



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

SAS-OD-RC

20 August 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-2016-00563

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 the state of Georgia due to litigation.

---

<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.

## 1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

The review area was previously developed for low-income housing sometime between 1985 and 1994 which was later demolished in 2010 and maintained as an open grassy field between 2011 and 2024. The site conditions of the review area have primarily remained unchanged since 2011, with minor use for temporary staging of equipment and building materials to support off-site construction activities. A delineation was conducted in 2016 (SAS-2016-00563) which identified no aquatic resources within the 8.7-acre review area. There has been no significant alteration to the review area since the 2016 delineation.

Based on a review of desktop data resources listed in Section 9 of this memorandum, prior 2016 delineation of the site and unchanged site conditions, and current data sheets provided by the agent, there are no aquatic resources on the identified project site that exhibit an Ordinary High-Water Mark or the three (3) wetland parameters listed in the 1987 Corps of Engineers Wetland Delineation Manual or any of the applicable regional supplements. The project site consists of only dry land.

## 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. 007 Rapanos Approved Jurisdictional Determination Form Instructional Guidebook
- f. 20190625 Section 10 Waters List – Savannah District

3. REVIEW AREA. The review area is an approximate 8.7-acre site located between Wheaton Street to the south and East Perry Lane to the north and is approximately 0.25-mile east of Randolph Street, within Savannah, Georgia in Chatham County (Latitude: 32.07099, Longitude: -81.08069).

The current 8.7-acre review area was previously evaluated under a Preliminary Jurisdictional Determination (PJD) in 2016 as part of a larger 30.68-acre project review that included 0.36-acre of jurisdictional ditch and 30.32-acre of uplands. No aquatic resources were observed within the current 8.7-acre review area during the 2016 PJD. The 0.36-acre of ditches identified in the 2016 PJD were located north of East Perry Lane, outside of the current 8.7-acre review area. All waters (ditches) were assumed jurisdictional under the PJD and project activities to develop the project site north of East Perry Lane were authorized under a Nationwide Permit 39.

The 8.7-acre review area has been owned and managed by the Housing Authority of Savannah and was previously developed and used for low-income apartment housing. Based on historic aerials, the low-income housing was constructed between 1985 and 1994 and comprised of the entire 8.7-acre project review area. Demolition of the low-income housing began in 2010 with the entire site cleared of all building structures, driveways, walkways, and parking areas and revegetated (i.e., grass cover) by 2011. Between 2011 and 2017 the site was maintained (mowed) and otherwise unused and undeveloped. In late 2017 – early 2018, approximately 2.4-acres in the northwest corner of the site was utilized as a staging area for new housing development being constructed on the north side of East Perry Lane. By 2019 the staging area in the northwest corner was cleared and revegetated. From 2019 to 2022 maintenance (mowing) of the site continued and the site remained otherwise unused and undeveloped. Based on aerial reviews, approximately 1-acre in the northwest corner of the site was cleared in 2023 and is currently being used for staging of storage containers and construction supplies.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.
  - A. Name of nearest downstream TNW, Territorial Sea or interstate water:  
Savannah River
  - B. Determination based on: Review of the Savannah District Section 10 Waters List. The review area is located approximately 0.47-mile south of the Savannah River, however there are no aquatic resources in the review area. The project site is comprised of upland areas only and does not present any aquatic resource connection to a nearby TNW, interstate water, or territorial sea.

SAS-OD-RC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2016-00563

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

N/A

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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 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

---

<sup>5</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>6</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 the water is a navigable water of the United States subject to Section 10 of the RHA.

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”).<sup>7</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 consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are

---

<sup>7</sup> 51 FR 41217, November 13, 1986.

SAS-OD-RC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2016-00563

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.

Date of Office Determination (desktop review): July 3, 2024

- a. Maps, plans, plots or plat submitted by, or on behalf of, the applicant: Approved Jurisdictional Determination Request and exhibits submitted by Sligh Environmental Consultants, Inc., June 7, 2024.
- b. Data sheets submitted by, or on behalf of, the applicant: Approved Jurisdictional Determination Request and exhibits submitted by Sligh Environmental Consultants, Inc., June 7, 2024.
- c. Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: PJD and NWP 39 authorization SAS-2016-0056, August 24, 2016.
- d. Aerial Imagery: Google Earth Imagery and historic imagery from 1985 to 2004.
- e. USGS topographic maps: Savannah, Georgia 2020, Scale 1:24000
- f. USGS Hydrologic Atlas: HUC 03060204
- g. USDA NRCS Soil Survey: Custom Soil Resource Report for Bryan and Chatham Counties, Georgia – SAS-2016-00563 ECLC, July 2, 2024
- h. USFWS NWI map(s): Chatham County, Georgia July 2, 2024
- i. NOAA Topographic LiDAR: 2018 NOAA LiDAR July 3, 2024
- j. FEMA/FIRM map(s): Panel ID #13051C0154G
- k. Site Photographs:

10. OTHER SUPPORTING INFORMATION. LiDAR mapping and other resources support the determination of the project review area being comprised entirely of dry land. LiDAR shows the elevation sloping from the northwest to the east and southeast (from 11ft to 3ft above mean sea level [amsl]). The lowest elevation of 3ft amsl is shown on LiDAR along the eastern project boundary. Data sheets and GPS data provided by the agent record no wetland indicators within the review area; however, data provided by the agent does record wetland indicators immediately to

SAS-OD-RC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2016-00563

the east of the review area outside of the project limits. Aerial imagery and Google Street Views show no signs of inundation or saturation visible within the review area. SAS-2016-00563 Preliminary Jurisdictional Delineation and Nationwide Permit 39 Authorization dated August 24, 2016, also shows the review area comprising entirely of upland dry soils. Based on a review of desktop data resources listed in Section 9 of this memorandum, prior site delineation and determination findings, and data sheets and supplemental information provided by the agent, it was determined the project site consists of only dry land.

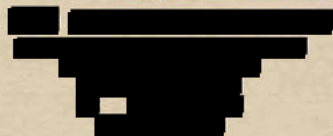
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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





Approximate Project Limits

Prepared By:



Location Map

Chatham County, Georgia

2,000

Feet

Exhibit Date: May 14, 2024

Drawn By: BWW

Reviewed By: DJP



Job Number: 01-24-049



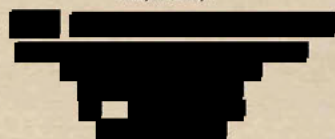


The approximate wetland boundaries depicted on this exhibit have been delineated and GPS located by SECI and are subject to change following U.S. Army Corps of Engineers (USACE) verification. This exhibit should be used for preliminary planning purposes only. It is [redacted] opinion that the site is all upland.

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

 Approximate Project Limits  Approximate Wetland

Prepared By:



Wetland Delineation Sketch  
Chatham County, Georgia

150

Feet

Exhibit Date: May 14, 2024

Drawn By: BWW

Reviewed By: DJP

Job Number: 01-24-049