

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 27, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NAB-2022-00233 Fenwick Acres Subdivision/AJD

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Maryland County/parish/borough: Charles County City: Bryans Road

Center coordinates of site (lat/long in degree decimal format): Lat. 38.66633° N, Long. -77.10350° W.

Universal Transverse Mercator:

Name of nearest waterbody: Unnamed Tributary to Pomonkey Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Potomac River

Name of watershed or Hydrologic Unit Code (HUC): HUC 12 020700100805 Occoquan Bay - Potomac River

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: July 22, 2022

Field Determination. Date(s): November 30, 2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 2,491 linear feet: width (ft) and/or acres.

Wetlands: 25.876 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **The Corps conducted a field review on July 8, 2022, and a desktop analysis on July 22, 2022. During the Corps review, a total of seventeen (17) wetland areas exhibiting three parameters, three (3) intermittent stream features, and one (1) ephemeral surface water feature were identified within the Area of Review (AOR). A total of five (5) wetland features delineated as Wetlands J, I, G, O, and N are all located near the central and southern portions of**

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

the AOR. These 5 wetland features are determined to be isolated waters since there was no evidence of a surface water flow or other hydrologic connection from these 5 wetlands to other downstream jurisdictional waters of the U.S (WOTUS). Four of these wetlands (Wetlands J, I, O, and N) appear to be depressional features constructed in dry land and likely incidental to construction activity as the Corps observed sidecasted material surrounding all 4 depressional features. Wetland G is a palustrine forested/scrub-scrub wetland system is separated from Wetland H (jurisdictional) by areas containing upland (non-wetland) characteristics (See Attachment 1). During the Corps July 8, 2022 site visit, there was no evidence of a surface flow or other hydrologic connection from the wetland systems G to other WOTUS (Wetland H). Therefore, wetland G is determined to be non-jurisdictional, isolated water. Within the Fourth District states, that includes Maryland, isolated waters are not Federally regulated due to the United States v. James J. Wilson case. That is, 33 CFR 328.3(a)(3) has been removed from the Corps regulation in the Fourth Circuit. In conclusion, the five isolated wetlands at this site are not Federally regulated.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: HUC 12 29,408.64 **acres**

Drainage area: 0.81 **square miles**

Average annual rainfall: 43.3 inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵: Waters L, M, and R originate within the Corps AOR on the western portion of the site. Waters L, M, and R flow in a westerly direction to their confluences with an unnamed tributary to Pomonkey Creek, outside the Corps AOR. Pomonkey Creek then flows into the Potomac River, a TNW.
Tributary stream order, if known: 1st order.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: 2 feet
 Average depth: 1 feet
 Average side slopes: **4:1 (or greater)**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: PFO wetlands K and L abut and flow into waters L, PFO wetland M abuts and flows into waters M, PFO wetland R abuts and flows into waters R. Waters L, M, and R then flow into an unnamed tributaries of Pomonkey Creek. The tributaires then flow into Pomonkey Creek and then into the Potomac River, a TNW.

Other information on duration and volume: .

Surface flow is: **Discrete and confined** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list): .

Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) **Chemical Characteristics:**

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: water color clear, the land directly surrounding the tributary is comprised of hardwood forest and a clearing associated with a utility line. Based on the Maryland 2010 Land-Use data, approximately 80% of the watershed is forested. According to the NLCD 2011 dataset, less than 1% of the watershed is impervious area and 6% is developed (urban) land.

Identify specific pollutants, if known: unknown.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): The majority of the area in the Corps AOR was forested.
 Wetland fringe. Characteristics: .
 Habitat for:
 Federally Listed species. Explain findings: Area is within the habitat range for the threatened northern long-eared

bat.

- Fish/spawn areas. Explain findings: .
 Other environmentally-sensitive species. Explain findings: .
 Aquatic/wildlife diversity. Explain findings: The area is habitat for amphibians and reptiles according to the State of Maryland - MERLIN Webpage.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

- Wetland size: 28.876 acres
Wetland type. Explain: PEM, PFO, and PSS.
Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Wetlands A, B, C, D, E, F, K, L, M, P, and R flow at least seasonally into RPWs that flow into the Potomac River, a TNW. Wetland H flows into "ephemeral channel", that then flows into Wetland M.

Surface flow is: **Discrete and confined**

Characteristics: Wetlands A, B, and C flow into an unnamed tributary to the Potomac River, outside the Corps AOR. Wetlands D, E, and F also flow into unnamed tributaries to the Potomac River, outside the Corps AOR. Wetlands K and L directly abut or touch Waters L, a RPW. Waters L flow into an unnamed tributary to Pomonkey Creek (RPW) that then flows into the Potomac River, a TNW. Wetland H flows into an ephemeral channel, that then flows into Wetland M. Wetland M abuts or touches Waters M, a RPW. Waters M then flow into an unnamed tributary to Pomonkey Creek (RPW) that then flows into the Potomac River, a TNW. Wetland P flows into an unnamed tributary to Pomonkey Creek, a RPW. Wetland R abuts or touches Waters R. Waters R flows into an unnamed tributary to Pomonkey Creek, which then flows into the Potomac River, a TNW.

