



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

SAS-RD-C

June 6, 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),<sup>1</sup> SAS-2024-00061

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 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.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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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 A (WA)	Non-JD	N/A
Wetland B (WB)	Non-JD	N/A
Wetland C (WC)	Non-JD	N/A
Wetland D (WD)	Non-JD	N/A
Wetland E (WE)	JD	Section 404
Wetland F (WF)	JD	Section 404
Wetland G (WG)	JD	Section 404
Wetland H (WH)	JD	Section 404
Wetland I (WI)	JD	Section 404
Wetland J (WJ)	JD	Section 404
Pond A (PA)	Non-JD	N/A

Although labelled Wetland E, Wetland F, Wetland G, Wetland H, Wetland I, and Wetland J function as one wetland (Wetland E/F/G/H/I/J) which is adjacent to the Little Ogeechee River.

## 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. 2003 SWANCC guidance
  - f. 2008 Rapanos Guidance
3. REVIEW AREA. The review area is an approximately 188.97-acre site located approximately 1.86 miles west of Interstate 95 and approximately 1.84 miles south of

Interstate 16, on Little Neck Road in Savannah, Chatham County, Georgia (Latitude 32.0560, Longitude -81.2919).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>5</sup> The Little Ogeechee River is the nearest TNW. The review area is adjacent to the Little Ogeechee River at the northeast boundary of the review area. This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum including review of the SAS Section 10 Waters list.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetlands E, F, G, H, I and J are wetlands that meet 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. Although labelled Wetland E, Wetland F, Wetland G, Wetland H, Wetland I and Wetland J, WE, WF, WG, WH, WI and WJ function as one wetland (Wetland E/F/G/H/I/J). This larger Wetland E/F/G/H/I/J abuts the Little Ogeechee River, a TNW.
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

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<sup>5</sup> 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.

<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.

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):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
Wetland E/F/G/H/I/J Wetland E Wetland F Wetland G Wetland H Wetland I Wetland J	4.225 0.074 0.252 0.335 0.354 81.136	Yes, Little Ogeechee River	Although labelled Wetland E, Wetland F, Wetland G, Wetland H, Wetland I and Wetland J, WE, WF, WG, WH, WI and WJ function as one wetland (Wetland E/F/G/H/I/J). This larger Wetland E/F/G/H/I/J abuts the Little Ogeechee River, a TNW.

Based on review of desktop data resources described in Section 9 of this memorandum, Wetland A/B/C/D/E is determined to be jurisdictional. Although labelled Wetland E, Wetland F, Wetland G, Wetland H, Wetland I and Wetland J,

WE, WF, WG, WH, WI and WJ function as one wetland (Wetland E/F/G/H/I/J). This larger Wetland E/F/G/H/I/J abuts the Little Ogeechee River, a TNW. This determination is supported by LiDAR, NWI and NRCS hydric soil mapping which shows similar hydric soils in the area of the wetlands, as well as aerial imagery.

## 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”).<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

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

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).

<b>Name of excluded feature</b>	<b>Size (in acres)</b>	<b>Type of resource generally not jurisdictional</b>
Wetland A	0.080	Wetland lacks a continuous surface connection to water of the US
Wetland B	0.580	Wetland lacks a continuous surface connection to water of the US
Wetland C	0.721	Wetland lacks a continuous surface connection to water of the US
Wetland D	0.222	Wetland lacks a continuous surface connection to water of the US
Pond A	0.186	Wetland lacks a continuous surface connection to water of the US

