



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

CENAB-OPR-S

7 July 2025

MEMORANDUM FOR RECORD

SUBJECT: United States 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-2025-00159-M53 (Talbot Street Development/AJD)²

BACKGROUND. An approved Jurisdictional Determination (JD) 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. Approved JDs are clearly designated appealable actions and will include a basis of JD with the document.³ Approved JDs are case-specific and are typically made in response to a request. Approved JDs 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 approved JD 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 approved JD as defined in 33 CFR §331.2. For the purposes of this approved JD, 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. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

i. NTW1: Non-tidal wetlands (0.34 acres), non-jurisdictional

ii. NTW2: Non-tidal wetlands (0.88 acres), 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. 651, 143 S. Ct. 1322 (2023)

d. "Memorandum To the Field Between the United States Department of Corps and The United States EPA 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. The property is located at 929 South Talbot Street St. Michaels, Talbot County, Maryland. The site is in the Miles River watershed⁶ (HUC: 020600020605), approximately 34,137-acres (53.3 square miles) in drainage area. The review area is approximately 3.05-acres and is a mix of open field, minor development, and riparian forest towards the back of the site. There is a large berm located on site, likely of old fill material, separating NTW1 and NTW2. The site is bordered by commercial development on the north and south, Talbot Street to the west, and riparian forest to the east. The project site is the location of a proposed commercial development.

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.

⁶ <https://mywaterway.epa.gov/community/020801110401/overview>

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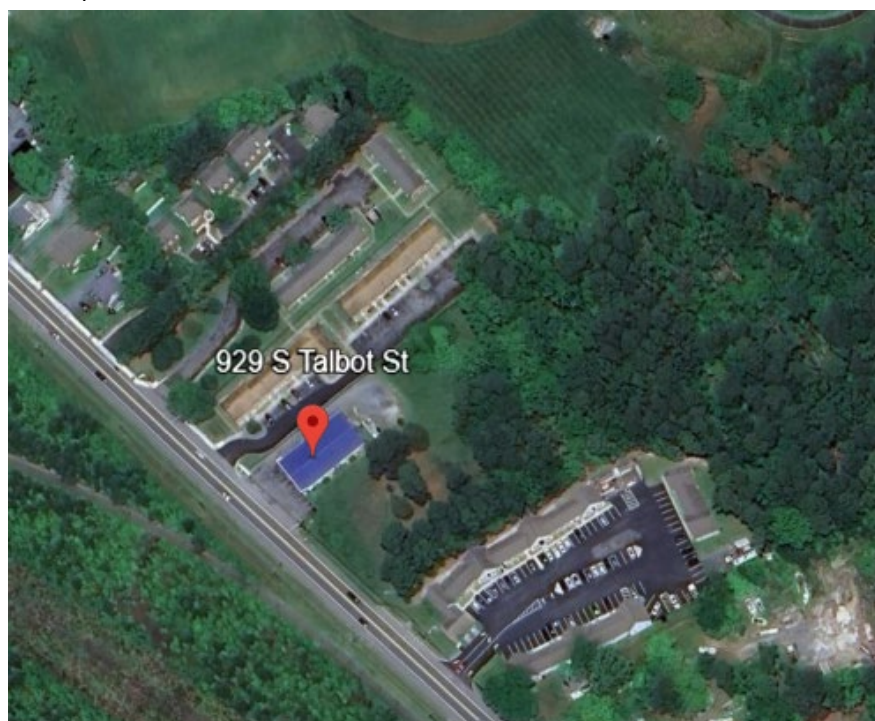


Figure 1: Vicinity Map (Source: Google Earth, taken 06/30/2025)

