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

SAS-RD-C 12 June 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-2024-01108

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 the state of Georgia 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.

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	Section 404

2. REFERENCES.

   a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (13 November 1986).

   b. Clean Water Act Regulatory Programs, 58 FR 45008 (25 August 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* (2 December 2008)

   d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

   e. Memorandum from Benita Best-Wong, U.S. EPA Deputy Assistant Director for the Assistant Administrator for Water and Robyn Colosimo, U.S. Department of the Army Senior Official for the Assistant Secretary of the Army (Civil Works) "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (12 March 2025).

3. REVIEW AREA.

   a. Project Area Size (in acres): 3.49 acres
   b. AJD Review Area Size (in acres, if different): same
   c. Center Coordinates of the Project Area (in decimal degrees):
      Latitude: 32.051253 Longitude: -81.165475
   d. Nearest City or Town: Savannah
   e. County: Chatham County
   f. State: Georgia
   g. Other associated Jurisdictional Determinations (including outcomes): None.

h. Any additional, relevant site-specific information: This project site is currently undeveloped and has consisted of native woodlands predating 1951 historic aerials. Based on historic aerial review, development in the area adjacent and surrounding this project site began between 1983 and 1995. The site is bound to the west by Chatham Parkway and bound to the north by Business Center Drive. The project site is also bound by commercial development to the east, the southeast, and southwest. Additionally, a transmission line right-of-way is located along the southern limits of the site boundary. Evidence is not present for significant manipulation of the site over an extended period beyond the transmission line right-of-way within the project review area and the commercial and roadway development adjacent to the review area.

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, Territorial Sea or interstate water: N/A, no resources within the review area are connected to a TNW.

   b. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum.

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

   N/A, no resources within the review area are connected to a TNW.

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6]

   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.

[6] 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.

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.

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").[7] 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.

[7] 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 (in acres)**	**Type of resource generally not jurisdictional**
Wetland 1	0.16	Wetland 1 is depressional and lacks a continuous surface connection to a requisite water of the US under current regulations and guidance.

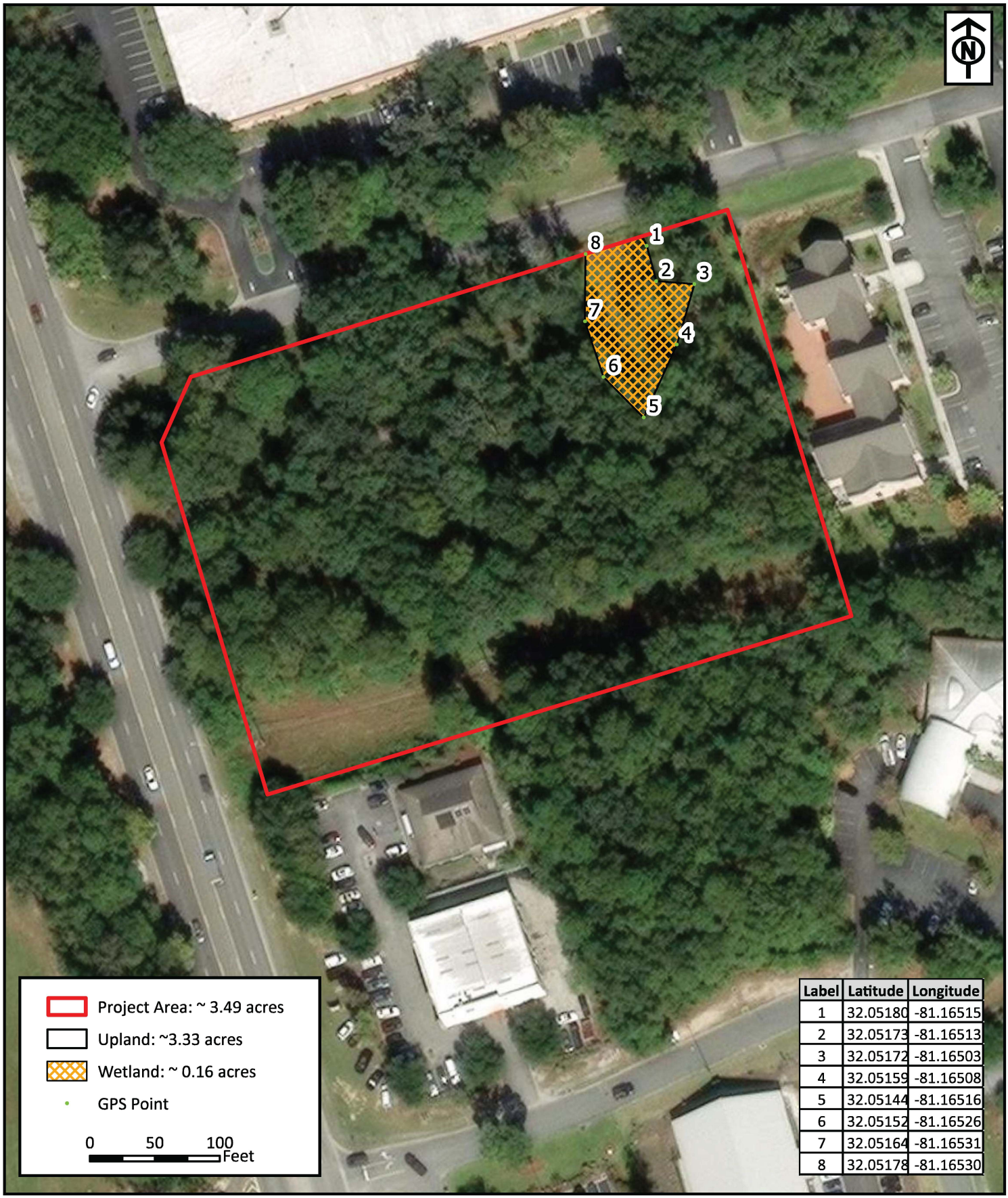
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

