



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

CENAB-OPR-N

8 December 2025

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),<sup>1</sup> NAB-2025-00357-M54 (Lands of Cordelia Investments/Razor Strap Rd/AJD)<sup>2</sup>

**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.<sup>3</sup> 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.<sup>4</sup>

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”).

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

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).

The Corps has determined that Waterway 1 is an (a)(3) tributary and is jurisdictional under Section 404 of the Clean Water Act. The Corps has determined that Waterways 2 and 3 are non-jurisdictional.

- i. Waterway 1 (S1), non-tidal stream (approximately 1,668-linear feet), jurisdictional, Section 404
- ii. Waterway 2 (S2), non-tidal stream (approximately 343-linear feet), non-jurisdictional
- iii. Waterway 3 (S3), non-tidal stream (approximately 298-linear feet), 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)
- 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)
- e. 1987 Corps of Engineers Wetland Delineation Manual
- f. Eastern Mountains & Piedmont Regional Supplement

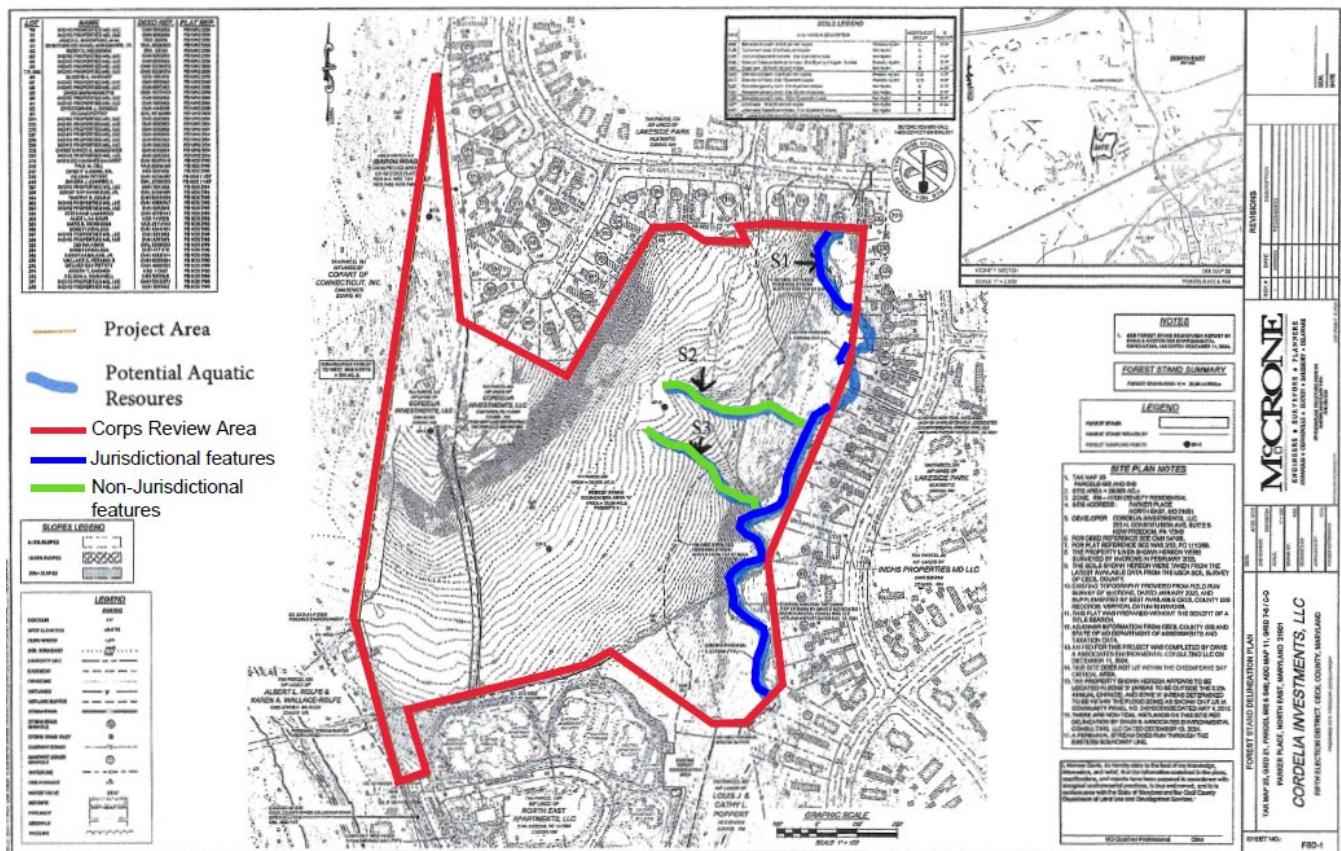
NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

