



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
100 W. OGLETHORPE AVENUE  
SAVANNAH, GEORGIA 31401-3604

November 13, 2023

Regulatory Division  
SAS-2023-00651



Dear Mr. [REDACTED]

I refer to a letter dated August 17, 2023, submitted on your behalf by [REDACTED], requesting a Jurisdictional Determination (JD) for a 5-acre site located on Old Clyattville Road, in Valdosta, Lowndes County, Georgia (Latitude 30.7790, Longitude -83.2903). This project has been assigned number SAS-2023-00651 and it is important that you refer to this number in all communication concerning this matter.

We have completed an approved JD for this site. Any wetlands on-site were delineated in accordance with criteria contained in the 1987 "Corps of Engineers Wetland Delineation Manual," as amended by the most recent regional supplements to the manual. I have enclosed an "AJD Memorandum for Record," which details whether aquatic resources present on the site are subject to the jurisdiction of the U.S. Army Corps of Engineers and how the Corps determined jurisdiction.

It has been determined that the review area as depicted on the enclosed exhibit entitled, "Site Location Aerial Map, Figure 7", dated June 23, 2023, as prepared by ECS Southeast, LLP, is comprised entirely of dry land. Therefore, Department of the Army authorization, pursuant to Section 404 of the Clean Water Act (33 United States Code § 1344), is not required for dredge and/or fill activities within the review area. This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

If you intend to sell property that is part of a project that requires Department of the Army Authorization, it may be subject to the Interstate Land Sales Full Disclosure Act. The Property Report required by Housing and Urban Development Regulation must state whether, or not a permit for the development has been applied for, issued or denied by the U.S. Army Corps of Engineers (Part 320.3(h) of Title 33 of the CFR).

This communication does not convey any property rights, either in real estate or material, or any exclusive privileges. It does not authorize any injury to property, invasion of rights, or any infringement of federal, state or local laws, or regulations. It does not obviate your requirement to obtain state or local assent required by law for the development of this property. If the information you have submitted, and on which the U.S. Army Corps of Engineers has based its determination is later found to be in error, this decision may be revoked.

Thank you in advance for completing our on-line Customer Survey Form located at <https://regulatory.ops.usace.army.mil/customer-service-survey/>. We value your comments and appreciate your taking the time to complete a survey each time you have interaction with our office.

If you have any questions, please contact me at [REDACTED] or by email at [REDACTED].

Sincerely,

[REDACTED]

Project Manager, Management Branch

Copy Furnished: [REDACTED]

Enclosures



**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS  
AND REQUEST FOR APPEAL**

Applicant: <span style="background-color: black; color: black;">[REDACTED]</span>	File Number: SAS-2023-00651	Date: 13Nov2023
Attached is:	See Section below	
<input type="checkbox"/> INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input type="checkbox"/> PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/> PERMIT DENIAL	C	
<input checked="" type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D	
<input type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

**ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

**OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

**ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

**APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

**ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

**APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. The division engineer must receive this form within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

██████████  
U.S. Army Corps of Engineers, Savannah District  
1104 North Westover, Albany, Georgia 31707

Phone: ██████████

Email: ██████████

If you only have questions regarding the appeal process you may also contact:

██████████  
Administrative Appeal Review Officer  
CESAS-PDS-O  
60 Forsyth Street Southwest, Floor M9  
Atlanta, Georgia 30303-8803

