



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

CENAB-OPR

April 18, 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) ,<sup>1</sup> NAB-2023-00411-M49 (Holy Korean Martyrs Church Project).

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>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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The subject property is a 37-acre parcel of land located northwest of the intersection of Old Frederick Road (MD Route 99) and Sykesville Road (MD Route 32), in Sykesville, Howard County, within the Piedmont physiographic province of Maryland. The Corps conducted a field review of the site on November 28, 2023.

## 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 W-1: Palustrine emergent wetland with no continuous surface connection; 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)
- d. Wetland Studies and Solutions, Inc. 28 November 2023. "Waters of the State (Including Wetlands) Delineation, Holy Korean Martyrs Church." Prepared for Pennoni Associates, Inc.

## 3. REVIEW AREA.

The review area comprises a single 37-acre parcel of land located northwest of the intersection of Old Frederick Road (MD Route 99) and Sykesville Road (MD Route 32), in Sykesville, Howard County, Maryland (39.323384, -76.949712). The review area contains a single-family residence with yard and driveway, approximately 21 acres of land historically used for row-crop production, and approximately 11 acres of forested area. The northeast quadrant of the site contains a buried utility line easement that has been cleared of woody vegetation. Wetland 1 is located within a depressional area along the utility easement, near the northern edge of the subject property. A map of the review area is shown in Figure 1. Soil series within the review area are provided in Exhibit 2a and 2b of the Wetlands Report.

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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 mouth of the Patapsco River (e.g., the portion of the Patapsco River subject to the ebb and flow of tide), located approximately 29 miles southeast of the review area.

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

Wetland W-1 is located within a concave depression area with no continuous surface connection to other waters. The wetland does not physically abut or touch an (a)(1), (a)(2) or (a)(3) water or possess a connection to such waters via a non-jurisdictional conveyance (e.g., swale or culvert). Consequently, Wetland W-1 does not contribute flow to a TNW, territorial sea, or interstate water.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</sup>

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

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<sup>5</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>6</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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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):

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

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within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>7</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).

Wetland W-1: Palustrine Emergent Wetland with no continuous surface connection [3,256 sq. ft. (0.07 acres)]

Wetland W-1 is in a concave depressional area within a utility easement at the northeastern edge of the review area. The wetland is in an area of mapped non-hydric soils and likely formed as a result of disturbance associated with the utility line construction. Within the wetland, the consultant observed hydrophytic vegetation species, including Redtop (*Agrostis gigantea*) and Small-Spike False Nettle (*Boehmeria cylindrica*). Wetland hydrology indicators at the site include C3 (Oxidized Rhizospheres on Living Roots), D2 (Geomorphic Position), and D5 (FAC-Neutral Test). Hydric soils field indicators include F3 (Depleted Matrix). The Corps evaluated site topography, aerial imagery, and LiDAR hillshade mapping to assess the potential for a continuous surface connection between Wetland 1 and other waters. Wetland W-1 is located approximately 600 linear feet south of an agricultural swale located on the property north of the review area. The swale conveys flow south to two impoundments, which eventually discharge to an unnamed tributary to the Patapsco River. The wetland is separated from the swale by an area of uplands used for row crop production; to reach the swale, flow from Wetland W-1 must travel through the upland area as overland flow, which is unlikely to occur to other than during extreme precipitation events. Photos of the upland area north of Wetland W-1, aerial imagery, and LiDAR mapping are enclosed. The Corps evaluation has determined that Wetland W-1 does not have a continuous surface connection to WOTUS; i.e. the wetland does not physically abut or touch an (a)(1), (a)(2) or (a)(3) water or have a continuous surface connection to such waters via a non-jurisdictional conveyance (e.g., swale or culvert).

