

APPENDIX G: CORRESPONDENCE
(Letter Received from US Army Corps of Engineers)

Georgetown University Boathouse
Environmental Assessment

April 2006



REPLY TO
ATTENTION OF

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

JUL 18 2005

July 11, 2005

Operations Division

Georgetown University
c/o Schnabel Engineering
Attn: Ms. Jane Rowan
656 Quince Orchard Road, Suite 700
Gaithersburg, Maryland 20878

Dear Ms. Rowan:

This is in reference to your letter, dated June 23, 2005, regarding application CENAB-OP-RMS(GEORGETOWN UNIVERSITY BOATHOUSE/JD)05-02723-11, requesting a jurisdictional determination (JD) and verification of the delineation of Waters of the United States within the Potomac River watershed, including jurisdictional wetlands, on property located on the Potomac River, Gerogetown, District of Columbia.

A field inspection was conducted by George Harrison on January 12, 2005, with you in attendance. This inspection indicated that the delineation of Waters of the United States, including jurisdictional wetlands within the "Area of Review" on the enclosed map is accurate. Specifically, while there are wetlands present on site, they are not Federally regulated because their source of hydrology is the result of leaks from the adjacent C&O Canal. This is evidenced by the wetland's outline showing springhead-like patterns of origin at the east and west ends of the site abutting the hiker-biker trail. The only source of water is the much elevated C&O Canal, whose walls are in a deteriorated state in this area. The 1987 Corps of Engineers Wetlands Delineation Manual (TR Y-87-1), Part IV, Section F (Atypical Situations), Subsection 4 (Man-Induced Wetlands), Paragraph 76, Step 4, states "CAUTION: If hydrophytic vegetation is being maintained only because of man-induced wetland hydrology that would no longer exist if the activity...were to be terminated, the area should not be considered a wetland". However, the District of Columbia's Water Quality Division may regulate such areas and should, therefore, be contacted. Those areas indicated as Waters of the United States (the Potomac River) 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.

Please note that on March 28, 2000, an administrative appeals process was established for JDs. Enclosed is a JD appeals form that can be used if you believe the JD you received warrants further review. You may accept this JD, submit new information seeking reconsideration of the JD or appeal the JD. If you accept the JD, you do not need to notify the Corps. A JD will be reconsidered if you submit new information or data to the Baltimore

District Engineer (DE) within 60 days from the date of this letter. If you decide to appeal the approved JD, please submit the attached form within 60 days from the date of this letter to our Regulatory Appeals Review Officer at the following address:

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

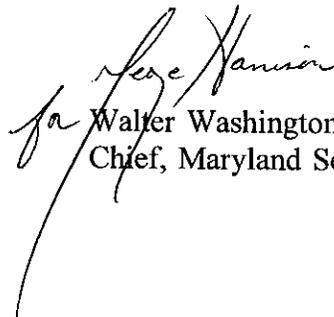
If we do not hear from you within 60 days, we will consider this JD accepted by you. This approved JD is valid for five years from the date of issuance unless new information warrants a revision before the expiration date.

You are reminded that 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 conduct activities in the locations. 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, being purchased.

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 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 USDA (United States Department of Agriculture) program participants, or anticipate participation in USDA programs, you should request a certified wetland delineation from the local office of the Natural Resources Conservation Service prior to starting work.

If you have any questions concerning this matter, please call George Harrison of this office at (410) 962-6002.

Sincerely,


for Walter Washington, Jr.
Chief, Maryland Section Southern

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Georgetown University	File Number: 200502723	Date: July 11, 2005
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/cecwo/reg> or Corps regulations at 33 CFR Part 331.

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 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 district engineer. Your objections must be received by the 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 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 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 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 division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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 division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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 division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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:
Sandy Zelen
Regulatory Branch Baltimore District
P.O. Box 1715
Baltimore, MD 21203-1715
(410) 962-6028 or 3670

If you only have questions regarding the appeal process you may also contact:
James W. Haggerty
Regulatory Appeals Review Officer
North Atlantic Division, US Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
(718) 765-7150

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 applicant or agent.

