



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

SAS-RD-C

17 January 2025

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-2024-00494 (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 1	JD	Section 404
Wetland 2	JD	Section 404
Wetland 3	JD	Section 404
Wetland 4	Non-JD	N/A
Tributary 1	JD	Section 404
Tributary 2	JD	Section 404
Tributary 3	JD	Section 404
Tributary 4	JD	Section 404
Tributary 5	JD	Section 404
Tributary 6	JD	Section 404
Tributary 7	JD	Section 404
Pond 1	JD	Section 404
Ditch 1	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): 366.85
- b. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 32.431757 Longitude: -81.795934
- c. Nearest City or Town: Statesboro
- d. County: Bulloch
- e. State: Georgia
- f. Other associated Jurisdictional Determinations: N/A

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: Canoochee River, which is a TNW is approximately 9 miles from the review area.
- 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)).

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

All jurisdictional waters on site abut or have a continuous surface connection to Little Lotts Creek, a RPW. Little Lotts Creek flows for approximately 2.6 miles offsite before flowing into Lotts Creek, a RPW. Lotts Creek flows for approximately 6.4 miles before flowing into Canoochee River, a TNW.

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

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.

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
Tributary 1	2,428	Tributary 1 flows into Wetland 1. See Wetland 1 below for the flow path of Wetland 1.	Tributary 1 is acting as a relatively permanent water that has an ordinary high water mark. The consultant provided photos of this tributary that showed water actively flowing. A determination of RPW was determined via the consultant provided information and desktop analysis of NHD, NWI, and Web Soil Survey.
Tributary 2	208	Tributary 2 flows into Tributary 1 which flows into Wetland 1. See Wetland 1 below for the flow path of Wetland 1.	Same as Tributary 1.
Tributary 3	1,433	Tributary 3 flows into Wetland 1. See Wetland 1 below for the flow path of Wetland 1.	Same as Tributary 1.
Tributary 4	405	Tributary 4 flows into Wetland 1. See Wetland 1 below for the flow path of Wetland 1.	Same as Tributary 1.
Tributary 5	181	Tributary 5 flows into Wetland 2. Wetland 2 flows into Little Lots Creek, an RPW.	Same as Tributary 1.
Tributary 6	378	Tributary 6 flows into Wetland 3. Wetland 3 flows into Tributary 1 which flows into Wetland 1. See Wetland 1 below for the flow path of Wetland 1.	Same as Tributary 1.
Tributary 7	2,361	Tributary 7 is a portion of Little Lotts Creek, a RPW. See Section 5 of this MFR for the flowpath of Little Lots Creek.	Same as Tributary 1.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
Wetland 1	47.91	Yes, contiguous with Little Lotts Creek via an unnamed RPW ditch and Beautiful Branch Creek, a RPW	The eastern boundary of this wetland consists of a railroad track. Wetland 1 is connected to a RPW ditch to the east of this railroad via an approximately 60-ft culvert. The RPW ditch continues for approximately 2,400 feet before abutting an approximately 150-ft culvert under Highway 301. The culvert maintains a continuous surface connection to Beautiful Branch Creek, an RPW. Beautiful Branch Creek continues for approximately 2,400 feet before flowing into Little Lotts Creek, an RPW. See Section 5 of this MFR for the flow regime of Little Lotts Creek.
Wetland 2	28.79	Yes, abutting Little Lotts Creek	Wetland 2 is directly abutting Tributary 7, an RPW. Tributary 7 is a portion of Little Lotts Creek, an RPW.
Wetland 3	9.3	Yes, contiguous with Wetland 1 via Tributary 1, an RPW.	Wetland 3 is connected to Wetland 1 via Tributary 1. See Wetland 1 above for the flow regime.
Pond 1	0.14	Yes, connected to Wetland 1.	Pond 1 is connected to Wetland 1 via an approximately 30 ft culvert. Although the culvert is above the current water level, the culvert is within the berms of the pond and would carry flow during heavy rain events. The culvert is acting as a continuous surface connection between Pond 1 and Wetland 1.

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

⁸ 51 FR 41217, November 13, 1986.

