



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

CENAB-OPR-N

13 November 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-2025-61047-M54 (HCI DP Land Acquisition, LLC/Singerly Rd Industrial/Warehouse)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.

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).

The Corps has determined that Wetlands 1, 2, 3, 4, 5, and 6 are non-jurisdictional.

- i. Wetland 1 (WL1), non-tidal wetland (0.42-acre), non-jurisdictional
- ii. Wetland 2 (WL2), non-tidal wetland (0.26-acre), non-jurisdictional
- iii. Wetland 3 (WL3), non-tidal wetland (0.07-acre), non-jurisdictional
- iv. Wetland 4 (WL4), non-tidal wetland (0.24-acre), non-jurisdictional
- v. Wetland 5 (WL5), non-tidal wetland (0.05-acre), non-jurisdictional
- vi. Wetland 6 (WL6), non-tidal wetland (0.09-acre), non-jurisdictional

The Corps has determined that Sediment Traps 1 and 2 are non-jurisdictional.

- i. Sediment Trap 1 (ST1), non-tidal open water (0.25-acre), non-jurisdictional
- ii. Sediment Trap 2 (ST2), non-tidal open water (0.28-acre), non-jurisdictional

The Corps has determined that Waterways 1, 2, 3, 4, 5, 6, 7, and 8 are non-jurisdictional.

- i. Waterway 1 (ES1), non-tidal stream (238-linear feet), non-jurisdictional
- ii. Waterway 2 (ES2), non-tidal stream (99-linear feet), non-jurisdictional
- iii. Waterway 3 (ES3), non-tidal stream (101-linear feet), non-jurisdictional
- iv. Waterway 4 (ES4), non-tidal stream (643-linear feet), non-jurisdictional
- v. Waterway 5 (ES5), non-tidal stream (75-linear feet), non-jurisdictional
- vi. Waterway 6 (ES6), non-tidal stream (575-linear feet), non-jurisdictional
- vii. Waterway 7 (ES7), non-tidal stream (125-linear feet), non-jurisdictional
- viii. Waterway 8 (ES8), non-tidal stream (164-linear feet), non-jurisdictional

2. REFERENCES.

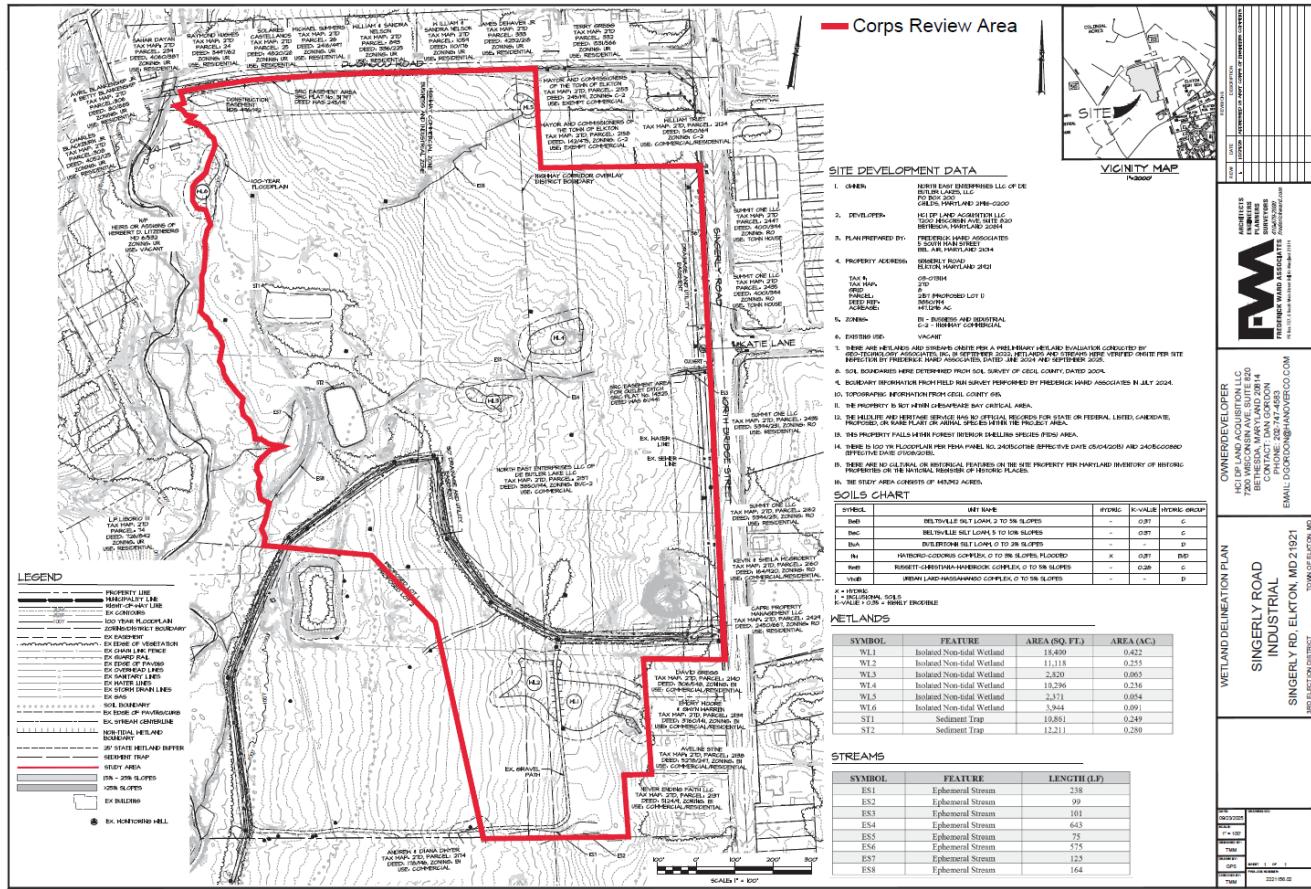
- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))

- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)
 - d. "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 59-acre parcel located on the west side of Singerly Road in Elkton, Cecil County, Maryland (39.624980, -75.841794). The site is identified on the Cecil County Tax Map 27D at Parcel 2157. The review area for the AJD is approximately 43.4-acres and is outlined by the red line in Figures 1 and 2. The site is in the Atlantic Coastal Plain physiographic province of Maryland. On 5 September 2025, the Corps conducted a site visit of the approximate 43.4-acre area of review. The review area currently encompasses deciduous forest with remnant access trails. The site has been historically modified and has undergone land disturbance activities dating back to the early 1990s. Historic activities and land use changes include the installation of water and sanitary sewer infrastructure, construction of gravel access trails, and site grading for the construction of sediment traps and divergent swales associated with sediment control features. Refer to Figure 3 for historical aerial imagery documenting evidence of prior land use and disturbance activities.

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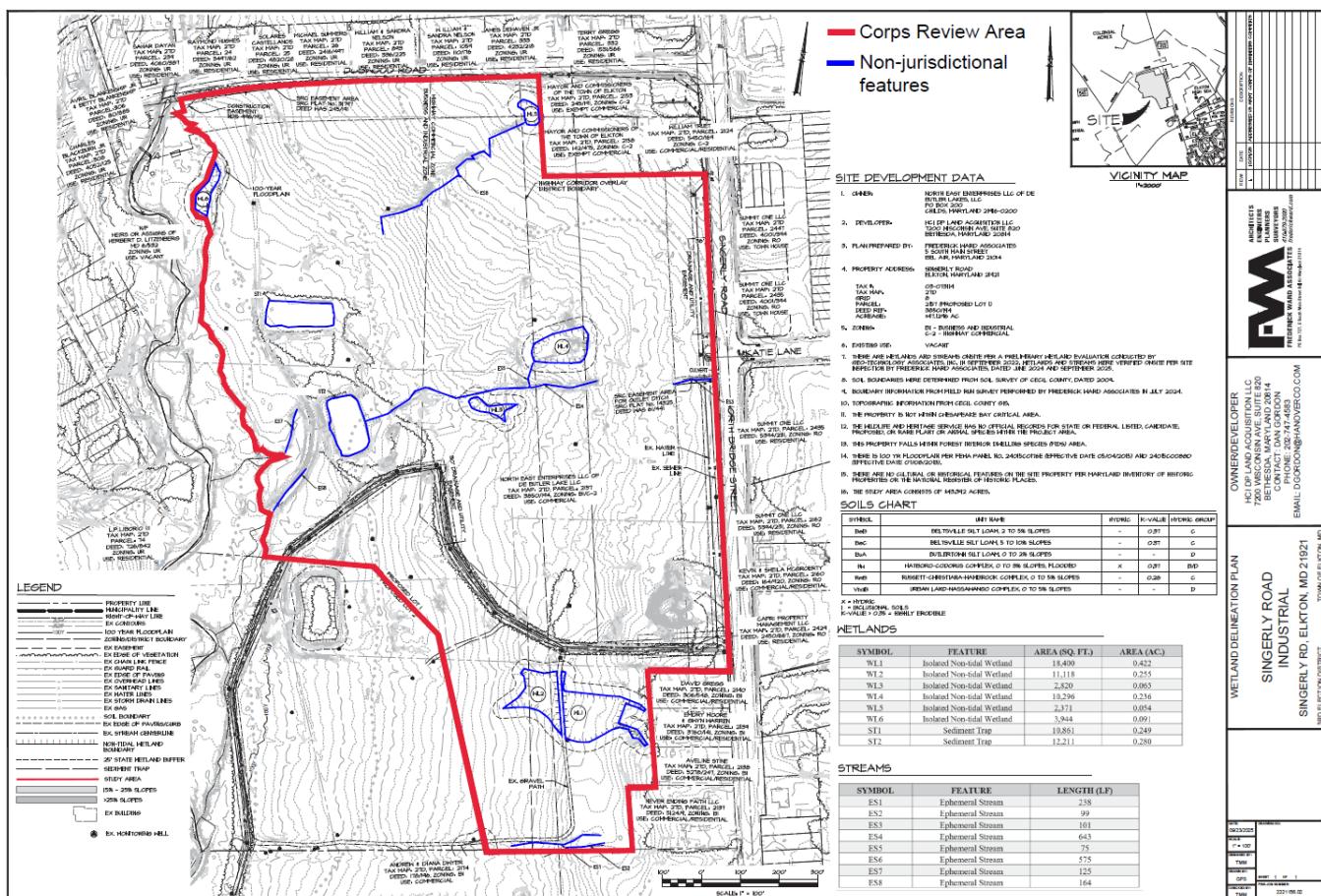
Figure 1: Corps area of review identified in red.



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Figure 2: Corps area of review identified in red and approximate area of non-jurisdictional features identified in blue.



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Figure 3: Google Earth historic aerial from 1995 documenting prior land use and disturbance activities within the area of review



4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Elk River is the nearest TNW to the subject project, a traditionally navigable Section 10 water subject to the ebb and flow of tide.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The site drains to Dogwood Run, which then flows approximately 1.4-miles south into the Elk River, an (a)(1) traditionally navigable water.

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.

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, 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 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

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.

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).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).
