



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

CENAB-OPR-N

May 21, 2026

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-2025-61147-M46 (Endurance Number 14 General LLC/Industrial Development)]<sup>2</sup>

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.<sup>3</sup> 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.<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*").

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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 approved JD request (i.e., number them 1, 2, 3, etc.).

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

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

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),<sup>5</sup> 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).

Please see Table 1 below.

Name	Cowardian Class	Area (SF)	Jurisdictional Status	Location (Lat, Long)
WL1	PFO	15,070	Non-jurisdictional	39.632318, -75.81134
WL2	PFO	98,611	Non-jurisdictional	39.629682, -75.815074
WL3	PEM	4,196	Non-jurisdictional	39.631273, -75.814216
WL4	PUB	22,423	Non-jurisdictional	39.631742, -75.8138509
WL5A	PFO	19,330	Non-jurisdictional	39.632971, -75.811016
WL5B	PFO	16,351	Jurisdictional, Section 404 of the Clean Water Act	39.633214, -75.810154

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 United States Department Of The Army, United States Army Corps Of Engineers And The United States 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)

<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.

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3. REVIEW AREA. The review area contains portions of Parcels 58, 2483, and 807 on Tax Map 027B, located near 65 Swallow Drive, Elkton, Cecil County, Maryland (Latitude: 39.631382, Longitude: -75.813017). The Corps area of review is approximately 43 acres of the 58 acre property. The parcel contains forested areas, open fields, utility easements, and a residential structure. According to the 2010 Maryland Land Use Land Cover data layer, land uses across the above stated parcels were agriculture, low density residential development, and forest. According to the National Resources Conservation Service, Web Soil Survey, the majority of the soils in the area of review are non-hydric, with the southwestern portion of the property mapped with hydric soils and the north eastern side mapped with non-hydric soils with hydric inclusions. The Corps area of review (AOR) drains to the south towards unnamed tributaries to the Big Elk Creek (Figure 1). The unnamed tributaries flow south to their confluence with the Big Elk Creek, approximately 1.85 river miles (Figure 2 and 3). The Big Elk Creek then flows south until it becomes subject to the ebb and flow of tide, approximately 3.3 river miles from the Corps area of review. The Big Elk Creek then flows into the Chesapeake Bay and Atlantic Ocean. The site is in the Coastal Plain physiographic region of Cecil County. The Atlantic and Gulf Coastal Plain Regional Supplement and data forms were used to perform the resource determinations. The Corps received a request for a Department of the Army approved JD on 28 January 2026, for the subject site located in Elkton, Cecil County, Maryland, associated with permit application number NAB-2025-61147. On 20 March 2026, the Corps inspected the AOR (Enclosure 1). The Corps' AOR encompasses agricultural fields and forests with some depressional areas. The project area has experienced manipulations from past farming activities, including modifications to improve drainage along some portions the site.