- 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 non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Name of excluded feature	Size	Specific exclusion a-e
Ditch 1	88 linear feet	Ditch 1 is a man made depressional swale that was excavated in uplands. This swale lacks the three wetland characteristics or an ordinary high water mark. The swale has accumulation of leaf litter and upland vegetation. There is no evidence of water flow in the swale. The project consultant provided shapefiles and photos of Ditch 1. LIDAR and photos of the swale show elevation changes throughout the swale that would impair the flow of water across the ditch.
Wetland 4	0.15 acres	Besides Ditch 1, Wetland 4 is surrounded by uplands on all sides. Wetland 4 abuts Ditch 1, however there is no evidence of flow between Wetland 4 and Wetland 1 through Ditch 1. Based on LIDAR and photos of Ditch 1, flow of water would be impaired between Wetland 4 and Wetland 1. Aside from Ditch 1, there is no evidence of subsurface or surface connections between Wetland 4 and Wetland 1. As a result, Wetland 4 lacks a continuous surface connection to a Water of the US and is a non-jurisdictional feature.

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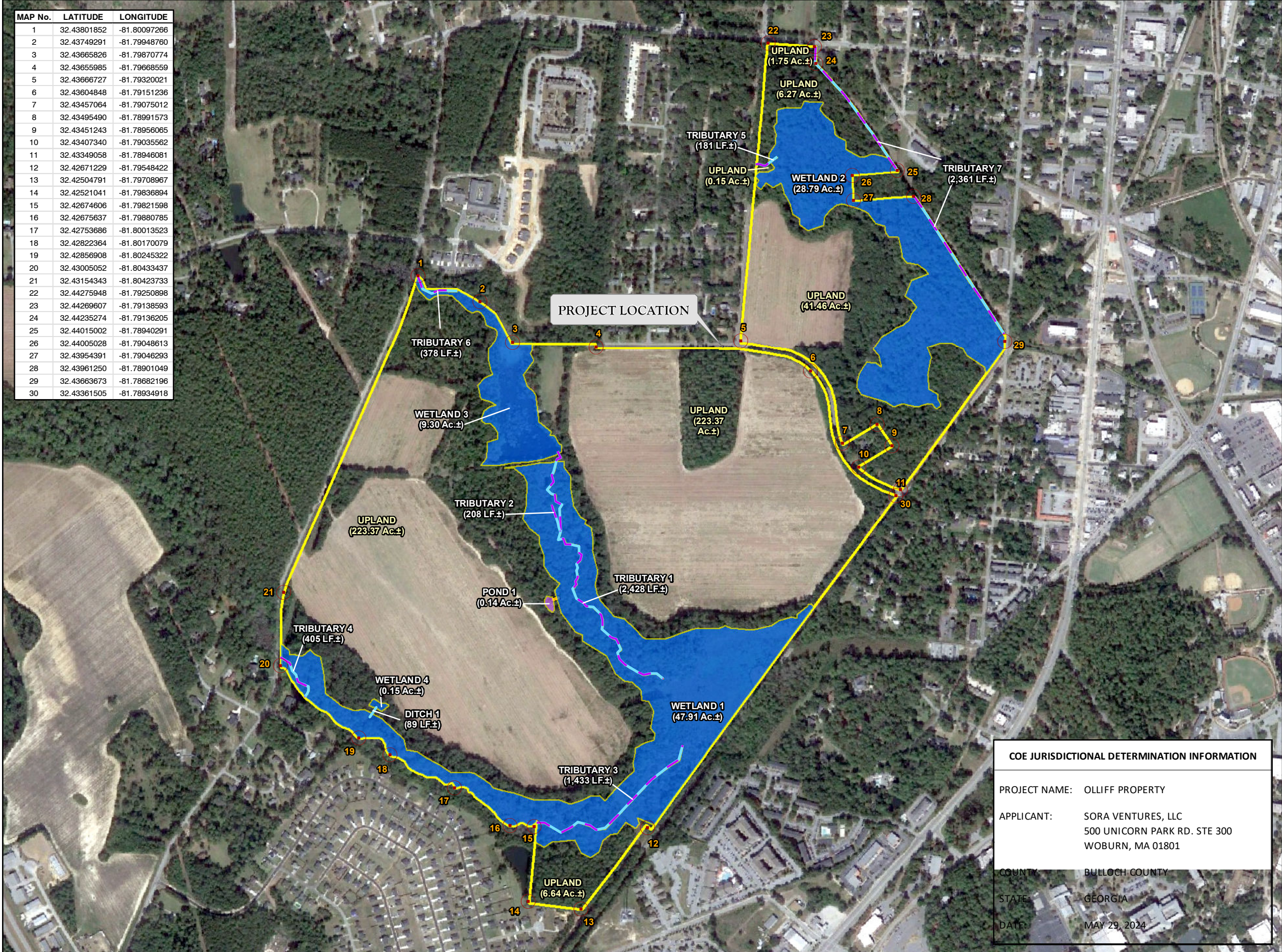
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Date of Office (desktop review): October 2, 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 "Olliff Property – Aerial with Features and Boundary Coordinates" and dated May 29, 2024.
 - ☒ Photographs: Source: Passarella and Associates, LLC and dated May 23, 2024.
 - ☒ Aerial Imagery: Source: Google Earth and dated October 2, 2024
 - ☒ LIDAR: Source: NOAA; Titled "NOAA LIDAR"; Dated October 2, 2024
 - ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated October 2, 2024
 - ☒ USFWS NWI maps: Titled "NWI" and dated October 2, 2024
 - ☒ USGS NHD data/maps: Titled "NHD" and dated October 2, 2024
 - ☒ Section 10 resources used: Titled "Savannah District – U.S. Army Corps of Engineers Regulatory Branch"