Phone: ██████████

Fax: ██████████

Email: ██████████

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

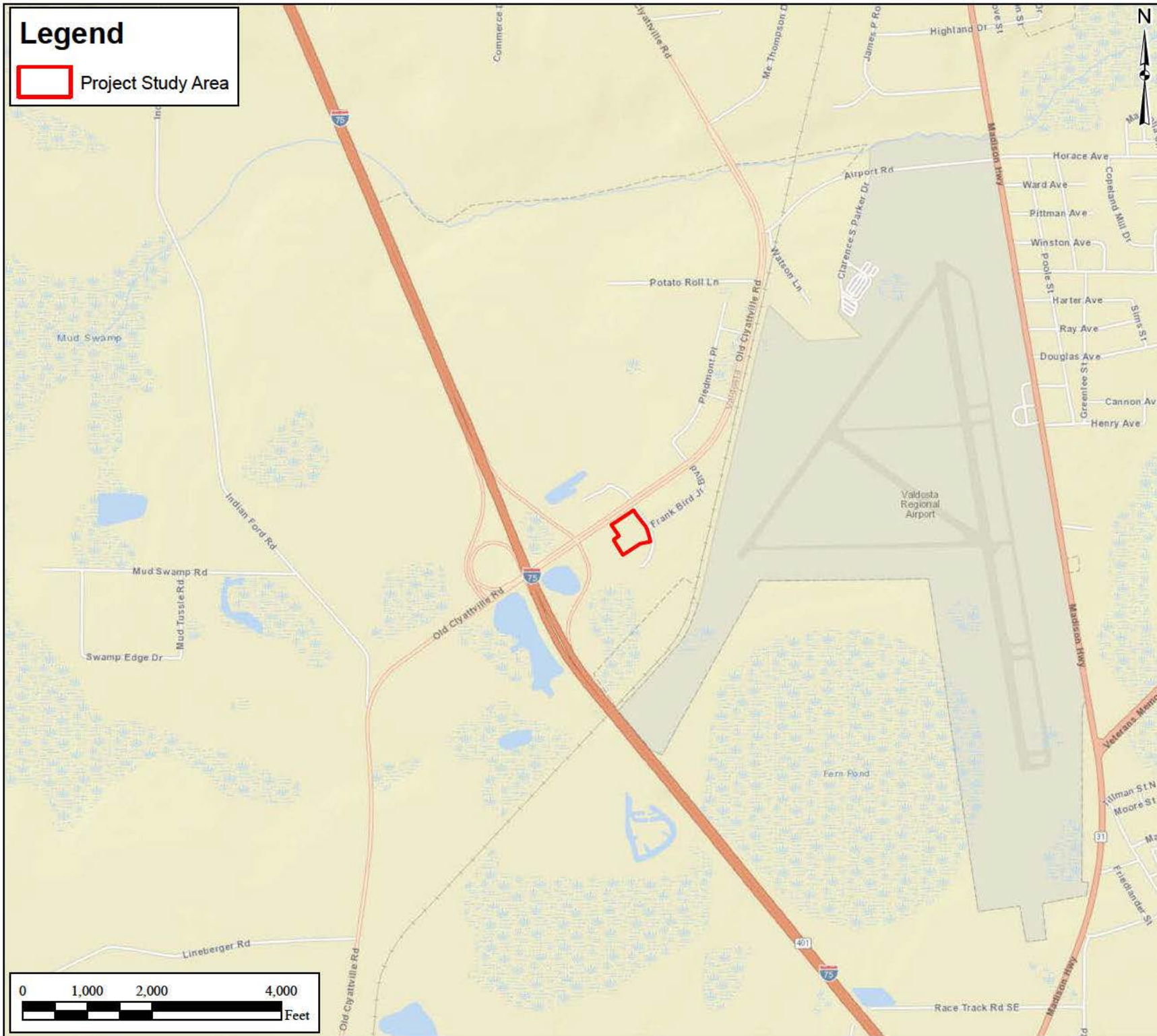
\_\_\_\_\_  
Signature of appellant or agent.

Date: \_\_\_\_\_

Telephone number: \_\_\_\_\_

# Legend

 Project Study Area



Client:

C4 CSTORE HOLDINGS III,  
LLC

Project:

PROPOSED CONVENIENCE  
STORE - VALDOSTA

OLD CLYATTVILLE ROAD,  
VALDOSTA,  
LOWNDES COUNTY,  
GEORGIA

Title:

**SITE LOCATION  
MAP**

**LOWNDES COUNTY**



Drawn By:



Scale:

1" = 2,000'

Approved By:



Date:

06/23/2023


Project No.

