



ENGINEERING CONSULTANTS INTERNATIONAL, LLC

**ENGINEERING
PLANNING
SURVEYING**

July 17, 2008

Ms. Constance C. Holland, AICP
Director
The State of Delaware
Office of State Planning
122 William Penn Street, 3rd Floor
Dover, DE 19901

RECEIVED
OFFICE OF STATE PLANNING AND SURVEYING
2008 JUL 29 AM 10 06

552 Atlantic Avenue
Millville, Delaware
19967
(302) 537-8555
Fax (302) 537-8556
E-mail: ecide2@ecieng.com

**RE: WHISPERING BREEZE RPC
GEORGETOWN, DELAWARE
PLUS NO. 2008-03-05
ECI PROJECT NO. 06-045**

220 Rehoboth Avenue
P. O. Box 820
Rehoboth Beach, Delaware
19971
(302) 226-2844
(800) 403-4749
Fax (302) 226-2939
E-mail: eci@ecieng.com

Dear Ms. Holland:

One East Uwchlan Avenue
Suite 118
Exton, Pennsylvania
19341
524-2440
(888) 883-0700
Fax (610) 524-2452
E-mail: ecipa@ecieng.com

Thank you for the opportunity to showcase our Whispering Breeze Project to your committee. In response to your letter of April 15, 2008, we offer the following comments:

**OFFICE OF STATE PLANNING COORDINATION- STATE
STRATEGIES/PROJECT LOCATIONS**

www.ecieng.com

We understand that this Project is located in an Investment Level 2 & 3, according to the Delaware Strategies for State Policies and Spending. We further recognize that the Project is located within the incorporated limits of Georgetown. We welcome the support of the Planning Office with regard to this Project. It is our intention to develop the site to enhance existing environmental conditions, as they currently exist on the property.

The inaccuracy in the Georgetown map and the Sussex County Records has been resolved with the Sussex County and the Town of Georgetown. The reason for the discrepancy is there was an additional ± 15 acre portion of the initial Project Site that when surveyed was found to be a part of the over all Tract Boundary. It is my understanding that documents within the Town of Georgetown and the Official Maps for Sussex County have now been amended to reflect the additional property. I would hope that the State has been provided with the appropriate copies necessary to document the map change.

The Developer has been working earnestly with the Delaware Department of Transportation to resolve the transportation issues related to the Whispering Breeze Project in total. In fact, an agreement related to the manner in which the proposed grade separation at Arrow Safety Road and Route 113 as it fronts the

Whispering Breeze Project has been tentatively reached. For your reference, we have enclosed a copy of the most recent Plan Amendment necessitated by the agreements with DeIDOT along with a copy of an e-mail received from DeIDOT that clearly indicates that agreement is forth coming.

It is recognized that the Stormwater Management for this Project presents some unique challenges ECI will coordinate with DNREC, the Sussex County Conservation District, as well as the Tax Ditch Staff.

STATE HISTORICAL PRESERVATION OFFICE

As there were no comments from the State Historic Preservation we have no responses to offer.

DEPARTMENT OF TRANSPORTATION

In response to the comments raised by the Delaware Department of Transportation we offer the following response, in the order in which the comments were received.

Item 1

To date CMS Builders and the Delaware Department of Transportation have entered into discussions over a six-month period of time related to the North/South Quarter Study through Georgetown and along Route 113 and how Whispering Breeze can coordinate with the Department in providing the two-phase approach to the Route 113 and Arrow Safety Road corridor issues. Tentative agreement has been reached with the Department that will resolve the concerns related to the eventual construction of a grade separation and split diamond interchange at the intersection of Arrow Safety Road and Route 113 and at one of the entrances to Whispering Breeze. In addition, other considerations along the Route 113 corridor have been agreed to, to include a right in right out access to Route 113 for Whispering Breeze. For more direct to the point information related to the agreement we have enclosed a copy of the updated Whispering Breeze Plan documenting the results of CMS Builders negotiations with DeIDOT along with an e-mail from Mr. Ted Bishop depicting the agreement that has been tentatively reached with regard to a coordinated access through the Whispering Breeze Project that meets the requirements of both the Department of Transportation and CMS Builders. We would wish to point out that this spirit of cooperation has resulted in a Project that far exceeds expectations related to safety improvements at Arrow Safety Road in that the tentative agreement has been presented to the Town of Georgetown Council who have extended support for the agreement.

With regard to the current intersection of Arrow Safety Road and Route 113 as a direct result of letters forwarded to the Department Secretary by the Town Council of Georgetown as well as the Planning Commission of Georgetown the Department has commenced work to design a traffic signal for the intersection. Recent correspondence with principals at DeIDOT have indicated that the warrants approving the traffic light are available and that the construction of the traffic signal can be anticipated to occur either late Fall 2008 or the Spring of 2009.