Date:

Telephone number:

DISTRICT OFFICE: Baltimore
FILE NUMBER: JD 200502723; 11Jul05

PROJECT LOCATION INFORMATION:

State: District of Columbia
 County: DC
 Center coordinates of site (latitude/longitude): 38° 54' 22"/77° 04' 25"
 Approximate size of area (parcel) reviewed, including uplands: 1 acre.
 Name of nearest waterway: Potomac River
 Name of watershed: Potomac River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination Date:
 Site visit(s) Date(s): 12Jan05

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: 1-acre.

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: 1-acre.

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.

^{A, B1} The Potomac River is a navigable, interstate waterway and this portion of the river is tidal.

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:*

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:

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): Leaking adjacent C&O Canal creates an artificial hydrology source that, otherwise, would not be present

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 February 2005, prepared by (company): Schnabel Engineering
 - 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:
 - 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): Corps, 1994; Google, 2003
 - Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on: 12Jan05
- Applicable/supporting case law:
- Other information (please specify):

Steve Harrison 11-Jul-05
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).

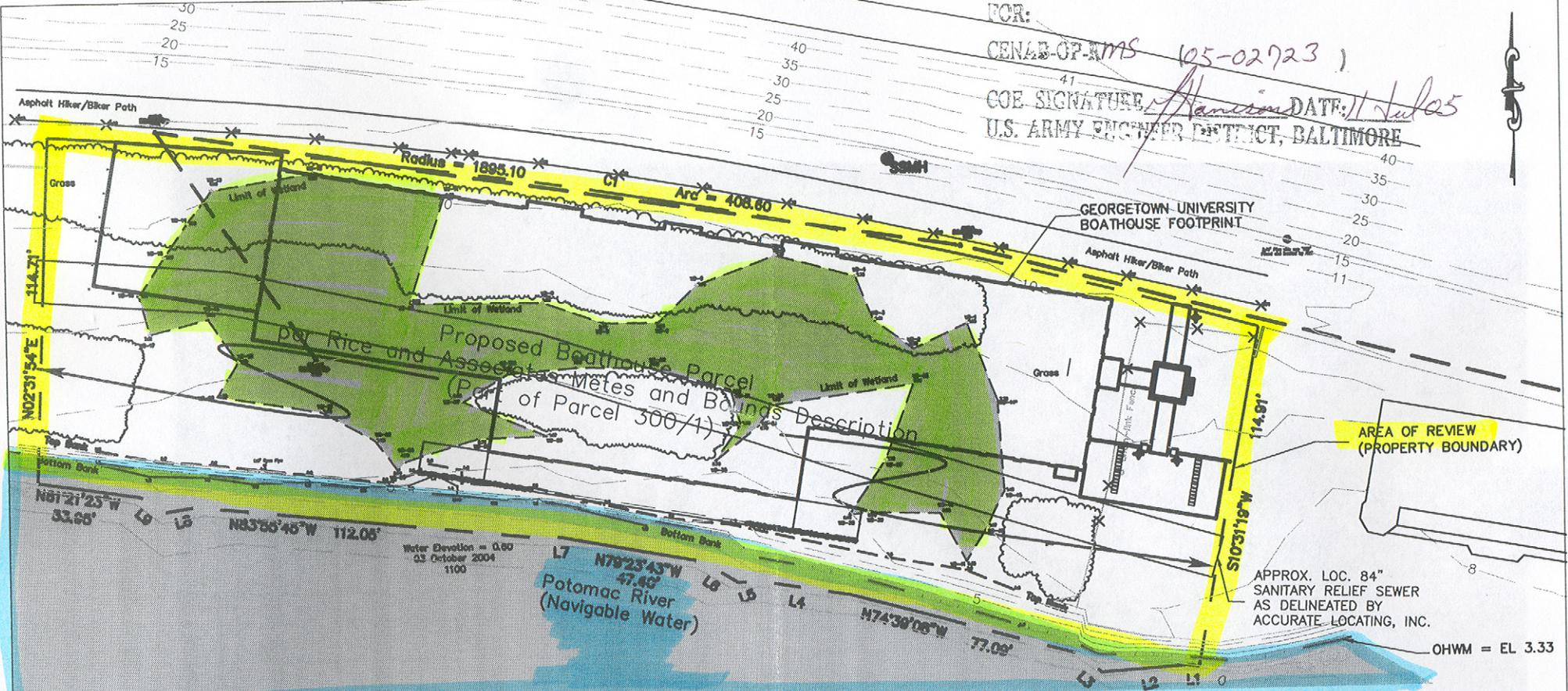
²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

