



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

CENAB-OPR-N

17 April 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);¹ NAB-2024-00312-M55 (FRP Old Philadelphia Road, LLC/Cranberry Run Business Park - Phase II/Approved JD)].

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. 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.

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), 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—jurisdictional Section 404
- ii. Stormwater basin 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 XXXX (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)
- d. “Memorandum To the Field Between the U.S. Department of The Army, U.S. Army Corps of Engineers and The U.S. Environmental Protection Agency Concerning the Proper Implementation Of ‘Continuous Surface Connection’ Under the Definition Of “Waters of The United States” Under the Clean Water Act (March 12, 2025)
- e. Bay Environmental Request Letter
- 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 includes a limit of disturbance (LOD) for the subject site, encompassing approximately 50.71 acres and is located north and south of Cranberry Run Drive and south of Old Philadelphia Road in the Aberdeen area of Harford County, Maryland. The subject site consists primarily of gravel lots and wooded areas. Center coordinates of the review area are approximately (39.48575, -76.18371). An aerial image of the review area is shown in Figure 1 below.

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Figure 1: Aerial Imagery of Study Area

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cranberry Run is the closest TNW located west of the site within Harford County, Maryland limits. Cranberry Run is subject to the ebb and flow of tide.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All waters flow from the site from Wetland 1 to a tributary to Cranberry Run (RPW) to Cranberry Run (RPW) to Cranberry Run (TNW).

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Figure 2: Flow path of Wetland 1 to Cranberry Run.

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 – there are no Section 10 waters in the review area.

6. 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

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.

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):

Wetland 1 (2.17 acres) meets the standard 3 parameter approach per the 1987 Manual and Coastal Plain Regional Supplement.

g. Additional Waters (a)(5):

N/A

7. 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

There is one (1) Stormwater Management Pond. Stormwater management ponds (SWM) are manmade stormwater management facilities excavated in uplands, determined to be non-jurisdictional (excluded under 33 CFR 328.3(b)(5)).

“33 CFR 328.3(b)(5), Artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.”

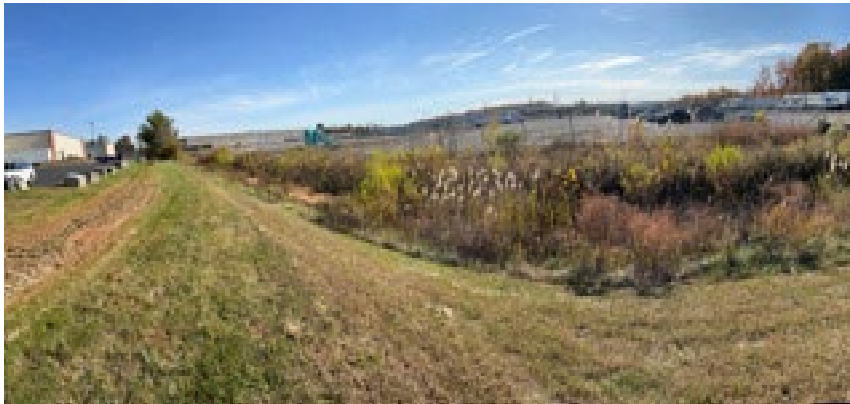
⁷ 88 FR 3004 (January 18, 2023)

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SWM 1; meets the (b)(5) exclusion and is non-jurisdictional

SWM 1 is a stormwater management facility located in the central portion of the project area to the north of WL 1. SWM 1 was excavated wholly in uplands and does not impound other waters. SWM1 has no continuous surface connection (no CSC) to other waters, i.e., there is no outfall/outlet structure, stream, or discrete conveyance downslope of the pond.



SWM 1 captured by the Corps on 29 October 2024.

