



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

CENAB-OPR-MS

07 FEBRUARY 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),<sup>1</sup> NAB-2023-00348-M53 (Chesterhaven Beach Partnership/AJD)<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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. TW1: Tidal wetlands (17.30 acres), Section 404 a(4) jurisdictional waters of the US

ii. NTW1: Non-tidal wetlands (20.70 acres), Section 404 a(4) jurisdictional waters of the US

iii. D1: Agricultural ditch (547.9 lf), excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3).

iv. D2: Agricultural ditch (607.11 lf), excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3).

## 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)

3. REVIEW AREA. The property is located at 2501 Piney Creek Road, in the town of Chester, Queen Anne's County, Maryland and is bounded to the west by the Gibson's Grant Community, and to the north and west by the Chester River. The site is in the Lower Chester River watershed<sup>6</sup> (HUC: 020600020411), approximately 48,712.74-acres (76.11 square miles) in drainage area. The review area is approximately 96.7-acres and is primarily an agricultural field with a large riparian forested area along the east associated with Chester River/Bryans Cove and Piney Cove, and additional forested area along the west edge of the property. A berm separates tidal wetlands to the north from the agriculture fields. The site has two agriculture ditches, one flowing west to east and intersecting the second, which runs north to south separating the

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<sup>6</sup> [https://water.usgs.gov/wsc/a\\_api/wbd/index\\_wbd.html](https://water.usgs.gov/wsc/a_api/wbd/index_wbd.html)

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agriculture fields from riparian forests, at a perpendicular angle. The project site is the location of a proposed residential development.

