



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 WEST OGLETHORPE
SAVANNAH, GEORGIA 31401

SAS-OD-RC

June 11, 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-2023-00561²

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 Georgia 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	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): 25.01
- B. Center Coordinates of the Project Site (in decimal degrees)
 Latitude: 32.113199 Longitude: -81.313125
- C. Nearest City or Town: Bloomingdale
- D. County: Chatham
- E. State: Georgia

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

The aquatic resources do not connect to a requisite water (RPW) thus there is no connection to a TNW, Interstate Water and/or Territorial Sea.

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

The wetland flows through a culvert under Pine Barren Road and is connected to the wetland that abuts the culvert on the northeastern side of Pine Barren Road. The wetland does not abut an RPW which ends the flow path of this wetland.

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

d. Impoundments (a)(4): 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.

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- 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 1	13.82	Wetland lacks a continuous surface connection to water of the US. This wetland connects to another wetland under Pine Barren Road through a culvert that has evidence of an OHWM (staining across the culvert inlet identifying water is present) on the culvert indicating this wetland has surface flow through this culvert thus connecting it to the other wetland on the northeastern side of Pine Barren Road. These wetlands are functioning as one wetland system. The wetland on the northeastern side of the road does not have a continuous surface connection (CSC) to a jurisdictional water based on the revised definition of a CSC provided in guidance dated March 24, 2025. The wetland connects to a swale that does not present an OHWM or the 3 wetland parameters thus making the swale not an aquatic resource and would not qualify as an RPW requisite water rendering Wetland 1 non-jurisdictional due to a lack of a CSC to a requisite water.
Wetland 2	1.03	Wetland 2 lacks a continuous surface connection to a water of the US. The wetland is surrounded by uplands to the north and south and a pond offsite to the west that does not a surface connection. To the east of the wetland is Pine Barren Road. There is no culvert present connecting wetland 2 to the wetlands to the east of Pine Barren Road. The wetland does not connect to a ditch or swale to the south along pine barren road. Elevations of uplands to the south are higher and current conditions of this area do not represent a discrete feature. Wetland 2 is not connected to the wetlands on the eastern side of Pine Barren Road and these wetlands do not function as one wetland. Pine Barren Road is a well-developed road and is approximately 60-70 feet wide including side slopes. There was no evidence of water seeping from underneath the road. Given the conditions and impermeability of Pine Barren Road and modern road construction practices (significant concrete, fill placement etc, compaction, etc.) a shallow subsurface connection is not present. Review of historic aerial imagery shows Pine Barren Road predating 1971. Given the time of being separated by the road and the lack of evidence currently of any type of shallow subsurface connection, Wetland 2 is and the wetlands to the east of Pine Barren Road are functioning as separate wetlands.

- 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.

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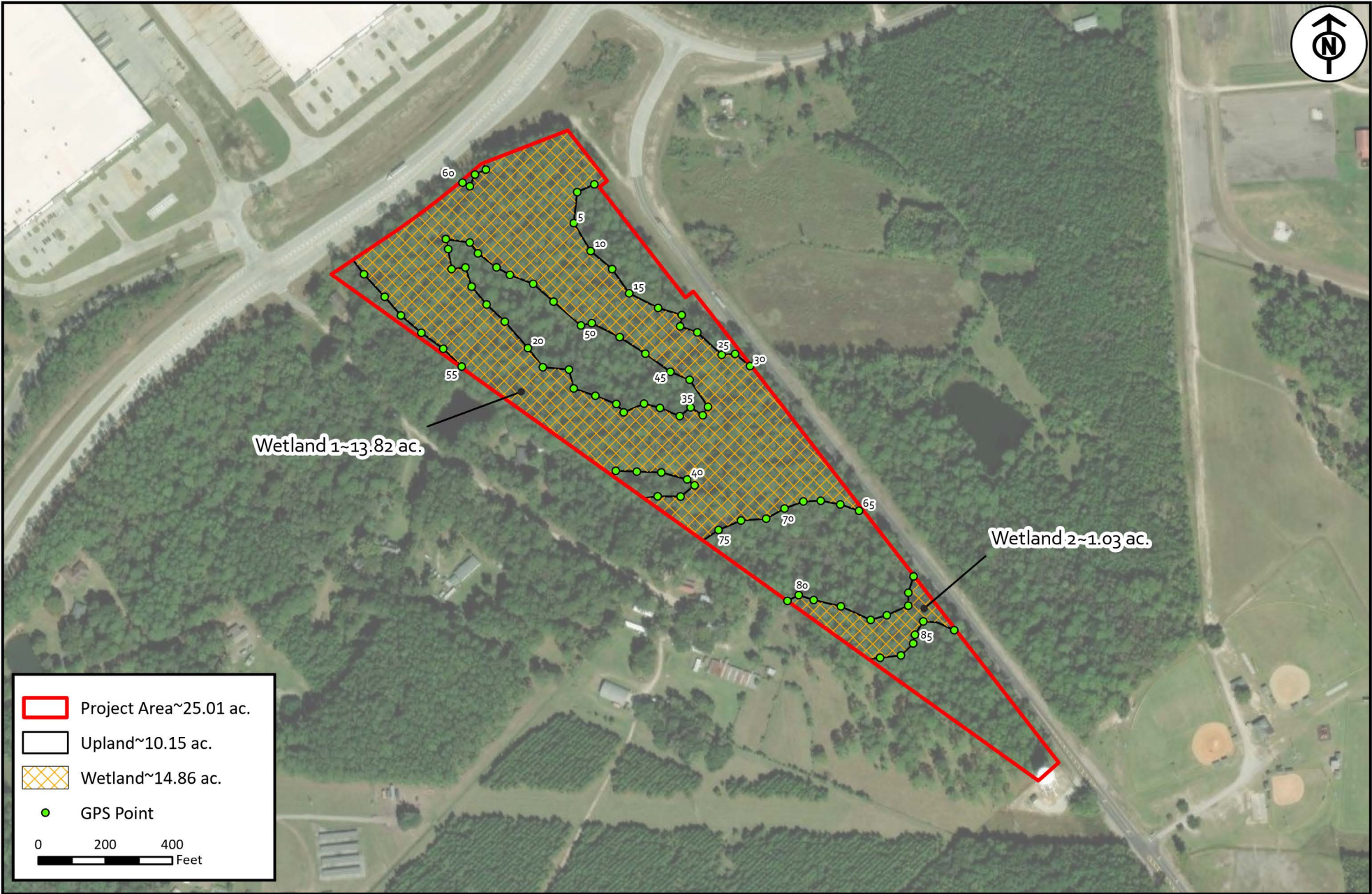
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- a. 1. Date of Office (desktop review): June 6, 2025
2. Date(s) of Field Review (if applicable): December 1, 2023
- b. Data sources used to support this determination (included in the administrative record).
 - Aquatic Resources delineation submitted by, or on behalf of, the requestor: Desnoyer Tract B, GPS Wetland Exhibit, April 1, 2025
 - Photographs: Photo from Field Visit on December 1, 2023
 - Aerial Imagery: Google Earth Imagery (1999 and 2023)
 - LIDAR: Wetland 1 and 2 6/6/2025
 - USDA NRCS Soil Survey: NRCS Soil Map, April 1, 2025, provided in application
 - USFWS NWI maps: Desnoyer Tract B USFWS National Wetlands Inventory, April 1, 2025, provided in application
 - USGS topographic maps: Desnoyer Tract B USGS Topographic Map 4/1/2025
 - USGS NHD data/maps: NHD Map 6/6/2025