 - a. Wetland 1 (WL1): Approximately a 0.42-acre palustrine forested (PFO) non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL1 is in a concave depressional area and is surrounded by uplands. WL1 is isolated and does not have a continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
 - b. Wetland 2 (WL2): Approximately a 0.26-acre PFO non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL2 is in a slight concave depressional area and is surrounded by uplands. WL2 is isolated and does not have a continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
 - c. Wetland 3 (WL3): Approximately a 0.07-acre PFO non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL3 is adjacent to channel ES4 a non-relatively permanent water. WL3 does not have a relatively permanent continuous surface connection to a jurisdictional feature; therefore, does

⁹ 88 FR 3004 (January 18, 2023)

not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.

- d. Wetland 4 (WL4): Approximately a 0.24-acre PFO non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL4 connects to channel ES5 a non-relatively permanent water. WL4 does not have a relatively permanent continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
- e. Wetland 5 (WL5): Approximately a 0.05-acre PFO non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL5 connects to channel ES6 a non-relatively permanent water. WL5 does not have a relatively permanent continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
- f. Wetland 6 (WL6): Approximately a 0.09-acre PFO non-tidal wetland that meets the standard 3 parameter approach required by the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement. WL6 is in a slight concave depressional area and is surrounded by uplands. WL6 is isolated and does not have a continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
- g. Sediment Trap 1 (ST1): Approximately a 0.25-acre relic embankment sediment trap from prior land use and disturbance activities that has reverted to open water and lacustrine fringe non-tidal wetland. ST1 is in an excavated concave depression with a manmade embankment and is surrounded by uplands. ST1 is isolated and does not have a continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction.
- h. Sediment Trap 2 (ST2): Approximately a 0.28-acre relic embankment sediment trap from prior land use and disturbance activities that has reverted to open water and lacustrine fringe non-tidal wetland. ST2 is in an

