



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

SAS-RD-C

June 24, 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-2019-00549

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.

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 1	Non-JD	NA
Wetland 2	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. 2008 Rapanos Guidance

3. REVIEW AREA. The project review area is an approximately 9.21-acre site located adjacent to and south of Old Central Road, approximately 0.22 miles east of Seabrook Parkway, in Pooler, Chatham County, Georgia (Latitude 32.1202, Longitude -81.2713).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ The Hardin Canal is the nearest named waterbody. The Little Ogeechee River is the nearest TNW. The review area is located approximately 0.2 miles from the Hardin Canal and approximately 2.54 miles from the Little Ogeechee River; however, the aquatic resources within the review area are not connected to the Hardin Canal nor the Little Ogeechee River.

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.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2019-00549

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
 - d. Impoundments (a)(4): N/A
 - e. Tributaries (a)(5): N/A
 - f. The territorial seas (a)(6): N/A

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.

- 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
- 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).

⁸ 51 FR 41217, November 13, 1986.

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland 1	2.64	Wetland is a closed, depressional wetland that lacks a continuous surface connection (CSC) to a water of the US.
Wetland 2	0.21	Wetland is a closed, depressional wetland that lacks a continuous surface connection (CSC) to a water of the US.

During the Corps site visit on March 26, 2024, the boundaries of Wetland 1 and Wetland 2 were observed. Wetland 1 and Wetland 2 meet 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. Wetland 1 (W1) and Wetland 2 (W2) are closed, depressional wetland surrounded by uplands as seen during the site visit. No connection was observed between W1 and W2, and there were no outputs observed coming from W1 or W2. There is an unnamed road surrounding the majority of the project review area and no culverts were observed between the road and W1 or W2. LiDAR supports the determination that W1 and W2 are surrounded by uplands, and that there is no connection between W1 or W2 to any aquatic features or discrete features that would constitute a CSC outside the project. NWI mapping shows no other wetlands within the project area and does not support a connection to any wetlands outside the project area. SAS-2022-00378 AJD verified by letter dated September 2, 2022, delineates the area between the project review area and the Hardin Canal, and shows only closed borrow pits with no connection to a water of the US or any other wetlands. Based on historic and current aerial imagery, there have not been any significant changes to the site nor major work done in the project review area and surrounding area since 2022. NRCS soil mapping shows W1 and W2 consist of a different soil type than the area between the project area and the borrow pits, and also differs from the soil typed between the borrow pits and Hardin Canal. Based on the Corps site visit and desktop review of data resources described in Section 9 of this memorandum, Wetland 1 and Wetland 2 lack a continuous surface connection to a water of the US; therefore, Wetland 1 and Wetland 2 are 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: June 2024
Field Visit: March 26, 2024

