



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 7/28/2020
 ORM Number: NAB-2020-00281
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Maryland City: Henderson County/Parish/Borough: Caroline
 Center Coordinates of Review Area: Latitude 39.022206 Longitude -75.878493

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland NT-1	6.8	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.
			Palustrine forested nontidal wetlands delineated by consultant satisfying all three parameters and are adjacent wetlands to Long Marsh Ditch, a perennial

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			tributary (a)(2) to Tuckahoe Creek. Drainage to the (a)(2) tributary from the wetland are visible on aerial photography and on LiDAR. The wetlands touch at least one point or side of Long Marsh Ditch. There is no physical separation from the (a)(2) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
PDA Tax Ditch-M1	1,521 linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	During the June 18, 2020 site visit, there was no evidence this main run collecting ditch would satisfy a flow regime under the definition of a “tributary” (i.e., either perennial or intermittent flow) to Long Marsh Ditch, a perennial tributary to the Choptank River. No discrete and confined surface water flows were observed in the field or during a review of recent aerial photography during the wet season. Historically, this ditch feature was constructed per the “Bridgetown Heights Public Drainage Association (PDA)” tax ditch maps dating to 1964-1968 timeframe. The ditch was excavated out of areas documented as hydric soils typically characteristic of isolated Delmarva Bay wetland communities typical of this region of Caroline County. The PDA tax maps identified approximately 1.2 miles of drainage ditch network was constructed with a drainage area of approximately 118 acres. Although “Lenni” and “Fallsington” soil series may have seasonal high groundwater tables, these soils under normal conditions in a “typical year” would not contribute intermittent surface water flow downstream to Long Marsh Ditch. Since Corsica mapped soils series comprises the upper limits of the mainstem ditch to the east, the map soil series is usually associated with closed depressions (Delmarva Bays), which only occasionally having ephemeral discharges and are typically isolated features. Therefore, the contributing flow to this ditch feature is largely overland topographic sheet flow from the adjacent croplands and a roadside drainage ditch entering the site. While historically the

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
				ditch was constructed in wetland areas, the farmed nontidal wetland areas are currently in agricultural use and a PC designation was made on November 8, 1988. The ditch feature is a non-jurisdictional conveyance as an excluded feature. Excluded under 33 CFR 328.3(b).
PDA Tax Ditch-T1	1,133	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	During the June 18, 2020 site visit, there was no perennial or intermittent flow observed/confined to the ditch channel. Further no discharge flow was evident to Long Marsh Ditch, a perennial tributary. The linear feature is identified as the “Trib 1” per the “Bridgetown Heights Public Drainage Association (PDA)” tax ditch maps (1964-1968). The feature was constructed as part of the approximately 1.2 mile long drainage ditch network with a drainage area of 118 acres. While Lenni and Fallsington soils may have seasonal high groundwater tables, the soil series under normal conditions in a typical year would not contribute intermittent flow. Further Corsica soils are usually closed depressions only occasionally having ephemeral discharges and are generally considered geographically isolated. The areas on either side of the ditch feature are currently in agricultural use and have a PC designation. The ditch feature is non-jurisdictional conveyances and is an excluded feature. Excluded under 33 CFR 328.3(b).
PDA Tax Ditch-T2	1,253	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	During the June 18, 2020 site visit, there was no perennial or intermittent flow observed/confined to the ditch channel. Further, no discharge flow evident to Long Marsh Ditch, a perennial tributary to Mason Creek, was observed existing beneath the mine. The linear feature is identified as the “Trib 2 per the “Bridgetown Heights Public Drainage Association (PDA)” tax ditch maps (1964-1968). The feature was constructed as part of the approximately 1.2 mile long drainage ditch network with a drainage area of 118 acres. While Lenni and Fallsington soils may have seasonal high groundwater tables, the soil series under normal conditions in a typical year would not contribute intermittent flow. Further Corsica soils are usually closed depressions only occasionally having ephemeral discharges and are general considered geographically isolated. The areas on either side of the ditch feature are currently in agricultural use and have PC



