U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/7/2020
ORM Number: NAB-2020-00230
Associated JDs: N/A
Review Area Location[1]: State/Territory: Maryland City: Ingleside County/Parish/Borough: Queen Anne's
Center Coordinates of Review Area: Latitude 39.082648 Longitude -75.859692

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Main Tax Ditch 1	1,750	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent main pubic drainage association (PDA) tax ditch identified on the as-builts for the Queen Anne's County SCD as-builts and shown on historic aerial imagery dating back to 1937. Flow observed early and late growing season. Feature contributes intermittent flow to perennial tributary identified as Downes Wilson Bittle.
Tributary 1	1,970	linear feet	(a)(2) Perennial tributary contributes	Perennial tributary identified on the as-builts for the Queen Anne's County SCD and shown on historic aerial imagery dating back to 1937. Flow observed

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			surface water flow directly or indirectly to an (a)(1) water in a typical year.	early and late growing season. Feature contributes perennial flow to upper reaches of Mason Branch eventually flowing into Tuckahoe Creek/Choptank River.
Tributary 2	2,570	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Perennial tributary identified on the as-builts for the Queen Anne's County SCD and shown on historic aerial imagery dating back to 1937. Flow observed early and late growing season. Feature contributes perennial flow to upper reaches of Mason Branch eventually flowing into Tuckahoe Creek/Choptank River.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland C	0.537	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Palustrine emergent nontidal wetlands delineated by consultant satisfy all three parameters and are determined adjacent wetlands to Downes Wilson Bittle, a perennial (a)(2) tributary to Tuckahoe Creek. Drainage to the perennial tributary from Wetland C is visible on aerial photography and on LiDAR data during the growing season. Wetland C touches at least one point or side of Downes Wilson Bittle. There is no physical separation from the (a)(2) water and the (a)(4) wetland. Wetland C has no certified prior-converted cropland (PCC) determination made by USDA-NRCS on file. Wetland C was determined to be an abandoned PCC and meets the definition of (c)(16) and is being evaluated under NWPR paragraphs (b) and (a). Additionally, Wetland C does not contain a conservation practice(s) that were identified by the local Soil Conservation District (SCD) office suggesting Wetland C is fallow/idle as a result of implementing a set-aside cropland area nor was the area cropped at least once within the preceding 5 years based on a desktop and field reviewed data.
Wetland D-E	1.197	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Palustrine emergent nontidal wetlands delineated by consultant satisfy all three parameters and are determined adjacent wetlands to Downes Wilson Bittle, a perennial (a)(2) tributary to Tuckahoe Creek. Drainage to the perennial tributary from Wetland D-E

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
				is visible on aerial photography and on LiDAR data during the growing season. Wetland D-E touches at least one point or side of Downes Wilson Bittle. There is no physical separation from the (a)(2) water and the (a)(4) wetland. Wetland D-E has no certified PCC determination made by USDA-NRCS on file. Wetland D-E was determined to be an abandoned PCC and meets the definition of (c)(16) and is being evaluated under NWPR paragraphs (b) and (a). Additionally, Wetland D-E does not contain a conservation practice(s) that were identified by the local SCD office suggesting Wetland D-E is fallow/idle as a result of implementing a set-aside cropland area nor was the area cropped at least once within the preceding 5 years based on a desktop and field reviewed data.
Wetland J-K	0.548	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Palustrine emergent nontidal wetlands delineated by consultant satisfy all three parameters and are determined adjacent wetlands to Downes Wilson Bittle, a perennial (a)(2) tributary to Tuckahoe Creek. Drainage to the perennial tributary from Wetland J-K is visible on aerial photography and on LiDAR data during the growing season. Wetland J-K touches at least one point or side of Downes Wilson Bittle. There is no physical separation from the (a)(2) water and the (a)(4) wetland. Wetland J-K has no certified PCC determination made by USDA-NRCS on file. Wetland J-K was determined to be an abandoned PCC and meets the definition of (c)(16) and is being evaluated under NWPR paragraphs (b) and (a). Additionally, Wetland J-K does not contain a conservation practice(s) that were identified by the local SCD office suggesting Wetland J-K is fallow/idle as a result of implementing a set-aside cropland area nor was the area cropped at least once within the preceding 5 years based on a desktop and field reviewed data.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Ag. Drainage Ditches	590	linear feet	(b)(5) Ditch that is not an (a)(1) or	During the June 18, 2020 site visit, there was no evidence the approximately 590 linear

