

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): February 25, 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: 2021-00215 175th Wing Warfield Air National Guard Base/Pre-app/Approved JD**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Maryland County/parish/borough: Baltimore County City: Middle River  
Center coordinates of site (lat/long in degree decimal format): Lat. 39.330611° **N**, Long. -76.414611° **W**.  
Universal Transverse Mercator:

Name of nearest waterbody: Unnamed Tributary ("WC1") to Frog Mortar Creek ("WC11")

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Frog Mortar Creek

Name of watershed or Hydrologic Unit Code (HUC): HUC number 020600030701

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: February 25, 2022

Field Determination. Date(s): November 22, 2021

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: Frog Mortar Creek is subject to the ebb and flow of tide from Middle River and the Chesapeake Bay. Frog Mortar Creek has the physical capabilities of use to transport interstate or foreign commerce. Frog Mortar Creek flows into Middle River then into the Chesapeake Bay. The Chesapeake Bay supports commercial fisheries for blue crabs, rockfish, menhaden, and eastern oysters. The Chesapeake Bay also includes two large commercial ports.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 2,521 linear feet: width (ft) and/or acres.

Wetlands: 4.1 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The Corps conducted a field review on November 22, 2021, and a desktop analysis on February 25, 2022. During the reviews, eight wetlands exhibiting all three wetland indicators, one stormwater Best Management Practice (BMP), and four ephemeral features were identified. Two such wetlands "WL4" and "WL5" and one stormwater BMP were located near the southwestern portion of the Corps Area of Review (AOR). During the Corps site visit and desktop analysis, it was determined these features were constructed in uplands for the purpose of stormwater flow and retention. Therefore, the palustrine emergent wetland (PEM) "WL4", palustrine scrub-shrub wetland "WL5", and stormwater BMP are determined to be non-Federally regulated, isolated intrastate waters. Three ephemeral channels were located near the southwestern portion of the Corps AOR and one ephemeral channel was located near the northeastern portion of the Corps AOR. During the Corps site visit and desktop analysis, it was determined these features, "WC2B", "WC2C", "WC1a", and the ephemeral portion of "WC2", were constructed in uplands for the purpose of stormwater control. Based on aerial imagery and the NRCS Web Soil Survey, these features were constructed in upland soils and are considered pre-amble waters, ditches or swales excavated in uplands. Therefore, these features are determined to be non-jurisdictional, non-Federally regulated, isolated intrastate waters. During the Corps field review, six PEM wetlands were identified near the center of the Corps AOR, noted as "WL6", "WL7", "WL8", "WL9", "JW7", and "JW2". During the Corps site visit, there was no evidence of a connection surface flow or other hydrologic connection from the wetland systems to other waters of the U.S. Therefore, the wetlands "WL6", "WL7", "WL8", "WL9", "JW7", and "JW2" are determined to be non-jurisdictional, non-Federally regulated, isolated intrastate waters. Within the Fourth District states, that includes Maryland, isolated waters are not Federally regulated due to the United States v. James J. Wilson case. That is, 33 CFR 328.3(a)(3) has been removed from the Corps regulation in the Fourth Circuit. In conclusion, the eight isolated wetlands, one stormwater BMP, and four ephemeral features at this site are not Federally regulated.**

### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### **1. TNW**

Identify TNW: **Frog Mortar Creek ("WL11")**.

Summarize rationale supporting determination: Frog Mortar Creek ("WL11") is subject to the ebb and flow of tide from Middle River and the Chesapeake Bay. Frog Mortar Creek has the physical capabilities of use to transport interstate or foreign commerce. Frog Mortar Creek flows into Middle River then into the Chesapeake Bay.

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": During the Corps field and desktop reviews, two wetlands exhibiting all three wetland indicators, were identified and noted as wetlands "JW4" and "JW5". Wetland "JW4" was classified as palustrine forested wetland and palustrine unconsolidated bottom. Wetland "JW4" fringes Frog Mortar Creek, a TNW. Based on aerial imagery, including LiDAR, wetland "JW4" is separated from Frog Mortar Creek by a berm, however there are potential connection surface flows or other hydrologic connections from the wetland system to Frog Mortar Creek on the northern and southern ends of the wetland (see attachment 1). Due to security fencing, the Corps could not review the area of potential connection of surface flows or other hydrologic connections from wetland "JW4" to Frog Mortar Creek. Wetland "JW4" is located approximately 100 feet from Frog Mortar Creek, therefore the Corps has determined that wetland "JW4" is adjacent to Frog Mortar Creek. Wetland "JW5" was classified as palustrine forested wetland and palustrine emergent wetland. Wetland "JW5" fringes Frog Mortar Creek, a TNW. Based on aerial imagery, including LiDAR, wetland "JW5" is likely connected to Frog Mortar Creek by a channel or pipe, however the Corps was unable to view the connection due to security fencing (see attachment 1). Wetland "JW5" is located approximately 50 feet or less from Frog Mortar Creek, therefore the Corps has determined that wetland "JW5" is adjacent to Frog Mortar Creek.