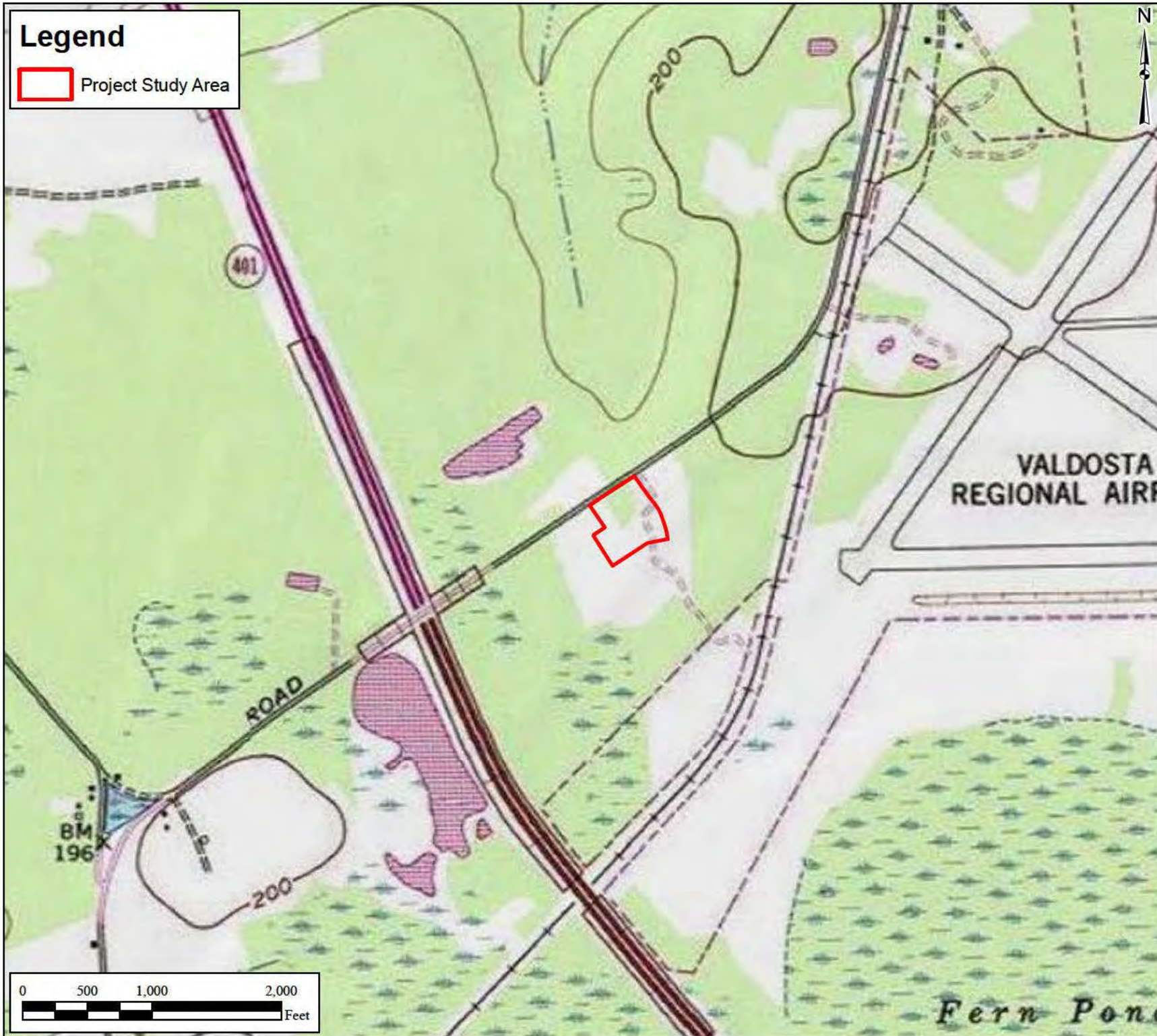
49: 20613

**FIGURE 1**



# Legend

 Project Study Area



Client:

Project:

PROPOSED CONVENIENCE  
STORE - VALDOSTA

OLD CLYATTVILLE ROAD,  
VALDOSTA,  
LOWNDES COUNTY,  
GEORGIA

Title:

USGS TOPOGRAPHIC  
MAP

VALDOSTA, GA  
QUADRANGLE  
DATED: 1961

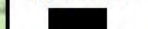
PROJECT STUDY AREA



Drawn By:



Approved By:



Scale:  
1" = 1,000'

Date:  
06/23/2023

Project No.  
49: 20613

FIGURE 2



**Legend**

 Project Study Area



Client:



Project:

PROPOSED CONVENIENCE  
STORE - VALDOSTA

OLD CLYATTVILLE ROAD,  
VALDOSTA,  
LOWNDES COUNTY,  
GEORGIA

Title:

**SITE LOCATION  
AERIAL MAP**

**PROJECT STUDY AREA**



Drawn By:



Scale:

1" = 200'

Approved By:



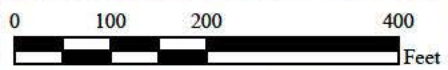
Date:

06/23/2023

Project No.

