



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

CENAB-OPR-MN

June 26, 2024

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-2021-00407-M49 (Martin Marietta, Northeast Quarry/Pre-app/Approved 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.

The subject property is comprised of a total of 636-acres of land located on properties owned by Martin Marietta subsidiaries associated with the North East Quarry in North East, Cecil County, within the Coastal Plain and Piedmont physiographic provinces of

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.

Maryland (39.63811, -75.92340). The Corps conducted several field reviews of the site between March 1, 2022, and March 21, 2024.

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).

Waterways 1-21 are (a)(3) tributaries and are jurisdictional under Section 404 of the Clean Water Act.

- i. Waterway 1; (a)(3) tributary; Jurisdictional; Section 404
- ii. Waterway 2; (a)(3) tributary; Jurisdictional; Section 404
- iii. Waterway 3; (a)(3) tributary; Jurisdictional; Section 404
- iv. Waterway 4; (a)(3) tributary; Jurisdictional; Section 404
- v. Waterway 5; (a)(3) tributary; Jurisdictional; Section 404
- vi. Waterway 6; (a)(3) tributary; Jurisdictional; Section 404
- vii. Waterway 7; (a)(3) tributary; Jurisdictional; Section 404
- viii. Waterway 8; (a)(3) tributary; Jurisdictional; Section 404
- ix. Waterway 9; (a)(3) tributary; Jurisdictional; Section 404
- x. Waterway 10; (a)(3) tributary; Jurisdictional; Section 404
- xi. Waterway 11; (a)(3) tributary; Jurisdictional; Section 404
- xii. Waterway 12; (a)(3) tributary; Jurisdictional; Section 404
- xiii. Waterway 13; (a)(3) tributary; Jurisdictional; Section 404
- xiv. Waterway 14; (a)(3) tributary; Jurisdictional; Section 404
- xv. Waterway 15; (a)(3) tributary; Jurisdictional; Section 404
- xvi. Waterway 16; (a)(3) tributary; Jurisdictional; Section 404
- xvii. Waterway 17; (a)(3) tributary; Jurisdictional; Section 404
- xviii. Waterway 18; (a)(3) tributary; Jurisdictional; Section 404
- xix. Waterway 19; (a)(3) tributary; Jurisdictional; Section 404
- xx. Waterway 20; (a)(3) tributary; Jurisdictional; Section 404
- xxi. Waterway 21; (a)(3) tributary; Jurisdictional; Section 404

Wetlands 1-8, Wetlands 10-14, and Seeps 1 and 2 are (a)(4) adjacent wetlands and are jurisdictional under Section 404 of the Clean Water Act. Wetland 9 has no continuous surface connection to other waters and is non-jurisdictional.

- xxii. Wetland 1; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxiii. Wetland 2; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxiv. Wetland 3; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxv. Wetland 4; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxvi. Wetland 5; (a)(4) adjacent wetland; Jurisdictional; Section 404

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

- xxvii. Wetland 6; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxviii. Wetland 7; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxix. Wetland 8; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxx. Wetland 9; Non-jurisdictional
- xxxi. Wetland 10; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxii. Wetland 11; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxiii. Wetland 12; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxiv. Wetland 13; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxv. Wetland 14; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxvi. Seep 1; (a)(4) adjacent wetland; Jurisdictional; Section 404
- xxxvii. Seep 2; (a)(4) adjacent wetland; Jurisdictional; Section 404

Ponds 1, 2, 3, 4, 5, and 8 are settling basins constructed in dry land within the active quarry mining area and are non-jurisdictional (excluded under 33 CFR 328.3(b)(5)).

Ponds 7, 9, and 10 are manmade stormwater management facilities constructed in dry land and are non-jurisdictional (excluded under 33 CFR 328.3(b)(5)).

Pond 6 is an (a)(2) impoundment that is jurisdictional under Section 404 of the Clean Water Act.

- xxxviii. Pond 1; Non-jurisdictional
- xxxix. Pond 2; Non-jurisdictional
- xl. Pond 3; Non-jurisdictional
- xli. Pond 4; Non-jurisdictional
- xl.ii. Pond 5; Non-jurisdictional
- xl.iii. Pond 6; (a)(2) impoundment; Jurisdictional; Section 404
- xliv. Pond 7; Non-jurisdictional
- xl. v. Pond 8; Non-jurisdictional
- xlvi. Pond 9; Non-jurisdictional
- xl. vii. Pond 10; Non-jurisdictional

The roadside ditch adjacent to Stevenson Road is non-jurisdictional (excluded under 33 CFR 328.3(b)(3)).

- xl. viii. Roadside Ditch; Non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

- 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. EN Engineering. April 2024. “Wetlands and Waterways Summary Report.” Prepared for Martin Marietta.
- 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 comprises a total of 636 acres including the North East Quarry active mining area, the Northeast Asphalt Mixing Plant, and adjacent properties owned by Martin Marietta. The North East Quarry is located at 233 Stevenson Road in North East, Cecil County, within the Coastal Plain and Piedmont physiographic provinces of Maryland. The review area is roughly bounded by Interstate 95 to the north, Union Church Road to the east, Mechanics Valley Road to the south, and Bouchelle/Quarry Roads to the west. The study area comprises Tax Map 25, Parcels: 485, 464, 465, 504, 151, 51, 456, 532, 642, 52, 436, 364, 228, 313, 24, 150, 22, 748, 638, 737, and 25. The center coordinates of the site are approximately 39.63811, -75.92340.

The North East Quarry’s active mining area comprises approximately 270 acres in the northern half of the review area and contains an open pit mine for aggregate stone material. The quarry began operation in the 1960s. The Northeast Asphalt Mixing Plant is also located within the review area, along Quarry Road just southeast of the mining area. The review area also includes several agricultural, residential, and forested parcels south of the active quarry.