#### **B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

##### **1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

###### **(i) General Area Conditions:**

Watershed size: HUC 12 020600030701 is 8,503.54 **acres**

Drainage area: **acres**

Average annual rainfall: 45.7 inches

Average annual snowfall: inches

###### **(ii) Physical Characteristics:**

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<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

(a) Relationship with TNW:

- Tributary flows directly into TNW.  
 Tributary flows through **2** tributaries before entering TNW.

Project waters are **1 (or less)** river miles from TNW.  
Project waters are **1 (or less)** river miles from RPW.  
Project waters are **1 (or less)** aerial (straight) miles from TNW.  
Project waters are **1 (or less)** aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: Tributary "WC1" flows along the northeastern border of the Corps AOR and into a culvert under Lynbrook Road. Downstream of the culvert, "WL1" becomes tidally influenced "WC1b" and flows into Frog Mortar Creek, a TNW. Tributary "WC2" originates at the confluence of several ephemeral stormwater features in the southern portion of the Corps AOR. Tributary "WC2" then flows into a culvert under Lynbrook Road, where the tributary becomes tidally influenced and flows directly into Frog Mortar Creek. Tributary "WC2a" is located in the southern portion of the Corps AOR and originates from a culvert draining palustrine emergent wetland "JW3" and flows directly into tributary "WC2". Tributary "JS1" originates from wetland "JW1" in the southern portion of the Corps AOR and flows into palustrine forested wetland "WL2". Based on aerial imagery, including LiDAR, wetland "JW1" is connected to wetland "JW5" (see attachment 1).

Tributary stream order, if known: 1st order.

(b) General Tributary Characteristics (check all that apply):

**Tributary is:**  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: There are several culverts for road crossings impacting the tributaries in the Corps AOR. Also based on historic aerials, current aerial imagery, and current land use, the area has experienced heavy human alternation since at least the 1950's, as an Air National Guard Base. Land and aquatic features on site have likely been manipulated for the construction and maintenance of the Air National Guard Base.

**Tributary properties with respect to top of bank (estimate):**

Average width: 3 feet  
Average depth: < 1 feet  
Average side slopes: **4:1 (or greater)**.

**Primary tributary substrate composition (check all that apply):**

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover: common reed, black willow (*Salix nigra*), and Virginia

Creeper (*Parthenocissus quinquefolia*).

Other. Explain: many channels contain some riprap and or large stone in sections.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: intermittent flow greater than 3 months.

Other information on duration and volume: Flow was observed in the intermittent tributaries during the Corps site visit in November 2021.

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup> A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input checked="" type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> destruction of terrestrial vegetation        |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                   |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                             |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away      | <input type="checkbox"/> scour  |
| <input checked="" type="checkbox"/> sediment deposition                       | <input type="checkbox"/> multiple observed or predicted flow events   |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community             |
| <input type="checkbox"/> other (list):  |   |

Discontinuous OHWM.<sup>7</sup> Explain: Culverts were present for road crossings on several tributaries, interrupting the presence of the OHWMs. However, the OHWMs became visible at the outfall of the culverts.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water color is clear. Waters contain runoff from nearby airfield and impervious surfaces such as parking facilities and buildings.

Identify specific pollutants, if known: Unknown.

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<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): forested riparian corridor.  
 Wetland fringe. Characteristics: .  
 Habitat for:  
 Federally Listed species. Explain findings: .  
 Fish/spawn areas. Explain findings: Tributaries on site are located less than 0.5 miles from mapped essential fish habitat according to NMFS. Shallow tidally influenced tributaries on site could provide habitat for fish.  
 Other environmentally-sensitive species. Explain findings: .  
 Aquatic/wildlife diversity. Explain findings: Habitat for benthic macroinvertebrates.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.76 acres

Wetland type. Explain: PFO, PSS, PEM, PUB.

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Wetlands labeled "WL1", "WL2", "JW1", and "JW3" contribute flow to the tributaries they abutt.

Surface flow is: **Overland sheetflow**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetland "JW3" drains into a culvert where the flow then enters intermittent stream "WC2a" and then into tributary "WC2". "WC2" then flows into Frog Mortar Creek. Wetland "JW1" appears to be connected to "JW5" and Frog Mortar Creek. Wetland "JW1" also drains into intermittent stream "JS1", that then flows into "WL2".

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: water color clear.

Identify specific pollutants, if known: Unknown.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): .  
 Vegetation type/percent cover. Explain: Forested wetlands comprised of generally facultative and or obligate wetland plant species.  
 Habitat for:  
 Federally Listed species. Explain findings: .  
 Fish/spawn areas. Explain findings: .  
 Other environmentally-sensitive species. Explain findings: .  
 Aquatic/wildlife diversity. Explain findings: Habitat for benthic macroinvertebrates.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **4**

Approximately ( 1.76 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Y	(WL1) 0.39		
Y	(WL2) 0.28		
Y	(JW3) 0.32		
Y	(JW1) 0.77		

Summarize overall biological, chemical and physical functions being performed: Export of organic matter, export of food resources, nutrient cycling, pollutant trapping, transformation, filtering, and transport.