As discussed previously the results of negotiations between CMS Builders and DeIDOT allows for the right-of-way and construction of both a grade separation and split diamond interchange at the Arrow Safety Road and Route 113 Intersection.

Item 2

ECI and CMS Builders have received a Traffic Impact Study (TIS) Scope from Mr. Brockenbrough of DeIDOT. The Developer is now in the process of selecting a traffic firm to conduct the TIS in accordance with scope documents as prepared.

Item 3

Issues related to minimum right-of-way along Route 113 have been addressed as a result of discussions held between CMS Builders and DeIDOT. With regard to right-of-way dedication along Parker Road CMS Builders will provide sufficient right-of-way to meet the anticipated needs for Parker Road to be improved.

Item 4

With regard to the development of a ten-foot wide Shared Use Plan CMS Builders has agreed to the construction of this path in accordance with the manner in which the pathway is developed for other projects of a similar nature.

Item 5

With regard to Roadway Improvements along Parker Road we recognize the need to not prejudice the TIS and will adhere to recommendations that may become a part of the Traffic Impact Study.

Item 6

Cross Easements will be provided where appropriate.

Item 7

As discussed throughout this section ECI, CMS Builders and DeIDOT have been in contact with each other for an extensive period of time, it is felt that the specific requirements for roadway construction associated with this Project have been or will be addressed as a result of agreements to be reached.

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL GREEN INFRASTRUCTURE

A review of the Plan prepared for Whispering Breeze indicates the strong commitment on the part of CMS Builders to develop a project that is considerate of the Environmental Features that dominate the Whispering Breeze Site. The Plan as proposed completely respects Wetlands as they occur onsite and allows for green corridors throughout the Project Environments. The Project as proposed meets and exceeds the Town of Georgetown's requirement for RPC's open space and has been developed to fully protect Green Infrastructure as it occurs onsite. The Project is developed to be of low impact- to- flora and fauna as it exists onsite and to become synergetic with the site and its environmental attributes.

WATER SUPPLY

With regard to water supply it is correct that the Town of Georgetown Public Works will provide water supply to this Project via a connection to an existing public water system. The Town of Georgetown will execute a Certificate of Public Convenience and Necessity (CPCN) to provide public water in this area in accordance with applicable Delaware State Law. The Town of Georgetown will file the application for a CPCN with the Public Service Commission if the application has not already been prosecuted. With regard to development of a public well onsite ECI is unaware of the need to do so. It is our understanding that current existing water supplies under the ownership and operation of the Town of Georgetown are adequate to meet the potable water supply needs for the Whispering Breeze Project.

With regard to the need for Dewatering wells CMS Builders is aware that Construction Permits must be obtained from the Water Supply Section prior to the construction of well points.

SEDIMENT AND EROSION CONTROL/STORMWATER MANAGEMENT

A comprehensive Stormwater Management Plan will be developed for this Project. The Plan will be designed in accordance with the Sussex Conservation District (SCD) and the State of Delaware regulations. The Stormwater Management Plan will address current pre-development hydrology at the Site, and will address conveyance and treatment of stormwater from adjacent properties that migrate through the Project. The Developer recognizes the importance of Stormwater Management and related aspects associated with the management of Post-Project hydrology throughout the Project. The Developer will cooperate fully with the agencies responsible for Stormwater Management. Due to the Sites proximity to the Inland Bay's, the Developer will be extremely diligent during the construction of this Project, to assure compliance with soil conservation measures for the site work and overall construction.

We intend to use Green Technology within this Site wherever feasible. We will use super-silt fence along any Wetland boundaries and other places where required. A Certified Construction Reviewer will be engaged during construction activities for this Project, to assure compliance with the approved Soil Erosion and Sedimentation Control Plan.

A Pre-design Meeting with Sussex Conservation District (SCD) will be held to discuss aspects of the Stormwater Management Design for the Project prior to commencement of in-depth Stormwater Management Design.

A Notice of Intent (NOI) to DNREC has been submitted as required.

Both the Developer and ECI are well versed in the requirements associated with the control of Sediment and Erosion on Development Sites. ECI will diligently prepare an Erosion and Sedimentation Control Plan for the Project in total this plan will be forwarded to the Sussex County Conservation District for review and approval.

DRAINAGE

ECI is cognizant of the establishment of the McGee Tax Ditch along the boundary of the Whispering Breeze Project. Currently ECI is perusing a reduction in right-of-way with the Tax District. As part of the Design and Engineering associated with this Project ECI will take precautions to ensure that the

development of the Whispering Breeze Project does not hinder any off Site drainage upstream of the Project nor create any off site drainage issues down stream of the Project Site. As a normal and customary part of the Stormwater Management for any development Project ECI verifies both a Pre and Post Development Condition for stormwater discharge as mandated by Delaware State Law the Pre Development Condition will not be exceeded in terms of discharge by the Post Development Conditions.

