
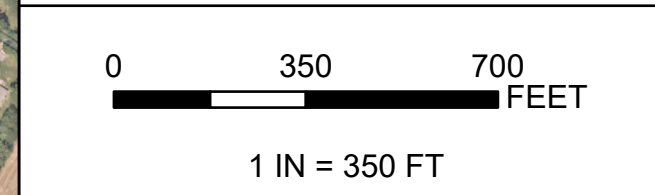
 PROJECT AREA (~94.6 AC)
 = Corps Area of Review

NOTES:

BASEMAP SOURCE:
NEARMAP USA LATEST



DEPARTMENT OF THE ARMY
 BALTIMORE DISTRICT, CORPS OF ENGINEERS
 JURISDICTIONAL DETERMINATION
 VERIFICATION MAP
 SITE LOCATION: 17137 Black Stallion Lane, Hagerstown, Washington
 County, Maryland
 NAB-2024-00142 DOWNSVILLE SOLAR III/ APPROVED JD
 CORPS SIGNATURE: *Nicole M. Nasteff* DATE: June 26, 2024



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

CENAB-OPR-MN

27 June 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-2024-00142-M46 (Downsville Solar II/Approved JD).²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

The subject of this approved jurisdictional determination is an approximate 95-acre site located near 17137 Black Stallion Lane, Hagerstown, Washington County, Maryland (39.590657, -77.775654). The parcel is identified on the Maryland Department of Assessments and Taxation Map 56 as Parcel 1085. The site is located within the piedmont physiographic province of Maryland.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

The Corps received a request for a Department of the Army (DA) approved jurisdictional determination on 21 March 2024, for the subject site located near 17137 Black Stallion Lane, Hagerstown, Washington County, Maryland. The information provided in the request package supplied by the consultant included a USDA Natural Resources Conservation Service Soil Survey map, USGS topographic map, aerial imagery, USFWS National Wetland Inventory Map, USGS National Hydrography Dataset, a site map, a LIDAR image, and wetland data sheets.

On 5 June 2024, the Corps conducted a site visit and field reviewed the entire approximate 95-acre Corps area of review as identified on the enclosed drawing dated 20 February 2024. The majority of the Corps area of review encompasses land that was previously agricultural, with upland forested lands throughout the site and paved areas with buildings near the center of the site. The Corps observed several rocky outcrops spread throughout the site. The soils on the site are mapped as Duffield Silt Loam, Hagerstown Silt Loam, Hagerstown Silty Clay Loam, Hagerstown Rock Outcrop Complex, Swampond Silt Loam, and Swampond-Funkstown Silt Loams (U.S. Department of Agriculture, Natural Resources Conservation Service, WebSoil Survey, 2024). These soils and their minor components are classified as non-hydric. The Corps evaluated two soil samples within the area of review and did not observe hydric soil indicators. Based on field observations, supplemental information reviewed by the Corps, and in accordance with the protocol contained within the 1) *Eastern Mountains and Piedmont Regional Supplement Version 2.0* and 2) *1987 Corps Delineation Manual*, the Corps did not observe hydrophytic vegetation, hydric soils, or

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wetland hydrology indicators within the above-mentioned area of review. The Corps determined the Corps area of review includes only dry land and no jurisdictional waters of the U.S.

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 review area is comprised of approximately 95 acres, located near 17137 Black Stallion Lane, Hagerstown, Washington County, Maryland. (Coordinates: 39.590657, -77.775654).

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

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

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

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.

⁷ 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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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): 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).⁸ 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

⁸ 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. The Corps conducted a site visit on 5 June 2024, with a representative from Kimley-Horn and Associates, Inc.
 - b. USGS Topographic Map, provided by requestor, within 13 March 2024 AJD request package.
 - c. Aerial Image of Site, provided by requestor, within 13 March 2024 AJD request package.
 - d. USFWS NWI Map, provided by requestor, within 13 March 2024 AJD request package.
 - e. USGS NHD Map, provided by requestor, within 13 March 2024 AJD request package.
 - f. USDA NRCS Soil Survey Map, provided by requestor, within 13 March 2024 AJD request package.
 - g. LIDAR Image of Site, provided by requestor, within 13 March 2024 AJD request package.
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.