



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

CENAB-OPR-S

01 APRIL 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ NAB-2025-00569-M51 (Ewing Farms - K. Hovanian Homes/ AJD)²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

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This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

a. The review area is comprised entirely of isolated or excluded non-jurisdictional aquatic features. Based on a review of desktop data resources listed in Section 9 of this memorandum and a field visit conducted on 19 May 2023, the non-tidal wetlands (NTW) are non-jurisdictional isolated features with no surface connection to regulated waters. The agricultural ditches are non-jurisdictional excluded features which do not carry relatively permanent flow.

Table 1 Aquatic Resources in the Area of Review

Waters Name	Cowardin Code	Amount of Aquatic Resource	Status
Drainage Ditch A	R6	1,500 linear feet (lf)	Non-jurisdictional
Drainage Ditch B	R6	890 lf	Non-jurisdictional
Drainage Ditch C	R6	390 lf	Non-jurisdictional
NTW A	PEMf	0.006 acres (ac)	Non-jurisdictional
NTW B	PEMf	0.293 ac	Non-jurisdictional
NTW C	PEMf	0.198 ac	Non-jurisdictional
NTW D	PEMf	0.242 ac	Non-jurisdictional

2. REFERENCES.

a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)

b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA.

Project Area Size: Approximately 93 ac.

Location Description: Agricultural field at 5400 Main Street, Grasonville, Queen Anne's County, Maryland

Center Coordinates of the Project Site: Latitude 38.958341, Longitude -76.187342

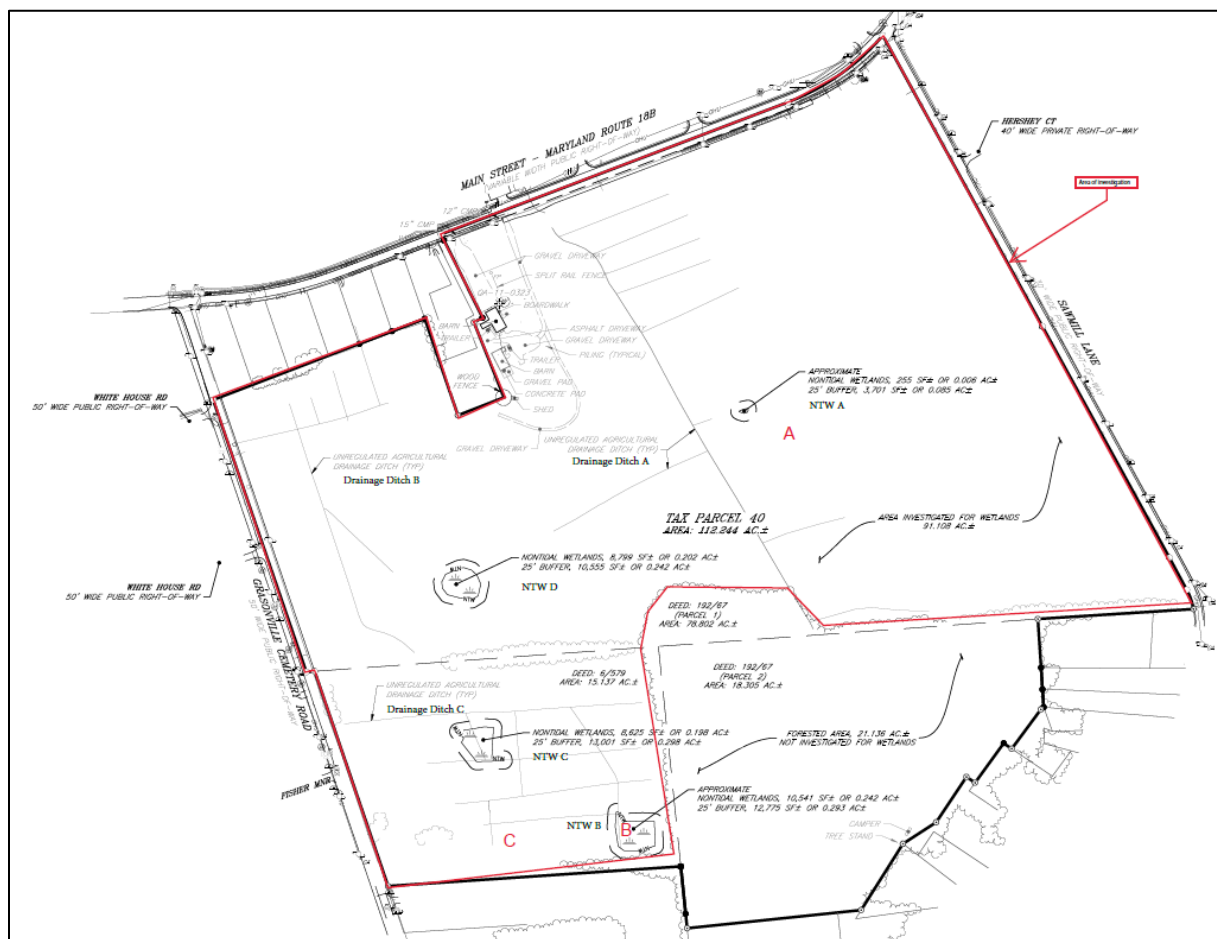


Figure 1 Review Area, provided by applicant.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The nearest TNW is the Chester River, a traditionally navigable Section 10 water subject to the ebb and flow of tide.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Not applicable, as no connection was observed from the subject waters to a TNW. There is no flow from the non-tidal wetlands or ditches within the area of review to a TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): N/A

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸ N/A

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

NTWs listed in Table 1 do not have a continuous surface connection to a jurisdictional water. The site contains approximately 0.74 ac of farmed non-tidal wetlands. These non-tidal wetlands are small, seasonally saturated depressions, surrounded by dry lands. These wetlands meet the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coast Regional Supplement but do not have a continuous surface connection to a jurisdictional feature.

Ditches listed in Table 1 are excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3). The excluded features are ditches, some of which are excavated in hydric soils mapped as Hurlock sandy loam (HvA); however, field conditions do not exhibit wetland vegetation, and the ditches do not carry relatively permanent flows of water. The ditches do not have more than a speculative/insubstantial effect on the chemical, physical, and biological integrity of the nearest TNW (Chester River).

⁸ 88 FR 3004 (January 18, 2023)

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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

a. Site Visit 19 May 2023: Ms. Megan Spindler (US Army Corps of Engineers) participated in a site visit to verify Lane Engineering, Inc.'s field delineation of the site. Ms. Spindler inspected the drainage ditches and non-tidal wetlands to determine their jurisdictional status.

b. Wetland Delineation Plan entitled, "Jurisdictional Determination on the Lands of T.R. Ewing Lands, Inc. and Thomas Raymond Ewing and Mary Cordelia Ewing" dated 24 February 2026, prepared by Lane Engineering, Inc., which denotes the presence of delineated aquatic resources, and accompanying wetland data sheets.

c. Desktop Review: Desktop information reviewed included mapped wetland/streams features via online geographic information systems, aerial imagery, US Fish and Wildlife Service National Wetland Inventory Maps, LiDAR, and digital elevation models.

10. OTHER SUPPORTING INFORMATION.

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Figure 2 Typical condition of feeder ditches.

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Figure 3 Typical condition of mainstem agricultural ditches.

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Figure 4 Poned NTW C – Typical of NTW conditions

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Figure 5 Ponded NTW D – more ponded than other NTWs on site, but isolated.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.