



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

SAS-RD-C

20 September 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-2009-00846 (MFR 1 of 1)<sup>2</sup>

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>3</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>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</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

---

<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> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

SAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2009-00846

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. 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 C	Non-JD	N/A
Wetland D	Non-JD	N/A
Wetland G	Non-JD	N/A
Wetland H	Non-JD	N/A
Pond A	Non-JD	N/A
Pond B	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. Project Are Size (in acres): 10.99
- B. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 31.84064 Longitude: -81.53750
- C. Nearest City or Town: Hinesville
- D. County: Liberty
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (see table on next page):

SAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2009-00846

Regulatory File No.	Type	Outcome
SAS-2009-00846	PJD	By letter dated August 18, 2009, a Preliminary Jurisdictional Determination was issued for this project area. The wetland delineation aligned closely with the current delineation. All waters were presumed jurisdictional under the PJD.

G. Any additional, relevant site-specific information: By letter dated April 15, 2019, a Delineation Review of Aquatic Resources was issued for the entire property. The wetland delineation aligned closely with the current delineation. Jurisdiction was not assessed under this DRAR. This AJD does not evaluate the entire property. Instead, this AJD is only reviewing the red polygon in Figure 1 of the Supplemental Material.

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

N/A. All aquatic features within the AJD review area are non-jurisdictional.

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

N/A. All aquatic features within the AJD review area are non-jurisdictional.

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 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

---

<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.

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): 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>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

---

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

SAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2009-00846

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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland C	0.01	This is a depressional wetland that lacks a continuous surface connection to waters of the US. During a site visit on April 25, 2024, we walked the perimeter of this wetland. There was a clear change in vegetation and soils along the perimeter of the wetland. The wetland delineation provided by the agent reflected onsite characteristics and there were no signs of surface or subsurface connections to nearby wetlands.
Wetland D	0.01	This is a depressional wetland that lacks a continuous surface connection to waters of the US. During a site visit on April 25, 2024, we walked the perimeter of this wetland. There was a clear change in vegetation and soils along the perimeter of the wetland. The wetland delineation provided by the agent reflected onsite characteristics and there were no signs of surface or subsurface connections to nearby wetlands.
Wetland G	0.01	This is a depressional wetland that lacks a continuous surface connection to waters of the US. During a site visit on April 25, 2024, we walked the perimeter of this wetland. There was a clear change in vegetation and soils along the perimeter of the wetland. The wetland delineation provided by the agent reflected onsite characteristics and there were no signs of a surface connection to nearby wetlands. This wetland had standing water, while the nearest wetlands did not. This indicated that there were no subsurface connections to nearby wetlands.
Wetland H	0.41	This is a depressional wetland that continues to the north outside of the project area. During a site visit on April 25, 2024, we walked the perimeter of this wetland within the project area. There was a clear change in vegetation and soils along the perimeter of the wetland. The wetland delineation provided by the agent reflected onsite characteristics and there were no signs of a surface or subsurface connection to waters of the

SAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2009-00846

		US. A review of NOAA LIDAR showed that the wetland continued to the north out of the project area but was surrounded by uplands on all sides and lacked continuous surface connections to a water of the US.
Pond A	0.19	This is a manmade pond that first appears in 1976 topo maps (according to HistoricAerials.com). It is unclear if this pond was historically dug in wetlands or uplands so it could not be classified as a preamble water. During a site visit on April 25, 2024, we walked the perimeter of this pond. This pond was surrounded by uplands and lacked a continuous surface connection to waters of the US.
Pond B	1.28	This is a manmade pond that first appears in 1976 topo maps (according to HistoricAerials.com). It is unclear if this pond was historically dug in wetlands or uplands so it could not be classified as a preamble water. During a site visit on April 25, 2024, we walked the perimeter of this pond. This pond was surrounded by uplands and lacked a continuous surface connection to waters of the US.

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. Date(s) of Field Review: April 25, 2024

b. Data sources used to support this determination (included in the administrative record).

- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Titled "Liberty Creek Storage" and dated August 26, 2024.
- ☒ Previous PJD addressing the same review area: SAS-2009-00846 and dated August 18, 2009.
- ☒ Aerial Imagery: Sources: Google Earth and HistoricAerials.com
- ☒ LIDAR: Source: NOAA, titled "NOAA LIDAR", and dated September 11, 2024
- ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated September 11, 2024
- ☒ USFWS NWI maps: Titled "NWI" and dated September 11, 2024
- ☒ USGS NHD data/maps: Titled "NHD" and dated September 11, 2024
- ☒ Antecedent Precipitation Tool Analysis: Dated January 24, 2024, and April 25, 2024

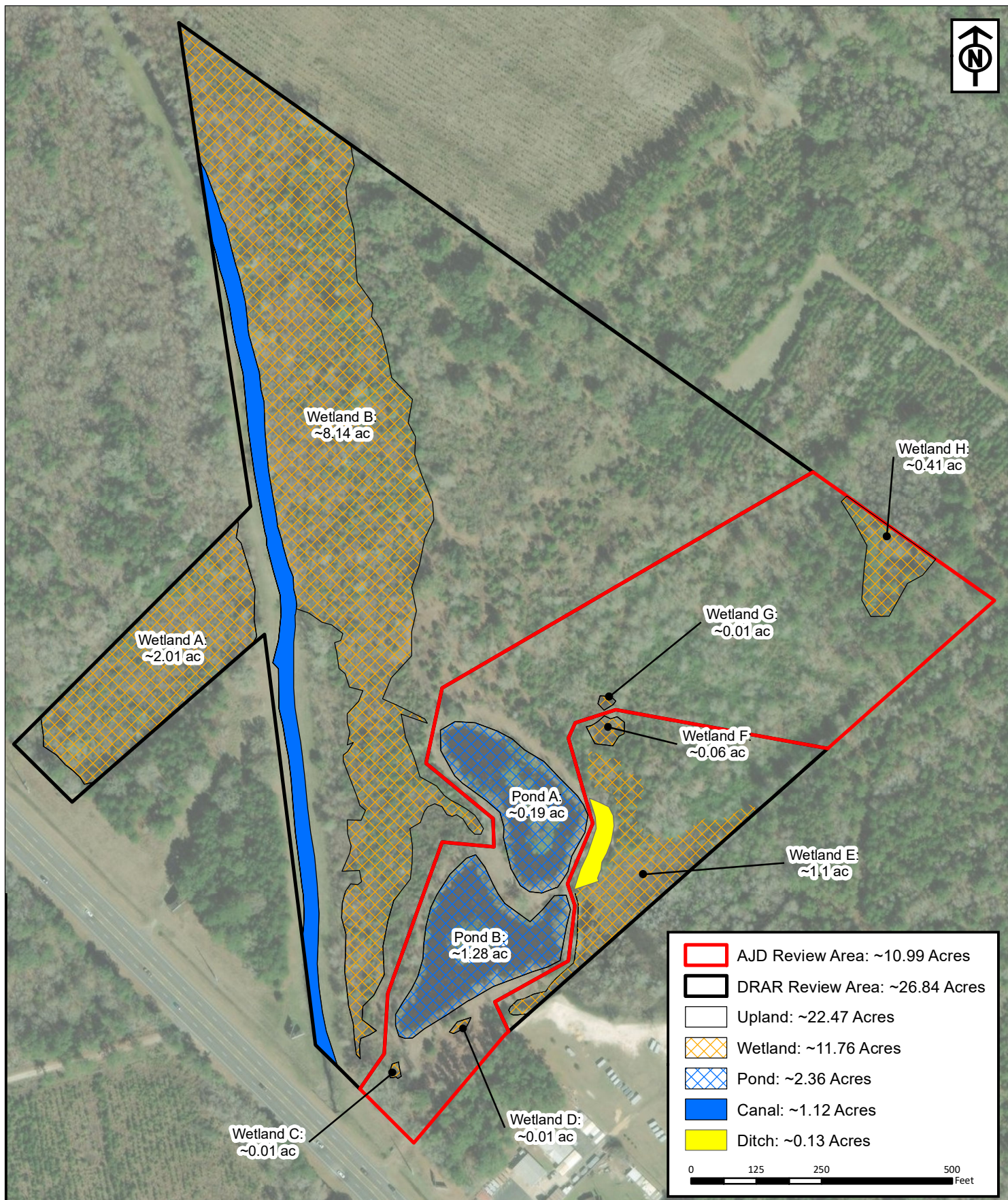
10. OTHER SUPPORTING INFORMATION. N/A

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

SAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2009-00846

additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



RLC Project No.: 17-272.2  
 Figure No.: 1  
 Prepared By: ZM  
 Sketch Date: 8/26/2024  
 Map Scale: 1 inch = 250 feet

## Liberty Creek Storage

Liberty County, Georgia

## Aquatic Resource Delineation Exhibit

Prepared For: 4AM Development LLC

**RLC**

**RESOURCE+LAND  
CONSULTANTS**

41 Park of Commerce Way, Ste. 101  
 Savannah, Georgia 31405  
 912.443.5596 www.rlc.com