



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA 29526

SAC
CESAC-RDE

09 April 2024

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 **SAC-2018-01589 (B&C Wild Iris B Project Site), MFR 1 of 1.**

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. SUMMARY OF CONCLUSIONS.

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.

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- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). The review area is a 9.19-acre parcel. The subject property is forested with Loblolly pine and located adjacent to, and in between, U.S. Highway 17 Bypass and a residential development. An approved jurisdictional determination (SAC-2018-01589) was previously issued for this site on October 23, 2018, in which the entire site was determined to be uplands.

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. Review Area Size: 9.19 acres
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 33.7333°N, Longitude: -78.8634°W
- C. City: Myrtle Beach
- D. County: Horry
- E. State: South Carolina

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A. There are no aquatic resources within the review area.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: N/A

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6. SECTION 10 JURISDICTIONAL WATERS⁵: 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
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

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.

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- 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
- 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). N/A

⁷ 51 FR 41217, November 13, 1986.

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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: 09 April 2024
- b. Data sources used to support this determination (included in the administrative record).

☒ Maps: Map prepared by: Hynes Land & Environmental Services titled "PREVIOUS WETLAND MAP (2018) / Project: Wild Iris B (4 lots)" dated April 4, 2023.

☐ Aquatic Resources delineation prepared by the USACE: N/A

☐ Wetland field data sheets prepared by the Corps: N/A

☐ OHWM data sheets prepared by the USACE: N/A

☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: Previous AJD issued on October 23, 2018, in which the entire site was determined to be uplands.

☒ Photographs: Photos provided by Hynes Land & Environmental Services, dated April 4, 2023.

☒ Aerial Imagery: National Regulatory Viewer – South Atlantic Division, 2022 Google Earth Pro imagery, SCDNR (SC-2020_NIR).

☒ LIDAR: 3DEP Digital Elevation Model (DEM)
<https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageS>

☒ USDA NRCS Soil Survey. Citation: / Soil Survey Geographic Database (SSURGO), Map service dated April 4, 2019, updated March 4, 2020. The entire site is mapped as Brookman (hydric). However, evidence presented by the consultant demonstrates high chroma in the soil profile 10YR 4/3 and 10YR 3/2 (brown sand to dark brown sand).

☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5-minute index / Ocean Forest / 1:24000. Quad map does not depict any aquatic resources within the review area.

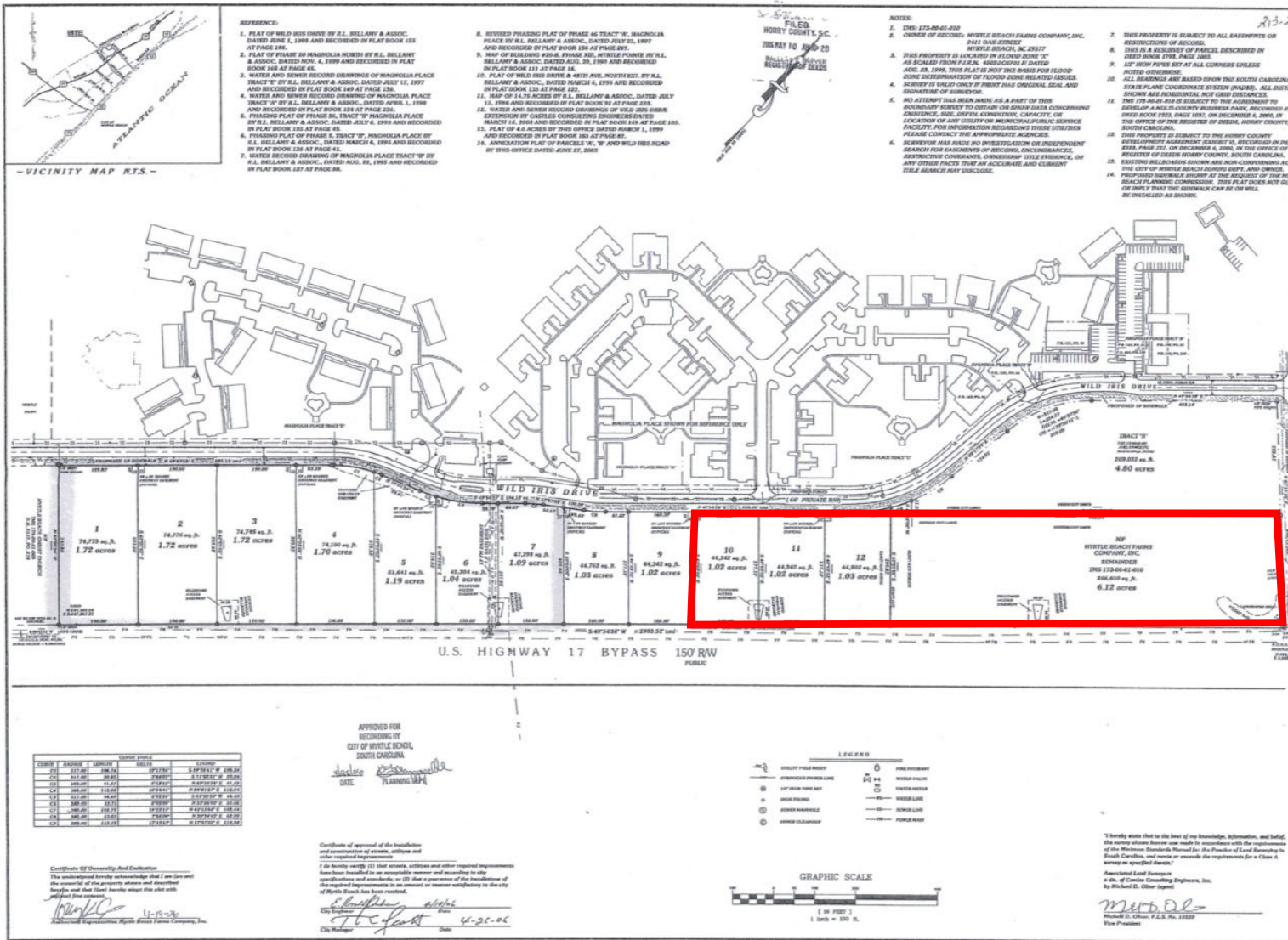
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☒ National Wetland Inventory (NWI): NWI depicts the entire site as uplands.

10. OTHER SUPPORTING INFORMATION. The consultant also submitted evidence (data sheets and pictures) that demonstrated lack of hydrology throughout the site. There were no primary or secondary indicators of hydrology observed throughout the site. The site is a well-maintained Loblolly Pine flat. The understory is regularly sprayed and mowed.

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.



SAC-2018-01589
Wild Iris Drive Tract 16-A
Applicant: Tony Cox
Horry County, SC

March 1, 2006

FINAL PLAT OF
15.87 ACRES PORTION OF WY FAR
173-00-00-01-010
MYRTLE BEACH, HORRY COUNTY, SOUTH
CAROLINA
MYRTLE BEACH FARMS COMPANY

Associated
Land
Surveyors
A-1341B



**Hynes Land &
Environmental Services**

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The information on this map has been compiled from various sources. The information is not guaranteed, either expressly or implied. The results of any subsequent environmental studies or surveys required could materially alter the map as shown.

PREVIOUS WETLAND MAP (2018)

Project: Wild Iris B (4 lots)

SAC: 2018-01589B

Area: 9.19-acres

Date: 2023 April 4



FIGURE:

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