



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

SAS-RD-C

15 May 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-2025-00257.

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 this state due to litigation.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2025-00257

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	Non-JD	N/A
Wetland 2	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): 9.43
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 31.866199 Longitude: -81.320875
- C. Nearest City or Town: Richmond Hill
- D. County: Bryan
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes): N/A

4. **NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED:** N/A. All aquatic resources under review in this MFR are considered non-jurisdictional.
5. **FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS:** N/A. All aquatic resources under review in this MFR are considered non-jurisdictional.
6. **SECTION 10 JURISDICTIONAL WATERS⁵:** N/A
7. **SECTION 404 JURISDICTIONAL WATERS:** Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A
 - b. Interstate Waters (a)(2): N/A
 - c. Other Waters (a)(3): N/A
 - d. Impoundments (a)(4): N/A
 - e. Tributaries (a)(5): N/A
 - f. The territorial seas (a)(6): N/A
 - g. Adjacent wetlands (a)(7): N/A

⁵ 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.

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”).⁶ 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
- 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).

⁶ 51 FR 41217, November 13, 1986.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2025-00257

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland 1	1.15	Wetland lacks a continuous surface connection to water of the US
Wetland 2	1.27	Wetland lacks a continuous surface connection to water 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 of Office (desktop review): April 16, 2025
- b. Data sources used to support this determination (included in the administrative record).
 - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: "Aquatic Resource Delineation GPS Exhibit", March 10, 2025
 - ☒ Wetland field data sheets prepared by the Corps: March 26, 2025 (provided by applicant)
 - ☒ Aerial Imagery: "Ortho Aerial", March 10, 2025 (provided by applicant)
 - ☒ LIDAR: April 16, 2025 (Supplemental Information generated by USACE)
 - ☒ USDA NRCS Soil Survey: April 16, 2025 (Supplemental Information generated by USACE)
 - ☒ USFWS NWI maps: April 16, 2025 (Supplemental Information generated by USACE)
 - ☒ USGS topographic maps: April 16, 2025 (Supplemental Information generated by USACE)
 - ☒ USGS NHD data/maps: April 16, 2025 (Supplemental Information generated by USACE)

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.



Label	Latitude	Longitude	Label	Latitude	Longitude
1	31.866834	-81.322301	24	31.866227	-81.323705
2	31.866774	-81.322419	25	31.866221	-81.323867
3	31.866720	-81.322507	26	31.866050	-81.323827
4	31.866680	-81.322689	27	31.865896	-81.323840
5	31.866642	-81.322830	28	31.865787	-81.323814
6	31.866656	-81.323013	29	31.865685	-81.323763
7	31.866607	-81.323130	30	31.865560	-81.323789
8	31.866520	-81.322989	31	31.865404	-81.323750
9	31.866373	-81.322880	32	31.865339	-81.323644
10	31.866442	-81.322673	33	31.865333	-81.323614
11	31.866344	-81.322716	34	31.865316	-81.323534
12	31.866166	-81.322657	35	31.865397	-81.323304
13	31.866153	-81.322496	36	31.865426	-81.323285
14	31.866118	-81.322439	37	31.865452	-81.323275
15	31.866106	-81.322384	38	31.865542	-81.323240
16	31.866032	-81.322245	39	31.865593	-81.323214
17	31.866102	-81.322123	40	31.865697	-81.323210
18	31.866263	-81.322009	41	31.865832	-81.323195
19	31.866435	-81.321939	42	31.865854	-81.323098
20	31.866619	-81.322047	43	31.866010	-81.323215
21	31.866576	-81.322113	44	31.866066	-81.323336
22	31.866652	-81.322143	45	31.866089	-81.323505
23	31.866730	-81.322230	46	31.866105	-81.323675

Project Area: ~9.43 Acres

Upland: ~7.01 Acres

Wetland: ~2.42 Acres

GPS Point

0 75 150 300 Feet

RLC Project No.: 21-031.6
Figure No.: 8
Prepared By: MW
Sketch Date: 3/10/2025
Map Scale: 1 inch = 150 ft

Pod 1A
Bryan County, Georgia

Aquatic Resource Delineation GPS Exhibit

Prepared For: FREN Foundation, Inc.

RLC

RESOURCE+LAND
CONSULTANTS

41 Park of Commerce Way, Ste. 101
Savannah, Georgia 31405
912.443.5896 www.rlandc.com