



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

SAS-RD-C

March 13, 2024

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),¹ SAS-2023-00275

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 in this state 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
Wetland	Non-JD	NA

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)
- e. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))
- f. 20190625 Savannah District Section 10 Waters List

- 3. REVIEW AREA. The project review area is an approximately 25.83-acre site located on the west side of Old Augusta Road, approximately 3 miles north of Georgia Highway 21, in Rincon, Effingham County, Georgia (Latitude 32.2762, -81.1922, Longitude -81.1922).

Regulatory File No.	Type	Outcome
SAS-2023-00275	ARDR	ARDR previously verified by letter dated August 30, 2023, delineates Wetland as only wetland on site and surrounded by uplands.

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

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CONNECTED.⁵ Mill Creek is the nearest TNW which is included in the SAS Section 10 Waters list. The review area is located approximately 0.9 miles from Mill Creek; however, the aquatic resource within the review area is not connected to Mill Creek.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁶ 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.

⁷ 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.

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- 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”).⁸ 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

⁸ 51 FR 41217, November 13, 1986.

- 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
Wetland	3.38	Wetland is a closed, depressionnal wetland that lacks a continuous surface connection to a water of the US.

The non-jurisdictional Wetland is a closed, depressionnal wetland that is approximately 0.9 miles from the nearest TNW (Mill Creek). NWI and LiDAR mapping shows the Wetland is surrounded by uplands with no continuous surface connection to a water of the U.S. The uplands surrounding the wetland are approximately 2-3 ft. higher in elevation than the surface elevation of the wetland. The ARDR previously verified by letter dated August 30, 2023, delineated the Wetland as the only aquatic resource within the project review area. A dry, shallow ditch within the project area drains into the wetland and provides no continuous surface connection to a water of the U.S. Based on the desktop review of data resources described in Section 9 of this memorandum, and distance from the Wetland to the nearest jurisdictional waters, no physical connection can be documented, and the Wetland lacks a continuous surface connection to a water of the US; therefore, the 3.38-acre Wetland is determined to be non-jurisdictional.

- 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. Office (Desk) Determination: March 11, 2024
 - b. Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Approved Jurisdictional Determination request and exhibit submitted by [REDACTED].
 - c. Data sheets prepared/submitted by or on behalf of the applicant/consultant: submitted by [REDACTED]
 - d. U.S. Geological Survey map(s): Effingham County, GA Quad.

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- e. U.S. Geological Survey Hydrologic Atlas: HUC-12: 030601090305.
- f. USDA Natural Resources Conservation Soil Survey: Effingham County, GA.
- g. National Wetlands Inventory map(s): Effingham County, GA.
- h. FEMA/FIRM maps: Panel ID: 13103C0289E
- i. Photographs: Aerial: Google Earth 2023, Ortho Aerial 2022 and Historic Aerial 1951 and 1974.
- j. NOAA Topographic LiDAR: 2018 NOAA LiDAR
- k. SAS-2023-00275 ARDR: August 30, 2023