Wetland A is a closed depressional wetland surrounded by uplands 2-3 ft. higher than the average surface elevation in the wetland. There is no evidence of a connection between Wetland A or any of the wetlands within the project review area. Wetland A lacks a continuous surface connection to a water of the US and is determined to be non-jurisdictional. Wetland B is a closed depressional wetland surrounded by uplands 1-2 ft. higher than the average surface elevation in the wetland. There is no evidence of a connection between Wetland B or any of the wetlands within the project review area. Wetland B lacks a continuous surface connection to a water of the US and is determined to be non-jurisdictional. Pond A and adjacent Wetland C are surrounded by uplands 1-4 ft. higher than the average surface elevation within. There is no evidence of a connection between Pond A and any of the other wetlands within the project review area, and no connection between Wetland C and any other wetlands in the review area. Pond A and Wetland C lacks a continuous surface connection to a water of the US; therefore, Pond A and Wetland C are determined to be non-jurisdictional. Wetland D is a closed depressional wetland surrounded by uplands 1-2 ft. higher than the average surface elevation in the wetland. There is no evidence of a connection between Wetland d or any of the wetlands within the project review area. Wetland D lacks a continuous surface connection to a water of the US and is also determined to be non-jurisdictional. These determinations are based on review of desktop data resources described in Section 9 of this memorandum including LiDAR, aerial imagery, NWI and NRCS soil maps.

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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: June 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): Chatham County 1'=1,000 ft.
  - e. U.S. Geological Survey Hydrologic Atlas: HUC 12 - 030602040201.
  - f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.
  - g. National Wetlands Inventory map(s): Chatham County, GA.
  - h. Photographs: 2011, 2016, 2019, and 2023 Google Earth Aerial Imagery.
  - i. 20190625 Section 10 Waters List - Savannah District.
  - j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
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.





WETLAND A LINE TABLE		
LINE #	COORDINATE	DIRECTION
W1	25.00	145°00'00"W
W2	25.00	145°00'00"W
W3	25.00	145°00'00"W
W4	25.00	145°00'00"W
W5	25.00	145°00'00"W
W6	25.00	145°00'00"W
W7	25.00	145°00'00"W
W8	25.00	145°00'00"W
W9	25.00	145°00'00"W
W10	25.00	145°00'00"W

WETLAND B LINE TABLE		
LINE #	COORDINATE	DIRECTION
W11	25.00	145°00'00"W
W12	25.00	145°00'00"W
W13	25.00	145°00'00"W
W14	25.00	145°00'00"W
W15	25.00	145°00'00"W
W16	25.00	145°00'00"W
W17	25.00	145°00'00"W
W18	25.00	145°00'00"W
W19	25.00	145°00'00"W
W20	25.00	145°00'00"W

WETLAND C LINE TABLE		
LINE #	COORDINATE	DIRECTION
W21	25.00	145°00'00"W
W22	25.00	145°00'00"W
W23	25.00	145°00'00"W
W24	25.00	145°00'00"W
W25	25.00	145°00'00"W
W26	25.00	145°00'00"W
W27	25.00	145°00'00"W
W28	25.00	145°00'00"W
W29	25.00	145°00'00"W
W30	25.00	145°00'00"W

WETLAND D LINE TABLE		
LINE #	COORDINATE	DIRECTION
W31	25.00	145°00'00"W
W32	25.00	145°00'00"W
W33	25.00	145°00'00"W
W34	25.00	145°00'00"W
W35	25.00	145°00'00"W
W36	25.00	145°00'00"W
W37	25.00	145°00'00"W
W38	25.00	145°00'00"W
W39	25.00	145°00'00"W
W40	25.00	145°00'00"W

WETLAND E LINE TABLE		
LINE #	COORDINATE	DIRECTION
W41	25.00	145°00'00"W
W42	25.00	145°00'00"W
W43	25.00	145°00'00"W
W44	25.00	145°00'00"W
W45	25.00	145°00'00"W
W46	25.00	145°00'00"W
W47	25.00	145°00'00"W
W48	25.00	145°00'00"W
W49	25.00	145°00'00"W
W50	25.00	145°00'00"W

WETLAND F LINE TABLE		
LINE #	COORDINATE	DIRECTION
W51	25.00	145°00'00"W
W52	25.00	145°00'00"W
W53	25.00	145°00'00"W
W54	25.00	145°00'00"W
W55	25.00	145°00'00"W
W56	25.00	145°00'00"W
W57	25.00	145°00'00"W
W58	25.00	145°00'00"W
W59	25.00	145°00'00"W
W60	25.00	145°00'00"W