49: 20613

**FIGURE 7**

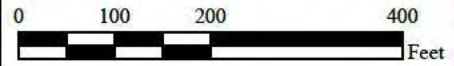
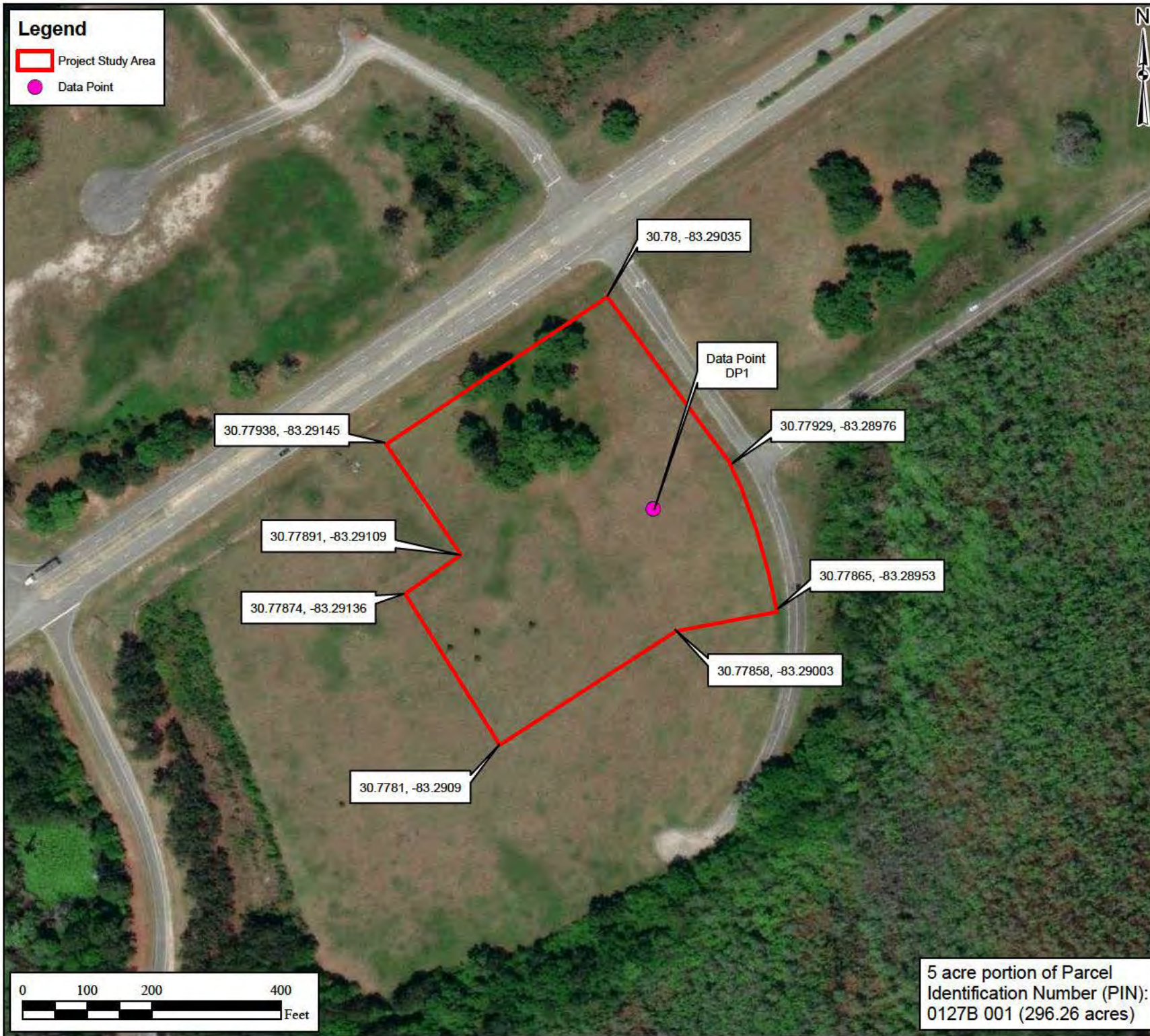