Waterway 13 (known as Little North East Creek), a tributary with relatively permanent flow (RPW) flows from northwest to southeast along the southern border of the active quarry area. The waterway continues offsite to connect with North East Creek, a TNW. There are twenty other RPW stream tributaries in the review area, all of which connect to Waterway 13, and fifteen nontidal wetlands areas that directly abut RPW tributaries.

Soil series within the review area are provided in Appendix A of the Wetlands and Waterways Summary Report. An aerial image of the review area is shown in Figure 1 below. A detailed map of the AJD review area and all waters is shown in Figure 3.



Figure 1: Aerial Imagery of Study Area

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

The nearest TNW to the project site is the tidal North East River, located approximately 4 miles downstream of the project site, west of the town of North East, in Cecil County, Maryland (39.593345, -75.950398). The North East River is subject to the ebb and flow of tide and supports commercial and recreational uses.

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

The subject features consist of Waterway 13 (Little North East Creek), a stream with relatively permanent flow (RPW), twenty RPW tributaries that connect to Waterway 13, and fifteen nontidal wetlands that directly abut RPW tributaries. Waterway 13 flows southeast through the review area. The stream enters the northwestern corner of the review area through a bridge beneath Interstate 95 and flows along the southern edge of the active mining area for 1.3 miles (6,816 linear feet) before

reaching the eastern edge of the review area at a bridge beneath Stevenson Road. After leaving the review area, Waterway 13 continues to flow south for approximately 3 miles to North East Creek (RPW). North East Creek flows south for approximately 1.3 miles and discharges to the tidal North East River (TNW). All other waters within the area of review flow to Waterway 13.

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

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.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i):

N/A

- b. The Territorial Seas (a)(1)(ii):

N/A

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.

c. Interstate Waters (a)(1)(iii):

N/A

d. Impoundments (a)(2):

Pond 6; [18,946 square feet / 0.43 acres]

Pond 6 is a farm pond just north of Stevenson Road in the south-central quadrant of the study area (39.63400, -75.92694). Historic aerial imagery shows water in the pond during all seasons of the year, indicating relatively permanent water (RPW). Pond 6 is shown on US FWS National Wetland Inventory (NWI) mapping as a permanently flooded freshwater pond with unconsolidated bottom (PUBHx). USDA Web Soil Survey indicates that Pond 6 is in an area of mapped Mount Alto soils with inclusions of Watchung, which is hydric. The presence of scrub shrub wetlands directly up and downstream of the pond further confirms that the pond was built in waters (Wetland 5). Pond 6 discharges to Waterway 12 (RPW), which flows to Waterway 13 (RPW), which flows to the tidal North East River (TNW).



Photo 1: Aerial Imagery of Pond 6, which discharges to Waterway 12 (RPW).

e. Tributaries (a)(3):

Waterways 1-21 are waters with relatively permanent flow (RPWs) which connect to a TNW (the tidal North East River). Photos of each waterway can be found in Appendix D of the Wetlands and Waterways Summary Report.

Waterway 1: RPW [62 linear feet]

Waterway 1 is an approximately 62 linear foot first-order stream located in the southeastern corner of the review area, between Mechanics Valley Road and railroad tracks (39.62577, -75.92304). Waterway 1 is an RPW with intermittent flow which receives hydrology from groundwater. Ordinary high-water mark (OHWM) indicators including sediment sorting and disturbed/washed away leaf litter were observed along the channel. Waterway 1 discharges to Waterway 3 (RPW) near the southern tip of the review area. Waterway 3 flows beneath a culvert under the railroad tracks, exiting the review area, continues to flow south and discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 2: RPW [240 linear feet]

Waterway 2 is an approximately 240 linear foot first-order stream located in the southeastern corner of the review area, between Mechanics Valley Road and railroad tracks (39.62557, -75.92402). Waterway 2 is an RPW with intermittent flow which receives hydrology from groundwater. OHWM indicators including sediment sorting, bed and bank, moss line on rocks, and disturbed/washed away leaf litter were observed along the channel. Waterway 2 discharges to Waterway 3 (RPW) near the southern tip of the review area. Waterway 3 flows beneath a culvert under the railroad tracks, exiting the review area, continues to flow south and discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 3: RPW [511 linear feet]

Waterway 3 is an approximately 511 linear foot second-order stream near the located in the southeastern corner of the review area, between Mechanics Valley Road and railroad tracks (39.62516, -75.92385). Waterway 3 is an RPW with intermittent flow which receives hydrology from groundwater and from Waterways 1 and 2. Waterway 3 originates at the outfall of a 36" culvert beneath Mechanics Valley Road. OHWM indicators including steep banks, sediment sorting, and breaks in vegetation were observed along the channel. Waterway 3 flows into a 48" culvert at the edge of the review area, discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 4: RPW [1,938 linear feet]

Waterway 4 is an approximately 1,938 linear foot first-order stream that originates within a forested nontidal wetland (Wetland 12) south of Stevenson Road (39.63402, -75.93011). Waterway 4 is an RPW with intermittent flow which receives hydrology from groundwater and surface runoff. OHWM indicators including steep banks with a well-defined break in slope were observed along the channel. Waterway 4 flows north from Wetland 12 and crosses beneath Stevenson Road in a 48" culvert. Downstream of the culvert, the Waterway 4 flows through a forested corridor in a steeper-gradient channel and discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 5: RPW [111 linear feet]

Waterway 5 is an approximately 111 linear foot first-order stream that originates within a palustrine forested wetland (Wetland 8), north of Stevenson Road and west of Quarry Road in the southwestern quadrant of the review area (39.636014, -75.93360). Waterway 5 is an RPW with intermittent flow that receives hydrology from groundwater. OHWM indicators including changes in vegetation and presence of large wood were observed along the channel. Waterway 5 flows north and discharges to Waterway 6 (RPW). Waterway 6 flows to Waterway 11 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 6: RPW [785 linear feet]