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
  - TNWs: linear feet width (ft), Or, 0.75 acres.
  - Wetlands adjacent to TNWs: 1.51 acres.
2. **RPWs that flow directly or indirectly into TNWs.**
  - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries "WC1" and "WC2" contain perennial sections, where stream flow was observed during the Corps field visit in November 2021. The channel is well-defined, with bed and bank as well as an OHWM. Groundwater is the primary source of water with some stormwater runoff.
  - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

seasonally: During the Corps site visit, water was flowing in the channels and there was a clearly defined OHWM and bed and bank.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **2,521** linear feet **3** width (ft).  
 Other non-wetland waters:        acres.  
Identify type(s) of waters:        .

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters:        linear feet        width (ft).  
 Other non-wetland waters:        acres.  
Identify type(s) of waters:        .

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **During the Corps site visit, palustrine scrub-shrub wetland "WL1" and palustrine forested wetland "WL2" were observed directly abutting or touching "WC1" and "WC2", respectively. "WC1" and "WC2" are RPWs that flow directly into Frog Mortar Creek, a TNW.**
- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **During the Corps site visit, wetland "JW1" was observed directly abutting or touching stream "JS1", a RPW. Stream "JS1" typically flows at least seasonally and connects wetlands "WL2" and "JW1". Wetland "JW3" was also observed directly abutting or touching stream "WC2a", a RPW. Stream "WC2a" flows at least seasonally and connects wetland "JW3" to RPW "WC2". Water from wetland "JW3" flows into a culvert adjacent to Lynbrook Road and then flows into stream "WC2a", which then flows into stream "WC2" .**

Provide acreage estimates for jurisdictional wetlands in the review area: **1.76** acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:        acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:        acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.



**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.  
Identify type(s) of waters: .
- Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): **The Corps conducted a field review on November 22, 2021, and a desktop analysis on February 25, 2022. During the reviews, eight wetlands exhibiting all three wetland indicators, one stormwater Best Management Practice (BMP), and four ephemeral features were identified. Two such wetlands "WL4" and "WL5" and one stormwater BMP were located near the southwestern portion of the Corps Area of Review (AOR). During the Corps site visit and desktop analysis, it was determined these features were constructed in uplands for the purpose of stormwater flow and retention. Therefore, the palustrine emergent wetland (PEM) "WL4", palustrine scrub-shrub wetland "WL5", and stormwater BMP are determined to be non-Federally regulated, isolated intrastate waters. Three ephemeral channels were located near the southwestern portion of the Corps AOR and one ephemeral channel was located near the northeastern portion of the Corps AOR. During the Corps site visit and desktop analysis, it was determined these features, "WC2B", "WC2C", "WC1a", and the ephemeral portion of "WC2", were constructed in uplands for the purpose of stormwater control. Based on aerial imagery and the NRCS Web Soil Survey, these features were constructed in upland soils and are considered pre-ambled waters, ditches or swales excavated in uplands. Therefore, these features are determined to be non-jurisdictional, non-Federally regulated, isolated intrastate waters. During the Corps field review, six PEM wetlands were identified near the center of the Corps AOR, noted as "WL6", "WL7", "WL8", "WL9", "JW7", and "JW2". During the Corps site visit, there was no evidence of a connection surface flow or other hydrologic connection from the wetland systems to other waters of the U.S. Therefore, the wetlands "WL6", "WL7", "WL8", "WL9", "JW7", and "JW2" are determined to be non-jurisdictional, non-Federally regulated, isolated intrastate waters. Within the Fourth District states, that includes Maryland, isolated waters are not Federally regulated due to the United States v. James J. Wilson case. That is, 33 CFR 328.3(a)(3) has been removed from the Corps regulation in the Fourth Circuit. In conclusion, the eight isolated wetlands, one stormwater BMP, and four ephemeral features at this site are not Federally regulated.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): **995** linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 1.17 acres.

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<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: HDR, Inc., Mr. Joshua Mace.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: State of Maryland, MERLIN Webpage, February 2022.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS Topo Map, Submitted by applicant/agent in Wetland Report.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Submitted by applicant/agent in Wetland Report.
- National wetlands inventory map(s). Cite name:USFWS NWI Online Mapper, February 2022.
- State/Local wetland inventory map(s):State of Maryland, MERLIN Web Mapper, Watershed Resources Registry Web Mapper, USGS Stream Stats Mapper.
- FEMA/FIRM maps:Accessed through State of Maryland, MERLIN Web Mapper.
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Access through State of Maryland, MERLIN Web Mapper, HistoricAerials.com.  
or  Other (Name & Date): Submitted by applicant/agent in Wetland Report .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** .