



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
CARLISLE FIELD OFFICE
401 EAST LOUTHER STREET, SUITE 205
CARLISLE, PENNSYLVANIA 1701-2657

CENAB-OPR-R 1100B

October 25, 2024

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-2013-01242-M35 (Magruder South JD).

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

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. Basin 1 – non jurisdictional
- ii. Basin 2 – non jurisdictional
- iii. Basin 3 – non jurisdictional
- iv. Basin 4 – non jurisdictional
- v. Basin/pit 5 – non jurisdictional
- vi. Basin 6 – non jurisdictional
- vii. Stormwater basin 7 – non jurisdictional
- viii. Basin 8 – non jurisdictional
- ix. Basin/pit 9 – non jurisdictional
- x. Basin 10 – non jurisdictional
- xi. Basin 11 – non jurisdictional
- xii. Basin 12 – non jurisdictional
- xiii. Wetland 1 – jurisdictional – Section 404
- xiv. Wetland 3 – jurisdictional – Section 404
- xv. Wetland 4 – non jurisdictional
- xvi. Drainage feature 1 – non jurisdictional
- xvii. Tributary 1 – jurisdictional – Section 404
- xviii. Tributary 2 – jurisdictional – Section 404

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 (September 8, 2023)
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)
- d. Bay Environmental Request Letter
- e. 1987 Corps of Engineers Wetland Delineation Manual
- f. Atlantic and Gulf Coastal Plain Regional Supplement
- g. Field Indicators of Hydric Soils of the United States
- h. 2020 National Wetland Plant List

3. REVIEW AREA. The review area includes an existing limit of disturbance for an existing mining permit (red polygon on the attached site plan) and proposed expansion of the activity (yellow cross-hatched polygon on the plan). The site is generally located between I-95 to the west, Maryland Route 200 (north), and Maryland Route 212 (south) in Prince Georges County, Maryland. The areas together comprise a total area of approximately 318 acres and the center coordinates of the review area are approximately 39.06319722 -76.90537222. A previous AJD under the same case number was issued in 2013 and subsequently expired. This determination was based primarily on-site observations and informed by previous file documentation.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Anacostia River is the closest TNW located south of the site within the Washington D.C. limits. The Anacostia River is subject to the ebb and flow of the tide.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All waters flow from the site through several unnamed tributaries to Indian Creek, a perennial RPW tributary to the Northeast Branch of the Anacostia River, a perennial RPW tributary to the Anacostia River, a perennial tributary to the Anacostia River, a traditional navigable water and tributary to the Potomac River and Chesapeake Bay, which are TNWs.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶

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): See the attached mapping for locations of tributaries.
 - i. **Tributary 1** – Tributary 1 (39.06657, -76.90246) is a relatively permanent water because has continuously flowing or standing water during certain times of the year and for more than for a short duration in direct response to precipitation. It flows for ~1250 linear feet through Wetland 1 and beyond the AOR to an unnamed tributary to Indian Creek.

⁵ 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.

⁶ 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.

Tributary 1 has an OHWM, bed and banks, sorting of materials in deposits, vegetation line on banks, exposed soil water table on banks, etc.

ii. **Tributary 2** is a relatively permanent water because has continuously flowing or standing water during certain times of the year and for more than for a short duration in direct response to precipitation. It flows ~125 linear feet from Wetland 3 before going subsurface (temporary break) near an unnamed tributary to Indian Creek, just east of the AOR. Tributary 2 exhibits an OHWM, bed and banks, sorting of materials in deposits, vegetation line on banks, exposed soil water table on banks, etc. Note, ~ 20 feet of the channel within a utility line has been highly disturbed from regular dirt bike travel but resumes just downslope of the utility right of way. See Figures 2,4,7, and 8 at the end of this document.

f. Adjacent Wetlands (a)(4): All three wetlands listed directly abut or have a continuous surface connection to a relatively permanent water.