Waterway 6 is a first and second order stream that originates within a forested nontidal wetland (Wetland 8) located in the southwestern quadrant of the review area, north of Stevenson Road and east of Quarry Road (39.63616, -75.93311). Waterway 6 is an RPW with intermittent flow that receives hydrology from groundwater and from Waterway 5. OHWM indicators including defined bedform features (riffle-pool morphology), breaks in vegetation, and deposition of large wood were observed along the channel. Waterway 6 flows east and discharges to Waterway 11 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 7: RPW [4,844 linear feet]

Waterway 7 is a second and third-order stream that originates north of Interstate 95 and flows from north to south along the eastern edge of the active quarry area, in the eastern quadrant of the review area (39.63572, -75.92022). Waterway 7 is an RPW with perennial flow that receives hydrology from groundwater and other first and second-order streams, including Waterways 8

and 9 (both RPWs), and streams north of the review area. OHWM indicators including sediment sorting, defined bedform features, shelving, and breaks in the vegetative community were observed along the channel. Waterway 7 flows to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 8: RPW [2,107 linear feet]

Waterway 8 is a second-order stream in the northeastern corner of the review area (39.64192, -75.91336). Waterway 8 originates outside of the review area, north of Interstate 95, and flows through a culvert into the review area. Waterway 8 is an RPW with perennial flow that receives hydrology from other streams north of the review area. Waterway 8 is designated as a Use I-P stream by Maryland DNR and is known as an Unnamed Tributary (UT) to Little North East Creek. OHWM indicators including undercut banks, sediment sorting and deposition (point bars), and defined bedform features (riffle-pool morphology) were observed along the channel. Waterway 8 flows south and discharges to Waterway 7 (RPW), which flows to Waterway 13 (RPW). Waterway 13 flows to the tidal North East River (TNW).

Waterway 9: RPW [234 linear feet]

Waterway 9 is a first-order stream located east of Waterway 7 and west of Union Church Road, in the eastern quadrant of the review area (39.63825, -75.91786). Waterway 9 is an RPW with intermittent flow that receives hydrology from groundwater. OHWM indicators including slope breaks, water staining, and changes in vegetative community were observed along the channel. Waterway 9 flows for a short distance before discharging into Waterway 7 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 10: RPW [827 linear feet]

Waterway 10 is a third-order stream located south of Interstate 95, north of Little North East Creek, and west of Quarry Road, in the northwestern corner of the review area (39.64347, -75.93020). Waterway 10 originates north of Interstate 95 and flows through a culvert into the review area. Waterway 10 is an RPW with perennial flow that receives hydrology from several tributaries north of the review area. Waterway 10 is designated a Use I-P stream by Maryland DNR and is known as an Unnamed Tributary (UT) to Little North East Creek. OHWM indicators including well defined streambanks, undercut banks, defined bedform features (riffle-pool morphology, cascades), and sediment sorting were observed along the channel. Waterway 10 flows southeast and discharges Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 11: RPW [2,373 linear feet]

Waterway 11 is a first- and second-order stream located west of Lums Road, east of Quarry Road, and south of Little North East Creek, in the western quadrant of the review area (39.63714, -75.93132). Waterway 11 is an RPW with intermittent flow that receives flow from groundwater and from Waterway 6 (RPW). OHWM indicators including scour and cut banks were observed along the channel. Waterway 11 flows northeast and discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 12: RPW [825 linear feet]

Waterway 12 is a first-order stream located north of Stevenson Road and Pond 6, in the center quadrant of the review area (39.63462, -75.92664). Waterway 12 is an RPW with intermittent flow that receives hydrology from Wetland 5, groundwater seepage from Pond 6, and runoff from adjacent forested hillslopes. OHWM indicators including sediment sorting, vegetative breaks, and deposition were observed along the channel. Waterway 12 flows north to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 13 (Little North East Creek): RPW [6,816 linear feet]

Waterway 13 is a stream known as Little North East Creek which bisects flows from northwest to southeast across the review area (39.63529, -75.92471). Waterway 13 is an RPW with perennial flow that receives hydrology from numerous tributaries, wetland areas, and forested hillslopes. All other (a)(3) tributaries within the review area discharge to Waterway 13. Waterway 13 is designated as a Use I-P stream by Maryland DNR and supports a variety of fish species. OHWM indicators including well defined bedform features (riffles, pools, cascades), sediment sorting, vegetative breaks, and rack lines were observed along the channel. Waterway 13 flows south to the tidal North East River (TNW).

Waterway 14: RPW [191 linear feet]

Waterway 14 is a first-order stream that originates in a wetland area just north of Pond 6 (39.63427, -75.92671). Waterway 14 is an RPW with intermittent flow that receives hydrology from Pond 6 and Wetland 5. OHWM indicators including scour and sediment sorting were observed along the channel. Waterway 14 flows north to Waterway 12 (RPW). Waterway 12 flows to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 15: RPW [550 linear feet]

Waterway 15 is a first- and second-order stream which originates in a forested wetland (Wetland 7) between a gravel access road and Mechanics Valley Road in the southeast quadrant of the review area (39.63129, -75.92508). Waterway 15 is an RPW with intermittent flow that receives hydrology from Wetland 7, groundwater, and overland flow from forested hillslopes. OHWM indicators including scour, sediment sorting, and vegetative breaks were observed along the channel. Waterway 15 flows west, exits the review area and discharges to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 16: RPW [747 linear feet]

Waterway 16 is a first-order stream located just south of Waterway 15, which also originates within a forested wetland (Wetland 7) between a gravel access road and Mechanics Valley Road in the southeast quadrant of the review area (39.63101, -75.92614). Waterway 16 is an RPW with intermittent flow that receives hydrology from Wetland 7, and overland flow from forested hillslopes. OHWM indicators including scour, sediment sorting, and vegetative breaks were observed along the channel. Waterway 16 flows west to Waterway 15 (RPW), which flows outside of the review area to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 17: RPW [170 linear feet]