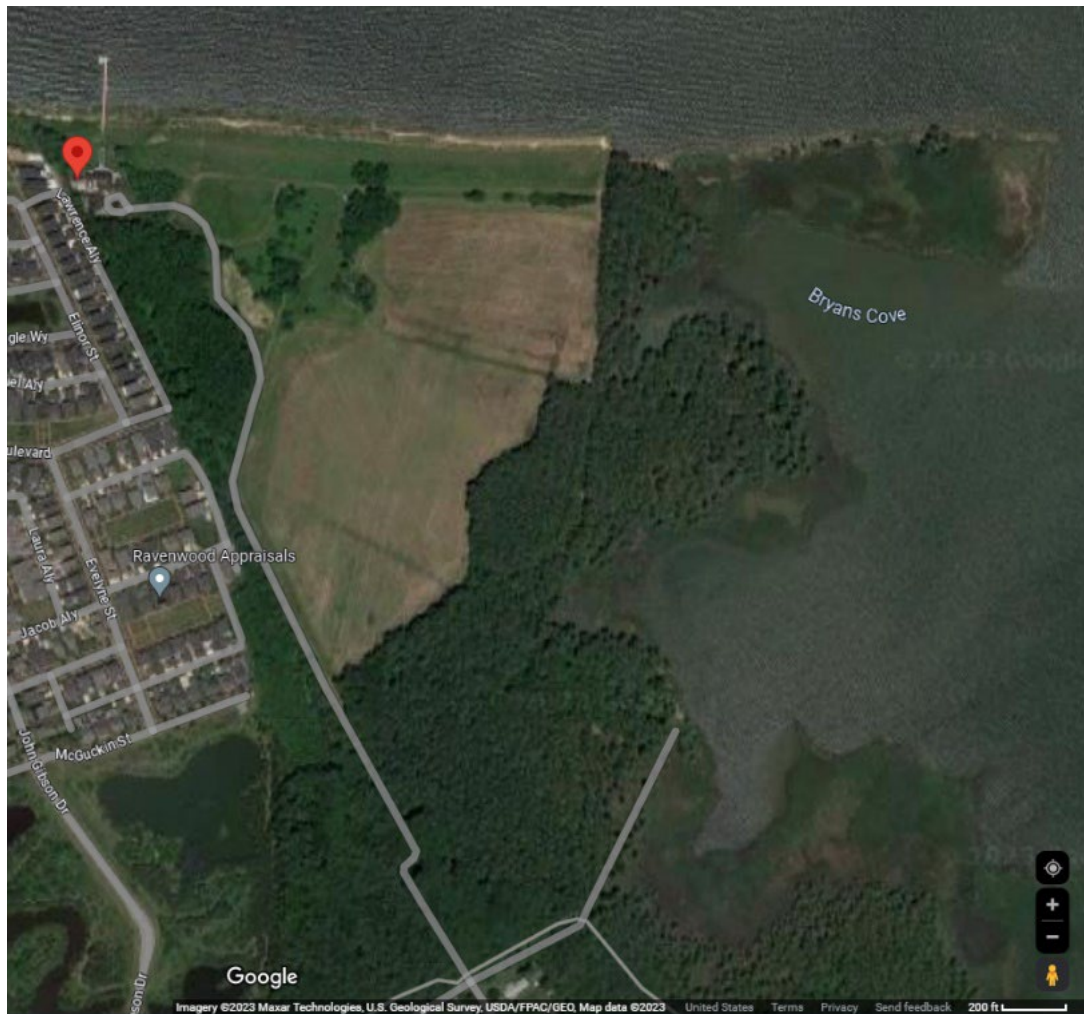


Figure 1: Vicinity Map (Source: Google Maps)

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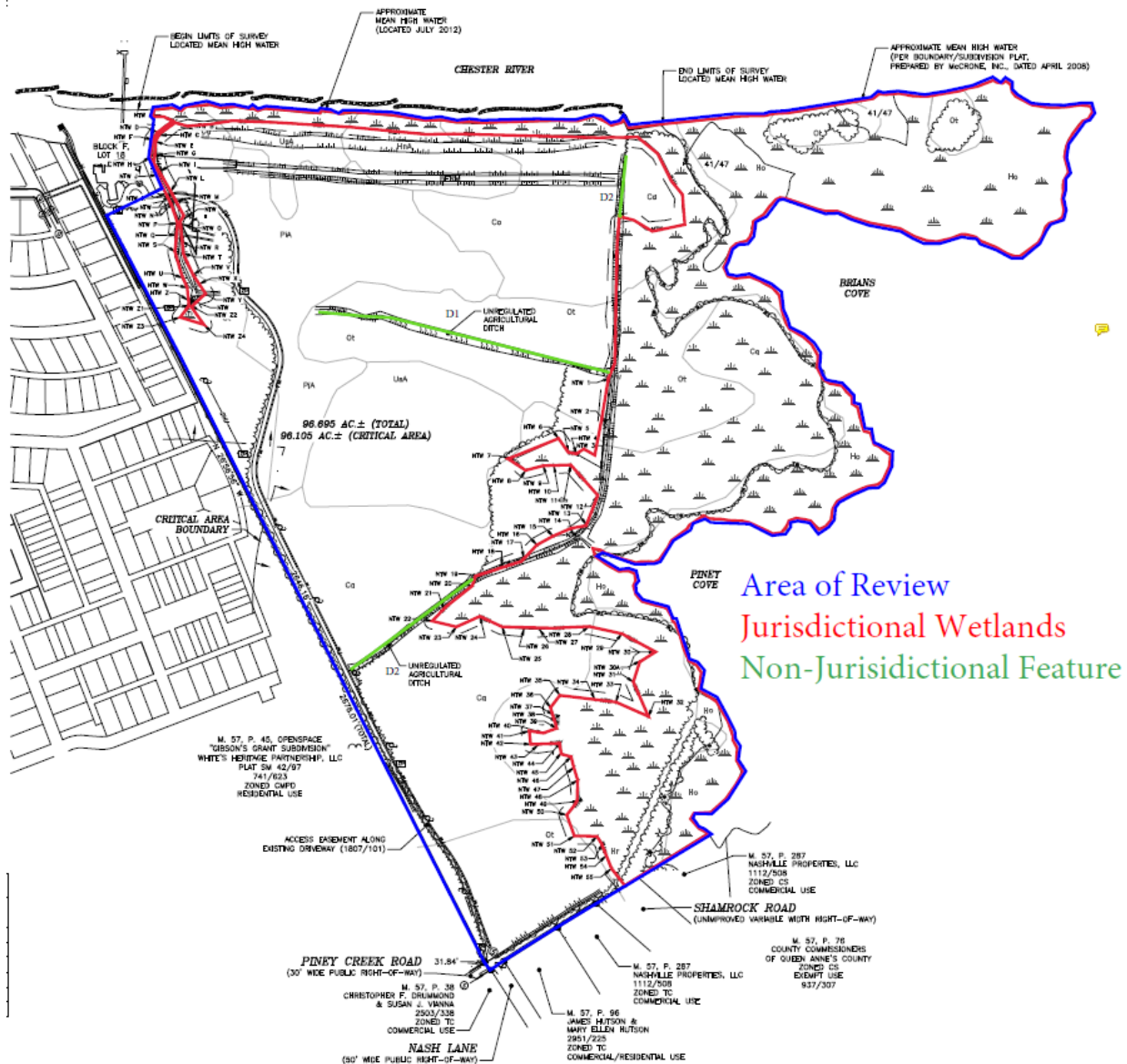


Figure 2: Area of review (blue), jurisdictional features (red), non-jurisdictional features (green).