RARE SPECIES

ECI has conducted a search of the Rare Endangered Species listing for this Project Site the results of our investigations indicate that within the Project Boundaries there are known species that are rare or endangered onsite. However it is certainly possible that secretive species could be hiding out in the Wetlands associated with this Project. However, it must be recognized that the Project design fully respects Small Streams and Wetlands thereby mitigating the possibility of impacting the rare amphibians.

SITE VISIT REQUEST

If the Environmental Review Coordinator wishes to have the opportunity to survey the Project Site the Developer will concur with that wish. In order to provide Project security, all that is necessary for the coordinator to do is to formally request a site visit in writing to the Developer who will then arrange to have a Site Representative accompany the Environmental Technician reviewing the Project Site. The Developer can be reached at: CMS Builders, Inc 301 Nottingham Place, Suite 101-104, Chalfont, Pennsylvania 18914 Telephone Number 215-822-9330. The president of CMS Builders and the individual contact would be Mr. Gerry Gruber, President.

FOREST AND WETLAND HABITAT PRESERVATION

Of the wooded area that makes a part of the Whispering Breeze total area there is approximately 49.7 acres of woodland of which 24.1 acres is to be removed resulting in a conservation of woodland of approximately 25.7 acres or approximately 52% of the woodland area. It will be the intention of the Developer of the Whispering Breeze Project to conserve woodlands wherever possible as it is recognized that woodlands are a desirable component of a Residential Planned Community. The Developer will place restrictions on each individual property that is involved in woodland-forested area to preclude the unnecessary removal of forestlands.

Consideration of woodlands will be undertaken in development of necessary Stormwater Management Facilities and tree removal where possible will be restricted to eliminate on the impact of nesting birds and to other wildlife during the period of April 1st through July 31st. It must be recognized that although efforts to comply with tree removal guidelines will be attempted there is no assurance that tree removal will not occur during that period of time.

PLANT RESCUE

Although some woodland will be removed in the logical development of this Project Site no Wetlands are to be destroyed, filled or in any manner disturbed. In fact very stringent efforts to assure that Wetlands are not impacted are made apart of the Project Planning. Clearly a review of the Concept Plan for the Whispering Breeze indicates that Wetlands are not, under any circumstances, involved or impacted in the development of this Project.

With regard to Plant Rescue the Developer of the Whispering Breeze Project would welcome the election of Limited Plant Harvest or Plant Rescue by the Delaware Native Plant Society. The harvesting of such plants although it is very doubtful that plants of that nature exist onsite will be at the discretion of the Developer and will not occur in a manner that would affect the overall construction sequence for the Project. In addition the liability associated with such events will be at the risk of the society. No transfer of liability and/or risk will be assumed by CMS Builders should such a Plant Rescue occur.

NUISANCE WATER FOUL

It is recognized that the number of ponds and lakes proposed as a part of this Project may result in attractive locations for nuisance geese. It is the intention of the Developer to landscape areas immediately adjacent to these ponds and lakes in a manner consistent with NOT providing habitat for nuisance geese.

UNDERGROUND STORAGE TANK

It is recognized that there is one active Lust Site located near the proposed Project Site, that being First State Chevrolet. Based upon Environmental Phase I documentation it appears that there is no environmental impact associated with the First State Chevrolet storage tank. Obviously if during construction an underground storage tank is uncovered or petroleum contaminated soil is discovered the Tank Management Branch of DNREC will be notified as soon as practical.

AIR QUALITY

The Project will utilize Energy Star Certifications for appliances, heating and air conditioning systems, insulation and other factors that directly impact power requirements and/or energy requirements to support the residences.

With regard to electrical power generation, although the residents of the development will purchase electrical power, they have no direct control of the manner in which power is generated within the State of Delaware. The Project provides significant opportunities for bicycling and walking throughout the Project Site. As the Project will have a Homeowners Association, grass cutting and landscape services will be contracted to a landscape firm to maintain the public open space areas.

STATE FIRE MARSHAL'S OFFICE

ECl is aware of the rules and regulations as promulgated by the State Fire Marshal's Office. It is the intention of the Developer and ECl to fully comply with these issues and to file appropriate plans for review by the State Fire Marshal's Office, as the plan advances. With regard to gas piping, at present there are no plans within the Whisper Breeze Project, to provide a central gas system. If however, a gas utility elects to construct a distribution system, the Developer may pursue the option of obtaining gas service for this Project. Should that be the case, the construction of gas piping, through the residential and commercial units, will be in direct conformance with all applicable fire protection standards.

With regard to Plan Notes, the plans will be annotated with the notes made a part of the Fire Marshal comments.

