

From: **Yost, Michael D CIV USARMY CENAP (US)** <Michael.D.Yost@usace.army.mil>
Date: Fri, Mar 16, 2018 at 2:41 PM
Subject: RE: [Non-DoD Source] Heritage Shores Development Project (UNCLASSIFIED)
To: Kyle Kowalczyk <kyle@raucheng.com>
Cc: Ken McFadden <ken@raucheng.com>

CLASSIFICATION: UNCLASSIFIED

Kyle,

(o) The term waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 et seq. and its implementing regulations, subject to the exclusions in paragraph (o)(2) of this section, the term "waters of the United States" means:

(i) All waters which are currently used, 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;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (o)(3)(iii) of this section, of waters identified in paragraphs (o)(1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (o)(1)(i) through (v) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (o)(1)(vii)(A) through (E) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (o)(1)(i) through (iii) of this section. The waters identified in each of paragraphs (o)(1)(vii)(A) through (E) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (o)(1)(i) through (iii) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (o)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (o)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

The following are not considered waters of the United States:

- Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands
- Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (o)(1)(i) through (iii) of this section.

Based off of the aerial imagery you have provided, the ditch does not appear to meet the definition of waters of United States. Consequently, the proposal is not subject to the authority of the Corps of Engineers and will not require the approval of this office.

Best Regards,

Michael D. Yost

-----Original Message-----

From: Kyle Kowalczyk [mailto:kyle@raucheng.com]
Sent: Friday, March 16, 2018 1:04 PM
To: Yost, Michael D CIV USARMY CENAP (US) <Michael.D.Yost@usace.army.mil>
Cc: Ken McFadden <ken@raucheng.com>
Subject: Re: [Non-DoD Source] Heritage Shores Development Project (UNCLASSIFIED)

Mike,

Please find attached an aerial showing the portion of ditch.

Thank you,
Kyle Kowalczyk

On Fri, Mar 16, 2018 at 10:06 AM, Yost, Michael D CIV USARMY CENAP (US)
<Michael.D.Yost@usace.army.mil> <mailto:Michael.D.Yost@usace.army.mil> > wrote:

CLASSIFICATION: UNCLASSIFIED

Kyle,

Can you provide me with an aerial as to which ditch you are referencing?

-----Original Message-----

From: Kyle Kowalczyk [mailto:kyle@raucheng.com> <mailto:kyle@raucheng.com>]

Sent: Friday, March 16, 2018 9:35 AM

To: Yost, Michael D CIV USARMY CENAP (US) <Michael.D.Yost@usace.army.mil> <mailto:Michael.D.Yost@usace.army.mil> >

Cc: Dustin Rauch <dustin@raucheng.com> <mailto:dustin@raucheng.com> >; Robert Rauch <robert@raucheng.com> <mailto:robert@raucheng.com> >;

Ken McFadden <ken@raucheng.com> <mailto:ken@raucheng.com> >

Subject: [Non-DoD Source] Heritage Shores Development Project

Mike,

I am involved with the development of Heritage Shores in Bridgeville, DE. We spoke recently regarding Turkey Branch just North of the property in question this time. To continue with the development, there is a portion of Ake Ditch located on the property that is no longer draining the development and is proposed to be filled. All storm water that used to drain into the ditch is now being handled by storm water collection devices inside the development. Please confirm that this portion of ditch, located within the lands of Passwaters Farms LLC only, is not an area that is regulated by the corps. Please do not hesitate to contact me with any questions, or to schedule a site visit, via email or by cell.

Thank you,

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Kyle Kowalczyk

LEHS-IT

cell: [484.706.0128](tel:484.706.0128) <tel:[484.706.0128](tel:484.706.0128)> <tel:[484.706.0128](tel:484.706.0128)> <tel:[484.706.0128](tel:484.706.0128)> >

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