DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
4751 BEST ROAD, SUITE 140
COLLEGE PARK, GEORGIA 30337

CESAS-RDP 10 April 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in light of *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023),[1] SAS-2024-01033, 6652 Ernest Barrett Parkway Mixed-use Development, Cobb County

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.[2] 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.[3] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Georgia due to litigation.

[1] While the Supreme Court's decision in *Sackett* 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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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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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)

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
E1	Non-JD	N/A
Wet A	Non-JD	N/A

2. REFERENCES.

   a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

   b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

   c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

   d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 16-acre property is located east of Barret Parkway and north of Powder Springs Road Southwest, at address 6652 Earnest Barrett Parkway.

   A. Project Area Size (in acres): 16 acres.
   B. Center Coordinates of the Project Site (in decimal degrees)
   Latitude: 33.871509 Longitude: -84.633219
   C. Nearest City or Town: Powder Springs
   D. County: Cobb
   E. State: Georgia

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL. N/A

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6] 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A
    b. Interstate Waters (a)(2): N/A
    c. Other Waters (a)(3): N/A
    d. Impoundments (a)(4): N/A
    e. Tributaries (a)(5): N/A
    f. The territorial seas (a)(6): N/A
    g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

    a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").[7] Include size of the aquatic resource or feature within

[5] 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.

[6] 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.

[7] 51 FR 41217, November 13, 1986.

the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.
N/A

b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.
N/A

c. waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

d. prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "*SWANCC*," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with *SWANCC*. N/A

f. 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 pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

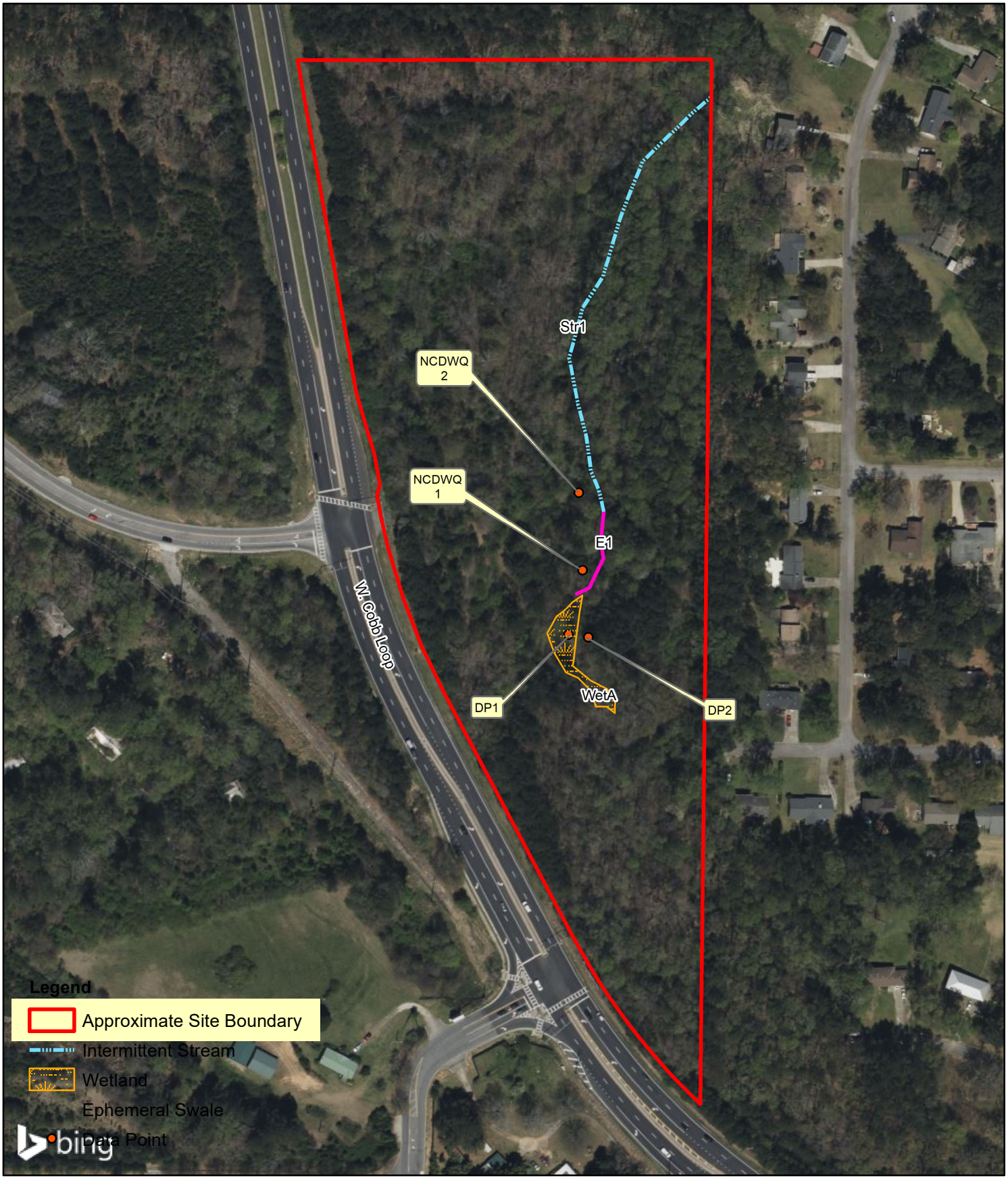
Name of excluded feature	**Size (in acres)**	**Type of resource generally not jurisdictional**
E1	149-linear feet (0.005-acres)	This feature does not meet the characteristics of having an OHWM, however, the 3DEP LiDAR imagery shows signatures of a drainage feature. Based on the information reviewed and provided, E1 appears to have been channelized