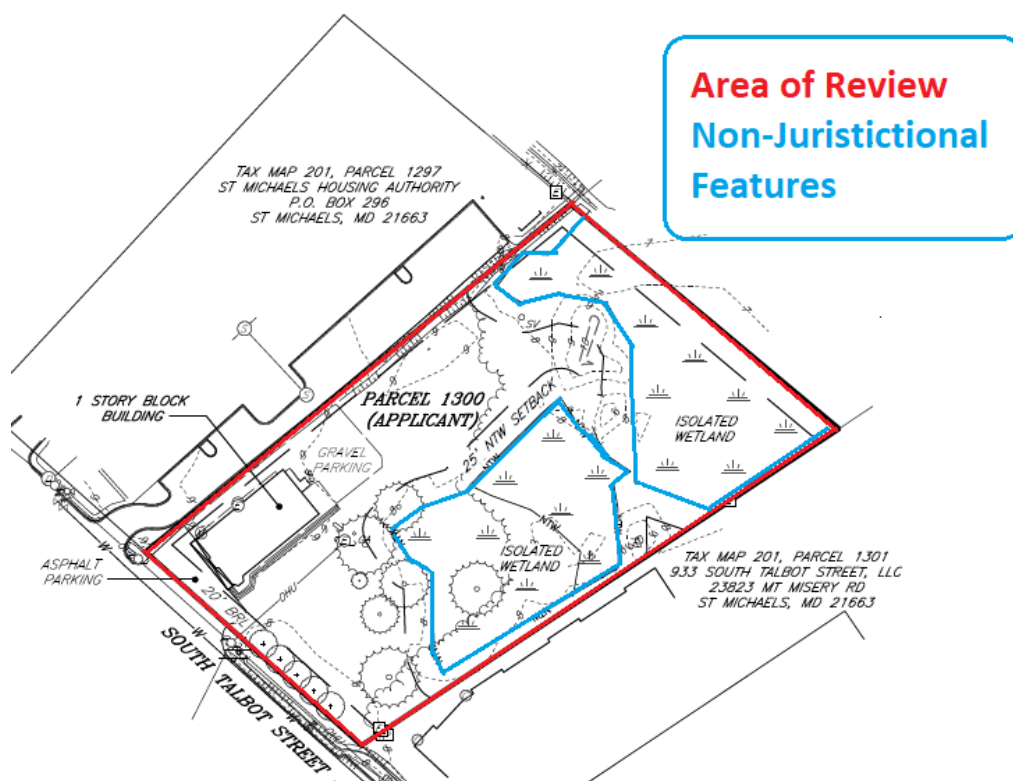


Figure 2: Area of review (red), non-jurisdictional features (blue), jurisdictional features (green).

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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 Miles 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. No flow was observed from the subject features to a TNW. There is no connection from NTW1 or NTW2 to a TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A

⁷ 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.

⁸ 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.

f. Adjacent Wetlands (a)(4):

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).⁹ 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).

i. NTW1 – This non-tidal wetland is a small, seasonally saturated depression (0.34 acres), surrounded by dry land. This wetland meets the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coast Plain Regional Supplement but does not have a continuous surface connection to a jurisdictional feature.

ii. NTW2 – This non-tidal wetland is a seasonally saturated mineral flat (0.88 acres), surrounded by dry land. This is only a section of the wetland, which extends further into the forested area located behind the parcel and area of review. However, during the site visit on 27 March 2025, the entire wetland (approximately 38 acres according to NWI mapping) was surveyed and no connection to a RPW was found. This wetland meets the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coast Plain Regional Supplement but does not have a continuous surface connection to a jurisdictional feature.

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.

⁹ 88 FR 3004 (January 18, 2023)

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a. Site Visit 27 March 2025: Mr. Sean Callahan (Lane Engineering, Limited Liability Company), Ms. Sarah Freund (Lane Engineering, Limited Liability Company), and Ms. Jaclyn Kelleher (United States Army Corps of Engineers) participated in a site visit to verify Lane Engineering's field delineation of the site. The site visit attendees inspected the palustrine emergent and palustrine forested wetlands to determine their jurisdictional status.

b. Wetland Delineation dated 12 May 2025: Lane Engineering, Limited Liability Company provided United States Army Corps of Engineers with the results of the field delineation in a Wetland Delineation Exhibit dated 12 May 2025, which denotes the presence of delineated aquatic resources.

c. Desktop Review: Desktop information reviewed included mapped wetland/streams feature via online geographic information systems, historic aerial imagery (1992 to present), United States Fish and Wildlife Service National Wetland Inventory Maps, and United States Geological Survey Stream Stats Webpage.

10. OTHER SUPPORTING INFORMATION:



Figure 3: Non-jurisdictional non-tidal wetland, NTW1.

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Figure 4: Berm (likely old fill material) separating NTW1 and NTW2.

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Figure 5: Portion of non-jurisdictional non-tidal wetland, NTW2.