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

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

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6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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):

i. TW1: A review of the wetland delineation and supporting information submitted by the applicant, photos and notes collected by USACE during the multiple site visits, as well as online GIS resources supported the applicant's determination that 17.30 acres of 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 (Chester River). The tidal wetlands are subject to the ebb and flow of tide and are

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<sup>7</sup> 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.

<sup>8</sup> 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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therefore jurisdictional. The (a)(4) wetlands are delineated based on the limits of hydric vegetation, hydric soils, and hydrology.

ii. NTW1: A review of the wetland delineation and supporting information submitted by the applicant, photos and notes collected by USACE during the multiple site visits, as well as online GIS resources supported the applicant's determination that 20.70 acres of nontidal wetlands are jurisdictional under paragraph (a)(4) of the CWA 2023 Rule. The nontidal wetlands directly abut and flow into a jurisdictional (a)(4) tidal wetlands, which abut and flow into a jurisdictional (a)(1) traditionally navigable water (Chester River). The (a)(4) wetlands are delineated based on the limits of hydric vegetation, hydric soils, and hydrology. A man-made drainage feature runs through the NTW, draining to the Chester River.

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).<sup>9</sup> 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).

i. The approximately 547.9-lf and approximately 607.11-lf of agricultural ditches running west to east and north to south, respectively, are excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3). The excluded features are ditches excavated in soils mapped as Othello Silt Loam; however, field conditions do not exhibit wetland vegetation, and the ditches do not carry relatively permanent flows of water. The ditches do not have more than a speculative/insubstantial effect on the chemical, physical, and biological integrity of the nearest TNW (Chester River). Where they have adjacent wetlands, those adjacent wetlands have been included in the acreage of jurisdictional wetlands as described above.

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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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 Visit 01 September 2022: Mr. Sean Callahan (Lane Engineering, LLC.), Mr. Chris Pajak (MDE Non-Tidal Wetlands), and Mr. Jason Peters (USACE) participated in a site visit to verify Mr. Callahan's field delineation of the site. The site visit attendees inspected two agricultural ditches, an adjacent riparian forested wetland, riparian wetlands to determine their jurisdictional status. An additional site visit was conducted on 20 February 2024 with Mr. Sean Callahan (Lane Engineering, LLC.), Mr. Jason Peters (USACE), Mr. Frank Plewa (USACE) and Ms. Jaclyn Kelleher (USACE) to confirm the field delineation of the site. The site visit attendees inspected the two agricultural ditches, an adjacent riparian forested wetland, and the riparian wetlands to determine their jurisdictional status.

b. Plan Sheet dated 20 October 2022: Mr. Callahan provided MDE and USACE with the results of the field delineation in a plan sheet dated 20 October 2022, which denotes the absence and presence of aquatic resources. MDE concurred with the delineation by email dated 26 October 2022.

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.



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#### 10. OTHER SUPPORTING INFORMATION.



*Figure 3: Riparian non-tidal wetland bordering tidal wetland on eastern side of property.*



*Figure 4: Riparian forested and emergent wetlands on north side of AOR.*



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*Figure 5: Drainage feature running through the NTW.*



*Figure 6: Upstream view of the agricultural ditch running north to south (D2, non-jurisdictional, non-RPW).*

PREPARED FOR: CHESTERHAVEN BEACH PARTNERSHIP  
PROPERTY ADDRESS: 2501 PINNEY CREEK RD  
CHESTER, MD 21619  
DEED REFERENCE: 242/152  
PLAT REFERENCE: 1/59, 40/53

#### SITE CALCULATIONS

TOTAL AREA = 96.695 AC.±  
AREA IN CRITICAL AREA = 35.369 AC.±  
AREA IN NON-CRITICAL AREA = 1,326 AC.±

#### GENERAL NOTES

ZONING CLASSIFICATION: NC-15  
SETBACKS:  
FRONT= 35'  
SIDE= 87/16' (MINIMUM/TOTAL)  
REAR= 50'  
MEAN HIGH WATER= 2007  
TIDAL WETLANDS= 2007  
NON-TIDAL WETLANDS= 25'  
MINIMUM LOT SIZE = 15,000 SQ'  
MINIMUM LOT WIDTH = 70'  
MINIMUM LOT FRONTAGE = 35'  
STREET BUFFER = 7' (20')

