



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
4751 BEST ROAD, SUITE 140  
COLLEGE PARK, GEORGIA 30337

SAS-2024-00368

August 7, 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), SAS-2024-00368

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>1</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>2</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>3</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 Georgia due to litigation.

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<sup>1</sup> 33 CFR 331.2.

<sup>2</sup> Regulatory Guidance Letter 05-02.

<sup>3</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
Stormwater Ditch	Non-JD	N/A

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)

3. REVIEW AREA:

- a. 10.39-acres
- b. Latitude: 32.637309, Longitude: -83.629948
- c. Warner Robins
- d. Houston County
- e. Georgia
- f. The oldest historical aerial imagery available of the review area was dated 1955. The aerial imagery indicates that the review area and surrounding areas were of agricultural land use. Historic aerials indicate that the review area became forested between 1993 and 2007.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED:

- a. N/A. There are no aquatic resources on the site.
- b. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and a review of the SAS Section 10 list (for a water body that is navigable-in-fact under federal

law for any purpose (such as Section 10, RHA)), that water body categorically qualifies as a Section 404 "traditional navigable water" subject to CWA jurisdiction under 33 CFR 328.3(a)(1)), and documented occurrences of boating traffic on the identified water.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>4</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. 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

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<sup>4</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.

- 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>5</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.

Name of excluded feature	Size	Type of resource generally not jurisdictional
Stormwater Ditch	530.75 linear feet	Non-tidal drainage and irrigation ditches excavated on dry land.

Historic aerial imagery indicates the review area was in agricultural use in 1955. The historic aerial imagery indicates that the distinct footprint of a dirt road in the area of the drainage ditch existed since 1973. Starting in 1981, a vegetated line appears adjacent to the dirt road. The topographic maps do not indicate an erosional feature or channel in this area. NWI and NHD do not depict tributaries or other waters associated with the ditch.

Based on the information available, the Stormwater Ditch is a non-tidal drainage ditch that was excavated on dry land and serves to convey stormwater in the area to a stormwater outlet located outside of the review area to the north.

- 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

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<sup>5</sup> 51 FR 41217, November 13, 1986.

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- 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.
- a. Office (desktop) determination: July-August 2024 (CESAS-RDP)
- b. Field determination(s): June 2023 and July 2024 (Agent) and August 6, 2024 (CESAS-RD-P)
- c. Data sources used to support this determination (included in the administrative record).
- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Figure 2: *Aquatic Resources Assessment Map*, dated March 8, 2024.
  - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
  - ☒ Wetland field data sheets: Data Points 1,2,3, and 4, dated 02/15/2024 and 07/24/2024.
  - ☐ OHWM data sheets prepared by the USACE: Title and Date
  - ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
  - ☒ Photographs: Site Photographs provided in the Applicant’s Request; and supplemental photos and associated email correspondence, dated 02/15/2024, 07/24/2024 and Site Photographs taken by CESAS-RD-P on 08/06/2024.
  - ☒ Aerial Imagery: Google Earth historic aerial imagery (1985 – 2024), accessed by CESAS-RDP.

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- ☒ LIDAR: LIDAR imagery (3DEP Slope, 3DEP DEM, and 3DEP Hillshade), accessed from the National Regulatory Viewer by CESAS-RDP July – August 2024.
- ☒ USDA NRCS Soil Survey: Exhibit 4a: *Soil Survey Map* and Exhibit 4b: *Hydric Soils Map*, dated 06/2023, included on PDF pages 22 and 25, respectively, of the Applicant's request; and USDA hydric soil rating data, accessed by CESAS-RDP in 07/2024.
- ☒ USFWS NWI maps: NWI data, provided in applicant's submittal.
- ☒ USGS topographic maps: Historic topographic maps, accessed by CESAS-RDP in 08/2024.
- ☒ USGS NHD data/maps: NHD data, accessed from the National Regulatory Viewer by CESAS-RDP in 07/2024.
- ☐ Section 10 resources used: Title and Dates
- ☐ NCDWR stream identification forms
- ☒ Antecedent Precipitation Tool Analysis: List Date(s) 02/15/2024 (Normal Conditions); 07/24/2024 (Normal Conditions); and 08/06/2024 (Wetter than Normal).
- ☒ Other sources of Information: National *Flood Hazard Layer FIRMette* included in the Applicant's request.

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.





Produced By:



**FIGURE 2: AQUATIC RESOURCE  
ASSESSMENT MAP**

Northside Drive Tract  
Houston County, Georgia  
For  
My Home Communities  
CE24MHC:01  
March 8, 2024

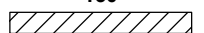
**LEGEND**

 Property Boundary

N



150



Feet