Waterway 17 is a first and second-order stream which also originates within a forested wetland (Wetland 13) west of Quarry Road in the southeast quadrant of the review area (39.64154, -75.93007). Waterway 17 is an RPW with intermittent flow that receives hydrology from Wetland 13 and overland flow. OHWM indicators including scour, sediment sorting, and vegetative breaks were observed along the channel. Waterway 17 flows south to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 18: RPW [41 linear feet]

Waterway 18 is a first-order stream which also originates within a forested wetland (Wetland 13) west of Quarry Road in the southeast quadrant of the review area (39.64151, -75.93038). Waterway 18 is an RPW with intermittent flow that receives hydrology from Wetland 13 and overland flow from forested hillslopes. OHWM indicators including slope breaks and vegetative breaks were observed along the channel. Waterway 17 flows south to Waterway 18 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 19: RPW [35 linear feet]

Waterway 19 is a first-order stream that originates within a scrub-shrub wetland (Wetland 14) east of Union Church Road in the east quadrant of the review area (39.63491, -75.91406). Waterway 19 is an RPW with intermittent flow that receives hydrology from Wetland 14 and overland flow. OHWM indicators including sediment sorting and vegetative breaks were observed along the channel. Waterway 19 flows south to Waterway 21 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 20: RPW [40 linear feet]

Waterway 20 is a first-order stream that also originates within a scrub-shrub wetland (Wetland 14) east of Union Church Road in the east quadrant of the review area (39.63483, -75.91409). Waterway 20 is an RPW with intermittent flow that receives hydrology from Wetland 14 and overland flow. OHWM indicators including sediment sorting and vegetative breaks were observed along the channel. Waterway 20 flows south to Waterway 21 (RPW) and Waterway 13 (RPW), which flows to the tidal North East River (TNW).

Waterway 21: RPW [212 linear feet]

Waterway 21 is a first and second-order stream east of Union Church Road in the east quadrant of the review area (39.63478, -75.91397). Waterway 21 is an RPW with intermittent flow that receives hydrology from Waterway 19, Waterway 20, and Wetland 14. OHWM indicators including scour, sediment sorting, and vegetative breaks were observed along the channel. Waterway 21 flows south to Waterway 13 (RPW), which flows to the tidal North East River (TNW).

f. Adjacent Wetlands (a)(4):

Wetlands 1-8, 10-14, and Seeps 1 and 2 meet wetland parameters and directly abut (a)(3) tributaries. Photos of each wetland can be found in Appendix D of the Wetlands and Waterways Summary Report.

Wetland 1: Palustrine Forested Wetland [5,083 square feet (0.12 acres)]

Wetland 1 is located south of Interstate 95, east of the active quarry, and west of Mechanics Valley Road, in the northeast corner of the review area (39.64080, -75.91567). Wetland 1 directly abuts (i.e., touches) Waterway 7, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 2: Palustrine Forested Wetland [13,560 square feet (0.31 acres)]

Wetland 2 is located northwest of the intersection of Stevenson Road and Little North East Creek, in the southeast quadrant of the review area (39.63444, -75.92073). Wetland 2 is situated at the toe of a forested hillslope area and directly abuts (i.e., touches) the northern bank of Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 3: Palustrine Forested Wetland [20,768 square feet (0.48 acres)]

Wetland 3 is located at the toe of a forested hillslope, and just east of Wetland 2, in the southeast quadrant of the review area (39.63392, -75.91997). Wetland 3 directly abuts (i.e., touches) the northern bank of Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 4: Palustrine Forested Wetland [1,509 square feet (0.03 acres)]

Wetland 4 is located in the southeast quadrant of the property, north of Stevenson Road, south of Little Northeast Creek, and west of Mechanics Valley Road (39.63444, -75.92215). Wetland 4 is located at the base of a forested hillslope and directly abuts (i.e., touches) the western bank of Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 5: Palustrine Forested / Emergent/ Scrub Shrub Wetland [47,795 square feet (1.10 acres)]

Wetland 5 is a wetland complex located north of Stevenson Road, south of the active quarry area, and west of Wetland 4, in the southeast quadrant of the review area (39.63553, -75.92547). Wetland 5 directly abuts (i.e., touches) the southern bank of Waterway 13 and Waterway 12, both (a)(3) tributaries. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 6: Palustrine Forested Wetland [7,071 square feet (0.16 acres)]

Wetland 6 is located north of Stevenson Road, south of the active quarry area, and directly west of Wetland 5, in the southeast quadrant of the review area (39.63596, -75.92595). Wetland 6 is located at the base of a forested hillslope directly abuts (i.e., touches) the southern bank of Waterway 13, an (a)(3)

tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 7: Palustrine Forested Wetland [201,650 square feet (4.63 acres)]

Wetland 7 is located south of Stevenson Road, east of Bouchelle Road and an unnamed gravel roadway, and west of Mechanics Valley Road, in the southern quadrant of the review area (39.63101, -75.92533). Wetland 7 is located along a forested hillslope and directly abuts (i.e., touches) Waterways 15 and 16, both (a)(3) tributaries. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 8: Palustrine Forested / Emergent Wetland [40,530 square feet (0.93 acres)]

Wetland 8 is a wetland complex located directly east of the intersection of Stevenson Road and Quarry Road, in the southwestern quadrant of the review area (39.63658, -75.93462). Wetland 8 directly abuts (i.e., touches) Waterway 6, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 10: Palustrine Forested Wetland [4,638 square feet (0.11 acres)]

Wetland 10 is located east of Quarry Road in the northwest quadrant of the review area (39.63932, -75.93010). Wetland 10 directly abuts (i.e., touches) the southern banks of Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 11: Palustrine Forested Wetland [9,360 square feet (0.21 acres)]

Wetland 11 is located in a forested area along the toe of a hillslope between Pond 3 and Waterway 7, in the northeast quadrant of the review area (39.63606, -75.91973). Wetland 11 directly abuts (i.e. touches) Waterway 7, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 12: Palustrine Forested Wetland [26,504 square feet (0.61 acres)]