- g. Field Indicators of Hydric Soils of the United States
- h. 2020 National Wetland Plant List

3. REVIEW AREA. The subject area of the approved jurisdictional determination (AJD) is an approximately 29-acre parcel located between Razar Strap Road and Champlain Road, in North East, Cecil County, Maryland (39.610702, -75.956426). The site is identified on Cecil County Tax Map 25 as Parcels 548 and 692. The review area for the AJD is approximately 26-acres and is outlined by the red line in Figure 1. The site is in the Piedmont Plateau physiographic province of Maryland. On 4 September 2025, the Corps conducted a site visit of the approximately 26-acre area of review. The review area encompasses entirely deciduous forests with old logging roads.

Figure 1: Corps area of review (red), approximate area of jurisdictional features (blue), and approximate area of non-jurisdictional features (green).



NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The North East River is the nearest TNW to the subject project, a traditionally navigable Section 10 water subject to the ebb and flow of tide.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The site drains to Stoney Run, an (a)(3) tributary, which then flows approximately 1.2-miles south into the North East River, an (a)(1) traditionally navigable water.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A, there are no Section 10 waters in the review area.
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.

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<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

- 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):
  - a. Waterway 1 (S1): Approximately 1,688-linear feet of relatively permanent water, having continuous flowing or standing water during all times of the year, having well defined bed and banks, an ordinary high-water mark (OHWM), and sorting of bed materials. S1 is an unnamed tributary to Stoney Run, an (a)(3) tributary, and flows south providing a continuous surface connection to the North East Creek, an (a)(1) traditionally navigable water.
  - 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).<sup>9</sup> 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).
  - a. Waterway 2 (S2): Approximately 343-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. S2 lacks indicators of defined bed and banks, an

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

ordinary high-water mark, or ground water discharge. S2 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.

- b. Waterway 3 (S3): Approximately 298-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. S3 lacks indicators of defined bed and banks, an ordinary high-water mark, or ground water discharge. S3 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.

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 conducted 4 September 2025: Zachary Fry (USACE), Louis Parnes (MDE), and Noreen Davis (Davis & Associates Environmental Consulting, LLC) participated in a site visit to verify Davis & Associates Environmental Consulting, LLC's field delineation of the site. The site visit attendees inspected the network of resources to determine their jurisdictional statuses.
- b. Wetland Delineation: Davis & Associates Environmental Consulting, LLC provided USACE with the results of the field delineation in a Wetland Delineation Report dated September 8, 2025, which denotes the presence of delineated aquatic resources.
- c. Desktop information reviewed included mapped wetland/stream features via online geographic information systems, USGS Topographic map, aerial imagery, USFWS NWI map, USDA NRCS soil survey map, and LIDAR imagery.

10. OTHER SUPPORTING INFORMATION. The following photographs were taken by the Crops during the 4 September 2025 site visit.

NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

Photograph 1: Waterway 1 (S1) during site visit on 4 September 2025.



Photograph 2: Waterway 1 (S1) during site visit on 4 September 2025.



NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

Photograph 3: Waterway 2 (S2) during site visit on 4 September 2025.



Photograph 4: Waterway 2 (S2) during site visit on 4 September 2025.



NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

Photograph 5: Waterway 3 (S3) during site visit on 4 September 2025.



Photograph 6: Waterway 3 (S3) during site visit on 4 September 2025.



NAB-OPR-N

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAB-2025-00357-M54

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.