DEPARTMENT OF AGRICULTURE

The Developer welcomes the Notice of No Objection by the Department of Agriculture and the Delaware Forest Service.

The Developer of the Whispering Breeze Project will take into consideration the Delaware Department of Agriculture Forest Service suggested "Right Tree for The Right Place". Consideration to all Landscape Plantings will be a paramount concern of the Developer of Whispering Breeze. It is recognized that the utilization of natives trees and shrubs to buffer the Project is an appropriate Landscape Design feature this issue will be fully addressed during the development of the Preliminary and Final Plans for the Whispering Breeze Project.

PUBLIC SERVICE COMMISSION

It is recognized that expansion of any natural gas or the installation of a closed propane system will fall within pipeline safety guidelines.

DELAWARE DIVISION OF PUBLIC HEALTH

CMS Builders, the Developers of the Whispering Breeze Project are delighted with the support of the Project by the Delaware Division of Public Health. In accordance with applicable State Law applications to the Delaware Division of Public Health with regard to water supply will be made as appropriate.

DELAWARE STATE HOUSING AUTHORITY

The Developer recognizes the demographic associated with incomes and medium home costs within the Sussex County geographic area. The Developer will utilize this information as a part of his Marketing Scheme, to position this Project in a market that will be compatible with the market participants.

DEPARTMENT OF EDUCATION

It is true that the construction of tot lots will be apart of the Project Design for the Whispering Breeze Project. It is the intention of the Developer to comply fully with all standards and specifications for the development of tot lots and playgrounds. CMS Builders recognizes the importance of meeting and/or exceeding these standards and developing play areas that are user friendly and provide security for tot lot or playground participants.

At present it is the intention of the Developer of Whispering Breeze to continue on with the age restriction made apart of the PLUS Application. The Developer plans to develop a marketing effort directed at active seniors and to continue with that venue thru the development of the residential portion of the Project.

SUSSEX COUNTY

It is apparent that the County Records do not depict the annexation of the Whispering Breeze Project into the Town Limits of Georgetown. As referenced elsewhere within this document the entire Project is and has been annexed by the Town of Georgetown for sometime.

With regard to buffers around the edge of the Site and Stormwater Management Ponds it will be the intention of the Developer to fully comply with the Stormwater Management Guidelines promulgated by the Sussex County Conservation District.

I hope that the responses contained within this correspondence will adequately address the concerns of the agencies reviewing this Project. Should you have any questions or concerns related to these responses and the Project in total, please feel free to contact me directly.

Very truly yours,

ECI

Kent Kullins For Gary Cuppels

Gary T. Cuppels, PLS, PP
President

Gary Cuppels

From: "Kevin Burdette" <keb@ce.net>
To: "Gerry Gruber - CMS Builders" <ggruber@cmsbuildersinc.com>; "Tom Mellon -CMS Builders" <tmellon@cmsbuildersinc.com>; "Joe Gaul - CMS - Whispering Breeze Project" <josephgaul@comcast.net>
Cc: "Gary Cuppels - ECI Engineering" <gtcuppels@ecieng.com>; "Irena Peters" <ipeters@mccrone-inc.com>
Sent: Thursday, July 03, 2008 5:22 PM
Subject: DRAFT Response Letter from DeIDOT

To CMS-

Here is a copy of the DRAFT for the Letter of Understanding from DeIDOT. Ted had just gotten back in the last comments from others throughout DeIDOT. As a rule the VERBIAGE in CAPS are what they have changed from our last draft. Read it over and we can talk. Kevin

Ted-

We have been retained to provide Consulting Services for our Client, CMS Builders, Inc. (CMS). CMS is the Equity Owners of the properties denoted on the Sussex County Tax Map - 1-35-19, Parcels 19 & 64, located near Safety Arrow Road and Rt. 113 in Georgetown, Delaware

I am providing this email as a RECITATION of the items that we had discussed and reached agreement on at our meeting on June 17, 2008 at your facility (Sign In Sheet Attached). This meeting discussed the potential Road Alignment and future Grade Separated Intersection (GSI) to be located on CMS's property. This document will serve to confirm agreement between DeIDOT and CMS. I would like to emphasize that the immediate need is to establish this AN UNDERSTANDING, so that CMS may continue to move forward with this project. The items WHICH WERE AGREED TO are as follows:

1. There will be a Traffic SIGNAL located on Rt. 113 in the near future, for an at grade intersection of Rt. 113 and Arrow Safety Road. A GSI will occur at a later date. The Conceptual Layout accommodates DeIDOT future plans for this intersection INITIALLY AS AN AT GRADE INTERSECTION AND AS A GSI AT A FUTURE DATE. IF AT A FUTURE DATE THE GSI OCCURS CMS WILL WORK WITH DELDOT TO RELOCATE THE ROUTE 113 ENTRANCE FURTHER TO THE NORTH POSSIBLY AS A SHARED ENTRANCE WITH THE ADJACENT PROPERTY SHOULD THAT PROPERTY BE DEVELOPED.
2. An area will be reserved for DeIDOT's use for an elevated GSI to Arrow Safety Road across Rt. 113. (AS DEPICTED ON Exhibit DENOTED AS - ECI Drawing #06-045, Dated 6-25-08)
3. The GSI and related Access Ramps will be constructed by DeIDOT utilizing a Retaining Wall along the North and West Sides as noted on the attached Exhibit.
4. The 300' radius, location and a maximum 700' length of the Access Ramp ARE acceptable to DeIDOT.
5. CMS desires for the Retaining Walls to contain some form of Decorative Facing for the exposed surfaces. The Cost of this Decorative Facing, IF IT IS A DESIGN OTHER THAN WHAT DELDOT CAN ACCOMMODATE AT NO EXTRA COST TO DELDOT, WILL BE BORNE BY CMS..
6. CMS has agreed that during the Development Design Process IT WILL TO THE BEST OF ITS ABILITY WORK to provide additional distance between the highlighted 70' Right of Way (ROW) and the Buildings in the Commercial Area.
7. CMS will work with DeIDOT TO DEVELOP a Shared SWM Facility AND RELATED

- AGREEMENTS for the stormwater generated from the GSI, Access Ramps and related impervious areas contained on or adjacent to their property.
8. DeIDOT will provide First State Chevrolet an access to Rt. 113 for the loss of the existing Access Easement that First State Chevrolet currently has with CMS. (A copy of CMS's Access Agreement with First State Chevrolet is attached.) DELDOT WILL HAVE NO OBLIGATIONS OTHER THAN A PROVISION OF ACCESS IN REGARDS TO SAID AGREEMENT.
 9. CMS will not be required to make a contribution towards THE Traffic Signal WHICH HAS BEEN APPROVED FOR THE ROUTE 113/ARROW SAFETY ROAD INTERSECTION.
 10. Currently, the GSI is not included 6 Year Capital TRANSPORTATION PROGRAM. While it can not be a certainty, the GSI may not actually be constructed for another 20 to 30 years, as the construction of this GSI is a small portion of a much larger DeIDOT project known as the Rt. 113 Refined On-Alignment Alternative Upgrade. According to Secretary Wicks, "this project will proceed forward in a number of years as the capacity and safety conditions dictate".
 11. CMS does applaud DeIDOT's ability to work with CMS to create a Win-Win situation for the current and future residents of the Town of Georgetown.
 12. CMS understands that DeIDOT must AND WILL ADHERE TO the normal intersection and Entrance requirements for this Subdivision. DeIDOT agrees to provide TIMELY review and UPON RECEIPT OF ACCEPTABLE PLANS approval of these items as they are presented to DeIDOT. CMS will coordinate with THE ASSISTANT DIRECTOR OF PLANNING, or his appointee, AND APPROPRIATE DeIDOT Work Groups to review the Project Plans within DeIDOT.
 13. The highlighted On-Grade Access Road will be constructed to DeIDOT Specifications and turned over to DeIDOT UPON INSPECTION AND ACCEPTANCE BY DELDOT. The remaining roads in the development will be constructed to the Town of Georgetown Specifications. DeIDOT will construct the GSI components as they are required at a later date.
 14. CMS will be permitted by DeIDOT to landscape with plantings, manicure and maintain the plantings and selectively remove or trim trees located in the area between the CMS Property Lines and the current or future Rt. 113 Paved Shoulder along the CMS frontage WITH DELDOT'S WRITTEN CONCURRENCE.
 15. DeIDOT will allow CMS to utilize the area between the edge of the Southbound Shoulder and the ROW for installation of Utilities as may be necessary THROUGH THE UTILITY PERMITTING PROCESS.
 16. DeIDOT will provide "typical" Directing / Notification Signage along Rt. 113 for the businesses located within the Commercial Section.

I trust that it accurately depicts the items that we discussed at our meeting and the understanding that both parties had agreed upon. I eagerly await your reply, as CMS is desirous of receiving your confirmation of this Memorandum of Understanding prior to July 1, 2008, so that they may proceed with this project. Please advise should you have any questions or comments once you have reviewed this information.