THE BOUNDARY SHOWN HEREON WAS TAKEN FROM A FIELD SURVEY DATED JULY, 2012 & PERFORMED BY LANE ENGINEERING, LLC.  
THE APPROXIMATE MEAN HIGH WATER SHOWN HEREON WAS TAKEN FROM A BOUNDARY AND EXISTING CONDITIONS SURVEY FOR CHESTERHAVEN BEACH BY MACRONE, INC., DATED APRIL 2006. A PORTION OF THE APPROXIMATE MEAN HIGH WATER WAS FIELD LOCATED BY LANE ENGINEERING, LLC IN JULY, 2012 AS NOTED HEREON.

MEAN HIGH WATER WAS NOT ESTABLISHED BY THIS SURVEY. MEAN HIGH WATER IS DEFINED BY ELEVATION REFERENCED TO A TIDAL BENCH MARK. THE SHORELINES WERE LOCATED TO THE EDGE OF TIDAL VEGETATION. THE BOUNDARY IS SUBJECT TO CHANGE DUE TO NATURAL CAUSES AND IT MAY NOT REPRESENT THE ACTUAL LOCATION OF THE LIMIT OF TITLE.

THE ELEVATIONS SHOWN HEREON ARE NAVD 1988 AS ESTABLISHED BY GPS METHODOLOGY TO CORS STATIONS LOTY (PD DK7414) COMBINED FACTOR: 0.99995360.

THE COORDINATES SHOWN HEREON ARE BASED ON THE MARYLAND STATE COORDINATE SYSTEM NAD83 (CORS), AS ESTABLISHED BY GPS METHODOLOGY TO CORS STATION LOTY (PD DK7414) COMBINED FACTOR: 0.99995360 & LOTY (NCS CERTIFICATE PENDING). THE DISTANCES SHOWN HEREON ARE GROUND BASED.

NO ABSTRACT OF TITLE, TITLE COMMITMENT, NOR RESULTS OF A TITLE SEARCH HAVE BEEN FURNISHED TO LANE ENGINEERING, LLC. THE BUILDING RESTRICTION LINES AS SHOWN HEREON ARE BASED SOLELY ON THE CURRENT QUEEN ANNE'S COUNTY ZONING ORDINANCE APPLICABLE TO THE PROPERTY SHOWN HEREON AND ARE SUBJECT TO CHANGE WITH THE REVISION OF ZONING LAWS. OTHER DOCUMENTS OF RECORD MAY EXIST THAT MAY AFFECT THE SURVEYED PROPERTY REFLECTED HEREON, INCLUDING BUT NOT LIMITED TO EASEMENTS, ENCUMBRANCES, RESTRICTIVE COVENANTS, PLAT RESTRICTIONS OR ANY OTHER FACTS THAT AN ACCURATE, COMPLETE AND CURRENT TITLE SEARCH MAY DISCLOSE.

THE STONE SILL SHOWN HEREON WAS TAKEN FROM THE 2010 QUEEN ANNE'S AERIALS AND IS APPROXIMATE ONLY.

THERE ARE NO STEEP SLOPES PROPOSED TO BE DISTURBED IN THIS SUBDIVISION.

THERE ARE NO MAPPED STREAMS LOCATED ON SITE BASED ON THE USGS QUAD MAP FOR "KENT ISLAND", MARYLAND.

THE TIDAL WETLANDS SHOWN HEREON WERE TAKEN FROM A BOUNDARY AND EXISTING CONDITIONS SURVEY FOR CHESTERHAVEN BEACH BY MACRONE, INC., DATED APRIL 2006.

THE NON-TIDAL WETLANDS SHOWN HEREON WERE RE-DELINEATED BY SEAN CALLAHAN, A QUALIFIED PROFESSIONAL WITH LANE ENGINEERING, LLC, SKATED BY LANE ENGINEERING, LLC AND VERIFIED BY CHRIS PLANK, MARYLAND DEPARTMENT OF THE ENVIRONMENT, ON AUGUST 18, 2022 AND JASON PETER, U.S. ARMY CORPS OF ENGINEERS, ON SEPTEMBER 1, 2022.

THE SOIL LINES SHOWN HEREON WERE TAKEN FROM A SHAPE FILE (GIS) PROVIDED BY QUEEN ANNE'S COUNTY AND ARE APPROXIMATE ONLY.

