



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

SAS-2022-00392

January 10, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 1 of 3)

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

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 4)

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 E	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. 651 (2023)

3. REVIEW AREA. ("Center Review Area")

- A. ~2.5 acres
- B. Latitude: 33.6422, Longitude: -83.8232
- C. Northeast of Covington
- D. Newton County
- E. Georgia
- G. Historic aerial imagery (since 1955) indicates that the property containing the subject review area has only been used for agriculture. Ongoing agricultural operations have resulted in alterations of the review area. The area previously containing a historic ditch appears to have been graded and flattened out (circa 2019).

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

- A. The Oconee River, located approximately 73,500 linear feet (22.5 linear kilometers) south of the subject review area, is the nearest TNW.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 4)

- 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. The subject water (Wetland E), does not have a flowpath to a TNW, interstate water, or the territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS⁴: 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

⁴ 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.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 4)

- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. 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”).⁵ 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

⁵ 51 FR 41217, November 13, 1986.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 4)

- 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	Type of resource generally not jurisdictional
Wetland E	0.339-acre	Wetland lacks a continuous surface connection to water of the US

Wetland E: The subject water is located in the center review area. A culverted field road is located east, downgradient of the wetland. Based on historic aerial imagery (since 1955), the footprint of Wetland E is distinct in comparison to the areas surrounding it. On the historic aerial images, a channel/ditch is located between it and the downgradient culvert; however, the feature is not easily identifiable during certain years. On aerial imagery from 2019, it appears that substantial disturbances occurred within the review area, including potential grading that flattened out the historic ditch. During the site visit conducted by CESAS-RDP and the Agent on September 11, 2024 (during normal conditions), uplands were observed in between the wetland and the culverted crossing. Further, the uplands were densely covered in vegetation (grasses) and no ditch or other discrete feature leading to downstream waters was observable. The historic channel/ditch does not appear to have been maintained in a sufficient manner for it to currently serve as a continuous surface connection (CSC). Therefore, Wetland E does not meet the definition of an (a)(7) water.

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: September-December 2024
 - b. Field determination(s): June 5, 2024 (Agent); September 11, 2024 (CESAS-RDP and Agent)
 - 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 6: *Delineated Aquatic Resources Map*, as prepared by the Agent and dated 9/2024.
 - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
 - ☒ Wetland field data sheets

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 4)

- ☐ 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 (Photos 1-26), prepared by the Agent, and dated 6/25/2024; Site visit photolog, prepared by CESAS-RDP, photos taken on 9/11/2024, photolog generated on 10/2/2024 .
- ☒ Aerial Imagery: Figure 2: *Aerial Map*, as prepared by the Agent and dated 7/2024.
- ☒ LIDAR: LIDAR (3DEP DEM and 3DEP Hillshade) and 2-foot contour imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP from 9-12/2024.
- ☒ USDA NRCS Soil Survey: Figure 5: *NRCS Soils Map*, prepared by Agent, and dated 7/2024; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 12/2024.
- ☒ USFWS NWI maps: Figure 4: *Desktop Aquatic Resources Map*, prepared by Agent, and dated 7/2024.
- ☒ USGS topographic maps: Figure 3: USGS Topographic Map, prepared by Agent, and dated 7/2024.
- ☒ USGS NHD data/maps: Figure 4: Desktop Aquatic Resources Map, prepared by Agent, and dated 7/2024.
- ☐ Section 10 resources used: Title and Dates
- ☐ NC DWQ stream identification forms
- ☒ Antecedent Precipitation Tool Analysis (List Date(s)): APT Data from 6/5/2024 and 9/11/2024 (Normal Conditions).
- ☒ Other sources of Information: FEMA Flood Zone data retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP in 12/24; and StreamStats data retrieved by CESAS-RDP in 12/24.

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.



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

SAS-2022-00392

January 10, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 2 of 3)

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

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 3 of 4)

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
Stream 4	Non-JD	N/A
Stream 5	JD	Section 404

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. 651 (2023)

3. REVIEW AREA. ("East Review Area")

- A. ~18.5 acres
- B. Latitude: 33.6415, Longitude: -83.8182
- C. Northeast of Covington
- D. Newton County
- E. Georgia
- G. Historic aerial imagery (since 1955) indicates that the property containing the subject the review area has only been used for agriculture. The aerials indicate that the review area has remained primarily undisturbed, with the exception of the establishment of a field road (in between 2019 and 2021).