- 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

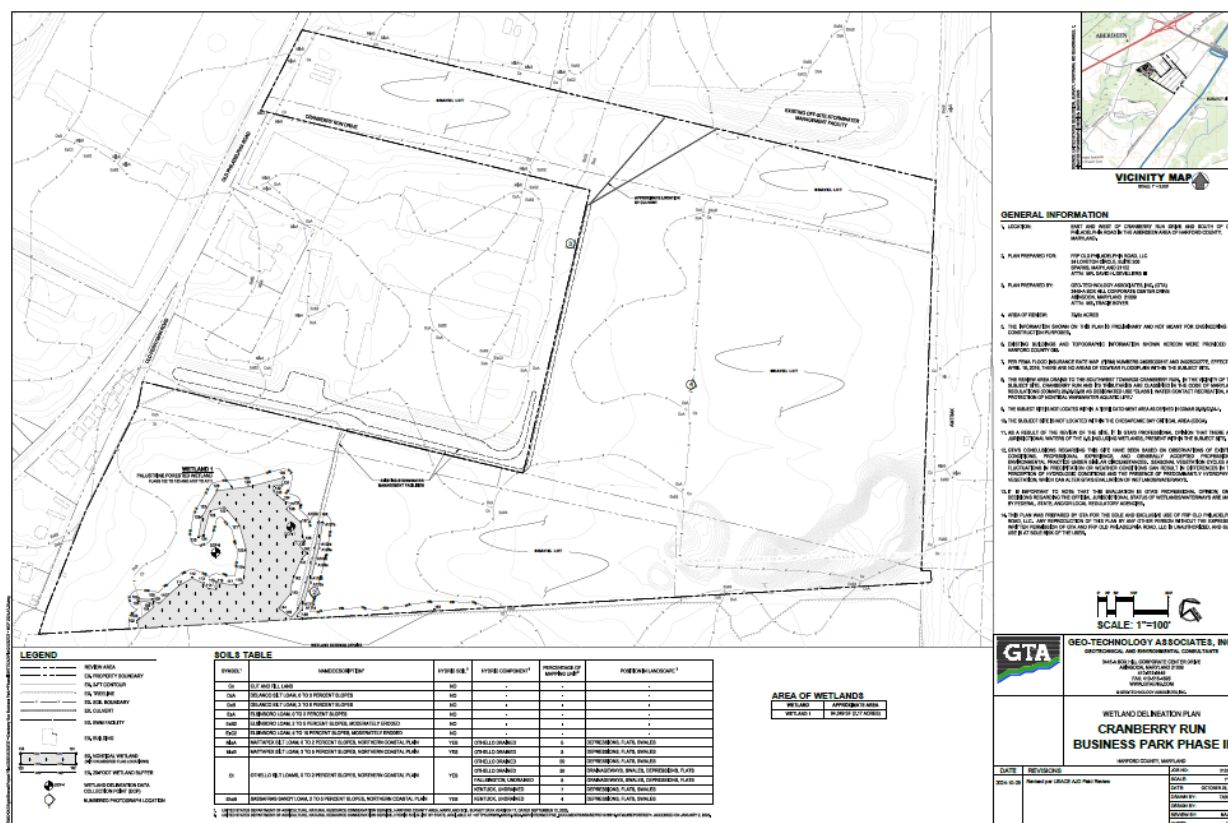
8. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Site inspections by Corps personnel, October 29, 2024.
- b. Aerial Imagery, accessed via Google Earth.
- c. US FWS National Wetland Inventory (NWI) Mapping (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).
- d. WOTUS Significant Nexus Viewer (<https://arcportal-ucop-corps.usace.army.mil/s0portal/apps/webappviewer/index.html?id=53a847df50374628ba3c3b31ddf1f214>).
- e. Watershed Resources Registry (<https://watershedresourcesregistry.org/states/pennsylvania.html>).

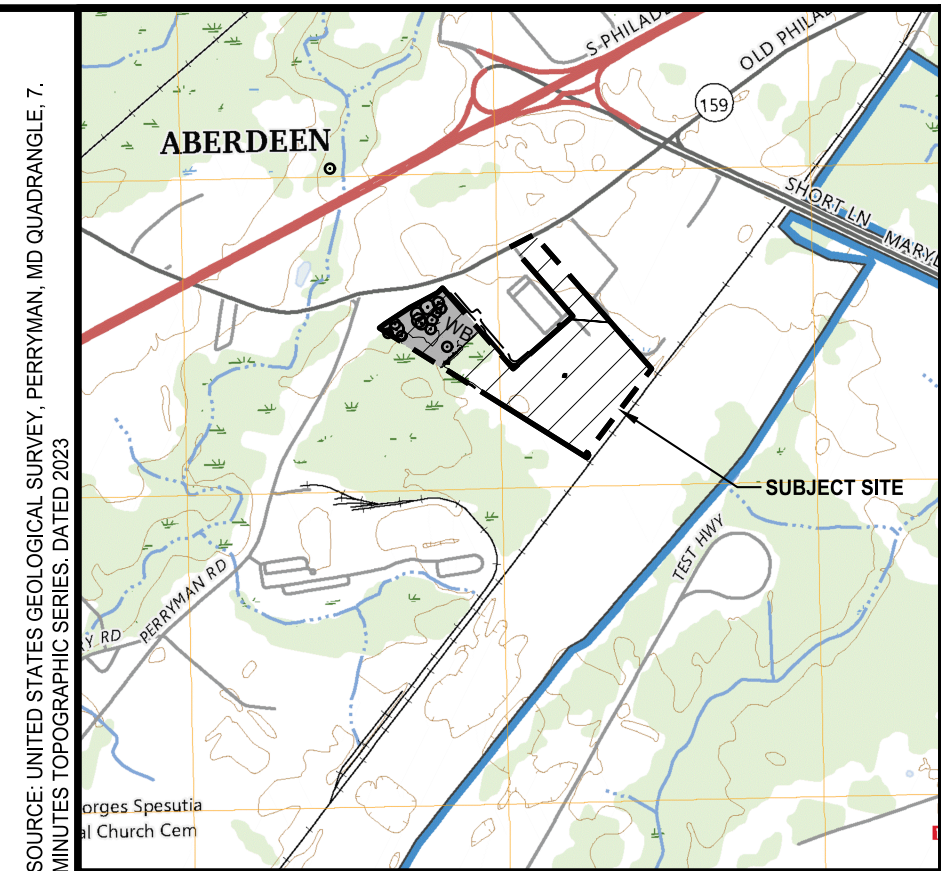
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- 9.OTHER SUPPORTING INFORMATION. N/A

10.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.



Corps AJD review area map.



SHEET: 1 OF 1

WETLAND	APPROXIMATE AREA
WETLAND 1	94,349 SF (2.17 ACRES)