Subsurface flow: **Unknown**. Explain findings: .

- Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
 Not directly abutting
 Discrete wetland hydrologic connection. Explain: An ephemeral channel was observed connecting Wetland H to Wetland M.
 Ecological connection. Explain: .
 Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.
Project waters are **2-5** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters**
Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Wetlands are classified as PEM, PFO, or PSS.
Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): Wetlands forested, emergent, or shrub-shrub and surrounded by upland forest.
 Vegetation type/percent cover. Explain: Consisting of mostly hydrophytic vegetation such as red maple, sweet gum, ironwood, sweetbay magnolia, American holly, and Carex species, as well as others.
 Habitat for:
 Federally Listed species. Explain findings: The area is mapped by USFWS as habitat for the northern long-eared bat.
 Fish/spawn areas. Explain findings: .
 Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: According to the State of Maryland MERLIN Webpage, the area is mapped as habitat for amphibians and reptiles.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **12**

Approximately (25.876) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland A (Y)	(4.43 AC)		
Wetland B (Y)	(0.38 AC)		
Wetland C (Y)	(10.23 AC)		
Wetland D (Y)	(0.61 AC)		
Wetland E (Y)	(0.69 AC)		
Wetland F (Y)	(0.006 AC)		
Wetland H (N)	(8.11 AC)		
Wetland K (Y)	(0.32 AC)		
Wetland L (Y)	(0.04 AC)		
Wetland M (Y)	(0.52 AC)		
Wetland P (Y)	(0.42 AC)		
Wetland R (Y)	(0.12 AC)		

Summarize overall biological, chemical and physical functions being performed: Export of organic matter, export of food resources, nutrient cycling, pollutant trapping, transformation, filtering, and transport.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: "Ephemeral channel" in combination with adjacent Wetland H have the capacity to carry pollutants or flood waters or to reduce the amount of pollutants or floodwaters to the Potomac River, a TNW. Wetland H, adjacent to "ephemeral channel" has the capacity to perform nutrient cycling, pollutant trapping, transformation, filtering, and transport to the "ephemeral channel", Wetland M, and Waters M, a RPW. Waters M then flows into a tributary of Pomonkey Creek, which flows into Pomonkey Creek, and then the Potomac River, a TNW. The Potomac River is 2-5 aerial miles and river miles from the waters in the Corps AOR. The "ephemeral channel" may serve as a travel route seasonally for amphibians to move between Wetland H, Wetland M, and Waters M. The relevant reach for this determination is the ephemeral headwaters of Waters M to the confluence with the unnamed tributary of Pomonkey Creek (RPW). Wetlands H and M are similarly situated along Waters M.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Waters L, M, and R flow at least seasonally. Forested wetlands K and L abut or touch Waters L. Forested wetland M abuts or touches Waters M. Forested wetland R abuts or touches Waters R. Waters L, M, and R flow into unnamed tributaries of the Pomonkey Creek outside the Corps AOR. The tributaries to Pomonkey Creek flow into the Pomonkey Creek, then into the Potomac River, a TNW. The Corps observed water within the channels of Waters L, M, and R during the July 8, 2022 site visit. The Corps observed vegetation matted down or a lack of vegetation within the channels, the presence of leaf litter and debris, and evidence that leaf litter had been disturbed or washed away within the stream channels.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **2,291** linear feet width (ft).
 Other non-wetland waters: acres.
 Identify type(s) of waters: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: **200** linear feet width (ft).
 Other non-wetland waters: acres.
 Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: The Corps observed during the July 8, 2022 site visit that wetlands K and L abut or touch Waters L, Wetland M abuts or touches Waters M, and Wetland R abuts or touches Waters R.

Provide acreage estimates for jurisdictional wetlands in the review area: **25.876** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

⁸See Footnote # 3.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **8.11** acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: .
 Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 2,491 linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .
 Wetlands: 25.876 acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
 Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
 Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
 Lakes/ponds: acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
 Lakes/ponds: acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: 2.78 acres.

SECTION IV: DATA SOURCES.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Environmental Systems Analysis, Inc.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas:USGS NHD data access through Watershed Resources Registry Webpage, July 2022.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:USGS Topo Quad. Bryans Road, MD .
- USDA Natural Resources Conservation Service Soil Survey. Citation:USDA NRCS Web Soil Survey, Charles County Digital Data, Accessed July 2022.
- National wetlands inventory map(s). Cite name:USFWS, NWI Digital Map, July 2022.
- State/Local wetland inventory map(s): State of Maryland, MERLIN Webpage.
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): Fenwick Acres Site Photos, February 2022.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify):State of Maryland - MERLIN Webpage.
Watershed Resources Registry, MD Statewide Hillshade - Color, LiDAR.

B. ADDITIONAL COMMENTS TO SUPPORT JD: .