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

- A. The Oconee River, located approximately 73,500 linear feet (22.5 linear kilometers) south of the subject review area, is the nearest TNW.

- 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

Stream 4 flows northeastward out of the site and flows for approximately 80 feet until it combines with an offsite reach of Stream 3. From this confluence, the new 2nd order unnamed tributary of Cornish Creek flows northeastward for approximately 600 feet and combines with another unnamed 2nd order tributary. From this confluence the new 3rd order unnamed tributary of Cornish Creek flows generally eastward for approximately 6,500 feet and enters Cornish Creek.

Stream 5 flows southeastward for approximately 700 feet offsite until it combines with another unnamed 1st order tributary of Cornish Creek. From the point of confluence, the new unnamed 2nd order tributary flows northeastward for approximately 1,200 feet and enters the unnamed 3rd order tributary of Cornish Creek. The unnamed 3rd order tributary flows generally eastward for approximately 4,500 feet and enters Cornish Creek.

From the point of confluence between the unnamed 3rd order tributary and Cornish Creek, Cornish Creek flows southward for approximately 3.5 kilometers (11,500 feet) and enters the Alcovy River. The Alcovy River flows southward for approximately 32 kilometers (105,000 feet) and enters the Oconee River, the closest TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁴: 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

⁴ 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.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 3 of 4)

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):

Name of Aquatic Resource	Size (in linear feet)	Flow Regime and additional description of the tributary	Method for determining flow regime
Stream 5	610	Intermittent (based on relevant reach); See additional description below.	observed flow during site visit during normal precipitation conditions; NC DWQ stream identification form

Stream 5: The subject water is located in the eastern review area. During the Agent's original delineation, conducted on June 5, 2024, the scoring system of the NC DWQ Stream Identification Form Version 4.11 was used to assist in determining the tributary's flow regimes. A 230-foot reach received a score of 13, concluding an ephemeral flow regime. However, an additional 380 linear feet of stream channel was observed to have relatively permanent flows (intermittent and perennial). During the subsequent site visit, conducted by CESAS-RDP and the Agent on September 11, 2024, the tributary was observed to consist of approximately 429 linear feet of ephemeral stream channel and 181 linear feet intermittent stream channel. Additionally, NHD, StreamStats, and LiDAR indicate that Stream 5's relevant reach includes approximately 700 linear feet of potentially intermittent offsite stream channel, before its confluence with another onsite first order stream. Based on that information, the relevant reach of Stream 5 is

predominantly (67%) intermittent (relatively permanent). Therefore, Stream 5 meets the definition of an (a)(5) water.

- f. 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”).⁵ 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

⁵ 51 FR 41217, November 13, 1986.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 3 of 4)

- 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 linear feet)	Type of resource generally not jurisdictional
Stream 4	117	Tributary that is a non-relatively permanent water.

Stream 4: The subject water is located in the eastern review area. During the Agent's original delineation, conducted on June 5, 2024, the scoring system of the NC DWQ Stream Identification Form Version 4.11 was used to determine the tributary's flow regime. The 117-foot onsite reach received a score of 9.5, concluding an ephemeral flow regime. NHD and LiDAR indicate that Stream 4's relevant reach also includes approximately 80 linear feet of intermittent offsite stream channel, before its confluence with Stream 3, a relatively permanent tributary located outside of the review area. Based on that information, the relevant reach of Stream 4 is predominantly (59%) ephemeral (not relatively permanent). Therefore, Stream 4 does not meet the definition of an (a)(5) water.