10. OTHER SUPPORTING INFORMATION. N/A

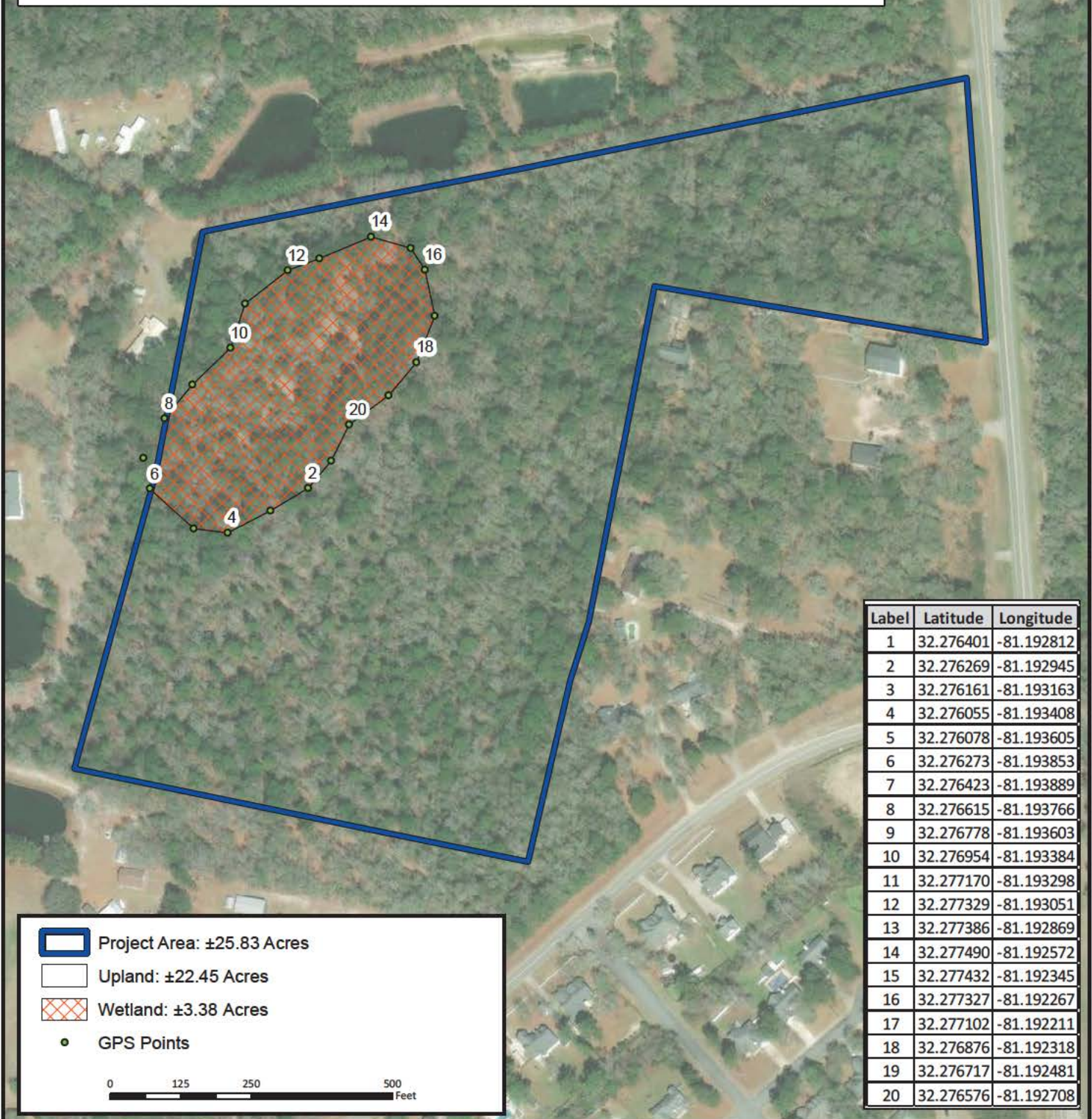
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

NOTES:


-PROJECT AREAS AND/OR PARCEL BOUNDARIES DEPICTED ON THIS MAP WERE DERIVED FROM PUBLICLY AVAILABLE GIS DATA, COUNTY TAX ASSESSOR'S WEBSITES OR SIMILAIR SOURCES.

-THE AQUATIC RESOURCE BOUNDARIES DEPICTED ON THIS EXHIBIT HAVE BEEN FIELD DELINEATED AND LOCATED VIA SUB-METER GPS. THE BOUNDARIES OF THE WETLANDS AND/OR STREAMS HAVE NOT BEEN FORMALLY SURVEYED OR VERIFIED BY THE U.S. ARMY CORPS OF ENGINEERS.

RECOMMENDS OBTAINING WRITTEN VERIFICATION FROM THE U.S. ARMY CORPS OF ENGINEERS PRIOR TO PURCHASE OF THE PROPERTY OR INITIATION OF ANY ON SITE LAND DISTURBANCE ACTIVITIES.



Label	Latitude	Longitude
1	32.276401	-81.192812
2	32.276269	-81.192945
3	32.276161	-81.193163
4	32.276055	-81.193408
5	32.276078	-81.193605
6	32.276273	-81.193853
7	32.276423	-81.193889
8	32.276615	-81.193766
9	32.276778	-81.193603
10	32.276954	-81.193384
11	32.277170	-81.193298
12	32.277329	-81.193051
13	32.277386	-81.192869
14	32.277490	-81.192572
15	32.277432	-81.192345
16	32.277327	-81.192267
17	32.277102	-81.192211
18	32.276876	-81.192318
19	32.276717	-81.192481
20	32.276576	-81.192708

 Project Area: ±25.83 Acres
 Upland: ±22.45 Acres
 Wetland: ±3.38 Acres
 GPS Points

0 125 250 500 Feet

Project No.:	23-027
Figure No.:	8
Prepared By:	MW
Sketch Date:	1/15/2024
Map Scale :	1 inch = 250 feet

Old Augusta Road Tracts
 Effingham County, Georgia

Aquatic Resource GPS Delineation Exhibit
 Prepared For:

