



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

CENAB-OPR-S

29 August 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-2024-61539-M53 (Delmarva Aces-Phase II/Sports Training Facility/AJD)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*").

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.

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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, 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. D1: agricultural drainage ditch (~300 linear feet), excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3).

ii. NTW1: Non-tidal wetlands (1.58 acres), non-jurisdictional

iii. NTW2: Non-tidal wetlands (0.48 acres), 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. 651, 143 S. Ct. 1322 (2023)

d. "Memorandum To the Field Between the United States Department of the Corps and The United States 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)

3. REVIEW AREA. The property is located at 59810 Hammond Road, Bishopville, Worcester County, Maryland (38.440530, -75.225047) and is bounded to the north, west and south by roads and to the west by an operational railroad. The site is in the St. Martin River watershed⁶ (HUC: 020403030302), approximately 28,148-acres (43.98 square miles) in drainage area. The review area is approximately 5.60-acres and is primarily a developed lot on the west side of the property, with emergent wetlands on

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.

⁶ <https://mywaterway.epa.gov/community/020403030304/overview>

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east side of the property. The site has one agricultural drainage ditch, which drains to the roadside drainage ditch. The project site is the location of a proposed commercial development.



Figure 1: Vicinity Map (Source: Google Earth, taken on 8/20/2025)

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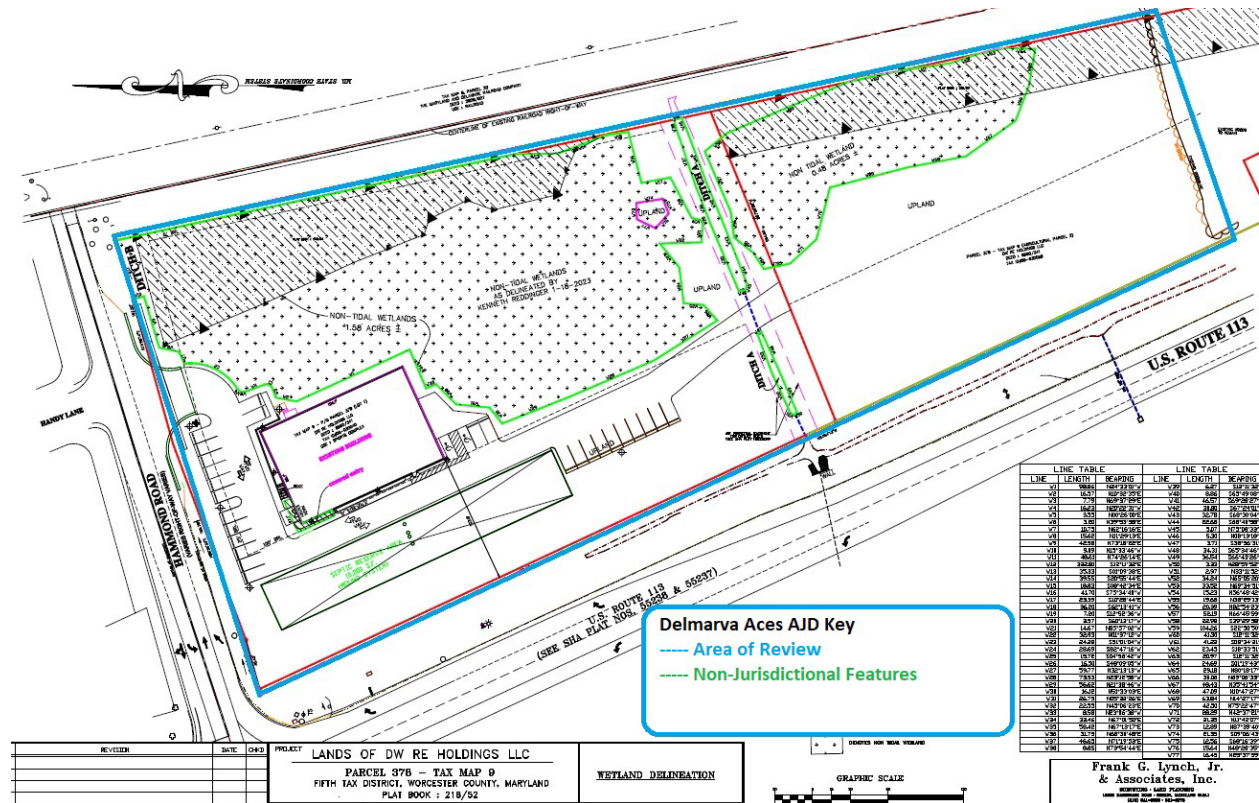


Figure 2: Area of review (blue), non-jurisdictional features (green).

- NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Buck Island Pond, a traditionally navigable Section 10 water subject to the ebb and flow of tide, and a tributary of Isle of Wight Bay.
- FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The ditch on site drains to a roadside ditch, which flows to Carey Branch, which flows to Buck Island Pond, a tributary of Isle of Wight Bay.

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6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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):
- 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

⁷ 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.

⁸ 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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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).⁹

i. D1 - The approximately 300 total linear feet of agricultural ditches are excluded from jurisdiction under the 2023 CWA Rule under paragraph (b)(3). The excluded features are ditches excavated in soils mapped as Mullica-Berryland complex; 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 (the Nanticoke River).

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. NTW1 - This non-tidal wetland is a small, seasonally saturated flat (1.58 acres), surrounded by dry land. This wetland meets the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coast Regional Supplement does not have a continuous surface connection to a jurisdictional feature.

ii. NTW2 - This non-tidal wetland is a small, seasonally saturated flat (0.48 acres), surrounded by dry land. This wetland meets the standard 3 parameter approach required by the 1987 Manual and Atlantic and Gulf Coast Regional Supplement does not have a continuous surface connection to a jurisdictional feature.

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 8 August 2025: Ms. Jaclyn Kelleher (United States Army Corps of Engineers) participated in a site visit to verify Kenny Reddinger's field delineation of the site. Ms. Kelleher inspected the drainage ditch and the non-tidal wetlands to determine their jurisdictional status.

b. Preliminary Wetland Delineation Plan and Report dated 21 July 2025: The applicant provided USACE with the results of the field delineation in a Preliminary Wetland Delineation Plan and Report prepared by Kenny Reddinger dated 21 July 2025, which denotes the presence of delineated aquatic resources.

⁹ 88 FR 3004 (January 18, 2023)

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c. Wetland Delineation dated 8 August 2025: The applicant provided USACE with a final Wetland Delineation prepared by Frank G. Lynch Jr & Associates, Inc dated 18 August 2025, which denotes the presence and size of delineated aquatic resources.

d. Desktop Review: Desktop information reviewed included mapped wetland/streams feature via online geographic information systems, historic aerial imagery (1992 to present), United States Fish and Wildlife Service National Wetland Inventory Maps, and United States Geological Survey Stream Stats Webpage.

10. OTHER SUPPORTING INFORMATION:



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Figure 3: Non-relatively permanent drainage feature between NTW1 and NTW2 (D1).



Figure 4: Non-jurisdictional, non-tidal wetlands (NTW1)

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Figure 5: Non-jurisdictional, non-tidal wetlands (NTW2)



TAX MAP & PARCEL 378
 THE WETLAND AND DELMARVA ACES
 2023 - 2024
 USE 1: 100000

CONTIGUOUS OF EXISTING RAILROAD RIGHT-OF-WAY

PARCEL 378 - TAX MAP 9 (CORRECTING PARCEL 378)
 DW RE HOLDINGS LLC
 2023 - 2024
 USE 1: 100000

NON-TIDAL WETLANDS
 AS DELINEATED BY
 KENNETH REDDINGER 1-18-2023

NON-TIDAL WETLANDS
 1.58 ACRES ±

NON-TIDAL WETLAND
 0.48 ACRES ±

UPLAND

UPLAND

UPLAND

U.S. ROUTE 113

HAYMOND ROAD

RANDY LANE

TAX MAP 9 - 7/25 PARCEL 378 EDP 0
 DW RE HOLDINGS LLC
 2023 - 2024
 USE 1: 100000

SEPTIC RESERVE AREA
 10,000 SF
 (SEE SHA PLAT NOS. 552338 & 552337)

