



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

CENAB-OPR-R P 1100B

9 September 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-2022-00309-TREC (Celestal Court-AJD).

BACKGROUND: An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of jurisdictional determination 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.

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1. SUMMARY OF CONCLUSIONS.

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).

- a. Wetland A – non jurisdictional
- b. Wetland B – non jurisdictional
- c. Wetland C – non jurisdictional
- d. Wetland D – non jurisdictional
- e. Wetland E – non jurisdictional
- f. Wetland G – non jurisdictional
- g. Stream 1-I – non jurisdictional
- h. Stream 2-E – non jurisdictional
- i. Stream 2-I – non jurisdictional
- j. Stream 3-E – non jurisdictional
- k. Stream 4-I – non jurisdictional
- l. Stream 5-I – non jurisdictional

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 United States, 143 S. Ct. 1322 (2023)
- d. Corblu Ecology Group AJD request and Wetland Delineation – December 2022
- e. Revised AOR and mapping June 10, 2024.

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- f. 1987 Corps of Engineers Wetland Delineation Manual
- g. Atlantic and Gulf Coastal Plain Regional Supplement
- h. Field Indicators of Hydric Soils of the United States
- i. 2020 National Wetland Plant List

3. REVIEW AREA. The review area is ~75 acres in size and located just north of Upper Marlboro, Prince Georges County, Maryland (38.828167 - 76.748194). See Figures 1 to 4 below.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ The nearest TNW is the tidal reach of the Patuxent River. This water 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. The resources identified in this MFR do not have a continuous surface connection to any jurisdictional water. Wetland F has been removed from the AOR and was not considered in this determination.

6. SECTION 10 JURISDICTIONAL WATERS⁶:

N/A

7. SECTION 404 JURISDICTIONAL WATERS:

- 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

⁵ 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 Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. 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.

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.

- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- 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 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
 - i. Stream 5-I (~305') and Stream 4-I (~224) are first order streams that exhibit relatively permanent flow upslope of their confluence at Wetland G. However, there is no evidence that they contribute flow to downstream waters as all indication of flow is lost within and below Wetland G. Flows go subsurface ~100 feet upslope of Stream 3-E, which is the nearest possible surface outlet and therefore, does not contribute flow to downstream waters. The Corps could not identify a discrete continuous connection or verify that this was a temporary discontinuity during a May 2024 site inspection.
 - ii. Stream 3-E is a first order stream ~1493 linear feet in length. The stream is non relatively permanent water because it appears to flow only for short duration in direct response to precipitation. Stream 3-E has a distinct OHWM and bed and banks but does not exhibit a continuous surface connection to a receiving water. The stream channel and OHWM stop over 100 linear feet short of the nearest downstream waters. The Corps could not identify a discrete continuous connection or verify that this was a temporary discontinuity during a May 2024 site inspection.

⁷ 88 FR 3004 (January 18, 2023)

- iii. Wetland G (0.115 acres) abuts and receives relatively permanent flow from Stream 5-I and Stream 4-I but does not contribute flow itself to any receiving water.
- iv. Stream 1-I is a 2nd order relatively permanent water because it has continuously flowed or standing water during certain times of the year and for more than for a short duration in direct response to precipitation. Stream 1 is ~1269 linear feet in length and has a distinct OHWM and bed and banks but does not exhibit a continuous surface connection to a receiving water. Stream 1-I goes subsurface several hundred linear feet short of the nearest potential receiving waters. The Corps could not identify a discrete continuous connection or verify that this was a temporary discontinuity during a May 2024 site inspection.
- v. Wetland A (0.182 acres), Wetland B (0.007 acres), Wetland C (0.039), and Wetland D (0.528 acres) all directly abut Stream 1-I. All wetlands meet the standard three parameter approach per the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement.

As indicated above, Stream 1-I has a distinct OHWM but does not exhibit a continuous surface connection to a receiving water. However, because Stream 1-I does not contribute flow to a downstream water, all abutting wetlands are non-jurisdictional as well.

- i. Stream 2 is a 1st order stream within the AOR with two differing flow regimes within the same reach. Flows from Stream 2-E (ephemeral ~ 50 linear feet) and Stream 2-I (intermittent ~ 205 linear feet) eventually confluence with Stream 1-I. Both streams possess a distinct OHWM but because the receiving Stream 1-I does not contribute flow further to a receiving water, these streams were determined to be non-jurisdictional as well.
- ii. Wetland E is not adjacent to Collington Branch as it has no surface connection and is therefore, non-jurisdictional.

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. 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.)