excavated concave depression with a manmade embankment and intercepts waterway ES4. ST2 is isolated and does not have a continuous surface connection to a jurisdictional feature; therefore, does not meet the definition of an (a)(4) adjacent wetland and is not subject to CWA jurisdiction

- i. Waterway 1 (ES1): Approximately 238-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES1 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES1 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
- j. Waterway 2 (ES2): Approximately 99-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES2 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES2 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction
- k. Waterway 3 (ES3): Approximately 101-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES3 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES3 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
- l. Waterway 4 (ES4): Approximately 643-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES4 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES4 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
- m. Waterway 5 (ES5): Approximately 75-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES5 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES5 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.

- n. Waterway 6 (ES6): Approximately 575-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES6 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES6 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
 - o. Waterway 7 (ES7): Approximately 125-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES7 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES7 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
 - p. Waterway 8 (ES8): Approximately 164-linear feet of ephemeral channel only having flowing or standing water for a short duration in direct response to precipitation. ES8 lacked indicators of defined bed and banks, an ordinary high-water mark, or groundwater discharge. ES8 did not contain a relatively permanent flow; therefore, does not meet the definition of an (a)(3) tributary and is not subject to CWA jurisdiction.
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 5 September 2025: Zachary Fry (USACE), Louis Parnes (MDE), Gabriella Scramlin and Tom Miner (FWA) participated in a site visit to verify FWA's field delineation of the site. The site visit attendees inspected a network of resources to determine their jurisdictional statuses.
 - b. Wetland Delineation: Frederick Ward Associates (FWA) provided USACE with the results of the field delineation in a Wetland Delineation Report and photograph log dated September 2025, which denotes the presence of delineated aquatic resources.
 - 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. The following photographs were taken by the Corps during the 5 September 2025 site visit.

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Photograph 1: Wetland 1 (WL1) during site visit on 5 September 2025.



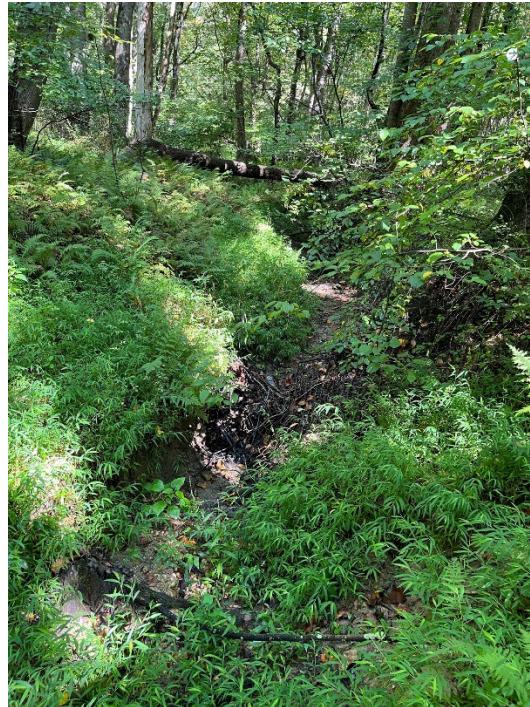
Photograph 2: Waterway 1 (ES1) during site visit on 5 September 2025.



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Photograph 3: Waterway 4 (ES4) during site visit on 5 September 2025.



Photograph 4: Waterway 4 (ES4) during site visit on 5 September 2025.



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Photograph 5: Wetland 3 (WL3) during site visit on 5 September 2025.



Photograph 6: Waterway 5 (ES5) during site visit on 5 September 2025.



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Photograph 7: Waterway 3 (ES3) during site visit on 5 September 2025.



Photograph 8: Waterway 6 (ES6) during site visit on 5 September 2025.



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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.