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.

MAP No.	LATITUDE	LONGITUDE
1	32.43801852	-81.80097266
2	32.43749291	-81.79948760
3	32.43665826	-81.79870774
4	32.43655985	-81.79668559
5	32.43666727	-81.79320021
6	32.43604848	-81.79151236
7	32.43457064	-81.79075012
8	32.43495490	-81.78991573
9	32.43451243	-81.78956065
10	32.43407340	-81.79035562
11	32.43349058	-81.78946081
12	32.42671229	-81.79548422
13	32.42504791	-81.79708967
14	32.42521041	-81.79836894
15	32.42674606	-81.79821598
16	32.42675637	-81.79880785
17	32.42753686	-81.80013523
18	32.42822364	-81.80170079
19	32.42856908	-81.80245322
20	32.43005052	-81.80433437
21	32.43154343	-81.80423733
22	32.44275948	-81.79250898
23	32.44269607	-81.79138593
24	32.44235274	-81.79136205
25	32.44015002	-81.78940291
26	32.44005028	-81.79048613
27	32.43954391	-81.79046293
28	32.43961250	-81.78901049
29	32.43663673	-81.78682196
30	32.43361505	-81.78934918



LEGEND

OLLIFF PROPERTY

WETLAND

POND

TRIBUTARY

DITCH

CULVERT

N

W

E

S

0

350

700

Feet

PROJECT ACREAGE TABLE			
TYPE	ACREAGE	LINEAR FEET	% OF TOTAL
UPLAND	279.65 Ac.±	-	76.2%
WETLAND	86.15 Ac.±	-	23.5%
TRIBUTARY	0.88 Ac.±	7,394 LF. ±	0.2%
POND	0.14 Ac.±	-	0.0%
DITCH	0.00 Ac.±	89 LF. ±	0.0%
TOTAL	366.82 Ac.±	7,909 LF. ±	100.0%

COE JURISDICTIONAL DETERMINATION INFORMATION

PROJECT NAME:

OLLIFF PROPERTY

APPLICANT:

SORA VENTURES, LLC
500 UNICORN PARK RD. STE 300
WOBURN, MA 01801

COUNTY:

BULLOCH COUNTY

STATE:

GEORGIA

DATE:

MAY 29, 2024

NOTES:

AERIAL PHOTOGRAPHS ESTIMATED FROM GOOGLE EARTH PER ESRI, MAXAR, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRIID, AND IGN WITH A FLIGHT DATE OF OCTOBER, 2022.

PROPERTY BOUNDARY ESTIMATED FROM THE BULLOCH COUNTY GIS WEBSITE.

UPLAND/WETLAND LIMITS HAVE NOT BEEN REVIEWED BY ANY REGULATORY AGENCY AND ARE SUBJECT TO CHANGE.

REVISIONS	DATE	DRAWN BY	DATE
		L.C.	05/29/24
		DESIGNED BY	DATE
		J.W.	05/29/24
		REVIEWED BY	DATE
		S.R.	05/29/24

363 Wando Place Drive
Suite 200
Mt. Pleasant, SC 29464
Phone (843) 971-8520
Fax (843) 971-8522



OLLIFF PROPERTY
AERIAL WITH FEATURES AND BOUNDARY COORDINATES

DRAWING No.
SC-24JLC4184
SHEET No.
FIGURE 7