



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA, 29562

CESAC-RDE

04 April 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 SAC-2024-00132, MFR 1 of 1²

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	Acreage/Linear Footage	Waters of the U.S. (WOTUS)	Section 404/Section 10
NJW-A (Non-Jurisdictional Wetland-A)	3.63 acres	No	N/A
NJW-B (Non-Jurisdictional Wetland-B)	10.97 acres	No	N/A
NJW-C (Non-Jurisdictional Wetland-C)	2.13 acres	No	N/A
NJW-D (Non-Jurisdictional Wetland-D)	0.04-acre	No	N/A
NJW-E (Non-Jurisdictional Wetland-E)	3.47 acres	No	N/A
NJP-1 (Non-Jurisdictional Pond 1)	0.08-acre	No	N/A
NJP-2 (Non-Jurisdictional Pond 2)	0.25-acre	No	N/A
NJF-1 (Non-Jurisdictional Feature 1)	833 linear feet	No	N/A
NJF-2 (Non-Jurisdictional Feature 2)	1,153 linear feet	No	N/A
NJF-3 (Non-Jurisdictional Feature 3)	1,088 linear feet	No	N/A

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NJF-4 (Non-Jurisdictional Feature 4)	337 linear feet	No	N/A
NJF-5 (Non-Jurisdictional Feature 5)	48 linear feet	No	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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size: 92.07 acres
- b. Center Coordinates of Review Area: 33.8498, -79.7746
- c. Nearest City: Lake City
- d. County: Florence County
- e. State: South Carolina

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Lynches River: Section 10 waterbody. The navigable limits of the Lynches River is detailed in the Corps' 1977 Navigability study, Report No. 10 Lynches River Basin. ⁶

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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

NJW A: NJW-A abuts NJF-3, a non-relatively permanent drainage feature, that flows for approximately 1,088 linear feet south. NJF-3 flows into a roadside ditch that flows west and north for approximately 2,400 feet, where the ditch then connects with an unnamed relatively permanent tributary. The unnamed tributary continues south for 1.2 miles, where it then drains into named tributaries Smith Swamp, leading to Singleton Swamp, and leading to Lake Swamp, totaling approximately 23 miles of flow eastward. Lake Swamp flows into the Lynches River, a TNW.

NJW-B: NJW-B directly abuts NJF-4, a non-relatively permanent drainage feature, that flows southeast for approximately 337 linear feet until flowing into a roadside ditch. The roadside ditch then flows west and north for approximately 4,900 linear feet where it connects with an unnamed relatively permanent tributary. The unnamed tributary continues south for 1.2 miles, where it then drains into named tributaries Smith Swamp, leading to Singleton Swamp, and leading to Lake Swamp, totaling approximately 23 miles of flow eastward. Lake Swamp flows into the Lynches River, a TNW.

NWJ-E: NJW-E abuts a non-relatively permanent roadside ditch that flows west and north for approximately 2,500 feet, where the ditch then connects with an unnamed relatively permanent tributary. The unnamed tributary continues south for 1.2 miles, where it then drains into named tributaries Smith Swamp, leading to Singleton Swamp, and leading to Lake Swamp, totaling approximately 23 miles of flow eastward. Lake Swamp flows into the Lynches River, a TNW.

NJW-C, NWJ-D, NJP-1, and NJP-2: These aquatic resources do not have a flow path to a TNW, interstate water, or the territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ N/A.

⁷ 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 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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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").⁹ 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.

⁹ 51 FR 41217, November 13, 1986.

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- 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*.

NJP-1 (Non-Jurisdictional Pond 1): NJP-1 is an 0.08-acre, freshwater, non-tidal, open water feature that appears to have been historically excavated out of NJW-C. NJP-1 is not an (a)(4) water, as it was constructed out of a non-jurisdictional wetland. NJP-1 is also not an (a)(2) or (a)(3) water. Therefore, this feature is non-jurisdictional.

NJP-2 (Non-Jurisdictional Pond 2): NJP-2 is a 0.25-acre, freshwater, non-tidal, open water feature that was historically excavated out of NJW-B. Therefore, NJP-2 is not an (a)(4) water, as it was constructed out of a non-jurisdictional wetland. NJP-2 is also not an (a)(2) or (a)(3) water. Therefore, this feature is non-jurisdictional.

- 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).

NJW-A (Non-Jurisdictional Wetland A): NJW-A is a freshwater, non-tidal wetland, that exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps’ Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. This wetland is mapped as Coxville sandy loam (hydric) and is mapped as wetlands on NWI. The wetland is also

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depicted as lower in elevation on LiDAR than the surrounding uplands. As described in Section 5, the wetland does not directly abut a requisite water. The only connection to a requisite water is via non-relatively permanent ditches. Since the wetlands are far removed from and not directly abutting covered waters, NJW-A does not meet the definition of an (a)(7) water and is non-jurisdictional.