i. **Wetland 1** (~ 3.0 acres) directly abuts and provides a continuous surface connection to Tributary 1. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

ii. **Wetland 3** (<0.1-acre wetland) directly abuts and provides a continuous surface connection to Tributary 2. The wetland meets the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Excluded features:

i. Basin 1 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

ii. Basin 2 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

iii. Basin 3 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

iv. Basin 4 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

v. Basin 5 – Water filled depression constructed in dry land because of grading associated with mining is excluded 33 CFR 328.3(b)(7)

vi. Basin 6 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

vii. Basin 7 – stormwater impoundment constructed in dry land in association with the construction of MD Route 200) is excluded 33 CFR 328.3(b)(5)

viii. Basin 8 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

ix. Basin 9 – Water filled depression constructed in dry land because of grading associated with mining is excluded 33 CFR 328.3(b)(7)

x. Basin 10 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

xi. Basin 11 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

xii. Basin 12 – impoundment constructed in dry land as a wash basin is excluded 33 CFR 328.3(b)(5)

xiii. Drainage feature 1 is an erosion gully (~225 feet) in dry land that does not exhibit tributary requirements and is excluded 33 CFR 328.3(b)(8)

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. Wetland 4 – This is a small water filled depression (<0.25 acres) surrounded by uplands and that has developed wetland characteristics. Wetland 4 meets the standard 3 parameter approach required by the 1987

Manual and Atlantic and Gulf Coastal Plain Regional Supplement but does not provide a continuous surface connection to other 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 most recently performed a field inspection on April 23, 2024, and is the primary information used in this MFR combined with supporting information listed below.

b. A previous field inspection occurred in April 2013 in conjunction with the previously issued JD.

c. Bay Environmental revisited the site on August 22, 2024, and submitted a slightly revised delineation which is attached separately from this MFR. Wetland 2 and drainage feature 1 presented in the previous MFR were consolidated into Wetland 1.

10. OTHER SUPPORTING INFORMATION. Despite a previous determination which has expired, this AJD is based primarily on current information, specifically, those observations by the Corps on April 23, 2024, and associated office determination.

a. Google Earth Pro – full range of aerial photography

b. Maryland Watershed Resource Registry – aerial photos, LiDAR, and numerous supporting layers (e.g., NWI, MD DNR wetland maps, Soil mapping, NHD, MARF precipitation departures, etc.).

c. Digital Globe aerial photography

d. Regulatory Reviewer – LiDAR, DEM

e. April 23, 2024, field inspection by Mr. Frank Plewa and Ms. Lamuelle Coleman (NAB) and Mr. Ken Wallis (Bay Environmental).

f. Wetland delineation report June 21, 2013, by McCarthy and Associates, Incorporated – *this file is too large to forward (86 MGs)*.

g. November 4, 2022, Mining Expansion Letter from Mr. Ken Wallis of Bay Environmental, Incorporated.

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h. August 29, 2024, Delineation revision (including data forms and photos) from Ken Wallis of Bay Environmental, Incorporated.

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.

Figure 1: Enlargement of the Plan View provided by Bay Environmental, LLC illustrating the AOR which includes previous (red and open yellow polygon) and proposed mining permit areas (yellow crosshatch). The 2013 JD included only the previous mining operations (red polygon).



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Figure 2: NAB produced mapping (April 2022) of all features within an approximated AOR boundary. This map is intended to illustrate the locations and estimate boundaries of features not provided in Figure 1 by Bay Environmental, LLC. Enlargements of the areas are provided in Figures 3-4.