JURISDICTIONAL DETERMINATION
VERIFICATION MAP

FOR:

CENAE-OP-RMS (05-02723)

COE SIGNATURE: *[Signature]* DATE: 1/12/05
U.S. ARMY ENGINEER DISTRICT, BALTIMORE



BOATHOUSE - PLAN VIEW
SCALE 1" = 50'-0"

LEGEND

- AREA OF REVIEW
- ORDINARY HIGH WATER (OHWM) = 3.33 DC SURVEYORS DATUM OR 4.03 MSL NGVD 29
- WETLAND BOUNDARY FLAG (44 TOTAL)
- SOIL PROBE (SP-1 THROUGH SP-3)
- PHOTO LOCATION
- WETLAND AREA (= 0.31 ACRES) *(not Federally Regulated)*
- NAVIGABLE WATERS OF THE U.S. *waters of US*

"This plot identifies as wetlands all areas of wetlands and waters of the U.S. pursuant to Section 404 of the Clean Water Act as delineated by the undersigned on September 22, 2004. Unless there is a change in the law or published regulations, the Corps of Engineers generally accepts delineation for a period not to exceed five years from this date. This determination was made utilizing the 1987 Corps of Engineers Wetlands Delineation Manual." The boundary line has not yet been approved by the Baltimore District.

"All point and contour elevations shown are on DC Surveyors Datum. The OHWM was obtained by averaging the daily high water measured at a real-time USGS Tidal Gauge 01647600 located on the Potomac at Wisconsin Avenue in Washington DC. Data from the tidal gauge is provided in DC Mean Low Water. Water elevations were converted to Mean Sea Level (MSL) NGVD 29 by subtracting 1.41 feet from DC Mean Low Water. Topographic elevations (vertical datum) provided by A. Morton Thomas as shown on this drawing were provided in DC Surveyors Datum which is 0.7 feet lower than MSL NGVD 29. Therefore the OHWM is 4.03 MSL and 3.33 feet on DC Surveyor datum."

NOTES:
1. A. Morton Thomas surveyed this property NAD 83/93 Maryland State Plane on October 3, 2004
* Flag WD-44 had been inappropriately moved before surveying. This flag location has been estimated.

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REFERENCE: The wetland points were surveyed by A. Morton Thomas, Inc. on October 3, 2004. The information was obtained from their drawing dated Oct. 2004 and used Georgetown University Boathouse Site. Additional information for the proposed design was provided by Georgetown University and from a plan developed by MUSE ARCHITECTS.

REV.	DESCRIPTION	DATE

DELINEATED BY: JOR
DRAWN BY: NSF
CHECKED BY: JOR/PTW
JANE O. ROWAN, P.W.S.
[Signature] DATE: 2/4/05
PROFESSIONAL WETLAND SCIENTIST
000170

Schnabel
Schnabel Engineering
656 Quince Orchard Road
Suite 700
Gaithersburg, MD 20870
Phone: 301-417-2400

WETLANDS DELINEATION AND
SAV REPORT
NON-MOTORIZED BOATHOUSE
GEORGETOWN UNIVERSITY
WASHINGTON, D.C.

WETLAND BOUNDARY PLAN			
SCALE: AS SHOWN	DATE: 2/4/05	DRAWING NO. 04121197.01	ATTACHMENT 3