Respectfully yours, Kevin

--

Kevin E. Burdette

Area Business Manager

McCrone Inc

26177 Deep Branch Road
Milton, DE 19968
Work- 302-684-8931
Mobile- 302-745-8800
Fax- 302-684-8931
Email- kburdette@mcrone-inc.com

Kevin E. Burdette

Area Business Manager

McCrone Inc

26177 Deep Branch Road
Milton, DE 19968
Work- 302-684-8931
Mobile- 302-745-8800
Fax- 302-684-8931
Email- kburdette@mcrone-inc.com

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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

JUN 10 2008

Regulatory Branch
Applications Section I

SUBJECT: CENAP-OP-R-2008-631-23 (JD)
Project Name: Mason Farm

Edward M. Launay
Environmental Resources, Incorporated
100 East Main Street, Suite 500
Salisbury, Maryland 21801

Dear Mr. Launay:

The plans identified on the following page depict the extent of Federal jurisdiction on the subject property. The basis of our determination of jurisdiction is also provided (Enclosure 1).

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands. Any proposal to perform the above activities within the area of Federal jurisdiction requires the prior approval of this office.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participating in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter is valid for a period of five (5) years. However, this jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the jurisdictional determination at any time should the existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete or inaccurate.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a combined Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form (Enclosure 2). If you request to appeal this

determination, you must submit a completed RFA form to the North Atlantic Division Office at the following address:

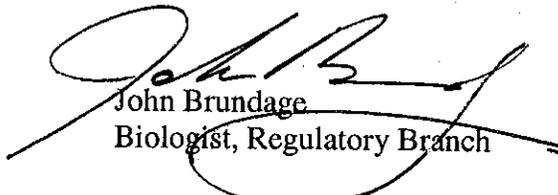
Michael G. Vissichelli
Regulatory Appeals Review Officer
North Atlantic Division, U.S. Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
EMAIL: Michael.G.Vissichelli@usace.army.mil

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by August 10, 2008.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

If you should have any questions regarding this matter, please contact me at 302-736-9763 between the hours of 1:00 and 3:30 p.m. or write to the above address.

Sincerely,


John Brundage
Biologist, Regulatory Branch

SUBJECT PROPERTY: Mason Farm, Tax Map 1-35-19.00, Parcel 64.00, Georgetown Hundred, Sussex County, Delaware.

SURVEY DESCRIPTION: Plans prepared by ECI, dated April 2007, revised May 1, 2008, entitled: *Boundaries of Waters of the United States Including Wetland Subject to the Corps of Engineers Regulatory Program, Whispering Breeze, Georgetown Hundred, Sussex County, Delaware, Tax Map 1-35-19.00, Parcel 64.00*, six sheets.

COMMENTS: The above referenced site was inspected by a Corps of Engineers representative on April 24, 2008.

Enclosures

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 10, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: PHILADELPHIA DISTRICT, CENAP-OP-R-2008-631 Mason Farm Waters 1 (RPW and abutting WL)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: DELAWARE County/parish/borough: SUSSEX City: GEORGETOWN
Center coordinates of site (lat/long in degree decimal format): Lat. 38.6724° Long. 75.391108°
Universal Transverse Mercator:

Name of nearest waterbody: ALMS HOUSE DITCH

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: INDIAN RIVER

Name of watershed or Hydrologic Unit Code (HUC): 02060010

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): APRIL 24, 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 4000 linear feet: width (ft) and/or 0.75 acres.

Wetlands: 6.91 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: 300 ~~acres~~

Drainage area: 300 ~~acres~~

Average annual rainfall: 42 inches

Average annual snowfall: 6 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through ~~4~~ tributaries before entering TNW.

Project waters are ~~5~~ river miles from TNW.

Project waters are ~~0 (or less)~~ river miles from RPW.

Project waters are ~~5~~ aerial (straight) miles from TNW.

Project waters are ~~0 (or less)~~ aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: NO.

Identify flow route to TNW⁵: ALMS HOUSE DITCH TO STOCKLEY BRANCH TO COW BRIDGE BRANCH TO MILLSBORO POND TO INDIAN RIVER.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: FIRST.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: SOME MAN MADE CHANNELIZATION PRESENT.

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet

Average depth: 4 feet

Average side slopes: ~~Vertical (1/1 or less)~~.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: RELATIVELY STABLE.

Presence of run/riffle/pool complexes. Explain: NONE, SLIGHT GRADIENT.

Tributary geometry: ~~Relatively straight~~

Tributary gradient (approximate average slope): 0.1 %

(c) Flow:

Tributary provides for: ~~Seasonal flow~~

Estimate average number of flow events in review area/year: ~~25~~

Describe flow regime: FLOW CONTINUOUS FOR SIX MONTHS.