THERE ARE NO EROSION HAZARD AREAS LOCATED ON SITE.

THE TREE LINE SHOWN HEREON WAS TAKEN FROM THE 2016 QUEEN ANNE'S AERIALS AND IS APPROXIMATE ONLY. THE SITE CONTAINS 41.60 ACRES OF WOODLANDS, NO MORE THAN 20% OF WOODLANDS (8.32 AC.) MAY BE DISTURBED.

#### FLOOD DATA

THE PROPERTY SHOWN HEREON IS LOCATED IN THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) SPECIAL FLOOD HAZARD AREA (SFHA) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD. THE PROPERTY IS MAPPED IN THE "X" 1% ANNUAL CHANCE FLOOD ZONE (EL. 6) & "X" 1% ANNUAL CHANCE FLOOD ZONE (EL. 7) FLOOD ZONING AS SHOWN ON THE FEDERAL INSURANCE RATE MAPS FOR COMMUNITY NO. 240054, MAP NO. 24030203100 FOR QUEEN ANNE'S, MARYLAND, EFFECTIVE NOVEMBER 5, 2014. THE 1% ANNUAL CHANCE FLOOD (100-YEAR FLOOD), ALSO KNOWN AS THE BASE FLOOD, IS THE FLOOD THAT HAS A 1% CHANCE OF BEING EQUALLED OR EXCEEDED IN ANY GIVEN YEAR. THE SFHA IS THE AREA SUBJECT TO FLOODING BY THE 1% ANNUAL CHANCE FLOOD. THE SFHA INCLUDES ZONES A, AE, AH, AO, AR, A99, V & VE. THE BASE FLOOD ELEVATION (BFE) IS THE WATER SURFACE ELEVATION OF THE 1% ANNUAL CHANCE FLOOD. FLOOD INSURANCE MAY BE REQUIRED FOR STRUCTURES LOCATED IN THE SPECIAL FLOOD HAZARD AREA.

FLOOD ZONE LEGEND:  
ZONE AE - 1% ANNUAL CHANCE FLOOD  
ZONE X (SHADED) - 0.2% ANNUAL CHANCE FLOOD  
ZONE X - AREA OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD

THE FLOOD DATA SHOWN HEREON IS BASED ON AVAILABLE MAPPED AND/OR DIGITAL INFORMATION AND IS DEPICTED AS DIRECTED AND REQUIRED BY FEDERAL, STATE AND LOCAL REGULATIONS. IT IS SUBJECT TO DATA INACCURACIES AND REGULATORY CHANGE AND SHOULD BE VERIFIED PRIOR TO FINALIZING DEVELOPMENT OR IMPROVEMENT PLANS FOR THE SUBJECT LANDS.

