



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

CENAB-OPR-N

22 September 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-2025-00362-M54 (Old Island Solar LLC/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*").

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. 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 AJD on 1 July 2025 for the subject site located north of Fairhaven Road and east of Solomons Island Road (MD Route 2), Tracys Landing, Anne Arundel County, Maryland. The information provided in the request package supplied by Triad Engineering Incorporated (TRIAD) included a USDA Natural Resources Conservation Service Soil Survey map, USGS National Elevation map dataset, current aerial imagery, historic aerial imagery, photograph log, and wetland determination data forms.

On 13 August 2025, the Corps conducted a site visit of the entire approximate 19-acre area of review as identified in Figure 1. The review area encompasses an agricultural field, including a strip of deciduous forest located along the east side of Solomons Island Road.

The soils on the site are mapped as Downer-Phalanx complex (DxC), Marr-Dodon complex (MaC/D), and Sassafras fine sandy loam (SaB/D) (U.S. Department of Agriculture, Natural Resources Conservation Service, WebSoil Survey, 2024). These soils are rated as non-hydric and are classified as well to moderately-well drained soils. Soil profiles observed during the site visit found no hydric soil indicators. No hydrophytic vegetation or wetland hydrology indicators or surface waters were observed. Drainage features onsite did not possess consistent bed and bank features, an ordinary high-water mark, wrack lines, or sediment sorting which would indicate evidence of a relatively permanent water.

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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Based on field observations, supplemental information reviewed by the Corps, and in accordance with the protocol contained within the 1) Atlantic and Gulf Coastal Plain Regional Supplement and 2) 1987 Corps Delineation Manual, the Corps did not observe any areas containing hydrophytic vegetation, hydric soils, wetland hydrology indicators, or relative permanent waters within the above-mentioned area of review. The Corps has determined that the area of review includes only dry land and no jurisdictional waters of the United States.

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. "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. 1987 Corps of Engineers Wetland Delineation Manual
- f. Atlantic and Gulf Coastal Plain Regional Supplement
- g. Field Indicators of Hydric Soils of the United States
- h. 2020 National Wetland Plant List

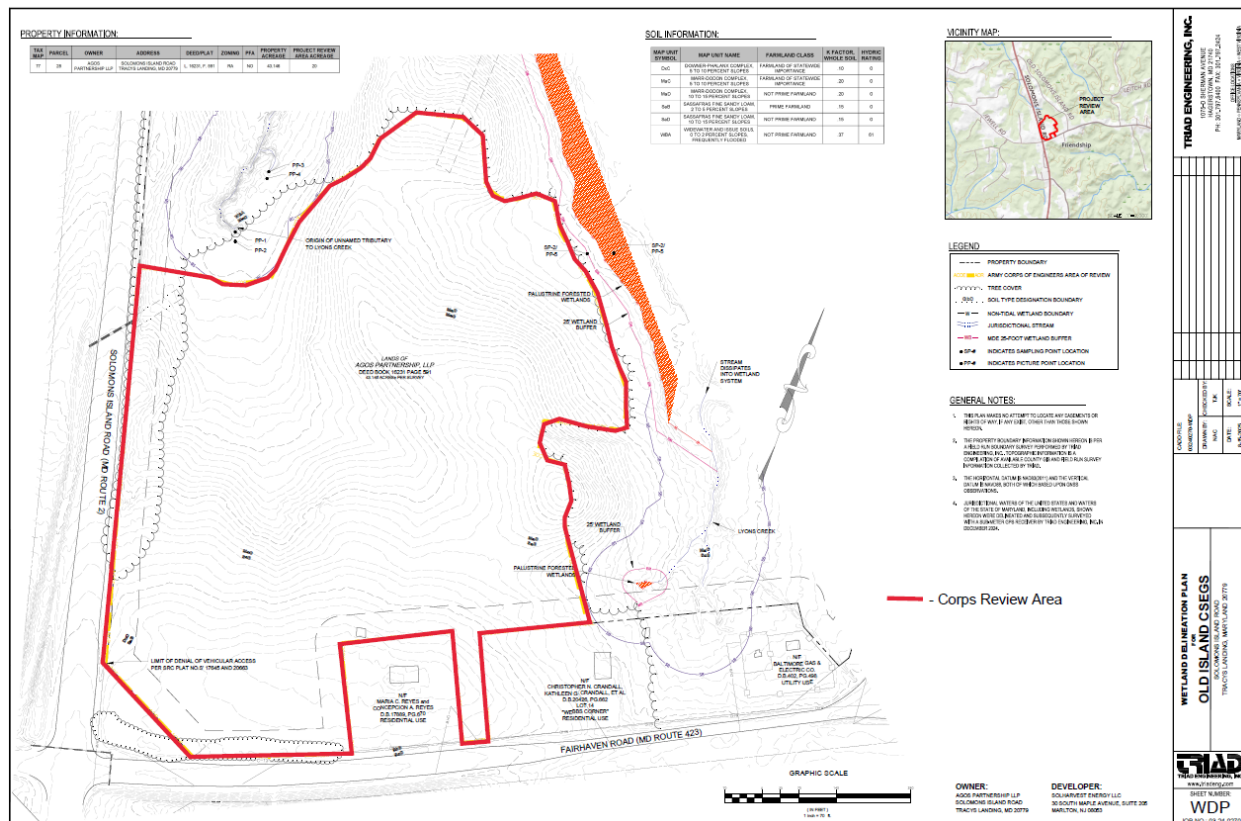
3. REVIEW AREA. The subject area of the approved jurisdictional determination (AJD) is an approximate 19-acre parcel located north of Fairhaven Road and east of Solomons Island Road (MD Route 2), Tracys Landing, Anne Arundel County, Maryland (38.754269, -76.592474). The parcel is identified on the Maryland Department of Assessments and Taxation Map 77 as Parcel 28. The review area for the AJD is approximately 19-acres and is outlined by the red line in Figure 1. The site is in the Coastal Plain physiographic provinces of Maryland. On 13 August 2025, the Corps conducted a site visit of the approximate 19-acre area of review. The

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review area encompasses an agricultural field, including a strip of deciduous forest located along the east side of Solomons Island Road.

Figure 1: Corps area of review identified in red.



4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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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): N/A
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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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- 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).⁹ 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
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 conducted 13 August 2025: Zachary Fry and Joseph DaVia (USACE), Tim Kellerman and Pat Upton (TRIAD), Cheryl Kerr, Jeff Thompson, Hanifah Parker-Morrison, and Kara Kemmerer (MDE) participated in a site visit to verify TRIAD’s field determinations.
 - b. Wetland Delineation Study dated 24 March 2025: TRIAD provided USACE with the results of the field delineation in a Wetland Delineation Study and photograph log dated 24 March 2025, which documents site conditions.
 - c. Desktop Review: Desktop information reviewed included mapped wetland/stream features via online geographic information systems, USGS Topographic map, aerial imagery, USFWS NWI map, USDA NRCS soil survey map, and LIDAR imagery.
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.

⁹ 88 FR 3004 (January 18, 2023)