Wetland 12 is located in a forested area along the toe of a hillslope directly southeast of the intersection of Lums Road and Stevenson Road, in the southwestern quadrant of the review area (39.63382, -75.93038). Wetland 12 directly abuts (i.e., touches) Waterway 4, an (a)(3) tributary. This wetland meets

the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 13: Palustrine Forested Wetland [10,172 square feet (0.23 acres)]

Wetland 13 is located west of the active quarry in the northwest quadrant of the review area (39.64146, -75.93023). Wetland 13 is located at the toe of a forested hillslope and directly abuts (i.e. touches) Waterways 17 and 18, both (a)(3) tributaries. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Wetland 14: Palustrine Scrub-Shrub Wetland [462 square feet (0.23 acres)]

Wetland 14 is located east of Union Church Road in the eastern quadrant of the review area (39.63492, -75.91397). Wetland 14 directly abuts (i.e., touches) Waterways 17 and 18, both (a)(3) tributaries. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Seep 1: Palustrine Forested Wetland (412 square feet (0.01 acres))

Seep 1 is a forested wetland located east of the active mining area at the toe of a forested slope (39.63583, -75.92051). The wetland directly abuts (i.e., touches) Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement.

Seep 2: Palustrine Forested Wetland (242 square feet (0.01 acres))

Seep 2 is a forested wetland located west of Quarry Road in the northwest quadrant of the review area (39.64230, -75.93090). The wetland directly abuts (i.e., touches) Waterway 13, an (a)(3) tributary. This wetland meets the standard 3 parameter approach per 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. 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).⁷

Ponds 1, 2, 3, 4, 5, and 8 are settling basins constructed in dry land within the active quarry mining area, determined to be non-jurisdictional (excluded under 33 CFR 328.3(b)(5)).

“33 CFR 328.3(b)(5), Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.”



Photo 2: Photo of typical settling basin condition within active quarry area; taken by Corps.

⁷ 88 FR 3004 (January 18, 2023)

Pond 1; non-jurisdictional

Pond 1 is located on the eastern perimeter of the active quarry mining area, in the northeast quadrant of the review area (39.63924, -75.91744). Pond 1 was excavated wholly in uplands within the active quarry area, does not feature relatively permanent water, and has no outlet to waters.

Pond 2; non-jurisdictional

Pond 2 is located at the base of a stockpile area, within the active quarry mining area, east of Waterway 7 in the northeast quadrant of the review area (39.63889, -75.91652). Pond 2 was excavated wholly in uplands within the active quarry area, does not feature relatively permanent water, and has no outlet to waters.

Pond 3; non-jurisdictional

Pond 3 is located east of Waterway 7 and west of Mechanics Valley Road, at the base of a stockpile area within the active quarry mining area (39.63626, -75.91929). Pond 3 was excavated wholly in uplands within the active quarry area, does not feature relatively permanent water, and has no outlet to waters.

Pond 4; non-jurisdictional

Pond 4 is located at the base of stone perimeter berms along the southeastern perimeter of the active quarry area, west of Waterway 7 (39.63618, -75.92056). Pond 4 was constructed wholly in uplands within the active quarry area and does not feature relatively permanent water or an outlet to other waters.

Pond 5; non-jurisdictional

Pond 5 is a settling basin located on the southern portion of the active quarry mining area, in the central quadrant of the review area (39.63620, -75.92481). Pond 5 was excavated wholly in uplands and receives overland runoff from the adjacent sections of quarry.

Pond 8; non-jurisdictional

Pond 8 is located along the western perimeter of the active quarry mining area, in the northeast quadrant of the review area (39.63706, -75.91913). Pond 8 was excavated wholly in uplands, does not feature relatively permanent water, and has no outlet structure to other waters.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

Ponds 7, 9, and 10 are manmade stormwater management facilities excavated in uplands, determined to be non-jurisdictional (excluded under 33 CFR 328.3(b)(5)).

Pond 7; non-jurisdictional

Pond 7 is a stormwater management facility at the intersection of Quarry Road and a paved driveway, in the northwestern quadrant of the review area (39.63950, -75.93093). Pond 7 was excavated wholly in uplands and does not impound other waters. Pond 7 captures upland runoff from the adjacent asphalt plant. Pond 7 has no continuous surface connection (no CSC) to other waters, i.e., there is no outfall/outlet structure, stream, or discrete conveyance downslope of the pond.



Photo 3: Pond 7, looking west. Taken by Corps on March 24, 2024.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

Pond 9; non-jurisdictional

Pond 9 is a dry stormwater management facility just west of Quarry Road and the asphalt plant, in the eastern quadrant of the review area (39.63687, -75.93389). Pond 9 was excavated wholly in uplands, within an area previously used for asphalt stockpiling, does not impound other waters, and does not feature relatively permanent water (non-RPW). Pond 9 collects overland runoff from an upland asphalt stockpile area west of Quarry Road.



Photo 4: Pond 9, looking west. Taken by Corps on March 24, 2024.

Pond 10; non-jurisdictional

Pond 10 is a stormwater management facility west of Quarry Road and north of the asphalt plant, in the eastern quadrant of the review area (39.63816, -75.93057). Pond 10 was excavated wholly in uplands without impounding other waters. Pond 10 collects overland runoff from adjacent areas of the asphalt plant (e.g., there are no waters upstream of the facility). Flow from the pond outlet dissipates within an upland area and there is no waterway or discrete conveyance (i.e., swale or erosional feature) that provides a continuous surface connection (no-CSC) between the outlet and other waters.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]



Photo 5: Pond 10, looking east. Taken by Corps on March 24, 2024.



Photo 6: Pond 10 outlet, taken by Corps on March 24, 2024. No stream or discrete conveyance was observed between the end of rip rap and other waters.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

The roadside ditch near Stevenson Road (identified 'Roadside Ditch' on the Corps AJD Area of Review map), was determined to be non-jurisdictional (excluded under 33 CFR 328.3(b)(3)).

