



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

SAS-RD-C

May 3, 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-2024-00270

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	JD	Section 404

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. 20190625 Section 10 Waters List Savannah District
- f. 2007 Rapanos Approved Jurisdictional Determination Form Instructional Guidebook
- g. 2008 Rapanos Guidance

3. REVIEW AREA. The project review area is an approximately 19.22-acre site located adjacent to and east of Jimmy Deloach Parkway on West Main Street in Bloomingdale, Chatham County, Georgia (Latitude 32.1312, Longitude -81.3078).
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ The Savannah River is the nearest TNW. The project review

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.

area is located approximately 10.1 miles from the Savannah River. This determination was made based on a review of desktop data resources described in Section 9 of this memorandum including review of the SAS Section 10 Waters list, and a field visit conducted on July April 25, 2024.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The Wetland meets the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic Gulf Coastal Plain Regional Supplement. There is a culvert at the southeast corner of the Wetland that connects the Wetland to an unnamed canal which runs along the eastern property boundary. This canal (an RPW) connects to Pipemakers Canal which flows into the Savannah River, a TNW.
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.

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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- 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):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
Wetland	7.19	No	There is a culvert at the southeast corner of the Wetland that connects the Wetland to an unnamed canal which runs along the eastern property boundary. This canal (an RPW) connects to Pipemakers Canal which flows into the Savannah River, a TNW.

During the April 25, 2024, site visit, the Wetland was observed, and it was determined that the wetland meets the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. A culvert was observed at the southeast corner of the Wetland which connects the Wetland to an unnamed canal which runs north along the eastern property boundary. This canal flows through a culver under US Highway 80 and connects to Pipemakers Canal which flows into the Savannah River, a TNW. The Wetland has a continuous surface connection to a TNW so the Wetland is determined to be jurisdictional.

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
 - 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.

⁸ 51 FR 41217, November 13, 1986.

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- a. Office (Desk) Determination: May 2024
Field Visit: April 25, 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]
[REDACTED]
- c. Data sheets prepared/submitted by or on behalf of the applicant/consultant:
submitted by [REDACTED]
- d. U.S. Geological Survey map(s): Chatham County 1' = 500 ft.
- e. U.S. Geological Survey Hydrologic Atlas: HUC 030602040201.
- f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.
- g. National Wetlands Inventory map(s): Chatham County, GA.
- h. Photographs/Aerial Imagery: Google Earth Aerial 2023 and 2019.
- i. NOAA Topographic LiDAR: 2019 NOAA LiDAR.
- j. Antecedent Precipitation Tool Analysis: Corps site visit on April 25, 2024.

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.



Approximate Project Limits (+/- 19.22 acres)

 Wetland (+/- 7.19 acres)

Wetland GPS Exhibit 16 acre Tract Chatham County, Georgia Sheet 1 of 2

0 100 200
 Feet
 Scale: 1 inch = 200 feet

Exhibit Date: May 7, 2024

Drawn by: [REDACTED]

Reviewed by: [REDACTED]

Job Number: 01-05-102

Name	Latitude	Longitude
pl1	32.132892	-81.309104
pl2	32.13203	-81.306483
pl3	32.131927	-81.30617
pl4	32.132109	-81.305278
pl5	32.13001	-81.30562
pl6	32.130821	-81.308745
pl7	32.131171	-81.308619
pl8	32.131291	-81.309083
pl9	32.130941	-81.309208
pl10	32.131101	-81.309824
a1	32.130155	-81.306179
a2	32.130225	-81.30617
a3	32.130399	-81.306035
a4	32.130576	-81.306042
a5	32.13069	-81.306175
a6	32.130808	-81.306216
a7	32.13091	-81.306307
a8	32.131023	-81.306465
a9	32.131116	-81.306513
a10	32.131275	-81.306652
a11	32.131419	-81.306736
a12	32.131534	-81.306879
a13	32.131535	-81.307145
a14	32.131516	-81.307192
a15	32.131648	-81.307319
a16	32.131707	-81.30745
a17	32.131596	-81.307642
a18	32.131562	-81.307911
a19	32.131556	-81.30814
a20	32.131698	-81.308282
a21	32.131801	-81.308345
a22	32.131917	-81.308239
a23	32.131896	-81.308044
a24	32.131898	-81.307901
a25	32.131957	-81.30779
a26	32.132115	-81.307768
a27	32.132185	-81.307835
a28	32.132283	-81.307909
a29	32.132412	-81.307761
a30	32.132436	-81.307717
b1	32.131805	-81.305426
b2	32.131663	-81.305484
b3	32.131398	-81.305479
b4	32.131049	-81.305569
b5	32.131039	-81.305532
b6	32.131324	-81.305447
b7	32.131596	-81.30541
b8	32.131796	-81.3054

Wetland GPS Exhibit
16 acre Tract
Chatham County, Georgia
Sheet 2 of 2

Exhibit Date: May 7, 2024

Drawn by: [REDACTED]

Reviewed by: [REDACTED]

Job Number: 01-05-102