



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

CENAB-OPR-MS

16 APRIL 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) ,¹ NAB-2023-00348-M53 (Chesterhaven Beach Partnership/AJD)²

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.³ 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.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*").

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),⁵ the 2023 Rule as amended,

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

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

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.

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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. W1: Tidal and non-tidal wetlands on Lots 1-3 (0.682 acres), Section 404 a (4) jurisdictional waters of the US

ii. W2: Tidal and non-tidal wetlands on Lot 2 (0.091 acres), Section 404 a (4) jurisdictional waters of the US

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 XXXX (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)

REVIEW AREA. The 3.6-acre review area on the property (Tax Map 76, Parcel 62) is located off Ackerman Drive, in the subdivision of Romancoke on The Bay in Stevensville, Queen Anne's County, Maryland (Figure 1). There are 7 lots of record that are the subject of this approved JD request. The latitude and longitude of the review area is 38.874493, -76.341902. The approximate 3.6-acre review area is located in the Cox Creek-Eastern Bay watershed (12-digit Federal HUC: 020600020607), with an approximate 19,983-acre drainage area. The smaller site catchment drainage area is approximately 53.37 acres cumulatively in size. The review area consists predominately of herbaceous emergent vegetation species located in Queen Anne's County and includes non-tidal wetland areas located on Lots 1-3 (Section L) and Lot 2 (Section M). The HGM class is slope and overland sheet flow. Lots 21-23 (Section K) are entirely in uplands. The initial Wetland Delineation Report as prepared by Wetland Studies and Solutions, Inc (WSSI), was submitted to the Corps on 22 July 2019, and an AJD was

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issued in January 2020. On 22 October 2024, an additional AJD request was submitted by WSSI as the previous AJD had expired. Lots 5-7, previously included in the 2020 AJD had sold and were developed and were no longer needed for the current AJD.

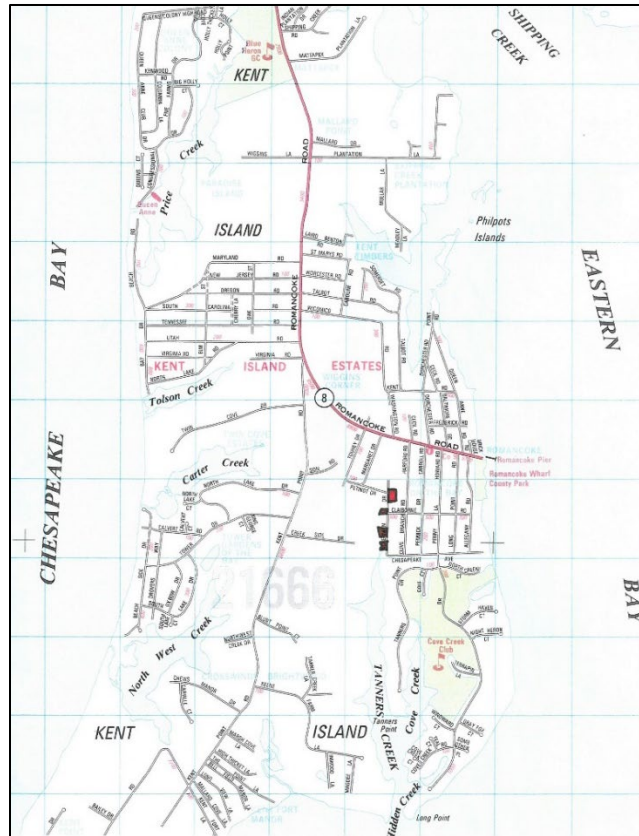


Figure 1: Vicinity Map (Source: WSSI)

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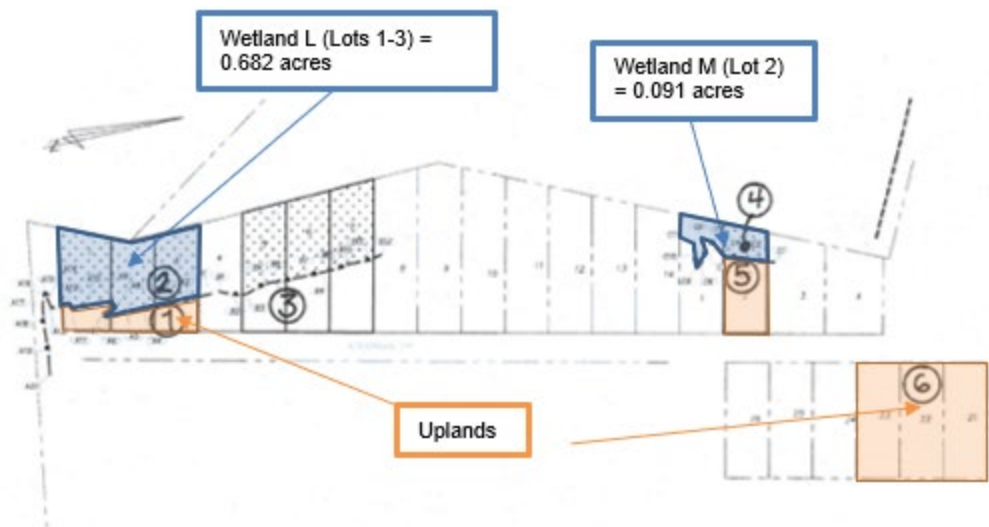


Figure 2: Survey plan with wetland and upland areas identified (Source: WSSI)

3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Tanners Creek, a traditionally navigable Section 10 water subject to the ebb and flow of tide, which drains to Eastern Bay, a TNW.

4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The non-tidal wetlands directly abut tidal wetlands, which directly abut and flow into a jurisdictional (a)(1) traditionally navigable water, Tanners Creek.

5. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ N/A

6. 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

⁶ 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.

⁷ 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.

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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):

i. W1: A review of the wetland delineation and supporting information submitted by the applicant, photos and notes collected by USACE during the original site visit, as well as online GIS resources supported the applicant's determination that 0.682 acres of tidal and non-tidal wetlands are jurisdictional under paragraph (a)(4) of the CWA 2023 Rule. The tidal wetlands directly abut and flow into a jurisdictional (a)(1) traditionally navigable water (Tanner's Creek/Eastern Bay). The tidal wetlands are subject to the ebb and flow of tide and are therefore jurisdictional. The (a)(4) wetlands are delineated based on the limits of hydric vegetation, hydric soils, and hydrology.

ii. W2: A review of the wetland delineation and supporting information submitted by the applicant, photos and notes collected by USACE during the original site visit, as well as online GIS resources supported the applicant's determination that 0.091 acres of tidal and non-tidal wetlands are jurisdictional under paragraph (a)(4) of the CWA 2023 Rule. The tidal wetlands directly abut and flow into a jurisdictional (a)(1) traditionally navigable water (Tanner's Creek/Eastern Bay). The tidal wetlands are subject to the ebb and flow of tide and are therefore jurisdictional. The (a)(4) wetlands are delineated based on the limits of hydric vegetation, hydric soils, and hydrology.

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

7. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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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).⁸ 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). N/A

8. 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: A site visit was conducted on 27 June 2019 by Mr. Jason Peters of the Corps, Mr. Chris Pajak of the Maryland Department of the Environment (MDE) Nontidal Wetlands, and Mr. Mike Klebasko of WSSI. The site visit including a review of wetland, non-wetland waters, and upland data points as identified in the WSSI. During the field inspection a sampling point was taken as representative of the emergent vegetation/community type and within the mapped hydric soil series for wetlands located on Lots 1-3 (Section L), Lots 5-7 (Section L) and Lots 2 (Section M) adjacent to Tanner’s Creek, a tidal tributary to the larger Eastern Bay, a TNW.

b. Wetland Delineation dated 21 June 2019: WSSI provided USACE with the results of the field delineation and a plan sheet dated 21 June 2019, which denotes the absence and presence of aquatic resources.

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

9. OTHER SUPPORTING INFORMATION.

⁸ 88 FR 3004 (January 18, 2023)

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Figure 3: Forested “Wetland L” Data Point 2/Lot 3 (Source: Corps 27 June 2019)

Figure 3: Emergent “Wetland L” Data Point 4/Lot 2A (Source: WSSI, Inc. 9 July 2019)

Wetland L is a large wetland complex adjacent to Tanner’s Creek, a tidal tributary subject to the ebb and flow of the tide twice daily. A Sampling Point (DP-2) was taken in areas where surface water inundation, high water table and saturation were all present as primary indicators of wetland hydrology. This area is mapped by NWI as estuarine emergent intertidal. The area as shown in Figure 4 above was dominated by common reed (*Phragmites australis*) and high-tide bush (*Iva Frutescens*) within the intertidal zone, all facultative wet (FACW) species. The soil series description is typical of black organic matter in the upper soil’s strata occurring in tidal to intertidal areas of Kent Island. Hydrogen sulfide (A4) was present and a depleted matrix (F3) occurring below a dark surface. Transitioning to the forested nontidal wetland areas, sampling point (DP-4) as shown in Figure 3 was taken in Longmarsh and Indiantown mapped soils series dominated by Loblolly Pine (*Pinus Taeda*) which transitions to upland mosaic.



Area of Review
3.6 acres

Lot Number	Wetland Acreage
1	0.255
2	0.214
3	0.213
5	0.233
6	0.235
7	0.235
2	0.091
21	0
22	0
23	0
TOTAL	1.475

U.S. ARMY ENGINEER DISTRICT, BALTIMORE
 JURISDICTIONAL DETERMINATION
 VERIFICATION MAP
 FOR: Ackerman Drive Lots, Romaconke On The Bay/JD
 CENAB-OP-R : 2019-00034
 COE SIGNATURE _____ DATE 1/13/2020

FILE NO.: 100124-WP.dwg
 SHEET NO.: 1 OF 1

WETLANDS DRAWING
 ON THE LANDS OF
EUGENE R. DEEMS JR. & RAYMOND P. CHAMBERS
 FOURTH ELECTION DISTRICT, QUEEN ANNE'S COUNTY, MARYLAND
 TAX MAP 76, GRID #, PARCEL 62
 PREPARED FOR: EUGENE DEEMS

DATE: DEC. 2013	SCALE: 1" = 100'
JOB NUMBER: D1100124	DRAWN BY: GTU
DESIGNED BY:	APPROVED BY:
DATE:	REVISIONS:

McCRONE

- Engineering
- Environmental Sciences
- Construction Services
- Land Planning & Surveying

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SEAL _____
 DATE _____