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- c. Digital Globe aerial photography
- d. Regulatory Reviewer – LiDAR, DEM
- e. Corps site inspection May 16, 2024, with Corblu.

10. OTHER SUPPORTING INFORMATION.

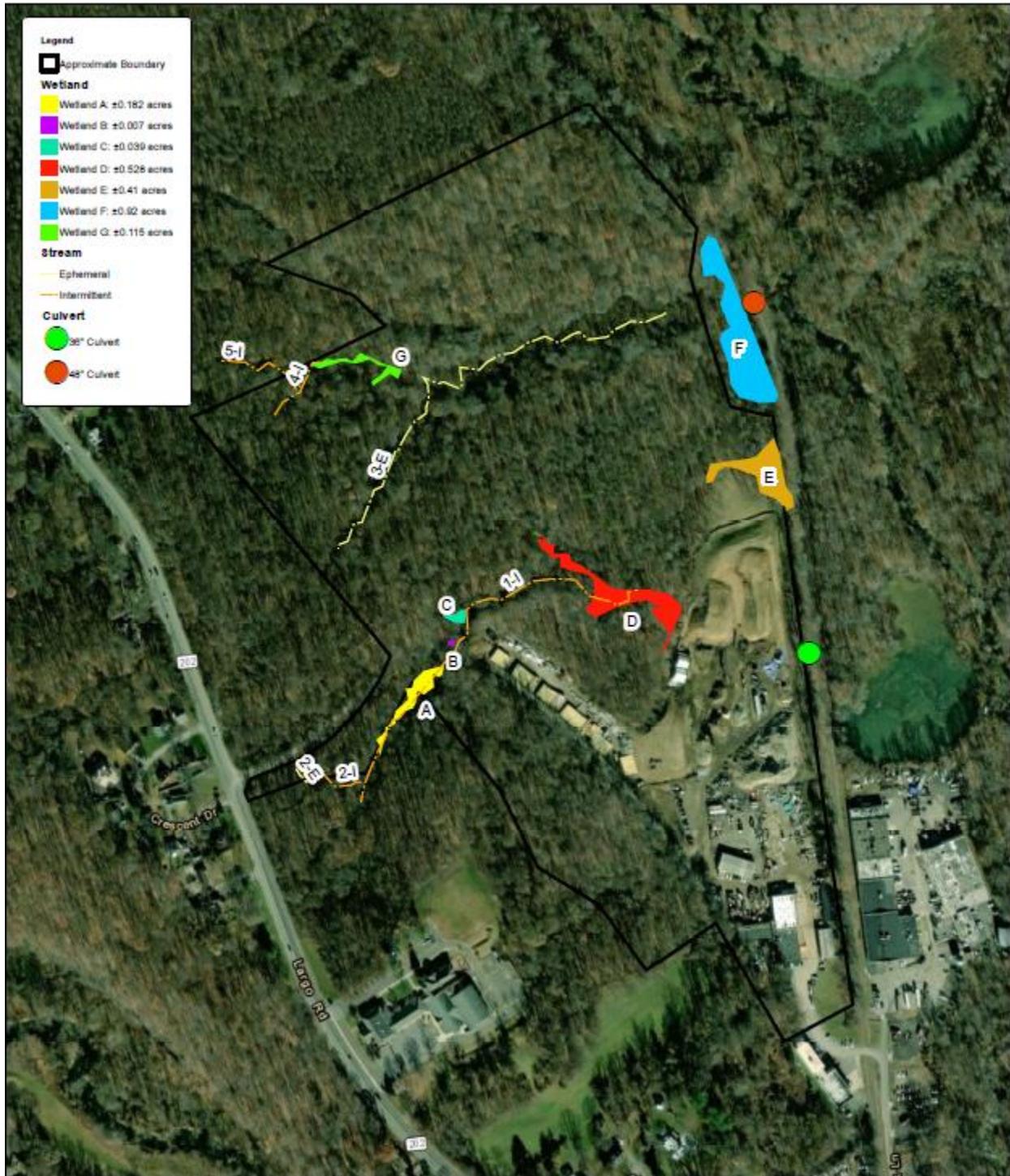
N/A

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.

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Figure 1. Area of Review (Black Polygon)



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Figure 2: Stream 1-I exhibiting obvious tributary characteristics. However, this discrete feature is lost further downslope (see Figure 3 below).



Figure 3: Upland area downslope of Wetland D and Stream 1-I. No discrete drainage feature or surface flows were evident.



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Figure 4: Looking upslope at Stream 3-E. A distinct bed and banks and OHWM become evident in the far background but disappear into the substrate in the foreground. While contributing stormwater from large precipitation events, there is no discrete feature conveying these flows.