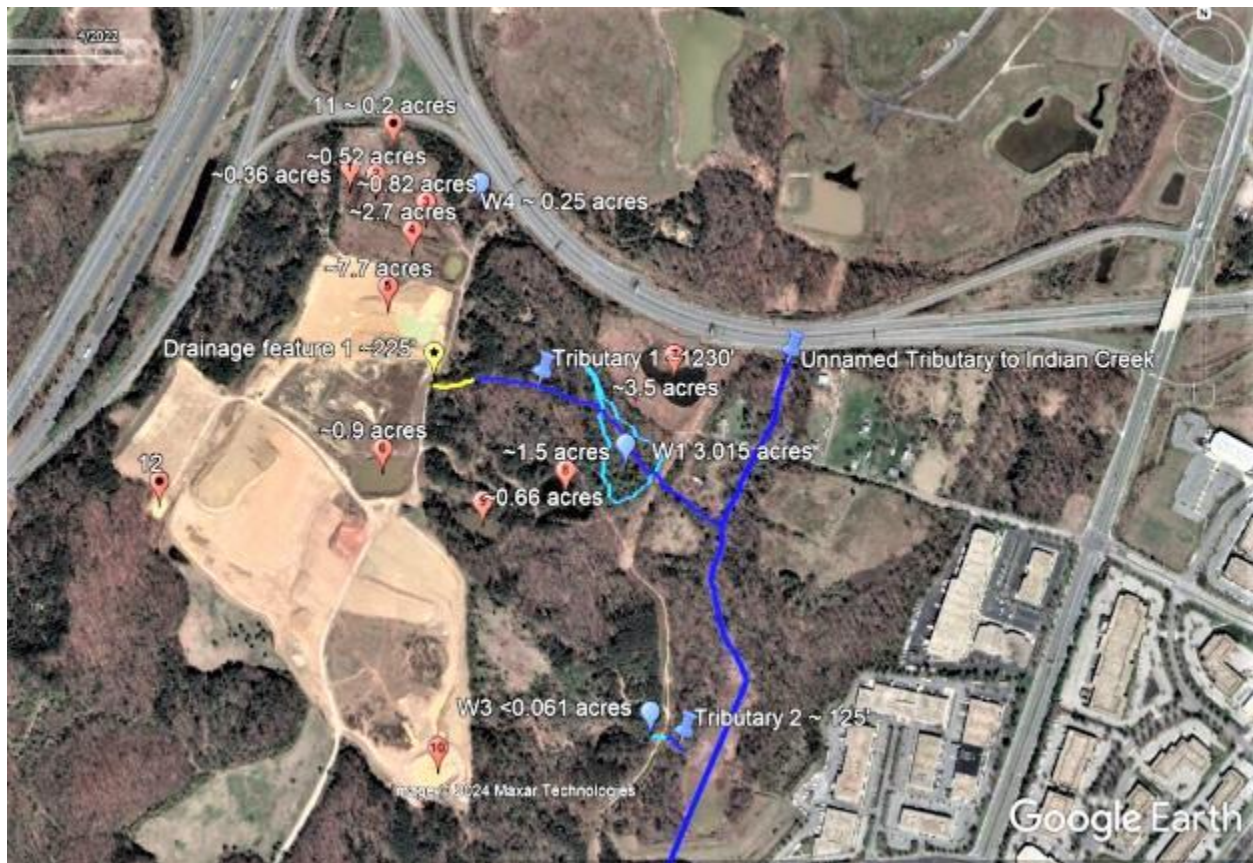


Figure 3: Enlargement of the northern section of the AOR.

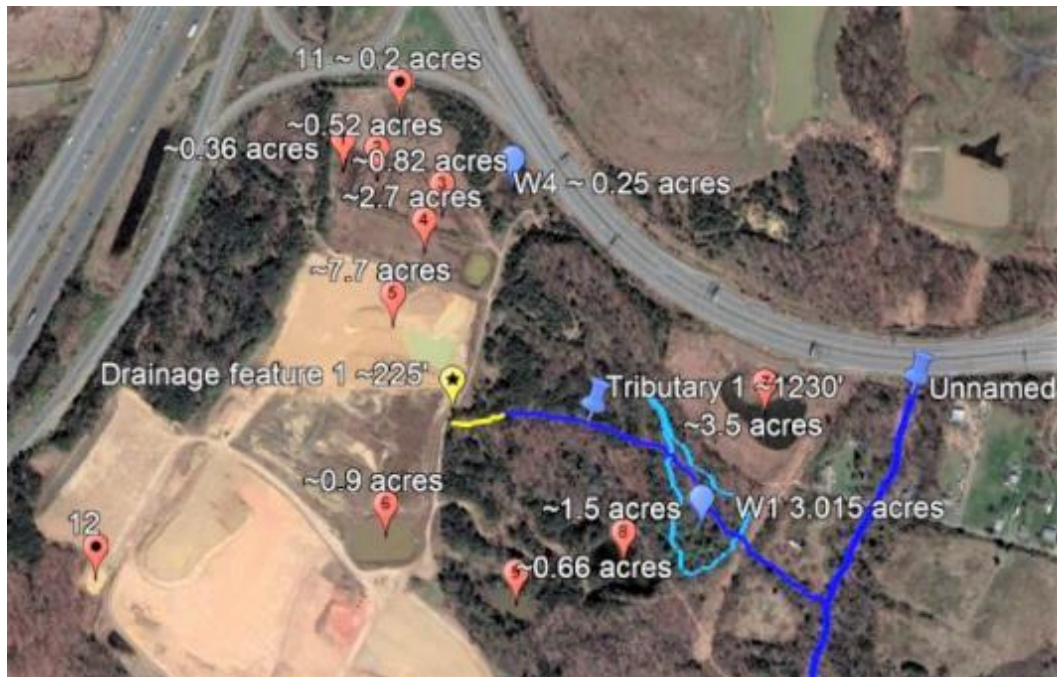


Figure 4: Enlargement of the southern section of the AOR.