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<sup>7</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, November 28, 2023
  - b. Wetland Studies and Solutions, Inc. 21 August 2023 *rev.* 28 November 2023. "Waters of the State (Including Wetlands) Delineation" Prepared for Pennoni Associates, Inc.
  - c. Aerial Imagery - Maryland Six-Inch Imagery Basemap, accessed via the Watershed Resources Registry (<https://watershedresourcesregistry.org/states/maryland.html>), March 2024.
  - d. LiDAR Hillshade Mapping, accessed via the Watershed Resources Registry (<https://watershedresourcesregistry.org/states/maryland.html>), March 2024.
  - e. Basin Delineation, accessed via USGS StreamStats (<https://streamstats.usgs.gov/ss/>), March 2024.
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.



Photo 1: Looking north from Wetland W-1 towards agricultural uplands. Taken by Corps on November 28, 2023.



Figure 2: Aerial Imagery Showing location of Wetland W-1 in relation to agricultural swale; Accessed via the Watershed Resources Registry, March 2024.

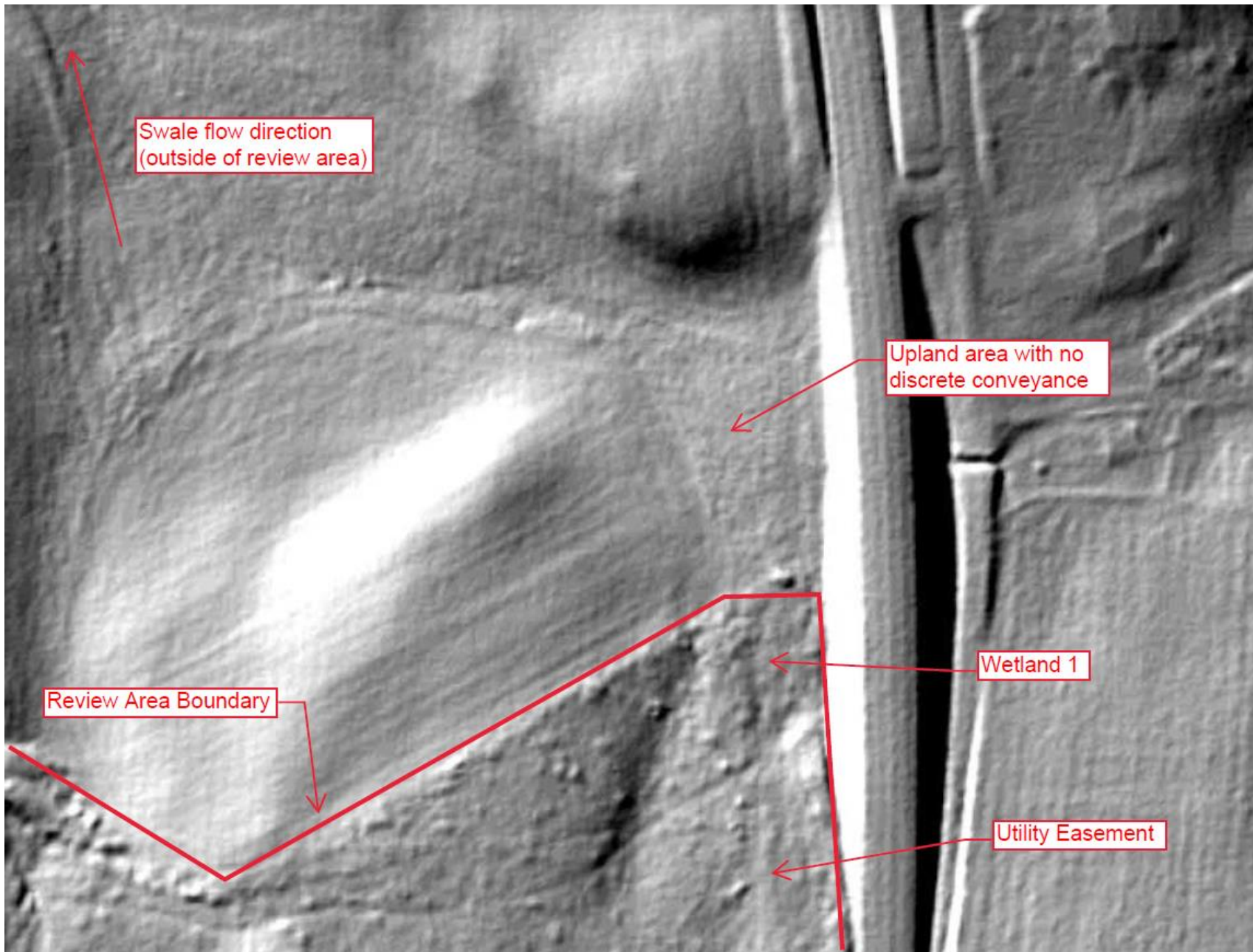
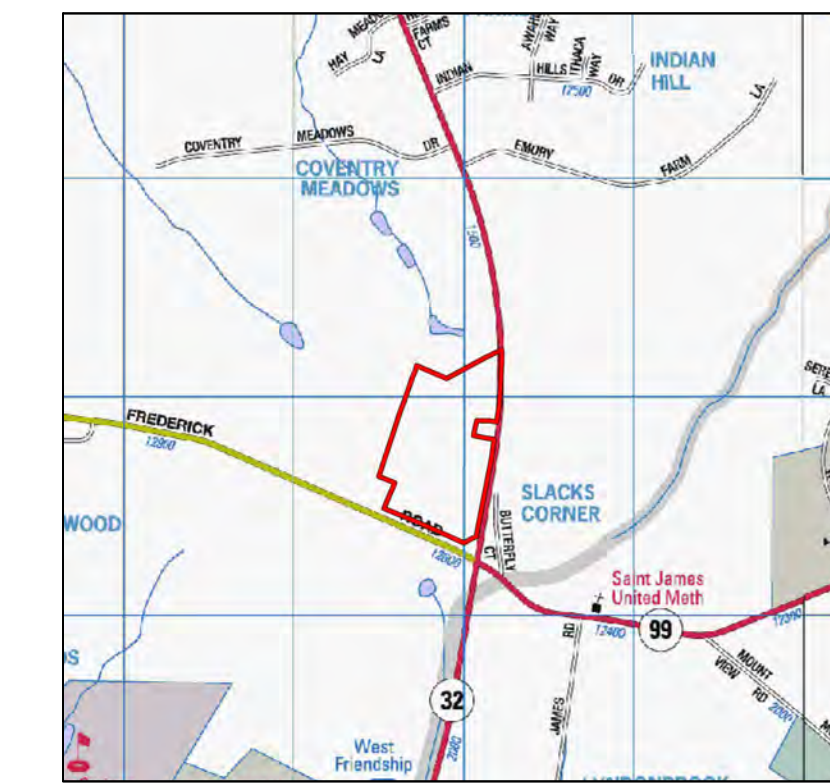
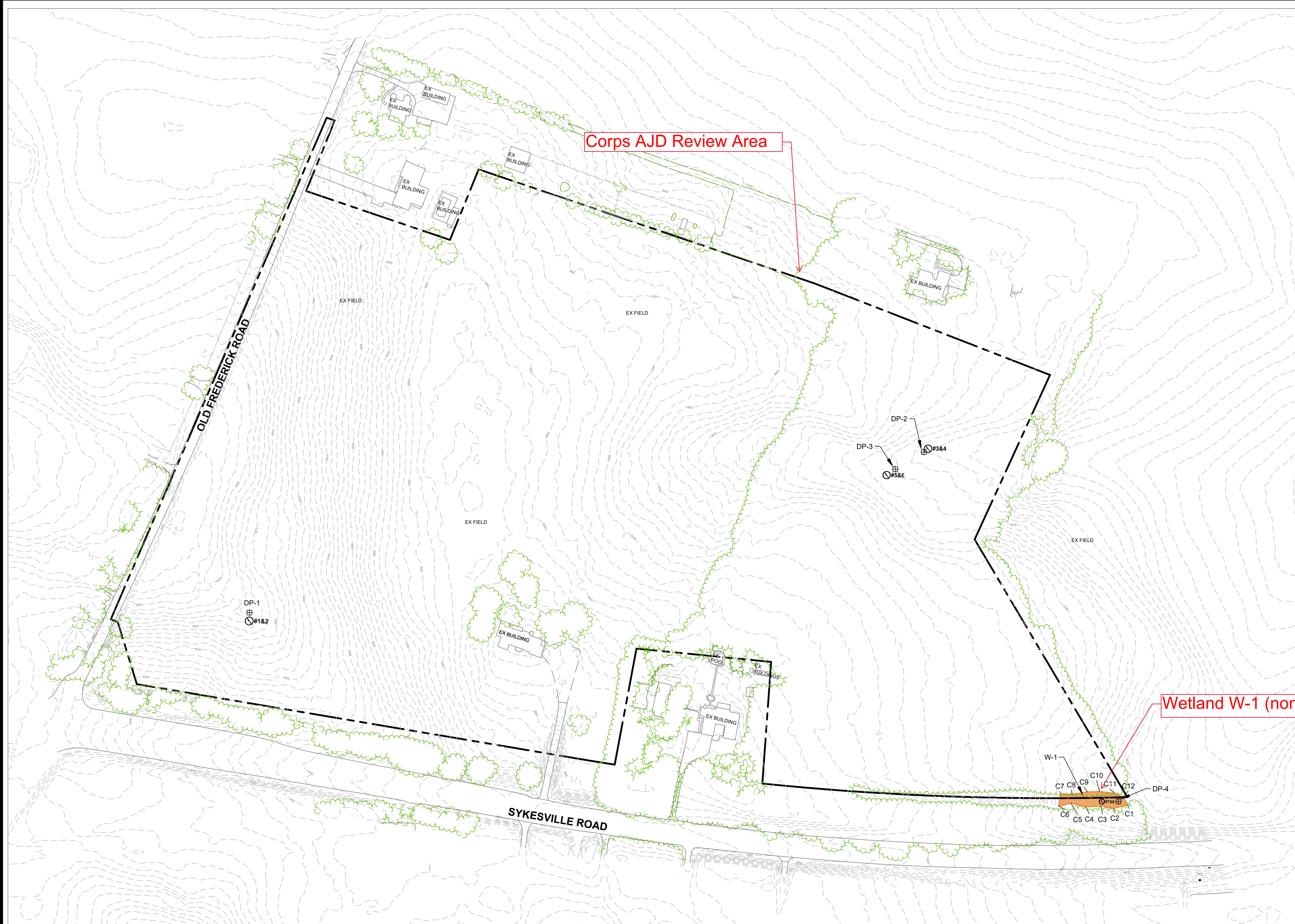