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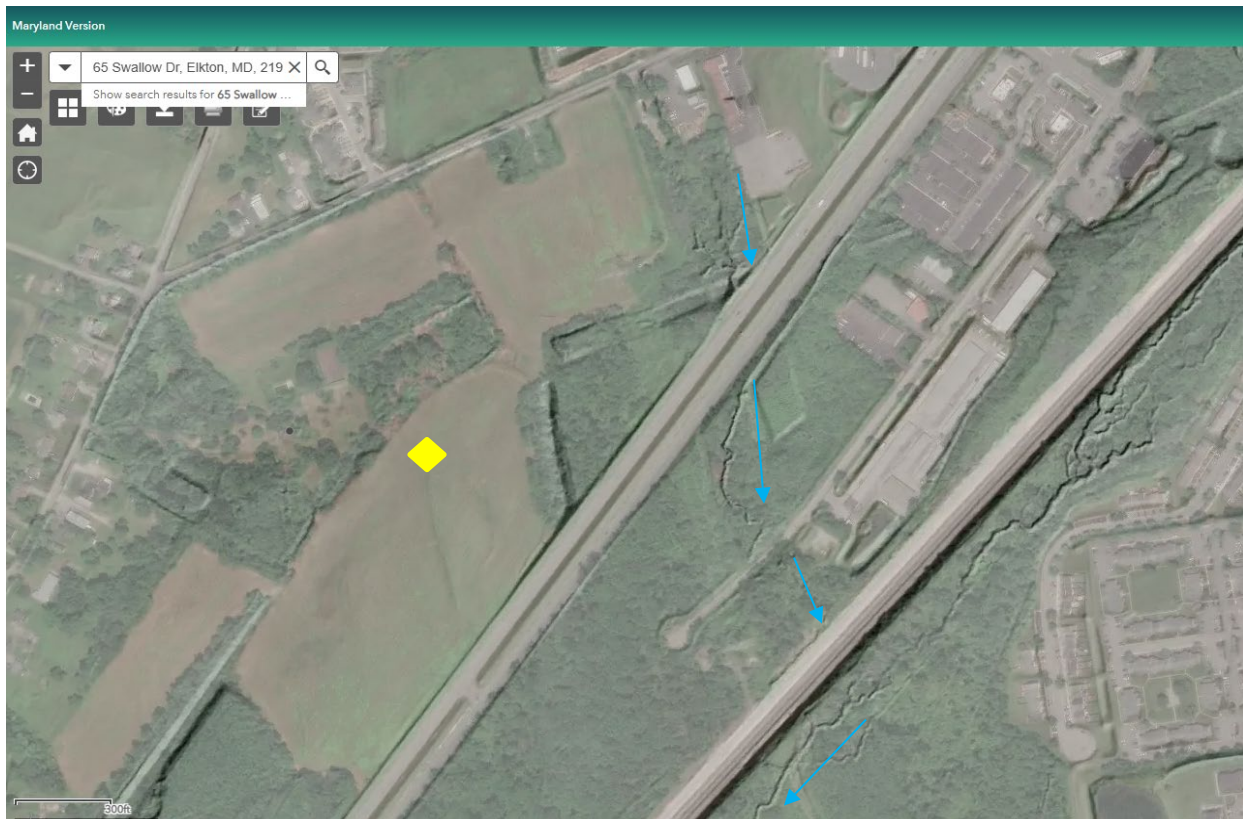


Figure 1. Aerial image of the AOR with a LIDAR overlay to display ground surface features such as stream channels. The center of the site is marked with the yellow diamond while the flow path off of the site into the unnamed tributary to the Big Elk Creek is marked in blue.

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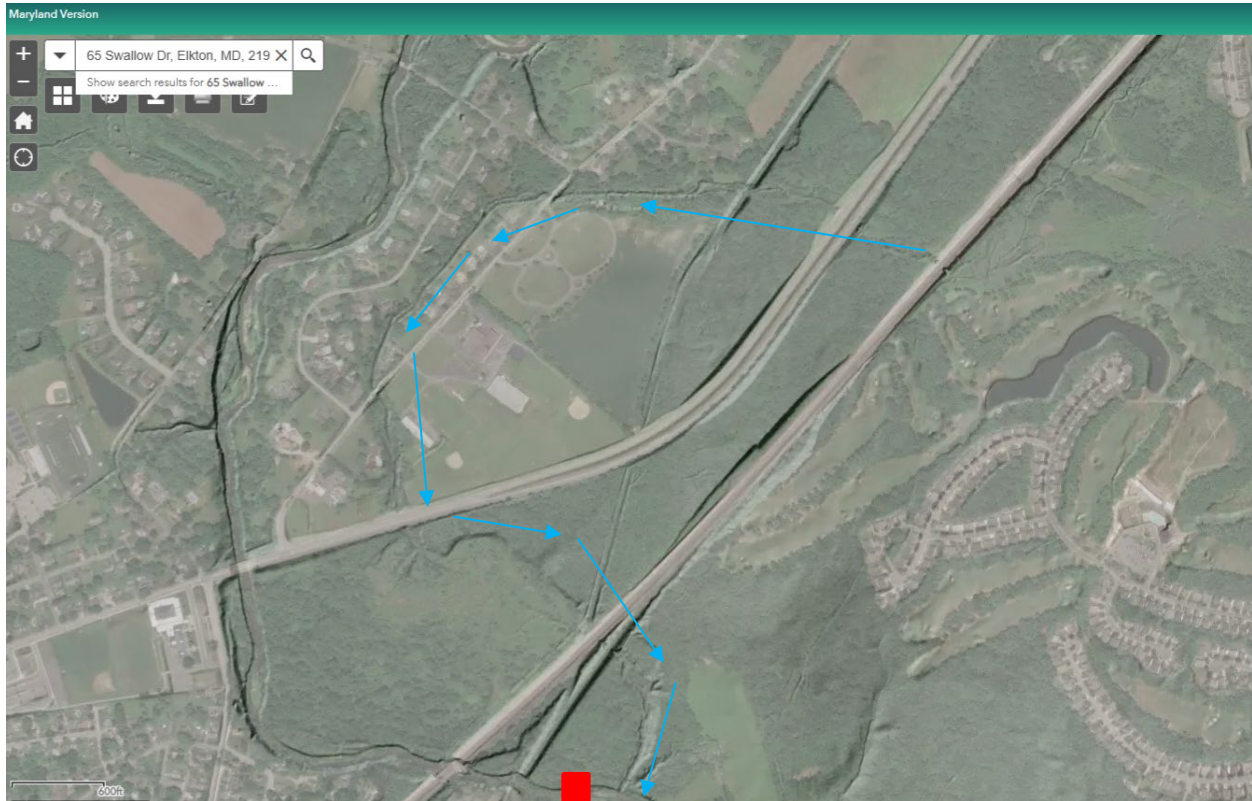