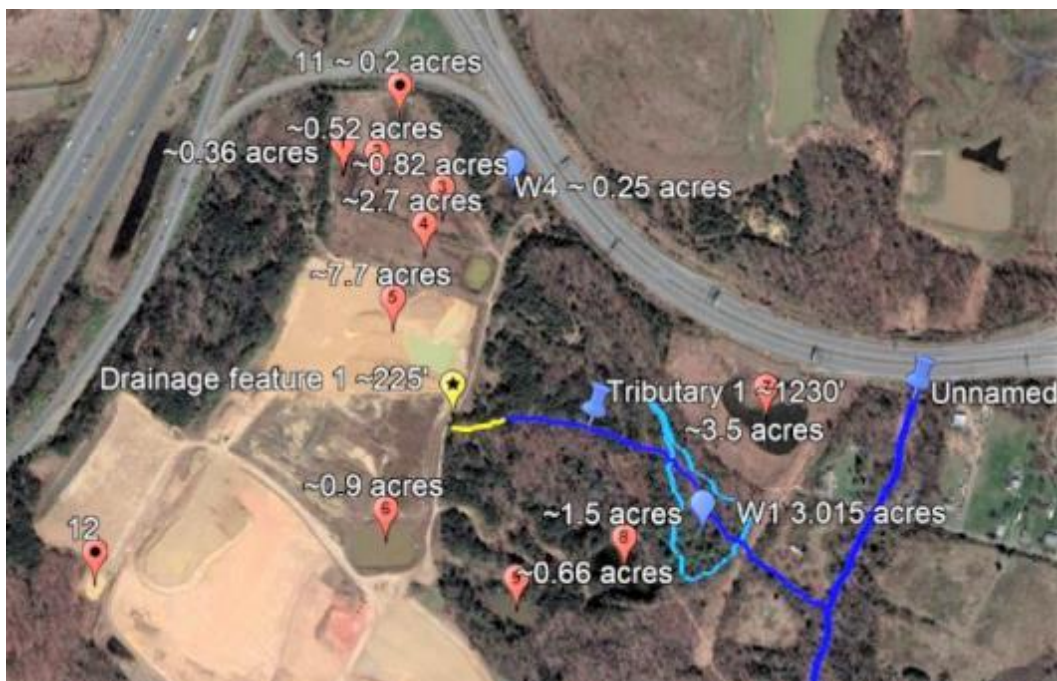


Figure 5: View of the southeast end of Basin 4. This is a typical wash basin common on mined lands. While this area supports hydrophytic vegetation and has obvious wetland hydrology, most of this 2.7-acre feature is dry. Regardless, these basins are excluded as they are located within an active mining operation.



Figure 6: View of Wetland 4 located in the northern end of the AOR. This wetland was created in dry land because of grading in conjunction with mining operations. This area is inactive but is non jurisdictional as it does not have a continuous surface connection to a TNW.



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Figure 7: A view of the discharge point of Wetland 3 at a utility line crossing just above the area depicted in Figure 8. Tributary 2 originates from this wetland. However, the channel has been destroyed by constant off-road traffic, primarily dirt bike travel (see Figure 8 below). Flow was observed during the inspection with Fe staining and other evidence of flow indicating a groundwater base flow.

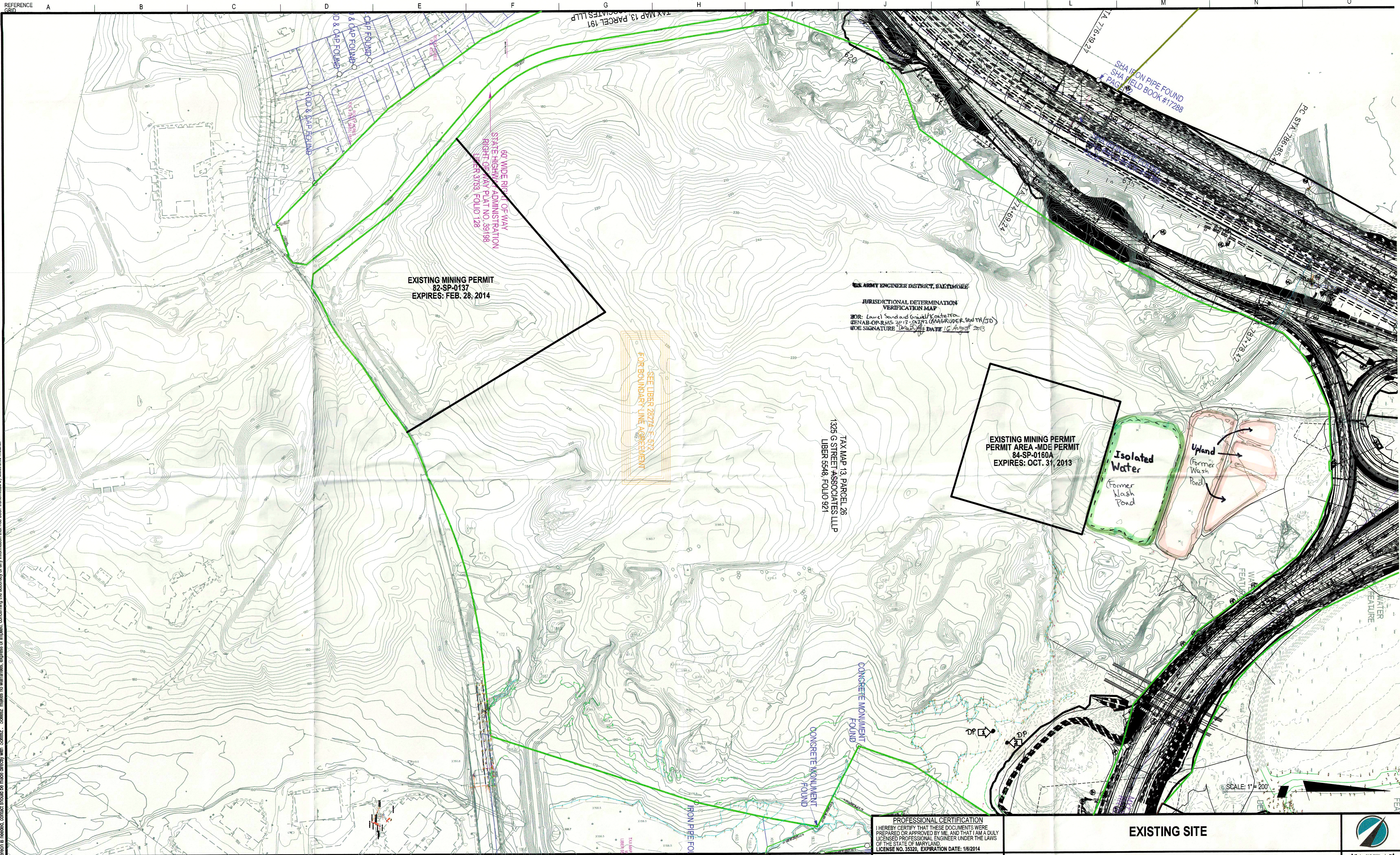


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Figure 8: Disturbed section of Tributary 2 looking east towards the receiving waters. A channel with definitive tributary indicators forms just beyond the disturbed area. Flow was observed during the inspection.





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MISS UTILITY NOTE

INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT "MISS UTILITY" AT 1-800-251-7777, 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHICHEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

OWNER/DEVELOPER/APPLICANT	
COMPANY NAME: LAUREL SAND AND GRAVEL, INC. ADDRESS: 14504 GREENVIEW DRIVE SUITE 200 CITY STATE: LAUREL, MD 20708 PHONE #: 301-953-7650 FAX #: 301-470-4075 CONTACT NAME: CALEB GOULD	
COPYRIGHT ADD THE MAP PEOPLE PERMITTED USE NUMBER 21001200 MAP 5168 GRID 07.57	
TAX MAP 009A1	ZONING CATEGORY: XXXX
WSBC 200' SHEET 218NE05	
SITE DATUM	
HORIZONTAL: XXXXXX	
VERTICAL: XXXXXX	

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 35320, EXPIRATION DATE: 1/6/2014


EXISTING SITE

MAGRUDER SOUTH PROPERTY

VANSVILLE (16T) ELECTION DISTRICT, PRINCE GEORGE'S COUNTY, MARYLAND

SHEET 1 OF 1

PROJECT NO. 1561-05-00



1" = 200'

SCALE: 1" = 200'

PLATOCOMMENT