		in the past due to the straight nature of the channel in upland habitats and does not carry a relatively permanent flow. At the time of the delineation the climate showed normal conditions according to the APT of November 15, 2024. The lateral limits were verified using remote desktop tools, verification of data forms, and maps.
Wet A	0.12-acre	This feature does not directly abut a relatively permanent water.

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. 1. Date of Office (desktop review): February 27, 2025.
   2. Date(s) of Field Review (if applicable): Agent conducted field visit on November 15, 2024.
   b. Data sources used to support this determination (included in the administrative record).
   - ☒ **Aquatic Resources delineation submitted by, or on behalf of, the requestor:** "Figure 5: Aquatic Resources Map, 6652 Earnest Barrett Parkway Site**",** prepared on December 5, 2024.
   - ☒ **Photographs:** Photo record from August 18, 2023, site visit, Photographs No. 1-7.
   - ☒ **Aerial Imagery:** Maxar, Global Enhanced GEOINT Delivery: Digital Earth Globe Tiled Aerial Imagery, date accessed February 27, 2025.
   - ☒ **LIDAR:** National Regulatory Viewer (NRV), LiDAR with Hillshade layers, date accessed February 27, 2025.
   - ☒ **USGS topographic maps:** USGS Website, Map Locator, NRV USGS topographic basemap date accessed February 27, 2025.
   - ☒ **USGS NHD data/maps:** National Regulatory Viewer (NRV), NHD layer, data accessed February 27, 2025.
   - ☒ **Antecedent Precipitation Tool Analysis:** 6652 Earnest Barrett Parkway Site APT results from August 18, 2023, completed February 27, 2025
   - ☒ **Other sources of Information:** U.S. Drought Monitor, Fulton County, date accessed February 27, 2025, USGS StreamStats.
     WIM Tool date accessed February 27, 2025, National Regulatory Viewer (NRV), FEMA data layers, date accessed February 27, 2025.

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.



Base Map Source: ESRI Aerial Imagery

1:2,500

0 125 250 500 Feet

6652 Earnest Barrett Parkway Site **USACE NWP 29** **Cobb County, Georgia**	corblu ECOLOGY GROUP	**Figure 5** **Aquatic Resources Map** **Project No. 02-081623**