



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

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

JUL 27 2007

Regulatory Branch
Applications Section II

SUBJECT: CENAP-OP-R2006-6199-39 (JD)
Project Name: Templin, Joel

Mr. Derron L. LaBrake

124 East Park Road
Suite 200
Havertown, Pennsylvania 19083

Dear Mr. LaBrake:

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:

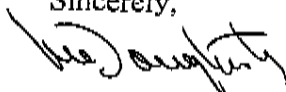
James W. Haggerty
Regulatory Appeals Review Officer
North Atlantic Division, U.S. Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700

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 **SEP 24 2007**

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 Lawrence Slavitter at 215-656-6734 or write to the above address.

Sincerely,



Kevin Dougherty
Biologist

SUBJECT PROPERTY: Joel and Holly Templin Property; approximately 12.3 acres; Block 32, Lot 140; near the intersection of State Line Road and Owensby Drive, in Bethel Township, Delaware County, Pennsylvania.

SURVEY DESCRIPTION: Plot plan prepared by Wilkerson and Associates, Incorporated; dated January 26, 2006; last revised March 30, 2007; entitled "Boundary and Topographic Survey"; scale 1" = 40'; one sheet.

COMMENTS: Site inspection by representative of this office on March 30, 2007.

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

| | | | |
|-------------------------------------|--|-----------------------------------|-------------------|
| Applicant: Joel Templin | | File Number: CENAP-OP-R-2006-6199 | Date: JUL 27 2007 |
| Attached is: | | | See Section below |
| <input type="checkbox"/> | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A | |
| <input type="checkbox"/> | PROFFERED PERMIT (Standard Permit or Letter of permission) | B | |
| <input type="checkbox"/> | PERMIT DENIAL | C | |
| <input checked="" type="checkbox"/> | APPROVED JURISDICTIONAL DETERMINATION | D | |
| <input type="checkbox"/> | PRELIMINARY JURISDICTIONAL DETERMINATION | E | |

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ccwo/regior> or Corps regulations at 35 CFR Part 35.

- A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.
- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the Philadelphia District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
 - OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the Philadelphia District Engineer. Your objections must be received by the Philadelphia District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the Philadelphia District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the Philadelphia District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT:** You may accept or appeal the permit
- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the Philadelphia District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.
- C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.
- D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.
- ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
 - APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION; You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II: REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers, Philadelphia District
ATTN: CENAP-OP-R
Wanamaker Building, 100 Penn Square East
Philadelphia, PA 19107-3390
Telephone:

If you only have questions regarding the appeal process you may also contact:

James W. Haggerty
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
Telephone: (718) 765-7150
E-mail: James.W.Haggerty@nad02.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: CENAP-OP-R
FILE NUMBER: 2006-6199

PROJECT LOCATION INFORMATION:

State: PA
County: Delaware
Center coordinates of site (latitude/longitude): 39°50'20.17"/75°31'52"
Approximate size of area (parcel) reviewed, including uplands: 12 acres.
Name of nearest waterway: Brandywine Canal
Name of watershed: Delaware River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date: [redacted]
Site visit(s) Date(s): [redacted]

Jurisdictional Determination (JD):

Preliminary JD - Based on available information, there appear to be (or) there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":
 The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

- B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":
- (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
 - (2) The presence of interstate waters including interstate wetlands.
 - (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
 - (4) Impoundments of waters otherwise defined as waters of the US.
 - (5) The presence of a tributary to a water identified in (1) - (4) above.
 - (6) The presence of territorial seas.
 - (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: [redacted] The site contains two main channels, [redacted] and [redacted], which flow into the Delaware River, which is a navigable interstate water of the United States. [redacted] and [redacted] are based on this connection to the watercourse on the subject property are part of the surface tributary system of the Delaware River, and thus is a waters of the United States in accordance with 33 CFR 328.3(a)(5). All

ENCLOSURE 1

wetlands identified in the vicinity of the streams are contiguous with the stream. Contiguous wetlands to the streams are therefore adjacent to part of the surface tributary system of the Delaware River. Wetlands that are contiguous with waters of the US per 33 CFR 328.3(a)(5) are considered waters of the US per with 33 CFR 328.3 (a)(7).

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
 - the presence of litter and debris
 - changes in the character of soil
 - destruction of terrestrial vegetation
 - shelving
 - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gages
 - other:

- Mean High Water Mark indicated by:
- survey to available datum; physical markings; vegetation lines/changes in vegetation types.

- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: Emerald Creek LLC. Minor changes were made to the original delineation.

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - Isolated, intrastate wetland with no nexus to interstate commerce.
 - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
 - Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated August 2006, prepared by (company): Emerald Creek LLC.
- Minor changes were made to the originally submitted delineation.
- This office does not concur with the delineation report, dated 2006, prepared by (company):
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
 - U.S. Geological Survey 7.5 Minute Topographic maps:
 - U.S. Geological Survey 7.5 Minute Historic quadrangles:
 - U.S. Geological Survey 15 Minute Historic quadrangles:
 - USDA Natural Resources Conservation Service Soil Survey:
 - National wetlands inventory maps:
 - State/Local wetland inventory maps:
 - FEMA/FIRM maps (Map Name & Date):
 - 100-year Floodplain Elevation is: (NGVD)
 - Aerial Photographs (Name & Date):
 - Other photographs (Date):
 - Advanced Identification Wetland maps:
 - Site visit/determination conducted on: 30 March 2007

Applicable/supporting case law: _____

Other information (please specify): _____

Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.