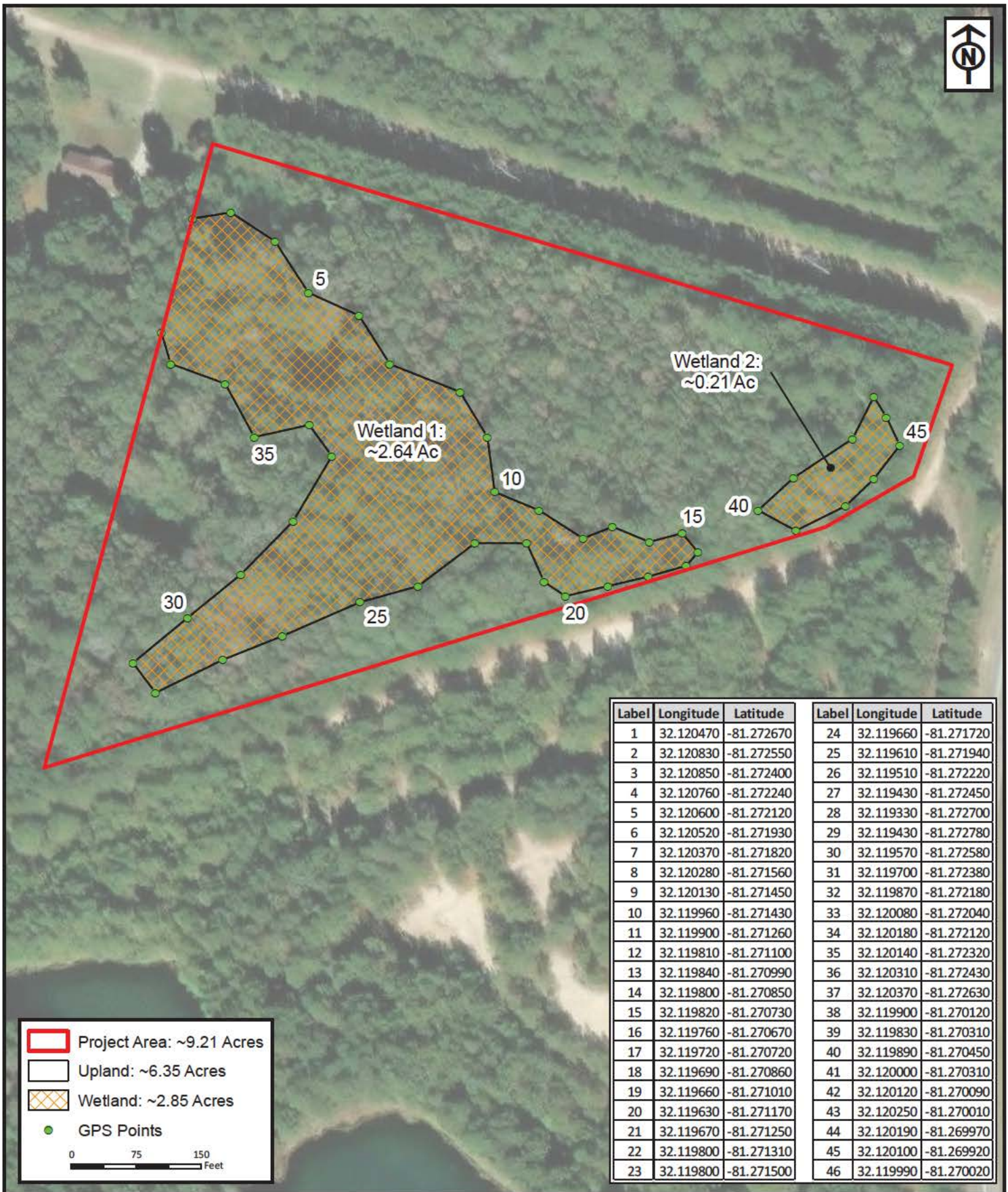
SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2019-00549

- 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, GA Quad.
- 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. FEMA/FIRM maps: Panel ID: 13051C0107H
- i. Photographs: Aerial: Google Earth 2023, 2020 and 2006 and Ortho Aerial 2023
- j. NOAA Topographic LiDAR: 2018 NOAA LiDAR
- k. 21090625 Savannah District Section 10 Waters List
- l. Antecedent Precipitation Tool Analysis: [REDACTED] agent site visit on October 2, 2023, and Corps site visit on March 26, 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.



Label	Longitude	Latitude	Label	Longitude	Latitude
1	32.120470	-81.272670	24	32.119660	-81.271720
2	32.120830	-81.272550	25	32.119610	-81.271940
3	32.120850	-81.272400	26	32.119510	-81.272220
4	32.120760	-81.272240	27	32.119430	-81.272450
5	32.120600	-81.272120	28	32.119330	-81.272700
6	32.120520	-81.271930	29	32.119430	-81.272780
7	32.120370	-81.271820	30	32.119570	-81.272580
8	32.120280	-81.271560	31	32.119700	-81.272380
9	32.120130	-81.271450	32	32.119870	-81.272180
10	32.119960	-81.271430	33	32.120080	-81.272040
11	32.119900	-81.271260	34	32.120180	-81.272120
12	32.119810	-81.271100	35	32.120140	-81.272320
13	32.119840	-81.270990	36	32.120310	-81.272430
14	32.119800	-81.270850	37	32.120370	-81.272630
15	32.119820	-81.270730	38	32.119900	-81.270120
16	32.119760	-81.270670	39	32.119830	-81.270310
17	32.119720	-81.270720	40	32.119890	-81.270450
18	32.119690	-81.270860	41	32.120000	-81.270310
19	32.119660	-81.271010	42	32.120120	-81.270090
20	32.119630	-81.271170	43	32.120250	-81.270010
21	32.119670	-81.271250	44	32.120190	-81.269970
22	32.119800	-81.271310	45	32.120100	-81.269920
23	32.119800	-81.271500	46	32.119990	-81.270020

Project Area: ~9.21 Acres

Upland: ~6.35 Acres

Wetland: ~2.85 Acres

GPS Points

075150

Feet

Project No.:	19-149.1
Figure No.:	8
Prepared By:	
Sketch Date:	10/2/2023
Map Scale :	1 inch = 150 feet

Parcel # 5-0004A-02-044
Old Central Road
Chatham County, Georgia

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