Figure 3: LiDAR Hillshade mapping of Wetland W-1, accessed via the Watershed Resources Registry, March 2024



VICINITY MAP  
SCALE: 1" = 2,000'  
COPYRIGHT ADC THE MAP PEOPLE  
PERMITTED USE NUMBER 20711184

**LEGEND**

- SITE BOUNDARY
- PALUSTRINE EMERGENT WETLAND AREAS
- SITE PHOTOGRAPHS
- WETLAND FLAGGING POINT/NUMBER (pink-glo)
- DATA POINT LOCATION/NUMBER (orange and pink-glo) (SURVEYED)

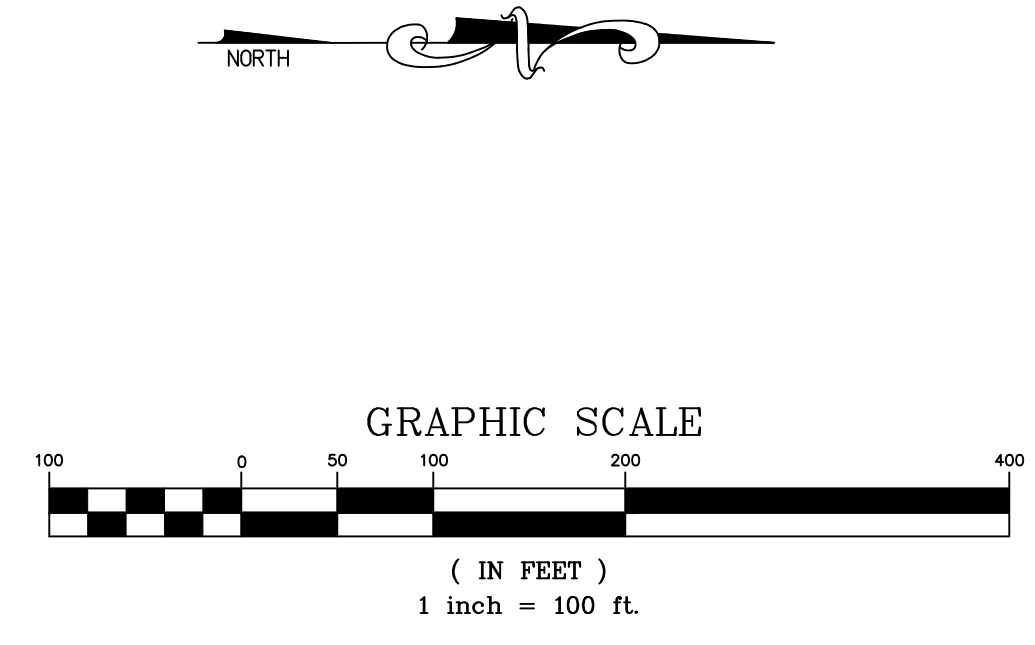
**COWARDIN CLASSIFICATION**

PEM	PALUSTRINE EMERGENT WETLAND
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- WETLAND DELINEATION AND SURVEY NOTES:**
- Periodic flag numbers are shown depicting the survey-located boundary of wetlands on site. Wetland flags are pink-glo in color. Data points are flagged with orange-glo and pink-glo flagging tied together.
  - Topoboundary information obtained in digital format from Howard County digital data was used as a base for this Attachment.
  - This delineation was performed pursuant to the "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 (1987 Manual) and subsequent guidance and modification by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0) dated April 2012.
  - Field work was performed on 06/13/23, 06/20/23, 06/23/23, and 06/26/23 by Marius Flemmer, W.P.I.T., Katelyn Hoisington W.P.I.T., and Dan Lekites.
  - The features identified are wetlands (in the northeastern portion of the site) that lack a surface connection to jurisdictional waters of the U.S. WSSI will request the COE to concur these isolated wetlands are not jurisdictional under the Clean Water Act. Note that all isolated wetlands, regardless of whether they are considered jurisdictional under the Clean Water Act, are regulated by Maryland Department of the Environment (MDE).
  - Total Site Area: 37.23 acres

JURISDICTIONAL WATERS OF THE STATE			
AQUATIC RESOURCE	COWARDIN CLASSIFICATION	AREA	
		SQUARE FEET	ACRE
W-1	PEM	3,256	0.075
<b>TOTAL JURISDICTIONAL WATERS OF THE STATE ON SITE</b>		<b>3,256</b>	<b>0.07</b>

Figure 1: Corps AJD Review Area



**Wetland**  
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**WATERS OF THE STATE (INCLUDING WETLANDS) DELINEATION**  
MD2231.01  
Prepared For: Pennoni Associates, Inc.

**Holy Korean Martyrs Church**  
Howard County, Maryland  
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**REVISIONS**

No.	Date	Description	App. By	Rev. By
1	11/08/2023	Wetland removed per file per USACE and MDE on 11/08/2023.	DPL	MJK

DATE: August 21, 2023 SCALE: 1" = 100' C.I.: 2'

Horizontal Datum: NAD83  
Vertical Datum: NAVD83  
Boundary and Topo Source: Howard County GIS and Pennoni

Design	Draft	Approved
KEH	KEH	MJK

Sheet #  
1 of 1

Computer File Name:  
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