WETLAND G LINE TABLE		
LINE #	COORDINATE	DIRECTION
W61	25.00	145°00'00"W
W62	25.00	145°00'00"W
W63	25.00	145°00'00"W
W64	25.00	145°00'00"W
W65	25.00	145°00'00"W
W66	25.00	145°00'00"W
W67	25.00	145°00'00"W
W68	25.00	145°00'00"W
W69	25.00	145°00'00"W
W70	25.00	145°00'00"W

WETLAND H LINE TABLE		
LINE #	COORDINATE	DIRECTION
W71	25.00	145°00'00"W
W72	25.00	145°00'00"W
W73	25.00	145°00'00"W
W74	25.00	145°00'00"W
W75	25.00	145°00'00"W
W76	25.00	145°00'00"W
W77	25.00	145°00'00"W
W78	25.00	145°00'00"W
W79	25.00	145°00'00"W
W80	25.00	145°00'00"W

WETLAND I LINE TABLE		
LINE #	COORDINATE	DIRECTION
W81	25.00	145°00'00"W
W82	25.00	145°00'00"W
W83	25.00	145°00'00"W
W84	25.00	145°00'00"W
W85	25.00	145°00'00"W
W86	25.00	145°00'00"W
W87	25.00	145°00'00"W
W88	25.00	145°00'00"W
W89	25.00	145°00'00"W
W90	25.00	145°00'00"W

WETLAND J LINE TABLE		
LINE #	COORDINATE	DIRECTION
W91	25.00	145°00'00"W
W92	25.00	145°00'00"W
W93	25.00	145°00'00"W
W94	25.00	145°00'00"W
W95	25.00	145°00'00"W
W96	25.00	145°00'00"W
W97	25.00	145°00'00"W
W98	25.00	145°00'00"W
W99	25.00	145°00'00"W
W100	25.00	145°00'00"W

WETLAND K LINE TABLE		
LINE #	COORDINATE	DIRECTION
W101	25.00	145°00'00"W
W102	25.00	145°00'00"W
W103	25.00	145°00'00"W
W104	25.00	145°00'00"W
W105	25.00	145°00'00"W
W106	25.00	145°00'00"W
W107	25.00	145°00'00"W
W108	25.00	145°00'00"W
W109	25.00	145°00'00"W
W110	25.00	145°00'00"W

WETLAND L LINE TABLE		
LINE #	COORDINATE	DIRECTION
W111	25.00	145°00'00"W
W112	25.00	145°00'00"W
W113	25.00	145°00'00"W
W114	25.00	145°00'00"W
W115	25.00	145°00'00"W
W116	25.00	145°00'00"W
W117	25.00	145°00'00"W
W118	25.00	145°00'00"W
W119	25.00	145°00'00"W
W120	25.00	145°00'00"W

WETLAND M LINE TABLE		
LINE #	COORDINATE	DIRECTION
W121	25.00	145°00'00"W
W122	25.00	145°00'00"W
W123	25.00	145°00'00"W
W124	25.00	145°00'00"W
W125	25.00	145°00'00"W
W126	25.00	145°00'00"W
W127	25.00	145°00'00"W
W128	25.00	145°00'00"W
W129	25.00	145°00'00"W
W130	25.00	145°00'00"W

WETLAND N LINE TABLE		
LINE #	COORDINATE	DIRECTION
W131	25.00	145°00'00"W
W132	25.00	145°00'00"W
W133	25.00	145°00'00"W
W134	25.00	145°00'00"W
W135	25.00	145°00'00"W
W136	25.00	145°00'00"W
W137	25.00	145°00'00"W
W138	25.00	145°00'00"W
W139	25.00	145°00'00"W
W140	25.00	145°00'00"W

**SURVEYORS CERTIFICATION**

I, DON E. HANDE, DECLARE THAT THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF ALABAMA.

DATE: 05/24/2023 FROM MY ACTUAL GPS SURVEY MADE ON 05/24/2023. I HAVE BEEN ADVISED THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

ALABAMA SURVEYORS ASSOCIATION, INC. (ASA) MEMBER NO. 12345

STATE OF ALABAMA

COMMISSIONER OF REVENUE

05/24/2023