(33 CFR 328.3(b)(3), Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water;)

Roadside ditch; non-jurisdictional

There is a manmade ditch adjacent to Stevenson Road that runs parallel to the road southeast towards Azure Lane. The ditch was excavated wholly in uplands and does not drain wetland areas. The ditch features grassy vegetation, no ordinary high water mark indicators, and a straightened planform.



Photo 7: Roadside Ditch; typical conditions. No ordinary high-water mark present within the ditch.

- 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).

Wetland 9: Palustrine Emergent Wetland; non-jurisdictional [932 square feet (0.02 acres)]

Wetland 9 is located directly adjacent to the eastern edge of Quarry Road, in the southwestern quadrant of the review area (39.63738, -75.93499). This wetland meets the standard 3 parameter approach per the 1987 Manual and Atlantic and Gulf Coastal Plain Regional Supplement. Wetland 9 is located within a concave depressional area between Quarry Road and the asphalt plant. Historic imagery indicates the feature likely formed as a result of grading for the adjacent asphalt plant. Wetland 9 has no continuous surface connection to other waters (no-CSC), i.e., there is no stream or discrete feature (swale, erosional feature, etc.) conveying flow from the feature to other waters.



Photo 8: Wetland 9, looking north. No continuous surface connection present between Wetland 9 and other waters. Photo taken by Corps on March 24, 2024.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]



Photo 9: Wetland 9, looking south. No continuous surface connection present between Wetland 9 and other waters. Photo taken by Corps on March 24, 2024.

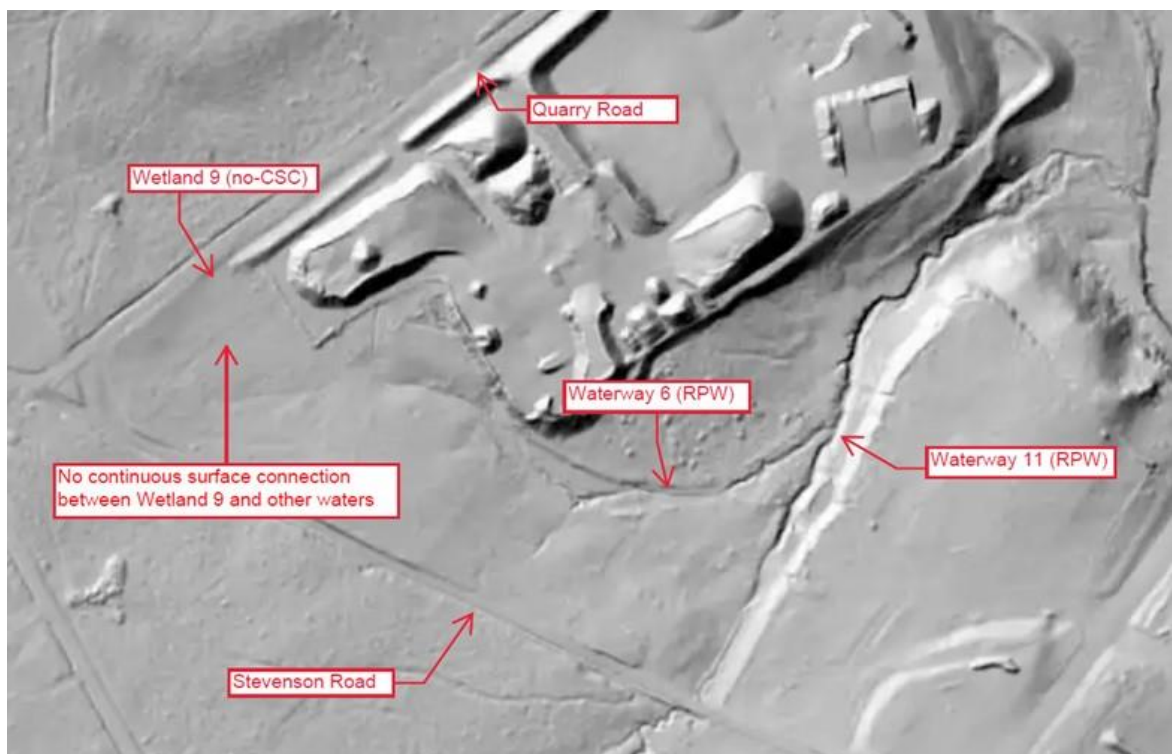


Figure 2: LiDAR Imagery showing Wetland 9 in relation to other waters.

CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]

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 inspections by Corps personnel, most recently on March 24, 2024.
- i. EN Engineering. April 2024. "Wetlands and Waterways Summary Report." Prepared for Martin Marietta.
- b. Aerial Imagery, accessed via Google Earth.
- c. US FWS National Wetland Inventory (NWI) Mapping, accessed via the Watershed Resources Registry (<https://watershedresourcesregistry.org/states/maryland.html>).
- d. Maryland DNR Wetland Mapping, accessed via the Watershed Resources Registry (<https://watershedresourcesregistry.org/states/maryland.html>).
- e. Little North East Creek Basin Delineation, accessed via USGS StreamStats (<https://streamstats.usgs.gov/ss/>).
- f. Maryland LIDAR Imagery, accessed via the Watershed Resources Registry (<https://watershedresourcesregistry.org/states/maryland.html>).
- g. Soils mapping, accessed via USDA Web Soils Survey Mapping (<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>)

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 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.



