



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

REPLY TO
ATTENTION OF

September 15, 2006

Operations Division

Subject: CENAB-OP-RPA (BORDER REALTY CO., LLC/BORDER REALTY
PARCEL/JD) 200601658-13

Border Realty Co., LLC
c/o Thomas J. McLane Associates
Mr. Art Popp
305 Linden Street, 2nd Floor
Scranton, Pennsylvania 18503

Dear Mr. Popp:

This is in reference to a letter dated January 26, 2006, requesting a jurisdictional determination (JD) and verification of the delineation of waters of the United States, including jurisdictional wetlands, located on the above referenced site, at the end of Ruth Street, adjacent to its intersection with Rtes. 6 & 11, adjacent to an unnamed tributary to Ackerly Creek, in Glenburn Township, Lackawanna County, Pennsylvania.

We have reviewed and concur with the Wetland Identification and Delineation Report entitled: Preliminary Wetlands Report for Border Realty Parcel, Glenburn Township, Lackawanna County, Pennsylvania, dated January 20, 2006, unrevised, and prepared by Thomas J. McLane Associates for the approximate 56.0 acre site. In addition, a field inspection was conducted on May 16, 2006 by Amy Elliott of my staff. This inspection indicated that the delineation of waters of the United States, including adjacent jurisdictional wetlands, as identified on the enclosed 1:100 scale plan, entitled: Preliminary Wetland Boundary Map - Border Realty Wetlands, Rts 6 & 11, Glenburn Township, Lackawanna County, Pennsylvania, drawing number Appendix #4.0, sheet 1 of 1, dated January 17, 2006, last revised August 10, 2006, is accurate. Those areas identified as waters of the United States, including jurisdictional wetlands, are regulated by this office pursuant to Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Clean Water Act. Enclosed is a document that outlines the basis of our determination of jurisdiction over these areas.

As indicated on the enclosed plan, Wetland C, Channel C, and Intermittent Channel F are all isolated wetlands and/or waters and as such are considered non-jurisdictional and not subject to Section 404 of the Clean Water Act. These areas are, however, wetlands/waterways as defined under the 1987 Corps of Engineers Wetlands Delineation Manual and therefore may be subject to Chapter 105 of the Pennsylvania Dam Safety and Encroachment Act. Please contact the Pennsylvania Department of Environmental Protection, Northeast Regional Office, 2 Public Square, Wilkes-

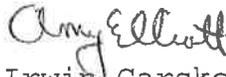
Barre, PA 18711 for further information.

Any grading or filling of waters of the United States, including jurisdictional wetlands, is subject to Department of the Army authorization. State and local authorizations may also be required to perform work on this property. In addition, the Interstate Land Sales Full Disclosure Act may require that prospective buyers be made aware, by the seller, of the Federal authority over any waters of the United States, including jurisdictional wetlands.

This approved JD is valid for five years from the date of issuance unless new information warrants a revision before the expiration date

If you have any questions concerning this matter, please call Amy Elliott of this office at (814) 235-0573.