(SEE SHA PLAT NOS. 552338 & 552337)

Delmarva Aces AJD Key
 - - - - Area of Review
 - - - - Non-Jurisdictional Features

LINE TABLE			LINE TABLE		
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
V1	98.86	N84°22'01"W	V39	6.27	S12°11'32"E
V2	16.37	N10°32'25"E	V40	8.86	S63°49'08"E
V3	7.79	N69°37'59"E	V41	46.57	S59°28'27"E
V4	16.23	N00°22'31"W	V42	31.80	S67°24'01"E
V5	3.53	N00°26'00"E	V43	32.78	S68°30'04"E
V6	3.80	N39°33'28"E	V44	82.68	S68°41'58"E
V7	10.73	N62°16'16"E	V45	3.07	N07°08'32"E
V8	15.62	N11°29'13"E	V46	5.30	N18°13'18"E
V9	42.58	N73°18'02"E	V47	3.71	S38°36'31"E
V10	5.19	N13°33'46"W	V48	34.31	S67°34'46"E
V11	48.61	N74°26'14"E	V49	56.54	S66°43'26"E
V12	232.80	S12°0'32"E	V50	3.30	N68°29'52"E
V13	35.33	S01°09'28"E	V51	2.97	N33°11'32"E
V14	39.55	S20°05'44"E	V52	34.24	N65°05'20"E
V15	10.83	S08°42'24"E	V53	33.52	N69°24'31"E
V16	41.70	S75°34'41"W	V54	15.23	N56°48'42"E
V17	23.39	S10°28'44"E	V55	19.68	N08°09'13"E
V18	36.80	S62°13'41"W	V56	20.32	N18°24'22"E
V19	7.80	S12°52'36"W	V57	53.13	N65°45'59"E
V20	3.71	S60°13'17"W	V58	22.98	S29°29'58"E
V21	14.67	N85°57'02"W	V59	104.25	S22°30'30"E
V22	32.83	N11°37'12"W	V60	41.30	S18°11'32"E
V23	24.28	S31°01'04"W	V61	41.28	S08°24'21"E
V24	28.69	S82°47'16"W	V62	23.43	S18°33'11"E
V25	19.78	S04°38'42"W	V63	20.97	S12°11'32"E
V26	16.30	S48°52'09"W	V64	24.62	S01°12'43"E
V27	59.77	N32°13'13"W	V65	29.18	N80°18'17"E
V28	7.93	N69°18'38"W	V66	31.08	N49°08'39"E
V29	36.62	N21°38'46"W	V67	18.43	N22°41'24"E
V30	36.12	N51°33'03"E	V68	47.28	N10°47'27"E
V31	25.79	N69°20'32"E	V69	63.84	N14°27'17"E
V32	22.73	N43°06'23"E	V70	42.30	N72°22'47"E
V33	8.58	N2°16'28"W	V71	88.28	N42°37'21"E
V34	22.46	N67°0'20"E	V72	31.28	N14°42'07"E
V35	58.42	N67°13'17"E	V73	12.88	N87°39'40"E
V36	31.79	N68°31'48"E	V74	61.38	S09°00'43"E
V37	16.62	N71°12'32"E	V75	12.56	S68°16'22"E
V38	8.85	N79°54'44"E	V76	15.64	N48°28'35"E
			V77	16.43	N59°37'22"E

REVISION	DATE	CHKD	PROJECT
			LANDS OF DW RE HOLDINGS LLC

LANDS OF DW RE HOLDINGS LLC
 PARCEL 378 - TAX MAP 9
 FIFTH TAX DISTRICT, WORCESTER COUNTY, MARYLAND
 PLAT BOOK : 218/52

WETLAND DELINEATION



Frank G. Lynch, Jr.
 & Associates, Inc.
 SURVEYING - LAND PLANNING
 1000 SANDHURST ROAD - WOODS, MARYLAND 21793
 (301) 844-0999 - FAX (301) 844-0970