Other information on duration and volume:

Surface flow is: ~~Discrete~~. Characteristics:

Subsurface flow: ~~Unknown~~. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known: WATER IS CLEAR.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

- (iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): GENERALLY FORESTED 30 FEET WIDE OR WIDER.
 Wetland fringe. Characteristics: FORESTED WETLANDS ABUT TRIBUTARY.
 Habitat for:
 Federally Listed species. Explain findings:
 Fish/spawn areas. Explain findings:
 Other environmentally-sensitive species. Explain findings:
 Aquatic/wildlife diversity. Explain findings: CHANNEL WITH SIGNIFICANT AREA OF ABUTTING WETLANDS PROVIDES SUPERIOR HABITAT.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

- Wetland size: 6.91 acres
Wetland type. Explain: PALUSTRINE FORESTED.
Wetland quality. Explain: GOOD, RELATIVELY UNDISTURBED MATURE FOREST.
Project wetlands cross or serve as state boundaries. Explain: NO.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain:

Surface flow is: Discrete
Characteristics:

Subsurface flow: Unknown. Explain findings:
 Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
 Not directly abutting
 Discrete wetland hydrologic connection. Explain:
 Ecological connection. Explain:
 Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 2.5 river miles from TNW.
Project waters are 2.5 aerial (straight) miles from TNW.
Flow is from: Wetland to navigable waters.
Estimate approximate location of wetland as within the 100-500 year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: WATER QUALITY GENERALLY CLEAR.
Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): FOREST 30 FEET OR MORE.
 Vegetation type/percent cover. Explain: FOREST 100 PERCENT COVER.
 Habitat for:
 Federally Listed species. Explain findings:
 Fish/spawn areas. Explain findings:
 Other environmentally-sensitive species. Explain findings:
 Aquatic/wildlife diversity. Explain findings: MATURE RELATIVELY UNDISTURBED WETLAND FOREST

PRESENT.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 3
Approximately (6.91) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
YES ABUTS WATERS 2	5.09	YES	0.74
0.74			
YES	1.04		

Summarize overall biological, chemical and physical functions being performed: WILDLIFE HABITAT, DOWNSTREAM AQUATIC FOODCHAIN SUPPORT.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. RPWs that flow directly or indirectly into TNWs.
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: ACOE AND CONSULTANT SITE OBSERVATIONS COMBINED WITH STRONG PHYSICAL EVIDENCE OF OHWL. BLUE LINE FEATURE ON USGS TOPOGRAPHIC SURVEY.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** June 10, 2008
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** PHILADELPHIA DISTRICT, CENAP-OP-R-2008-631 Mason Farm Waters 2 (RPW and abutting WL)
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:**
State: DELAWARE County/parish/borough: SUSSEX City: GEORGETOWN
Center coordinates of site (lat/long in degree decimal format): Lat. 38.6724° N, Long. 75.391108° W
Universal Transverse Mercator:
Name of nearest waterbody: ALMS HOUSE DITCH
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: INDIAN RIVER
Name of watershed or Hydrologic Unit Code (HUC): 02060010
 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.
- D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**
 Office (Desk) Determination. Date:
 Field Determination. Date(s): APRIL 24, 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There ~~are~~ "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There ~~are~~ "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 6300 linear feet: width (ft) and/or 1.3 acres.
Wetlands: 98 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 700 [redacted]
Drainage area: 400 [redacted]
Average annual rainfall: 42 inches
Average annual snowfall: 6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through [redacted] tributaries before entering TNW.

Project waters are [redacted] river miles from TNW.
Project waters are [redacted] river miles from RPW.
Project waters are [redacted] aerial (straight) miles from TNW.
Project waters are [redacted] aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: NO.

Identify flow route to TNW⁵: ALMS HOUSE DITCH TO STOCKLEY BRANCH TO COW BRIDGE BRANCH TO MILLSBORO POND TO INDIAN RIVER .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: SECOND.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: SOME MAN MADE CHANNELIZATION PRESENT.

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet

Average depth: 4 feet

Average side slopes: Vertical (0.10:1.00).

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: RELATIVELY STABLE.
Presence of run/riffle/pool complexes. Explain: NONE, SLIGHT GRADIENT.

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): 0.2 %

(c) Flow:

Tributary provides for: Seasonal flow

Estimate average number of flow events in review area/year: 2

Describe flow regime: FLOW CONTINUOUS FOR SIX MONTHS.

Other information on duration and volume:

Surface flow is: Discrete. Characteristics:

Subsurface flow: Unknown. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:

Identify specific pollutants, if known: WATER IS CLEAR.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): GENERALLY FORESTED 30 FEET WIDE OR WIDER.
- Wetland fringe. Characteristics: FORESTED WETLANDS ABUT TRIBUTARY.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: CHANNEL WITH SIGNIFICANT AREA OF ABUTTING WETLANDS PROVIDES SUPERIOR HABITAT.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 98 acres

Wetland type. Explain: PALUSTRINE FORESTED.

Wetland quality. Explain: GOOD, RELATIVELY UNDISTURBED MATURE FOREST.

Project wetlands cross or serve as state boundaries. Explain: NO.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain:

Surface flow is: Discrete

Characteristics:

Subsurface flow: Unknown. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 2.5 river miles from TNW.