a. 1. Date of Office (desktop review): April 2025
   2. Date(s) of Field Review (if applicable): N/A, field verification was not required following application and desktop review.
b. Data sources used to support this determination (included in the administrative record).

- ☒ Aquatic Resources delineation submitted by, or on behalf of, the applicant: Aquatic Resources Delineation GPS Exhibit, dated 23 December 2024 (Figure No. 8) prepared by Resource and Land Consultants (RLC).
- ☒ Wetland field data sheets submitted by, or on behalf of, the applicant: Dated 20 December 2024, prepared by RLC.
- ☐ OHWM data sheets submitted by, or on behalf of, the applicant: N/A.
- ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: N/A.
- ☒ Photographs: Photograph Location Exhibit, dated 9 May 2025 (Figure No. 1) and photos 1 – 3 dated 16 October 2024 and 24 April 2025, provided by RLC.
- ☒ Aerial Imagery provided by, or on behalf of, applicant: Ortho Aerial (Figure No. 5) prepared by RLC; and Google Earth Aerial Imagery 2024 Airbus and Historical Aerial Imagery between 1951 and 2025.
- ☒ LIDAR provided by, or on behalf of, applicant: NOAA Topographic Lidar dated 23 December 2024 (Figure No. 7) prepared by RLC; and NOAA Lidar Elevation and Hillshade data, maps prepared from the National Regulatory Viewer (Georgia).
- ☒ USDA NRCS Soil Survey provided by, or on behalf of, applicant: NRCS Soil Survey dated 23 December 2024 (Figure No. 3) prepared by RLC.
- ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Inventory dated 20 December 2024 (Figure No. 4) prepared by RLC.
- ☒ USGS topographic maps provided by, or on behalf of, applicant: USGS Topographic Survey dated 23 December 2024 (Figure No. 2) prepared by RLC.
- ☒ USGS NHD data/maps: NHD-TNW data provided on the National Regulatory Viewer (Georgia).
- ☒ Section 10 resources used: SAS Section 10 List
- ☒ Antecedent Precipitation Tool Analysis: processing data for the 20 December 2024 survey could not be completed at this time of this MRF was drafted due to the APT program pending IT admin updates.
- ☐ Other sources of Information: List other sources or enter N/A.

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
1	32.05180	-81.16515
2	32.05173	-81.16513
3	32.05172	-81.16503
4	32.05159	-81.16508
5	32.05144	-81.16516
6	32.05152	-81.16526
7	32.05164	-81.16531
8	32.05178	-81.16530

RLC Project No.:	16-022.1
Figure No.:	8
Prepared By:	MW
Sketch Date:	12/23/2024
Map Scale :	1 inch = 100 ft

7000 Business Center Drive

Chatham County, Georgia

Aquatic Resources Delineation GPS Exhibit

Prepared For: Holladay Properties

RLC
RESOURCE+LAND CONSULTANTS
41 Park of Commerce Way, Ste. 101
Savannah, Georgia 31405
912.443.5896 www.rlandc.com

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Source(s): ESRI Basemap; World Imagery