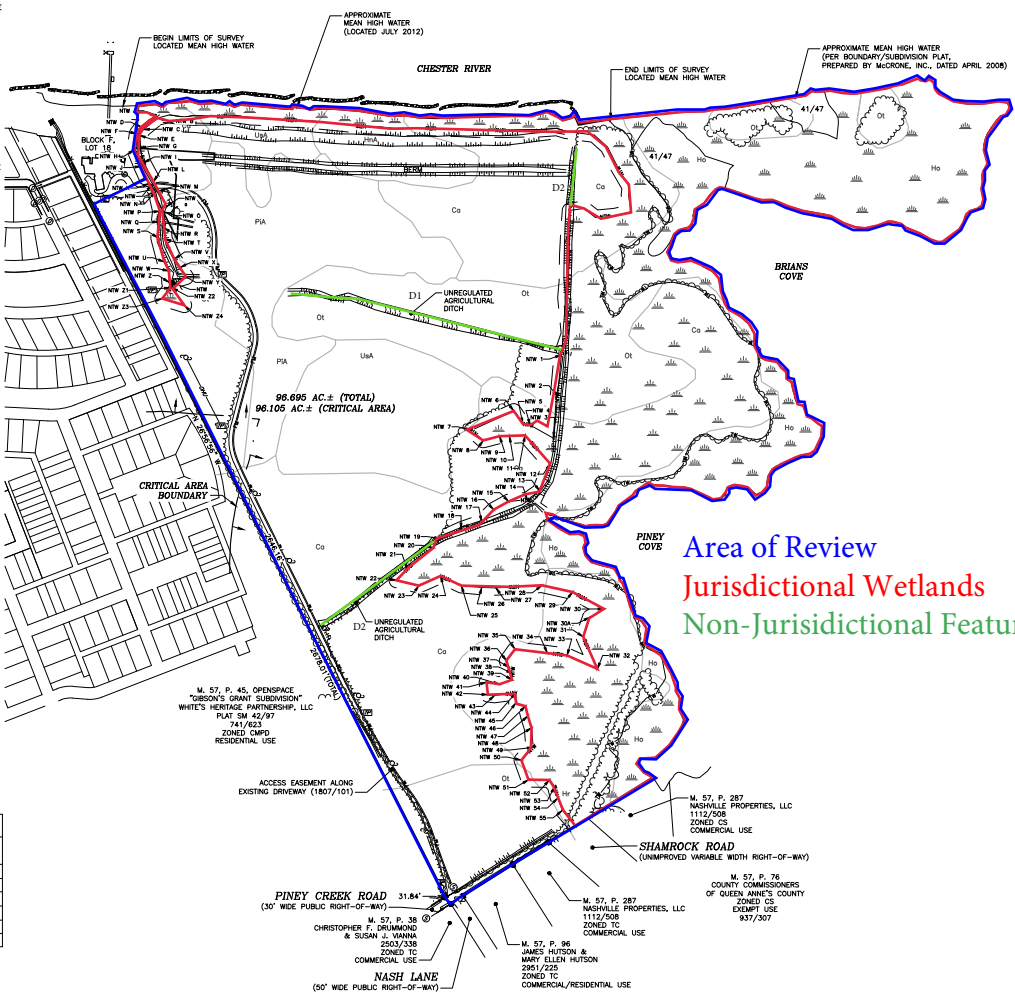
#### QUEEN ANNE'S COUNTY SOILS

MAP SYMBOL	SOILS NAME	HYDRIC SOILS	K FACTOR	SOIL GROUP	PRIME FARMLAND CODE
CGA	CARMICHAEL LOAM	YES	0.43	C/D	2
HGA	HAMMOND SANDY LOAM	YES	0.10	C/D	1
HG	HONGA PEAT	YES	0.10	C/D	1
OH	OTHELLO SILT LOAM	YES	0.43	C/D	2
PIA	PINEYNECK SILT LOAM	YES	0.49	C	1
UAA	UNICORN-SASSAFRAS COMPLEX	NO	+0.37	B	1

\* POSSIBLE SMALL AREAS OF HYDRIC SOIL INCLUSIONS SUBJECT TO FIELD VERIFICATION.

\* POSSIBLE SOIL INCLUSIONS WITH DIFFERENT K FACTOR SUBJECT TO FIELD VERIFICATION.

PRIME FARMLAND CODE (1-ALL SOIL AREAS, 2-ONLY DRAINED SOIL AREAS, 3-IRRIGATED SOIL AREAS)



#### LEGEND

- CIRCUIT BREAKER PANEL
- ELECTRIC TRANSFORMER
- UTILITY POLE
- SANITARY SEWER CLEAN OUT
- SANITARY SEWER MANHOLE
- TELEPHONE PEDESTAL
- NON TIDAL WETLAND
- TIDAL WETLAND
- NON TIDAL WETLAND
- TIDAL WETLAND
- SOIL CLASSIFICATION
- FENCE
- TREE LINE
- COMPUTED POINT
- CONCRETE MONUMENT FOUND
- IRON ROD FOUND, UNLESS OTHERWISE NOTED
- STONE SILL

REVISIONS			
No.	DATE	DESCRIPTION	BY

#### Lane Engineering, LLC

Established 1986

Civil Engineers • Land Planning • Land Surveyors

117 Bay St., Suite 200, Annapolis, MD 21401 (410) 291-0819  
12 Washington St., Cambridge, MA 02142 (617) 252-0819  
354 Pennsylvania Ave., Centerville, MD 21617 (410) 768-2085

#### JURISDICTIONAL DETERMINATION

ON THE LANDS OF  
CHESTERHAVEN BEACH  
PARTNERSHIP

IN THE FOURTH ELECTION DISTRICT  
QUEEN ANNE'S COUNTY, MARYLAND  
TAX MAP 57, GRID 4, PARCEL 25

ISSUED FOR: AGENCY REVIEW DATE: 10-20-22 BY: JDC

SHEET NO.	1 OF 1	DATE:	10-20-22
SCALE:	AS NOTED	JOB NO.	180331
		FILE NO.	C797