Project waters are 2.5 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 100-500 year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: WATER QUALITY GENERALLY CLEAR.

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): FOREST 30 FEET OR MORE.

Vegetation type/percent cover. Explain: FOREST 100 PERCENT COVER.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: MATURE RELATIVELY UNDISTURBED WETLAND FOREST

PRESENT.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 8

Approximately (98) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
YES	15.2	YES	0.8
YES	82.0		

Summarize overall biological, chemical and physical functions being performed: WILDLIFE HABITAT, DOWNSTREAM AQUATIC FOODCHAIN SUPPORT.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: ACOE AND CONSULTANT SITE OBSERVATIONS COMBINED WITH STRONG PHYSICAL EVIDENCE OF OHWL. BLUE LINE FEATURE ON USGS TOPOGRAPHIC SURVEY.

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: 6300 linear feet 8 width (ft).

Other non-wetland waters: 98 acres.

Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **WETLANDS IDENTIFIED ON SITE ABUT TOP OF BANK OF ALMS HOUSE DITCH EITHER ON SITE OR DOWNSTREAM OFF SITE .**

Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **SEE D2 ABOVE, PROJECT PLANS IDENTIFY PROJECT WETLAND AS ABUTTING.**

Provide acreage estimates for jurisdictional wetlands in the review area: 98 acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

Demonstrate that impoundment was created from "waters of the U.S.," or

Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

which are or could be used by interstate or foreign travelers for recreational or other purposes.

from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

which are or could be used for industrial purposes by industries in interstate commerce.

Interstate isolated waters. Explain:

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters:

Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study:

U.S. Geological Survey Hydrologic Atlas:

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name: GEORGETOWN 1 INCH = 2000 FEET.

USDA Natural Resources Conservation Service Soil Survey. Citation: USDA SOIL SURVEY OF SUSSEX COUNTY.

National wetlands inventory map(s). Cite name: GEORGETOWN QUADRANGLE.

State/Local wetland inventory map(s):

FEMA/FIRM maps:

100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

Photographs: Aerial (Name & Date): USDA 2002.

or Other (Name & Date): USDA 1954.

Previous determination(s). File no. and date of response letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: SITE INSPECTION MADE APRIL 24 2008 TO CONFIRM ON SITE HYDROLOGY CONDITIONS.

SOILS

ECl has reviewed the Soils Map by the latest soils survey as prepared by the United States Department of Agriculture, Natural Resources Conservation Service and is cognizant of the soil types that occur naturally onsite and their limitations. ECl has direct experience in working with these soils in other areas of Sussex County and has successfully mitigated the limitations associated with some of the soil types. It will be the intent of the Developer to address the soil issue in a manner consistent with excellence in Design and Engineering.

WETLANDS

Mr. Edward Lanay, a recognized expert in Wetland Delineation and related Biology, has mapped in the field the Wetlands that occur onsite. As a result of Mr. Lanay's work, CMS Builders has secured Jurisdictional Delineation of the Wetlands as they occur on this site from the United States Army Corp of Engineers; Philadelphia District for the convenience of the reviewer of this document a copy of the Jurisdictional Delineation is made a part of this submission.

IMPERVIOUS COVER

A review of colored rendering of the Project should indicated to the reviewer that 28% of the Residential Area is calculated to be of an impervious nature, however approximately 62% of the Commercial Area is impervious. A complete dissertation on the calculation of Impervious Area has and is made a part of the Concept Plan for the Project dated November 10, 2007.

ERES WATERS

Not only is this Project adjacent to receiving waters of the Inland Bay's it is immediately adjacent to a tax ditch and numerous other ditches that were developed to drain farm land to include contamination of receiving waters by fertilizers, cow and chicken manure and other farm oriented operations. The development of the Whispering Breeze Project will mitigate those issues by providing quality and quantity treatment of all stormwater prior to its release. It will be the intention of CMS Builders to fully utilize and comply with Best Management Practices (BMP's) in the development of the Whispering Breeze Project.

TMDL'S

With regard to TMDL's please be aware that the wastewater needs for this Project will be addressed by connection to the existing Town of Georgetown Sanitary Sewer System that has been specifically designed to meet the sewage needs of this Project as well as other Projects occurring within the drainage study area. It is anticipated that a substantial decrease in total nutrients to include Nitrogen and Phosphorus will occur in addition, with regard to bacteria the Town of Georgetown Wastewater Treatment Plant provides for an almost complete reduction in bacterial levels. With regard to the Pollution Control Strategy to date this strategy has not been approved or promulgated by the Department except in draft form. As this Project has been submitted in advance of any promulgation of pollution control strategies it is the opinion of ECl that the Project is not subject to those requirements however by virtue of the manner in which sewage disposal is addressed ECl feels that the Project will comply with anticipated pollution control strategies.