Sincerely,



For: Irwin Garskof
Chief, Pennsylvania Permit Section

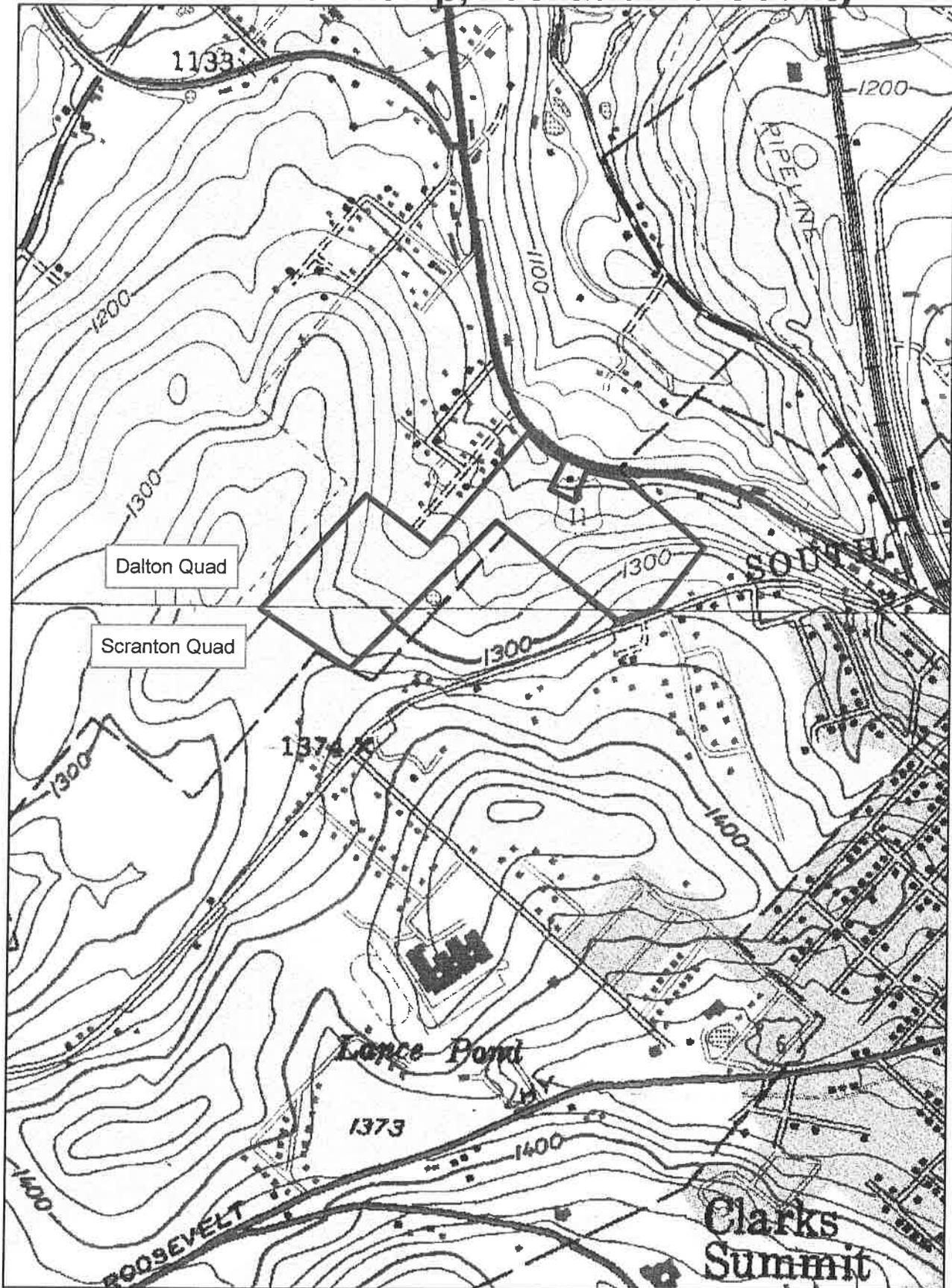
Enclosures

Copy Furnished:
PADEP, Northeast
Lackawanna County Conservation District
✓ Border Realty Co., LLC
File Copy

Appendix #1 Location Map

Border Realty Parcel

Glenburn Township, Lackawanna County



— Approximate Parcel Boundary

Scale: 1" = 1000'

DISTRICT OFFICE: Baltimore
FILE NUMBER: JD-200601658-13

PROJECT LOCATION INFORMATION:

State: Pennsylvania
County: Lackawanna
Center coordinates of site (latitude/longitude): Lat 41-30-03, Long 75-43-11
Approximate size of area (parcel) reviewed, including uplands: 56.0 acres
Name of nearest waterway: Unnamed tributary to Ackerly Creek
Name of watershed: Susquehanna River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date:
Site visit(s) Date(s): May 16, 2006

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 wetlands¹.

(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:* Unnamed tributary to Ackerly Creek eventually flows into the Susquehanna River which crosses a State line.

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 Thomas J. McLane Associates

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 January 20, 2006, unrevised, prepared by Thomas J. McLane Associates
- This office does not concur with the delineation report, dated _____, 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: Dalton, PA
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey: Lackawanna & Wyoming Counties Soil Survey
- National wetlands inventory maps: Dalton, PA
- 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: May 16, 2006
- Applicable/supporting case law:
- Other information (please specify):

¹Wetlands 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).