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.



	Project Area~25.01 ac.
	Upland~10.15 ac.
	Wetland~14.86 ac.
	GPS Point

0 200 400
Feet

RLC Project No.:	21-409.2
Figure No.:	8
Prepared By:	CS
Sketch Date:	6/11/2025
Map Scale :	1 inch = 400 ft

Desnoyers Tract B
Chatham County, Georgia

GPS Wetland Exhibit
Prepared For: Chris Hayes

	RESOURCE+LAND CONSULTANTS
	41 Park of Commerce Way, Ste 101 Savannah, GA 31405 tel 912.443.5896 fax 912.443.5898

ID	Latitude	Longitude
1	32.114937	-81.315689
2	32.114262	-81.316639
3	32.114874	-81.315856
4	32.114378	-81.316817
5	32.114620	-81.315891
6	32.114468	-81.316895
7	32.114497	-81.317125
8	32.114415	-81.317103
9	32.114251	-81.317072
10	32.114390	-81.315730
11	32.114390	-81.315730
12	32.114263	-81.316939
13	32.114241	-81.315524
14	32.114106	-81.316880
15	32.114040	-81.315362
16	32.113958	-81.316737
17	32.113918	-81.315084
18	32.113816	-81.316563
19	32.113766	-81.314874
20	32.113597	-81.316342
21	32.113859	-81.314858
22	32.113439	-81.316200
23	32.113715	-81.314709
24	32.113418	-81.315949
25	32.113529	-81.314475
26	32.113263	-81.315904
27	32.113537	-81.314346
28	32.113202	-81.315696
29	32.113134	-81.315495
30	32.113436	-81.314203
31	32.113064	-81.315424
32	32.113134	-81.315228
33	32.113098	-81.315075
34	32.113030	-81.314885
35	32.113101	-81.314779
36	32.112373	-81.315103
37	32.112370	-81.314882
38	32.113035	-81.314663
39	32.112461	-81.314747
40	32.112510	-81.314818
41	32.113104	-81.314612
42	32.113104	-81.314612
43	32.112569	-81.315066

ID	Latitude	Longitude
44	32.113327	-81.314787
45	32.113394	-81.314971
46	32.112577	-81.315302
47	32.113544	-81.315211
48	32.112585	-81.315505
49	32.113682	-81.315457
50	32.113798	-81.315725
51	32.113780	-81.315830
52	32.113977	-81.316092
53	32.114125	-81.316287
54	32.114200	-81.316510
55	32.113451	-81.316982
56	32.113598	-81.317158
57	32.113730	-81.317368
58	32.113874	-81.317564
59	32.114028	-81.317718
60	32.114959	-81.316960
61	32.114214	-81.317917
62	32.114929	-81.316889
63	32.115025	-81.316839
64	32.115065	-81.316734
65	32.112242	-81.313164
66	32.111699	-81.312644
67	32.112295	-81.313344
68	32.112326	-81.313532
69	32.112321	-81.313700
70	32.112265	-81.313882
71	32.111566	-81.312695
72	32.112182	-81.314060
73	32.111459	-81.312697
74	32.112169	-81.314302
75	32.112093	-81.314519
76	32.111382	-81.312904
77	32.111345	-81.313061
78	32.111458	-81.313346
79	32.111512	-81.313608
80	32.111553	-81.313752
81	32.111507	-81.313861
82	32.111256	-81.312256
83	32.111034	-81.312972
84	32.111330	-81.312553
85	32.111221	-81.312635
86	32.111052	-81.312771

ID	Latitude	Longitude
87	32.111149	-81.312652