



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

SAS-RD-C

June 10, 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-2024-00163

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 A	Non-JD	N/A
Wetland B	Non-JD	N/A
Wetland C	Non-JD	N/A
Wetland D	Non-JD	N/A

Although labelled Wetland B and Wetland D, Wetland B and Wetland D function as one wetland (Wetland B/D).

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. 2008 Rapanos Guidance

3. REVIEW AREA. The review area is an approximately 22.87-acre site located on Hodgeville Road, approximately 4.04 miles west of Georgia State Route 21, in Guyton, Effingham County, Georgia (Latitude 32.2478, Longitude -81.2816).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ Dasher Creek is the nearest TNW. The project review area is

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

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located approximately 1.48 miles from Dasher Creek; however, the aquatic resources within the review area are not connected to Dasher Creek. This determination was made based on a review of desktop data resources described in Section 9 of this memorandum and Corps site visit conducted on April 18, 2024.

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
 - c. Other Waters (a)(3): N/A

(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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- 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 A	0.59	Wetland lacks a continuous surface connection to water of the US
Wetland B/D Wetland B Wetland D	0.34 0.02	Wetland lacks a continuous surface connection to water of the US
Wetland C	1.53	Wetland lacks a continuous surface connection to water of the US

Wetland A, Wetland B, Wetland C, and Wetland D 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. The non-jurisdictional wetlands total 2.48 acres located at the project area. The wetlands are approximately 1.48 miles from the nearest TNW (Dasher Creek). During the Corps site visit on April 18, 2024, an area of upland was observed between Wetland A and Wetland C. Wetland C is a closed wetland with no connection to nearby wetlands within the project review area. Wetland A continues outside the project area towards Hodgeville Road. When viewing LiDAR and aerial imagery, there is no connection observed between Wetland A and nearby wetlands. There is a lack of evidence to support a connection between Wetland A and a water of the US. Although labelled Wetland B and Wetland D, Wetland B and Wetland D function as one wetland (Wetland B/D). Wetland B/D continues outside of the project review area along the northwest boundary. There is a small ridge of higher elevation outside the project review area where Wetland B/D ends with no connection to any nearby wetlands. Wetland B/D is a closed depressional wetland that lacks a continuous surface connection to a water of the US. Based on these observations, site inspection and desktop review including data sources listed in Section 9, Wetland A, Wetland C, and Wetland B/D are determined to be non-jurisdictional.

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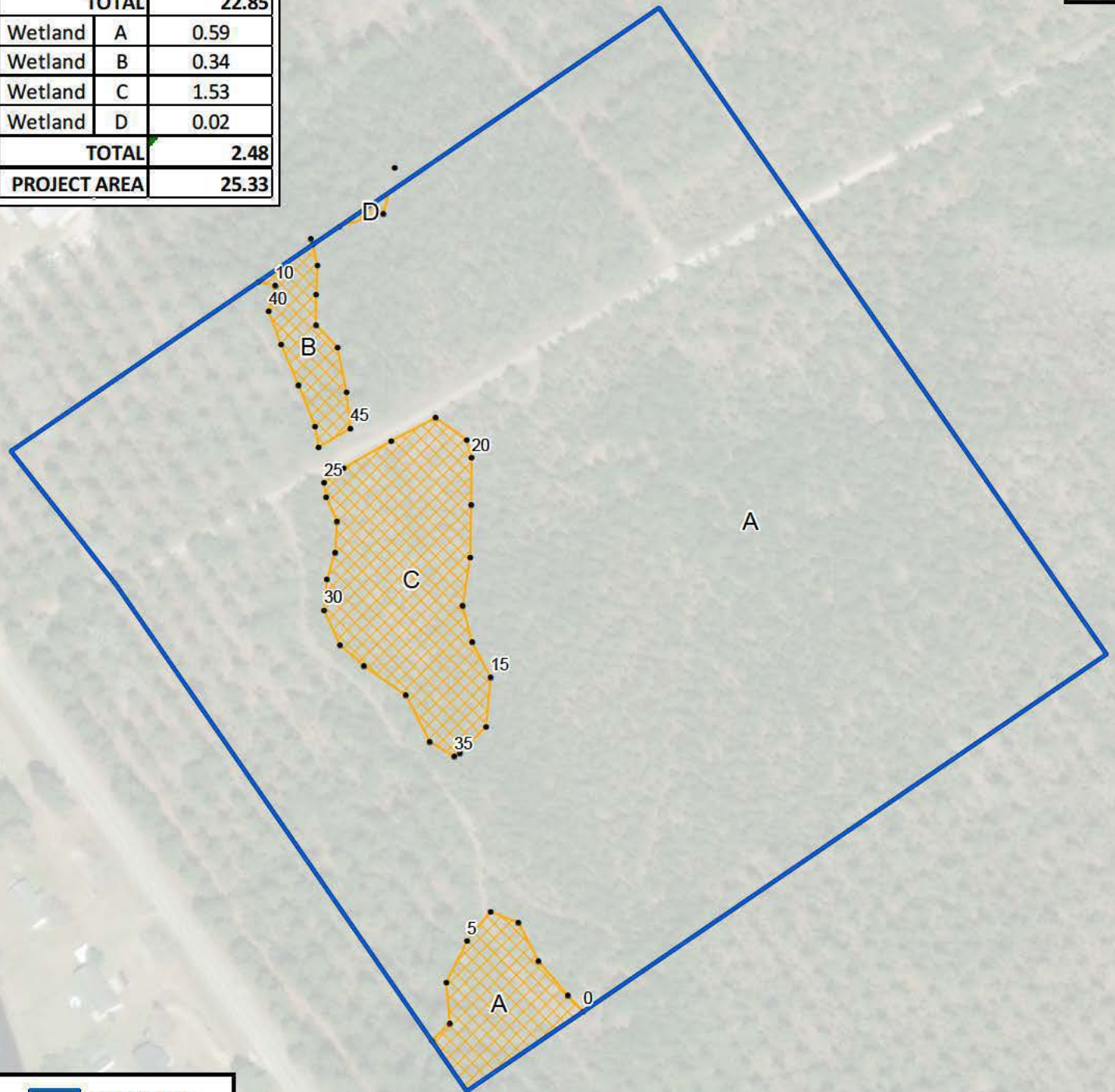
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Office (Desk) Determination: June 2024.
Field Visit: April 18, 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 1'=2,000 ft.
- 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. Photographs: 2023, 2022, 2011, 2008, and 2004 Google Earth Aerial Imagery and 2022 Ortho Aerial Imagery.
- i. FEMA/FIRM maps: Panel ID: 13103C0360E.
- j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
- k. Antecedent Precipitation Tool Analysis: [REDACTED] site visit on March 2, 2023, and Corps site visit on April 18, 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.

