



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

SAS-RD-C

17 October 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-2021-00660 (MFR 1 of 1)²

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

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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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 4	Non-JD	N/A
Wetland 5	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 Area Size (in acres): 33.17
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 32.106178 Longitude: -81.337107
- C. Nearest City or Town: Bloomingdale
- D. County: Chatham
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
SAS-2021-00660	AJD	By letter dated May 27, 2022, the Corps issued an AJD letter for this project area. The wetland boundaries within that letter are the same as those in this MFR. In the 2022 letter, jurisdictional status of these wetlands was jurisdictional under the Rapanos regulatory regime. The wetlands were ruled jurisdictional based on a significant nexus.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A, all aquatic features on site are non-jurisdictional.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A, all aquatic features on site are non-jurisdictional.
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

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.

- 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 4	11.01	This wetland lacks a continuous surface connection to water of the US. This wetland is surrounded by uplands on all sides. There is a canal located along the property boundary to the north of this wetland. The canal was constructed between 2014 and 2015. There is a strip of uplands between this wetland and the project boundary ranging from 30ft to 40ft in width. During a site visit on August 2, 2024, the Corps walked this upland strip. It was noted that the vegetation and soils were noticeably different between the wetland and this upland strip. Additionally, there was no evidence of a discrete surface connection between the wetland and canal. Regarding the southern end of this wetland, the wetland boundary stops at the project boundary. There is a roadside ditch approximately 30 ft south of the project boundary. There was upland vegetation between the wetland and the ditch. There was no evidence of a continuous surface connection between the wetland and the ditch. Additionally, there was a small berm along the project boundary.
Wetland 5	1.61	This wetland lacks a continuous surface connection to water of the US. This wetland is surrounded by uplands on all sides. There is a canal located along the property boundary to the north of this wetland. There is a strip of uplands that contains a gravel road between this wetland and the project boundary ranging from 40ft to 50ft in width. There were no culverts or continuous surface connections between this wetland and the canal. Regarding the southern end of this wetland, the wetland boundary stops approximately 40ft north of the project boundary. There is a roadside ditch approximately 30 ft south of the project boundary (and 70ft away from the wetland boundary). There was upland vegetation and soils between the wetland and the ditch. There was no evidence of a continuous surface connection between the wetland and the ditch. Additionally, there was a small berm along the project boundary.

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. 1. Date of Field Review: August 2, 2024

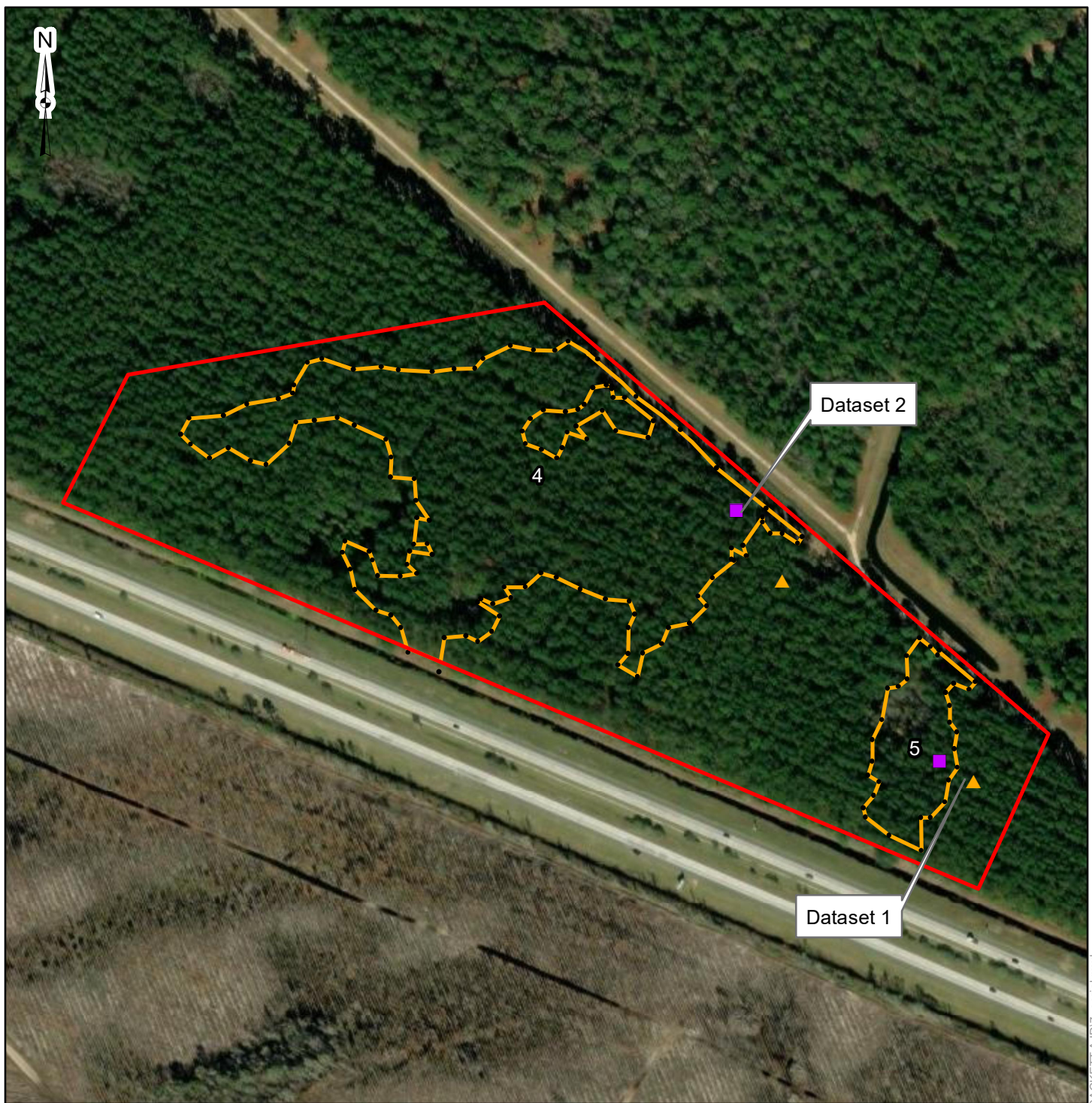
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- b. Data sources used to support this determination (included in the administrative record).
- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Titled: "Horse Pen East 65 acres – 2024 AJD" and dated March 2024.
 - ☒ Previous JDs (AJD) addressing the same review area: SAS-2021-00660 and dated May 27, 2022
 - ☒ Aerial Imagery: Source: Google Earth and dated September 19, 2024
 - ☒ LIDAR: Source: NOAA and dated September 19, 2024
 - ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated September 19, 2024
 - ☒ USFWS NWI maps: Titled "NWI" and dated September 19, 2024
 - ☒ USGS NHD data/maps: Titled "NHD" and dated September 19, 2024
 - ☒ Antecedent Precipitation Tool Analysis: Dated February 26, 2024, and August 2, 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.



- Review Boundary (+/- 33.17 acres)
- Isolated Freshwater Wetlands (+/- 12.61 acres)
 - Sub-Meter GPS Data
- ▲ Upland Data Form Locations
- Wetland Data Form Locations

0 200 400 800 Feet

DATA SOURCES:
ESRI World Imagery Basemap

Project No.:
ES217143
Date:
Mar 2024
Drawn By:
AJV
Reviewed By:
KHD

Terracon
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Aerial Imagery with Sub-Meter GPS Data

Horse Pen East 65 acres - 2024 AJD

Chatham County, Georgia

Exhibit

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