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: September-December 2024
 - b. Field determination(s): June 5, 2024 (Agent); September 11, 2024 (CESAS-RDP and Agent)
 - 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 6: *Delineated Aquatic Resources Map*, as prepared by the Agent and dated 9/2024.
 - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
 - ☒ Wetland field data sheets
 - ☐ 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

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 3 of 4)

- ☒ Photographs: Site photographs (Photos 1-26), prepared by the Agent, and dated 6/25/2024; Site visit photolog, prepared by CESAS-RDP, photos taken on 9/11/2024, photolog generated on 10/2/2024 .
- ☒ Aerial Imagery: Figure 2: *Aerial Map*, as prepared by the Agent and dated 7/2024.
- ☒ LIDAR: LIDAR (3DEP DEM and 3DEP Hillshade) and 2-foot contour imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP from 9-12/2024.
- ☒ USDA NRCS Soil Survey: Figure 5: *NRCS Soils Map*, prepared by Agent, and dated 7/2024; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 12/2024.
- ☒ USFWS NWI maps: Figure 4: *Desktop Aquatic Resources Map*, prepared by Agent, and dated 7/2024.
- ☒ USGS topographic maps: Figure 3: USGS Topographic Map, prepared by Agent, and dated 7/2024.
- ☒ USGS NHD data/maps: Figure 4: Desktop Aquatic Resources Map, prepared by Agent, and dated 7/2024.
- ☐ Section 10 resources used: Title and Dates
- ☒ NC DWQ stream identification forms
- ☒ Antecedent Precipitation Tool Analysis (List Date(s)): APT Data from 6/5/2024 and 9/11/2024 (Normal Conditions).
- ☒ Other sources of Information: FEMA Flood Zone data retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP in 12/24; and StreamStats data retrieved by CESAS-RDP in 12/24.

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.



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

SAS-2022-00392

January 10, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 3 of 3)

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

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 4 of 4)

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 F	Non-JD	N/A
Wetland G	Non-JD	N/A
Wetland H	Non-JD	N/A
Wetland I	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. 651 (2023)

3. REVIEW AREA. ("Southeast Review Area")

- A. ~15 acres
- B. Latitude: 33.6369, Longitude: -83.8190
- C. Northeast of Covington
- D. Newton County
- E. Georgia
- G. Historic aerial imagery (since 1955) indicates that the property containing the subject review area has only been used for agriculture. Granite outcrops are prevalent in the property and influence overland flow patterns. The area downgradient of Wetland I has been significantly altered within the last 10 years and includes the placement of numerous rock check dams. The area appears to have been graded and flattened out to allow for sheet flow conditions. The areas surrounding Wetlands F, G, and H have also been disturbed from equipment used to support ongoing agricultural activity.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 4 of 4)

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

- A. The Oconee River, located approximately 73,500 linear feet (22.5 linear kilometers) south of the subject review area, is the nearest TNW.
- 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. The subject waters (Wetlands F, G, H, and I) do not have flowpaths to a TNW, interstate water, or the territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS⁴: 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

⁴ 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.

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. 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”).⁵ 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

⁵ 51 FR 41217, November 13, 1986.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 4 of 4)

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	Type of resource generally not jurisdictional
Wetland F	0.182-acre	Wetland lacks a continuous surface connection to water of the US
Wetland G	0.947-acre	Wetland lacks a continuous surface connection to water of the US
Wetland H	0.049-acre	Wetland lacks a continuous surface connection to water of the US
Wetland I	0.024-acre	Wetland lacks a continuous surface connection to water of the US

Wetland F: The subject water is located on the eastern side of the southeast review area. It is located upgradient of Wetland G, separated by uplands that are densely covered in grasses. Wetland F was not observed to have a continuous surface connection (CSC) to a water of the United States (WOTUS). Therefore, Wetland I does not meet the definition of an (a)(7) water.

Wetland G: The subject water is located on the eastern side of the southeast review area. The wetland is understood to be underlain by a granite outcrop and a high confining layer which does not allow for infiltration of hydrology. It is located downgradient of Wetland F and upgradient of Wetland H. It is separated from Wetland F by uplands that are densely covered in grasses. Granite outcropping is present in between Wetland G and Wetland H. The granite outcropping allowed for an observable drainage path towards Wetland H; however, downgradient of Wetland H, the path often lost form and became difficult to discern due to dense vegetation (grasses). A path/field road was also observed downgradient of Wetland H. The path/field road was not culverted. Downgradient of the path/field road, a drainage path was no longer discernible. Wetland G was not observed to have a CSC to a WOTUS. Therefore, Wetland G does not meet the definition of an (a)(7) water.

CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 4 of 4)

Wetland H: The subject water is located on the eastern side of the southeast review area. The wetland is understood to be underlain by a granite outcrop and a high confining layer which does not allow for infiltration of hydrology. It is located downgradient of Wetland H. Granite outcropping is present in between Wetland G and Wetland H, and continues downgradient of Wetland H. However, the path formed in part from the granite outcropping often lost form and became difficult to discern due to dense vegetation (grasses). A path/field road was also observed downgradient of Wetland H. The path/field road was not culverted. Downgradient of the path/field road, a drainage path was no longer discernible. Wetland G was not observed to have a CSC to a WOTUS. Therefore, Wetland G does not meet the definition of an (a)(7) water.

Wetland I: The subject water is located on the western side of the southeast review area. During the site visit conducted by the Corps and Agent on September 11, 2024, it was observed to be inundated under normal climatic conditions. The wetland is understood to be underlain by a granite outcrop and a high confining layer which does not allow for infiltration of hydrology. While surface drainage enters Wetland I from the surrounding landscape, there was no evidence of a discrete continuous surface connection from Wetland K to a downstream WOTUS. Historic aerial imagery indicates that a discrete drainage feature did exist downgradient of the wetland. However, the area downgradient of Wetland I has been significantly altered within the last 10 years and includes the placement of numerous rock check dams. The area appears to have been graded and flattened out to allow for sheet flow conditions. During the site visit, the footprint of the historic drainage feature was densely vegetated with grasses and barely discernible from surrounding area. Wetland I was not observed to currently have a CSC to a WOTUS. Therefore, Wetland I does not meet the definition of an (a)(7) water.

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: September-December 2024
- b. Field determination(s): June 5, 2024 (Agent); September 11, 2024 (CESAS-RDP and Agent)
- 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 6: *Delineated Aquatic Resources Map*, as prepared by the Agent and dated 9/2024.
 - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
 - ☒ Wetland field data sheets

