



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

NAB-OPR-MS

5 May 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-2024-00154-M50 (Ardmore Ardwick Industrial Park/AJD).

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>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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## 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. Existing stormwater management pond, two connected lobes; Non-jurisdictional under Section 404 or Section 10

## 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" FR Vol. 88, No. 173 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)
- d. "Memorandum To the Field Between the United States 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. The applicant in their 5 March 2024 request for Corps Jurisdictional Determination (JD) initially requested review of an 8.26-acre property located at 8509 Ardwick Ardmore Road, in Hyattsville, Prince George's County, Maryland. However, the review focused on a 0.5-acre subarea in the southern end of the property that contains a stormwater pond and remnant native vegetation (Latitude 38.938039, Longitude -76.862967; Figures 1 and 2). The remainder of the subject property consists of parking lots and buildings with no aquatic features. Operations & Maintenance Business Information Link Regulatory Module (ORM) identifies no previous permit actions in the review area. Maryland's Environmental Resources and Land Information Network (MERLIN) does not map any waters on the subject property or vicinity, nor are any waters mapped there in historic US Geological Survey maps.

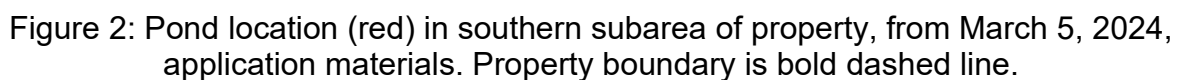
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Figure 1: Focused Review Subarea Centroid (at Red Marker, Google Maps)

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mapped surface water), which then flows approximately 4 miles to its confluence with the tidal Anacostia River.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</sup> 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
- f. Adjacent Wetlands (a)(4): N/A

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<sup>5</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>6</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.

- 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>7</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).

The parcel contains a stormwater management (SWM) pond with two interconnected lobes totaling approximately 0.05 acres in size located at the southern end of the parcel. The SWM ponds are in a manmade depression in a hilltop area. A rip-rap embankment bounds the pond margins. Historic US Geological Survey (USGS) topographic maps and aerial imagery from 1965 do not depict the ponds. USGS topographic maps from 1993 do not depict the ponds. The ponds are depicted in 1994 aerial imagery. No other aquatic resources are in the vicinity. The SWM ponds do not constitute an impoundment of a WOTUS. The application includes a copy of SWM plans from 2019 site development depicting the SWM ponds as receiving piped drainage from parking lots and micro-bio SWM features to the north of the ponds, with SWM pond overflow draining to the southwest through a pipe to an upland outfall not connected to a waterway. Thus the SWM ponds are not WOTUS, and instead fit Exclusions Category b(5) “artificial lakes or ponds.”

- 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. A Field Visit was conducted 9 April 2024.
  - b. US Geological Survey 1965 and 1993 1:24,000 scale topographic maps.

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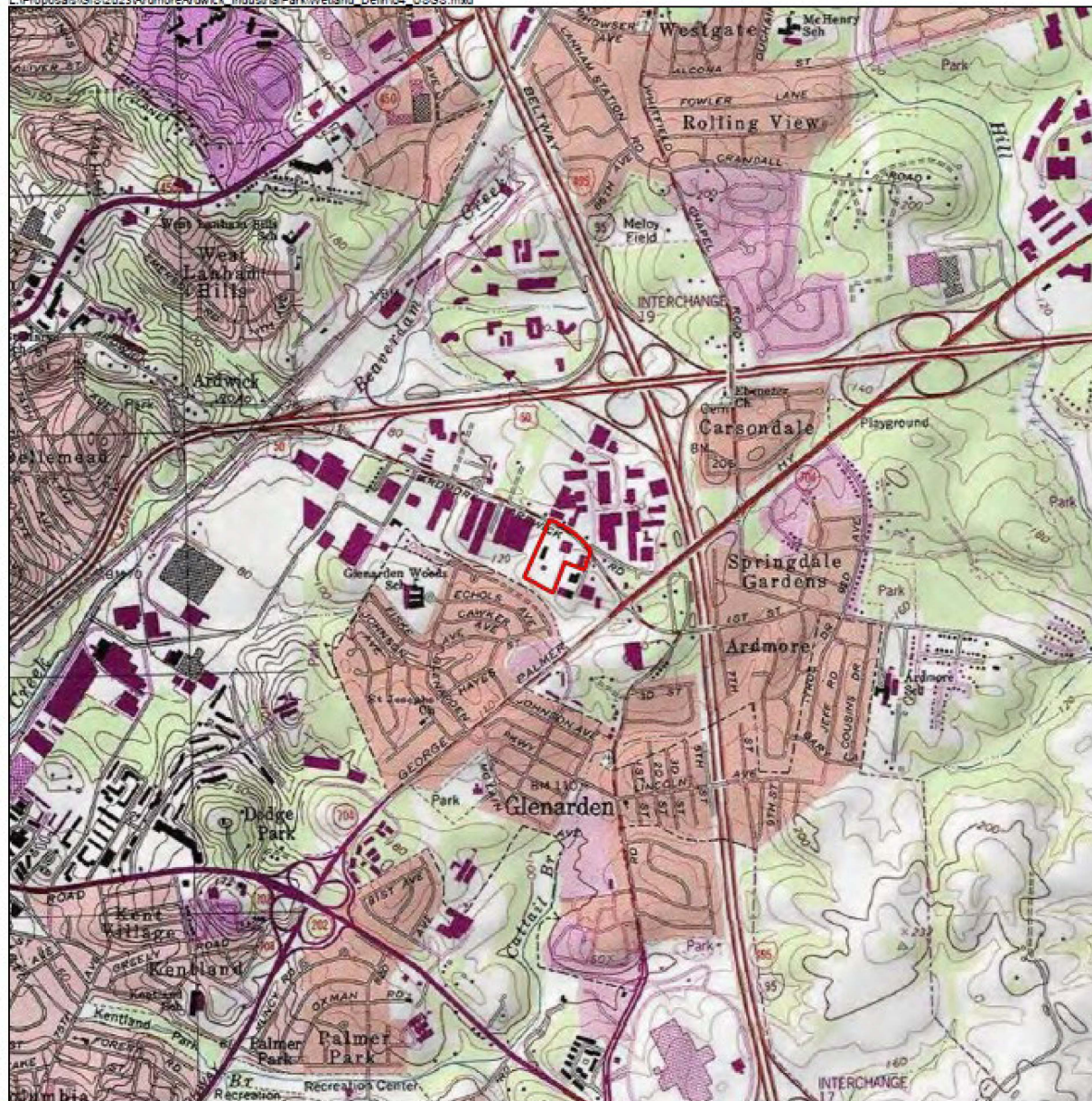
<sup>7</sup> 88 FR 3004 (January 18, 2023)

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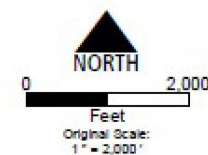
- c. Aerial imagery provided by applicant from 1938, 1965, 1994, 2002, 2009, 2018, 2020, 2023 from multiple original sources.

10. OTHER SUPPORTING INFORMATION. N/A




 Site

USGS 7.5' Quadrangle Map  
Ardmore Ardwick Industrial Park







 Site

**Spring 2020 Near Color Infrared Imagery  
Ardmore Ardwick Industrial Park**