**Legend**

Project Study Area

● Data Point



5 acre portion of Parcel  
Identification Number (PIN):  
0127B 001 (296.26 acres)

**Client:**

**Project:**

PROPOSED CONVENIENCE  
STORE - VALDOSTA

OLD CLYATTVILLE ROAD,  
VALDOSTA,  
LOWNDES COUNTY,  
GEORGIA

**Title:**

**POTENTIAL WATERS  
OF THE U.S.  
MAP**

**NOTES:**

1. POTENTIALLY JURISDICTIONAL WATERS OF THE U.S. WERE NOT OBSERVED BY ECS ON JULY 7, 2023.
2. FINDINGS DEPICTED ON THIS MAP HAVE NOT BEEN VERIFIED BY THE USAGE AND DELINEATION FINDINGS ARE SUBJECT TO CHANGE BASED ON AGENCY VERIFICATION.
3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

<b>Drawn By:</b>	<b>Scale:</b> 1" = 200'
<div style="background-color: black; width: 40px; height: 20px; margin: 0 auto;"></div>	
<b>Approved By:</b>	<b>Date:</b>
<div style="background-color: black; width: 40px; height: 20px; margin: 0 auto;"></div>	08/03/2023
<b>Project No.</b> 49: 20613	

FIGURE 8





DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
1104 NORTH WESTOVER BOULEVARD  
ALBANY, GEORGIA 31707

SAS-RD-M

November 13, 2023

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322  
(2023),<sup>1</sup> SAS-2023-00651<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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, interstate water, or territorial seas 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.



SAS-RD-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2023-00651

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

## 1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). Based on a review of desktop data resources listed in Section 9 of this memorandum, there are no aquatic resources on the identified project site that exhibit an Ordinary High-Water Mark, or the Three (3) wetland parameters listed in the 1987 Corps of Engineers Wetland Delineation Manual or any of the applicable regional supplements. The project site consists of only dry land.

## 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. \_\_, 143 S. Ct. 1322 (2023)

## 3. REVIEW AREA

- A. Project Are Size (in acres): 5
- B. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 30.7790 Longitude: -83.2903
- C. Nearest City or Town: Valdosta
- D. County: Lowndes
- E. State: Georgia

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



SAS-RD-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2023-00651

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.



- 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”).<sup>8</sup> 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 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. Describe aquatic resources and features identified within the review area as 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. Describe aquatic resources and features within the review area determined to be 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). N/A
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.

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<sup>8</sup> 51 FR 41217, November 13, 1986.

SAS-RD-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2023-00651

- a. 1. Date of Office (desktop review): 8Nov2023
- 2. Date(s) of Field Review (if applicable): N/A
- b. Data sources used to support this determination (included in the administrative record).
  - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request, August 17, 2023
  - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
  - ☐ Wetland field data sheets prepared by the Corps: Title and Date
  - ☐ OHWM data sheets prepared by the USACE: Title and Date
  - ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
  - ☒ Photographs: Field photos submitted as part of above referenced report
  - ☒ Aerial Imagery: Approved Jurisdictional Determination Request, Figure 7, 23Jun2023
  - ☒ LIDAR: Approved Jurisdictional Determination Request, Figure 6, 23Jun2023
  - ☒ USDA NRCS Soil Survey: Approved Jurisdictional Determination Request, Figure 3, 23Jun2023
  - ☒ USFWS NWI maps: Approved Jurisdictional Determination Request, Figure 4, 23Jun2023
  - ☒ USGS topographic maps: Approved Jurisdictional Determination Request, Figure 2, 23Jun2023
  - ☐ USGS NHD data/maps: Title and Dates
  - ☐ Section 10 resources used: Title and Dates
  - ☐ NCDWR stream identification forms
  - ☐ Antecedent Precipitation Tool Analysis: List Date(s)
  - ☐ Other sources of Information: List

10. OTHER SUPPORTING INFORMATION. The review area consists entirely of uplands.

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.