Feature		Size (Acres)
Upland	A	22.55
TOTAL		22.85
Wetland	A	0.59
Wetland	B	0.34
Wetland	C	1.53
Wetland	D	0.02
TOTAL		2.48
PROJECT AREA		25.33



Project Area
 Upland
 Wetland
 GPS Points

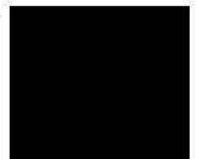
0 100 200 Feet

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

Project No.:	23-343
Figure No.:	8
Prepared By:	█
Sketch Date:	5/30/2024
Map Scale :	1 inch = 200 feet

**Hodgeville Road
School Site**
 Effingham County, Georgia

**Aquatic Resource
GPS Exhibit**
 Prepared For: █



Point	X	Y	Point	X	Y
0	-81.28190646	32.24595572	25	-81.28301009	32.24790595
1	-81.28197394	32.24601604	26	-81.28300138	32.24785269
2	-81.28209889	32.24614242	27	-81.28295572	32.24776315
3	-81.28218419	32.24628419	28	-81.28296457	32.2476498
4	-81.2823055	32.2463259	29	-81.28300032	32.24755142
5	-81.28240728	32.24621735	30	-81.28301301	32.24743784
6	-81.28249994	32.2460665	31	-81.28294605	32.24730794
7	-81.28248502	32.24591626	32	-81.28284304	32.24723354
8	-81.2825639	32.24585373	33	-81.28266443	32.24712326
9	-81.2832865	32.24864573	34	-81.2825618	32.24695165
10	-81.28321275	32.2486324	35	-81.28245606	32.2468966
11	-81.28302934	32.24870655	36	-81.2826925	32.24906209
12	-81.28305094	32.24878021	37	-81.28305749	32.24880254
13	-81.28243215	32.24690678	38	-81.28274247	32.24889193
14	-81.28231839	32.2470056	39	-81.2829345	32.2488488
15	-81.28229559	32.24718678	40	-81.28324235	32.24853784
16	-81.28237485	32.24731529	41	-81.28319018	32.24841578
17	-81.28241394	32.24744966	42	-81.28311583	32.24826494
18	-81.28238044	32.24762666	43	-81.2830471	32.24811414
19	-81.28237524	32.24781874	44	-81.283031	32.24803767
20	-81.28237115	32.24799336	45	-81.28289275	32.2481059
21	-81.2823913	32.24805991	46	-81.28290831	32.24823963
22	-81.28252388	32.24814146	47	-81.28294604	32.24840215
23	-81.28271752	32.24805817	48	-81.28303788	32.2484863
24	-81.28292564	32.24795966	49	-81.2830368	32.24859844

Project No.: 23-343
 Figure No.: 8
 Prepared By: ██████████
 Sketch Date: 7/16/2024
 Map Scale: 1 inch = 200 feet

**Hodgeville Road
 School Site**
 Effingham County, Georgia

**Aquatic Resource
 GPS Exhibit**
 Prepared For: ████████████████████

