



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

CENAB-OPR-M 1100B

21 March 2025

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-2022-00394-B03 (Paramount Realty Property/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 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.

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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. Wetland 1 – 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 61964 (September 8, 2023))

c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The site is a 2.59-acre parcel which fronts the south side of Mountain Road (Route 177), with Route 10 to the southwest and Jumpers Hole Road to the east. The property is in Pasadena, Anne Arundel County, Maryland (Figure 1). The study area is comprised of mixed hardwood forest, with minor clearing in the central portion and a parking lot located at the east end of the site. The coordinates of the property are N39.133750 and W76.586013, respectively.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the tidal section of Marley Creek, which is subject to the ebb and flow of the tide and a Section 10 water.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Non-relatively permanent flow is discharged from Wetland 1 thru Ditch 1 to an unnamed tributary to Marley Creek, a perennial RPW tributary to the tidal Marley Creek approximately 2 stream miles north of the subject site.

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]

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): [N/A].
- f. Adjacent Wetlands (a)(4):
- g. Additional Waters (a)(5): [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.

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. **Wetland 1** (<0.1 acres) is the only wetland located within the AOR. Wetland 1 is adjacent to Ditch 1 which provides a continuous surface connection to unnamed tributary to Marley Creek and the TNW. Ditch 1 is not included in this MFR as it appears to be just outside of the property which is approximately the chain link fence illustrated on the site plan (Figure 2).

Ditch 1 carries flows from this wetland ~100 linear feet to a culvert through MD Route 177. The ditch flows through a second culvert generally to the north ~1600 linear feet to the referenced tributary to Marley Creek. This could not be field verified due to lack of access. Various supporting information was used to verify this determination.

However, due to the excessive distance (~1700 linear feet) from Wetland 1 to the nearest (a)(3) tributary, it was determined that the connection is not physically close enough to meet the continuous surface connection to the downstream relatively permanent tributary as designated in the guidance provided in Memorandum on NWK-2024-00392.

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.

⁷ 88 FR 3004 (January 18, 2023)

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a. A field inspection was conducted on April 23, 2024, with Mr. Ken Wallis of Bay Environmental, LLC and Mr. Frank Plewa, of this office. The delineation report submitted by Mr. Wallis was used as base data augmented by observations during the field visit.

b. Full range of Google Earth aerial photography (22 years) from 1994 - 2024.

c. Full range of Maryland Watershed Registry aerial photography (6 years) ranging from 2011 – 2018. Additionally, all pertinent layers such as topographic maps, NWI and MD DNR wetland mapping, soil mapping, NHD, etc.

d. Regulatory Reviewer aerial photography and LiDAR.

e. Digital Globe aerial imagery – all available years.

10. OTHER SUPPORTING INFORMATION. While supporting information and information supplied by the consultant were used initially, the primary information relied upon was on site observations of the potential connection of this wetland to TNW.

a. Memorandum on NWK-2024-00392

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.