



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): 8/10/2021

ORM Number: NAO-2021-01482

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: VA City: Winchester County/Parish/Borough: Frederick County

Center Coordinates of Review Area: Latitude 39.148254 Longitude -78.101769

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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
S10	500 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes surface flow to a tributary of traditional navigable waters (Opequon Creek to Potomac River) in a typical year. The Potomac River is a Section 10 navigable water.
S2, S3, S11	4368 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes surface flow to a tributary of traditional navigable waters (Opequon Creek to Potomac River) in a typical year. The Potomac River is a Section 10 navigable water.

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
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<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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 independent 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.

<sup>4</sup> 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.

<sup>5</sup> 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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Pond OW1	0.614 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water inundated by flooding from an (a)(1)-(a)(3) water in a typical year	Contributes surface water flow to a traditional navigable water indirectly (through perennial stream S2 and S11) to Opequon Creek to the Potomac River. The Potomac River is a Section 10 navigable water.
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Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
S1, S4, S5, S6, S7, S9, S12, S13	1048 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature that receives surface water only in direct response to precipitation. Non-jurisdictional per the Navigable Waters Protection Rule (NWPR)
S8	87 feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Constructed in upland soils to satisfy stormwater management regulations for the CDD landfill and was approved and permitted by Frederick County. Non-jurisdictional per the Navigable Waters Protection Rule (NWPR)
SW Pond OW2	0.279 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Land was excavated in upland soils to satisfy stormwater management regulations for the CDD landfill and was approved and permitted by Frederick County. Non-jurisdictional per the Navigable Waters Protection Rule (NWPR)

**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: **Report: Frederick County CDD Landfill Area 2** Frederick County dated May 2020

This information *is* sufficient for purposes of this AJD.

Rationale: *N/A*

Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s)*.

Corps Site visit(s) conducted on: *7/22/2021*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

USDA NRCS Soil Survey: *Figure 6 in reports.*

USFWS NWI maps: *Figure 2 in report*

USGS topographic maps: *Title(s) and/or date(s)*.

**Other data sources used to aid in this determination:**

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Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
FEMA	(FIRM) 51069C0240D with an effective date of 9/2/2009

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

**Additional comments to support AJD:** The undeveloped portion of the property is forested. The dominant vegetation species growing within the property consists primarily of beech, oak, and hickory.

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