Figure 2 and 3. Aerial images of the areas surrounding the AOR with a LIDAR overlay to display ground surface features such as stream channels. Figures 2 and 3 display the flow path of the unnamed tributary to the Big Elk Creek in blue. Big Elk Creek is noted by a red square.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The nearest TNW to which the aquatic resource is connected is the Big Elk Creek. The Big Elk Creek becomes subject to the ebb and flow of tide at approximately the crossing of Maryland Route 213 in Elkton, according to the State of Maryland, COMAR 08.02.01.09. The tidal interface of the Big Elk Creek is located approximately 3.3 river miles from the Corps AOR.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

<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 RHA is completed independently of a request for an approved JD. 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.

Water flows off of the southeastern portion of the property to the south, crossing under Maryland Route 279 and railway tracks within an unnamed tributary to the Big Elk Creek. This tributary then flows to the south west crossing under the railway tracks and Maryland Route 279, where it flows into the Big Elk Creek. Big Elk Creek flows south, becoming a TNW before flowing into the Chesapeake Bay and Atlantic Ocean.

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

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. Adjacent Wetlands (a)(4): During the Corps field review on 20 March 2026, the Corps observed WL5B with a continuous surface connection to an unnamed tributary to the Big Elk Creek. The Corps observed water flowing into the stream from the wetland and flowing water within the stream channel, the stream channel was located outside of the AOR. As described above, the unnamed tributary then flows into the Big Elk Creek, a TNW. The Corps determined that WL5B is subject to Section 404 of the Clean Water Act jurisdiction, as it meets the definition of (a)(4) adjacent wetland, as it directly abuts an (a)(3) tributary as required. Wetland determinations were made per the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement.

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<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.

## 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).

The Corps determined that WL1, WL2, WL3, WL4, and WL5A are non-jurisdictional resources under Section 404 of the Clean Water Act, as they do not meet the definition of an (a)(4) adjacent wetland, as no continuous surface connections were observed to jurisdictional waters.

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. The Corps conducted a site visit on 20 March 2026, with Mr. Louis Parnes of Maryland Department of the Environment, and Ms. Gabriella Scramlin of Frederick Ward Associates.

b. Watershed Resources Registry, Maryland. Accessed 15 May 2026.  
<https://watershedresourcesregistry.org/map/?config=stateConfigs/maryland.json>

c. USGS Topographic Maps

d. USFWS NWI Map

e. USDA Hydric Soils Map

f. Aerial Imagery accessed from Google Earth 15 May 2026.

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

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10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFRs 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.