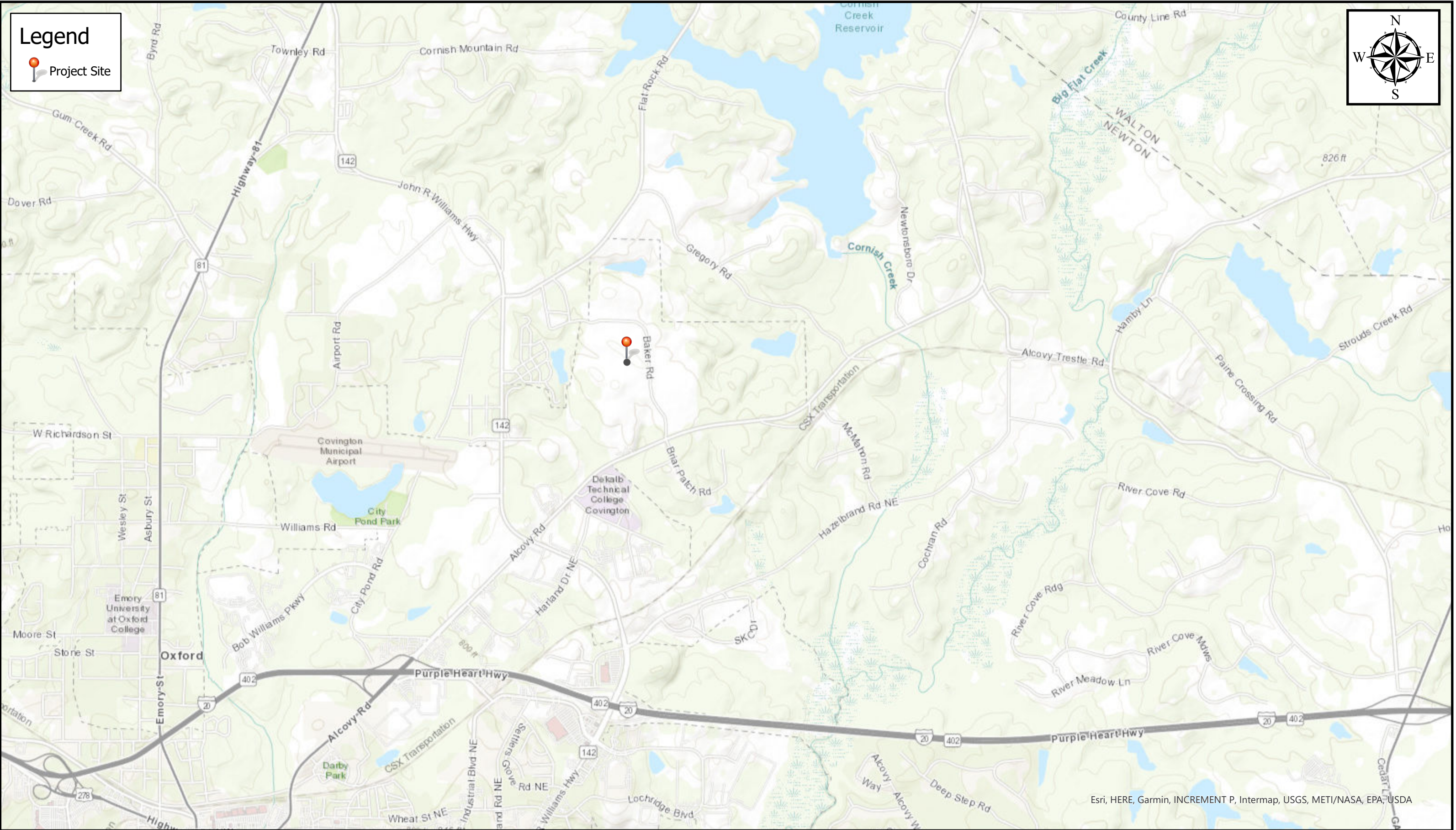
CESAS-RDP

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of Sackett v. EPA, 598 U.S. 651 (2023),
SAS-2022-00392 (MFR 4 of 4)

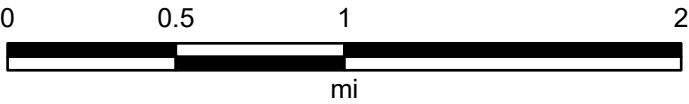
- ☐ OHWM data sheets prepared by the USACE: Title and Date
- ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
- ☒ Photographs: Site photographs (Photos 1-26), prepared by the Agent, and dated 6/25/2024; Site visit photolog, prepared by CESAS-RDP, photos taken on 9/11/2024, photolog generated on 10/2/2024 .
- ☒ Aerial Imagery: Figure 2: *Aerial Map*, as prepared by the Agent and dated 7/2024.
- ☒ LIDAR: LIDAR (3DEP DEM and 3DEP Hillshade) and 2-foot contour imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP from 9-12/2024.
- ☒ USDA NRCS Soil Survey: Figure 5: *NRCS Soils Map*, prepared by Agent, and dated 7/2024; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 12/2024.
- ☒ USFWS NWI maps: Figure 4: *Desktop Aquatic Resources Map*, prepared by Agent, and dated 7/2024.
- ☒ USGS topographic maps: Figure 3: USGS Topographic Map, prepared by Agent, and dated 7/2024.
- ☒ USGS NHD data/maps: Figure 4: Desktop Aquatic Resources Map, prepared by Agent, and dated 7/2024.
- ☐ Section 10 resources used: Title and Dates
- ☐ NC DWQ stream identification forms
- ☒ Antecedent Precipitation Tool Analysis (List Date(s)): APT Data from 6/5/2024 and 9/11/2024 (Normal Conditions).
- ☒ Other sources of Information: FEMA Flood Zone data retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP in 12/24; and StreamStats data retrieved by CESAS-RDP in 12/24.

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.



SAS-2022-00392 (ATL085 Site)
Site Location Map



Map Center: 83.814269°W 33.63531°N

Map Created by: CESAS-RDP

Date: 1/10/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