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			(a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	agricultural drainage ditch features would satisfy a flow regime under the definition of a "tributary" (i.e., either perennial or intermittent flow) to Beaverdam Ditch, a perennial tributary to the Tuckahoe Creek. No discrete and confined surface water flows were observed in the field or during a review of recent aerial photography during the wet season. Historically, these features were not constructed as in-line ditch featured to Beaverdam Ditch per the "Beaverdam Ditch Public Drainage Association (PDA)" tax ditch maps dating to 1964-1968 timeframe. Contributing flows to the approximately 590 linear feet of agricultural drainage ditches is predominately overland topographic sheet flow from adjacent cropland and roadside drainage areas entering the site. The ephemeral ditches are non-jurisdictional conveyances and do not connect other areas determined to be waters of the U.S. under the NWPR. Excluded features per. 33 CFR 328.3(b).
Wetland F	0.641	acre(s)	(b)(1) does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Corps independently evaluated PC areas during June 18, 2020 field investigation. Wetland F area is currently in agricultural use and not abandoned. Wetland F is identified as a conservation practice (CP) within Field 2 and is documented via a USDA Conservation Plan Map filed for Farm 1459 Tract 138. Ducks Unlimited Pond feature used as a waterfowl impoundment. Excluded under 33 CFR 328.3(b).
Wetland G	0.076	acre(s)	(b)(1) does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Corps independently evaluated PC areas during June 18, 2020 field investigation. Wetland F area is currently in agricultural use and not abandoned. Wetland F is identified as a conservation practice (CP) within Field 2 and is documented via a USDA Conservation Plan Map filed for Farm 1459 Tract 138 (approx. 10.63 acres cropland). Ducks Unlimited Pond feature used as a waterfowl impoundment. Excluded under 33 CFR 328.3(b).
Wetland H	0.637	acre(s)	(b)(1) does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from	Corps independently evaluated PC areas during June 18, 2020 field investigation. Wetland F area is currently in agricultural use and not abandoned. Wetland H is identified as a conservation practice (CP) within Field 10 and is documented via a USDA Conservation Plan Map filed for Farm 1459 Tract 138. Ducks Unlimited

			an (a)(1)-(a)(3) water in a typical year.	Pond feature used as a waterfowl impoundment. Excluded under 33 CFR 328.3(b).

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: delineation survey plan and report as prepared by Bay Environmental, Inc. dated April 27, 2020; revised July 10, 2020.
This information is sufficient for purposes of this AJD.
Rationale: N/A.

☐ Data sheets prepared by the Corps: N/A.

☒ Photographs: Aerial and Other: Google Earth Pro April 1992, February 2008, October 2009; May 2013; 2015 November and 2018 June. Photos taken by the Corps during the June 18, 2020 site visit.

☒ Corps site visit(s) conducted on: June 18, 2020.

☐ Previous Jurisdictional Determinations (AJDs or PJDs): N/A.

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: Queen Anne's County Soil Survey; online Streaming Web Soil Survey.

☒ USFWS NWI maps: NWI online wetland mapper.

☒ USGS topographic maps: 1:24,000; Ingleside, MD (7.5-Minute Series).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	12-Digit HUC: 020600050101; Upper Mason Branch. Upper reaches of the Choptank River/Tuckahoe Creek on farmland at the boundary between Queen Anne's and Caroline Counties.
Other USDA data (specify)	Queen Anne's County Soil Conservation Service "Highly Erodible and Wetland Conservation Determination" for Farm 1459 Tract No.: 138 dated August 8, 2016; Queen Anne's and Caroline Counties "Beaverdam Public Drainage Association (PDA)" tax ditch maps/as-built plans (1964-1968). Downes, Wilson Bittle PDA was also reviewed. Both PDAs are part of the Long Marsh Watershed. Corps also reviewed the August 8, 2016 USDA "Conservation Plan Map" for identifying agricultural uses including fallow/idle areas that are CREP/Ducks Unlimited CPs.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	Maryland's Environmental Resources and Land Information Network (MERLIN) online data.
FEMA/FIRM maps	Panel: 24011C0075D; Queen Anne's and Caroline Counties, MD.

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: During the June 18, 2020 site visit, the Corps observed no evidence of crop stress immediately adjacent to each of the drainage ditch features or in the farm fields. Each agricultural drainage ditch feature including PDA tax ditches were walked end-to-end. Further, the Corps completed a desktop review using high resolution time-lapse area photography to review areas

where not determined to be PCC independently by the Corps for which the Queen Anne's County stated no certified determination was on file. There was no persistant crop stress or prolonged saturation on aerial photographs (1992-2018) during the growing season. Historic aerials dating back to 1937 available from Queen Anne's County online property viewer were reviews to identified areas historically cropped against current aerial imagery to identify fallow/idle areas that satisfied wetland criteria and were not a certified conservation practice by USDA. Also the Queen Anne's County SCD provided the Corps with historical documentation of each of the as-builts for Beaverdam PDA and Downes Wilson Bittle PDA.