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

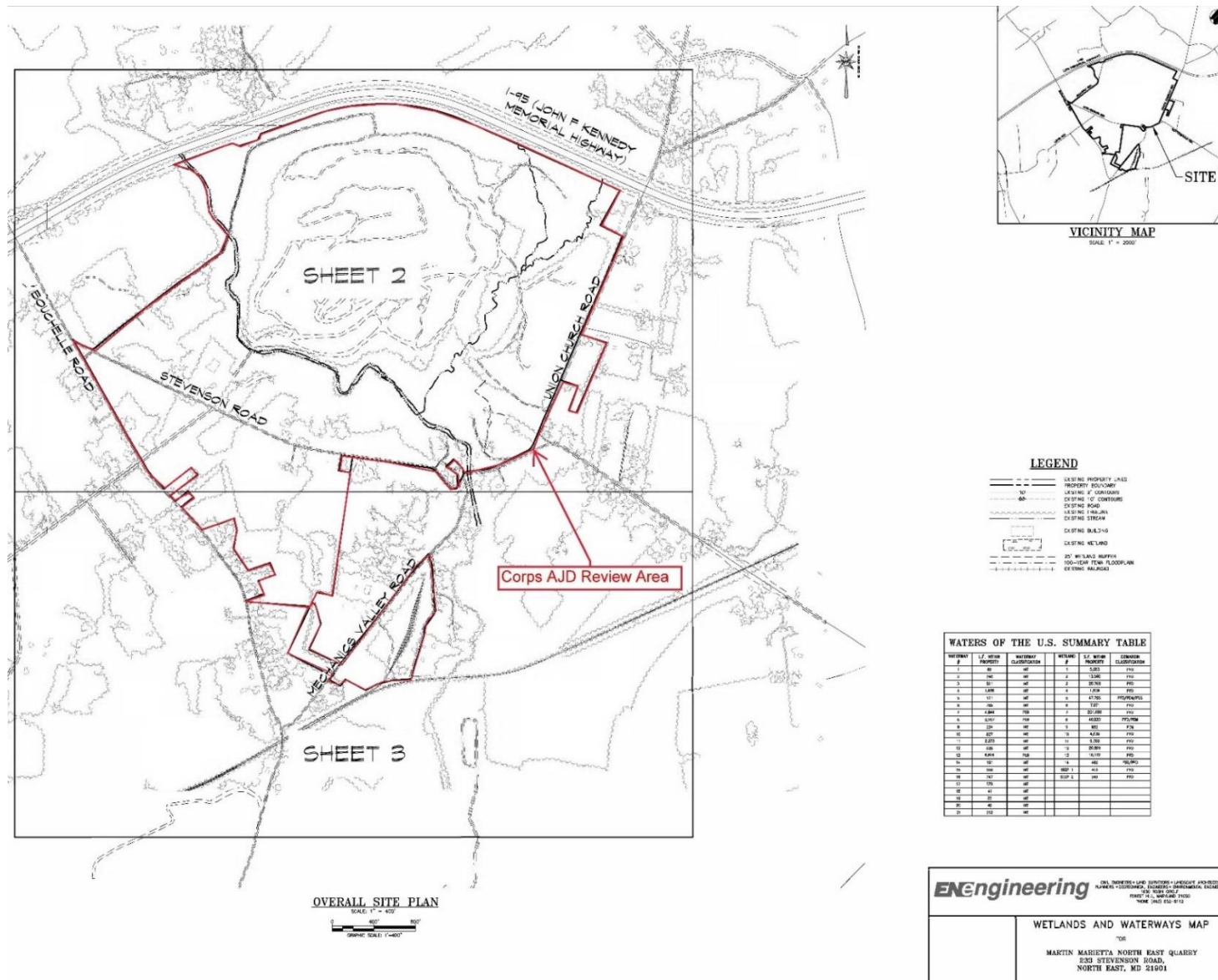
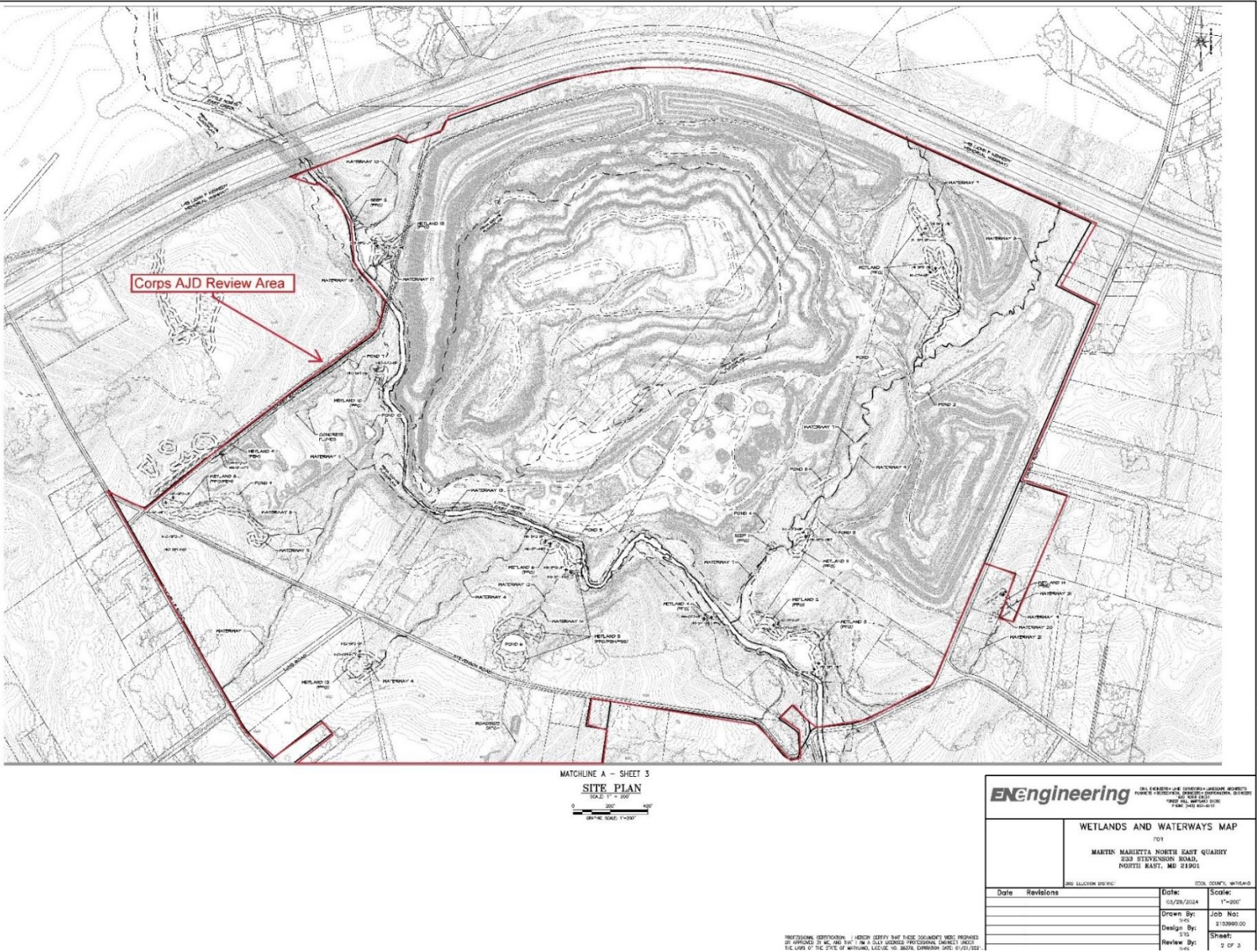