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
				designation (PC Areas A, B and C). Excluded under 33 CFR 328.3(b).
Artificial Pond	1.73	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	The artificial pond feature is incidental to the ongoing surface mining operation and dates back to before April 1992. Review of time-lapse aerial photography shows this feature is not an impoundment of Long Marsh Ditch, and (a)(2) water located off-site with perennial flow to the Choptank River. While the pond was documented as being constructed in “Longmarsh” soils, a mapped hydric series, the features was constructed in an PC area per the USDA Soil Conservation Service November 8, 1988 determination. The existing pond feature was historically constructed as a borrow pit dating back to the early 1970s used to obtain gravel material. Excluded under 33 CFR 328.3(b).
Surface Mine Phase 1	10	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	Excluded feature is entirely contained within the Phase 1 surface mining area limits and encompasses an approximately 40 acre surface mining area. Currently this 40-acre activity mining area contains an open-water feature that has formed incidental to the ongoing sand and gravel mining operation. An approximately 10-acre water-filled depression has formed from material removal/excavation and groundwater. Prior to this area being used for sand and gravel mining, a wetland determination was completed by the USDA Soil Conservation Service dated November 8, 1988 designating the area as PC. Excluded under 33 CFR 328.3(b).
PC Area-A	30.0	acre(s)	(b)(6) Prior converted cropland.	Certified USDA Soil Conservation Service Prior Converted (PC) wetland designation November 8, 1988; In addition, the Corps independently evaluated PC areas during June 18, 2020 field investigation. Area currently in agricultural production. Excluded under 33 CFR 328.3(b).
PC Area-B	31.8	acre(s)	(b)(6) Prior converted cropland.	A Certified USDA Soil Conservation Service Prior Converted (PC) wetland designation November 8, 1988; In addition, the Corps independently evaluated PC areas during June 18, 2020 field investigation. Area currently in agricultural production. Excluded under 33 CFR 328.3(b).



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
PC Area-C	23.4	acre(s)	(b)(6) Prior converted cropland.
Ditch NTW-2	0.11	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [delineation survey plan prepared by Lane Engineering, LLC dated June 11, 2020; revised June 26, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A.](#)

Data sheets prepared by the Corps: [N/A.](#)

Photographs: [Aerial and Other: Google Earth Pro April 1992, February 2008, October 2009; May 2013; 2015 November and 2018 June. Photos taken by the Corps during the June 18, 2020 site visit.](#)

Corps site visit(s) conducted on: [June 18, 2020.](#)



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- Previous Jurisdictional Determinations (AJDs or PJDs): *N/A.*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Caroline County Soil Survey; online Web Soil Survey.*
- USFWS NWI maps: *NWI online wetland mapper.*
- USGS topographic maps: *1:24,000; Henderson, MD (7.5-Minute Series).*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	12-Digit HUC: 020600050102; Lower Mason Branch.
Other USDA data (specify)	Caroline County Soil Conservation Service "Highly Erodible and Wetland Conservation Determination" for Farm Tract No.: 338 dated November 8, 1988; Caroline County "Bridgetown Heights Public Drainage Association (PDA)" tax ditch maps (1964-1968).
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	Maryland's Environmental Resources and Land Information Network (MERLIN) online data.
FEMA/FIRM maps	Panel: 24011C0075D; Caroline County, MD.

B. Typical year assessment(s): *N/A*

C. Additional comments to support AJD: During the June 18, 2019 site visit, the Corps observed no evidence of crop stress immediately adjacent to each of the drainage ditch features walked end-to-end. Further, the Corps desktop review of high resolution time-lapse area photography did not indicate persistent crop stress or prolonged saturation on aerial photographs (1992-2018) during the growing season. The Corps observed no wetland features within or adjacent to each PDA tax ditch with the exception of "Ditch NTW-2." The nontidal wetlands observed in the bottom of Ditch NTW-2, have developed in response to a lack of annual ditch maintenance. However, Ditch NTW-2 is an ephemeral feature in areas of Corsica mapped soil series. This ditch feature carries ephemeral flows and exists the site via a culvert to the roadside collecting ditch constructed along Cherry Lane. There was no direct hydrological surface water connection to Long Marsh Ditch, a perennial tributary. Further, the main collecting ditch "PDA Tax Ditch- M1" is in-line with the existing Phase 1 surface mine. The shortruns to PDA Tax Ditch- M1 are ephemeral in nature. Important to note the tax ditches altered areas that historically supported Delmarva Bay wetland communities. The PC area designations in 1988 were the result of the 1966-1968 construction of the PDA tax ditches.

During the site visit, the Corps observed the discharge point is a stone check dam with an existing stone outfall scour pad at the outfall of a 30-inch corrugated metal pipe. The elevation at the invert outlet is approximately 37.99 feet. The inlet pipe to the mine is at elevation 38.06 feet. There was no observed continuous flow regime from the stone check dam and metal pipe outfall structures supporting intermittent or perennial flow to Long Marsh Ditch, a perennial tributary. The approximately 40-acre surface mining open water feature is used for obtaining sand and gravel materials. This water feature is incidental to the mining activity.