Figure 3: Corps AJD Review Area Map (Sheet 1 of 3)

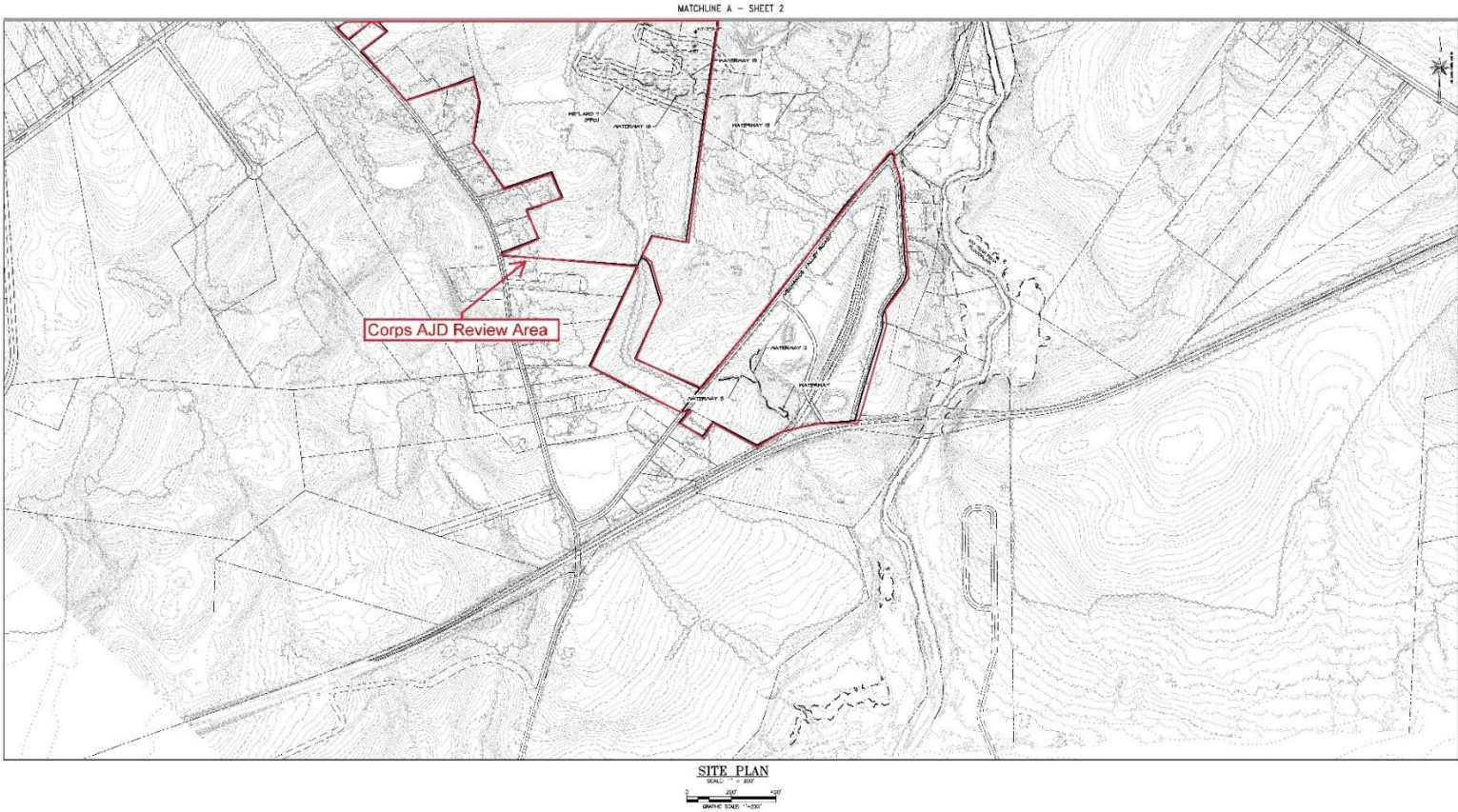
CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]



CENAB-OPR-MN

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [NAB-2021-00407-M49]



ENEngineering		FOR: MARTIN MARRETTA NORTH EAST QUARRY 303 STEVENSON ROAD, NORTH EAST, MD 21661	
WETLANDS AND WATERWAYS MAP		FOR: MARTIN MARRETTA NORTH EAST QUARRY 303 STEVENSON ROAD, NORTH EAST, MD 21661	
Date	Revisions	Date	Scale
03/29/2024		03/29/2024	1"=200'
Drawn By:	365	Job No:	2103990.00
Design By:	365	Sheet:	3 of 3
Review By:	365		