NJW-B (Non-Jurisdictional Wetland B): NJW-B is a freshwater, non-tidal wetland, that exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps' Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. The wetland is mapped as Coxville fine sandy loam (hydric) and Lynchburg sandy loam (hydric). The wetland is depicted as lower in elevation on LiDAR than the surrounding uplands. The wetland boundary was confirmed via site visit on November 1, 2024. As described in Section 5, the wetland does not directly abut a requisite water. The only connection to a requisite water is via non-relatively permanent ditches. Since the wetlands are far removed from and not directly abutting covered waters, NJW-B does not meet the definition of an (a)(7) water and is non-jurisdictional.

NJW-C (Non-Jurisdictional Wetland C): NJW-C is a freshwater, non-tidal wetland, that exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps' Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. This wetland is mapped as Coxville fine sandy loam (hydric) and is mapped as wetlands on NWI. The wetland is also depicted as lower in elevation on LiDAR than the surrounding uplands. The wetland boundary was confirmed via site visit on November 1, 2024. This wetland is surrounded by uplands and does not directly abut a requisite water. Furthermore, the wetland is severed from the adjacent non-relatively permanent feature, NJF-2, by a man-made berm. Therefore, NJW-C does not meet the definition of an (a)(7) water and is non-jurisdictional.

NJW-D (Non-Jurisdictional Wetland D): NJW-A is a freshwater, non-tidal wetland, that exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps' Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. NJD-D is depicted as lower in elevation on LiDAR than the surrounding uplands, and photographs provided by the agent depict the feature as a seasonally inundated depression surrounded by uplands. NJD-D is entirely surrounded by uplands and contains no traceable or discernable pathway to a requisite water. Therefore, NJW-D does not meet the definition of an (a)(7) water and is non-jurisdictional.

NJW-E (Non-Jurisdictional Wetland E): NJW-E is a freshwater, non-tidal wetland, that exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which

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satisfied the criteria set forth in the 1987 Corps' Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. This wetland is located within an active soybean field. This wetland is visible in imagery dating as far back as 1941 and is visible on the most recent imagery from 2024. The wetland is mapped as Coxville sandy loam (hydric), which is the same soil series as less-disturbed wetlands on-site (i.e., NJW-A, NJW-B, and NJW-C). The wetland boundary was confirmed via site visit on November 1, 2024. NWJ-E abuts a roadside ditch that only flows in direct response to precipitation and does not directly abut a requisite water. Since NJW-E does not directly abut a requisite water, this wetland does not meet the definition of an (a)(7) water and is non-jurisdictional.

NJF 1-5 (Non-Jurisdictional Features 1-5): NJF 1-5 are upland-cut ditches that do not contain evidence of relatively permanent flow. Photographs provided by the agent depict weak indicators of a bed and bank, with limited physical and biological indicators of flow. The features only flow in direct response to precipitation. Therefore, the features do not meet the definition of an (a)(5) water and are non-jurisdictional.

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. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Wetland Determination package including wetland determination forms and associated resource maps for the Lake City Music Center, prepared by S&ME, Inc. Submittal dated February 21, 2024. Aquatic resource depiction, prepared by the agent, dated March 18, 2025.
- b. Field Evaluation: November 1, 2024. Includes additional data points and photographs.
- c. Office Evaluation: March 19, 2025.
- d. USFWS NWI Map Service: "**NWI Exhibit**", prepared by the agent, dated February 19, 2024.
- e. LiDAR: 3DEP Digital Elevation Model (DEM). "**LIDAR Exhibit**", dated February 19, 2024, prepared by the agent.
- f. Soils: "**Soil Exhibit**", dated February 19, 2024, prepared by the agent.
- g. Topographic Maps: 7.5 Minute Index / 1:24,000. Lake City West Quad. "**Topographic Exhibit**", prepared by the agent, dated February 19, 2024.

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- h. Florence County GIS: Imagery from 1966, 1998, 2023, and 2024. Obtained by the Corps, dated October 28, 2024.
<https://www.arcgis.com/apps/webappviewer/index.html?id=fedede8fc1964de2b99aa2de1538ddb9>.
- i. University of South Carolina University Libraries Imagery: Images from 1941 and 1957. Prepared by the Corps, dated October 28, 2024.

10. OTHER SUPPORTING INFORMATION.

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, dated March 12, 2025.

- 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.

Drawing Path: T:\Florence-1639\Projects\2022\22390160_Eastern Engineering_Lake City Music Center - Revised A/D Exhibit 3-18-25.mxd plotted by chandley 03-18-2025

REFERENCE:

PLEASE NOTE THIS EXHIBIT IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT MEANT FOR DESIGN, LEGAL, OR SURVEY USES. THERE ARE NO GUARANTEES ABOUT ITS ACCURACY. S&ME, INC. ASSUMES NO RESPONSIBILITY FOR ANY DECISION MADE OR ANY ACTIONS TAKEN BY THE USER BASED UPON THIS EXHIBIT.

APPROXIMATE SITE LOCATION
33.8508, -79.7749



Feature Information	
Non-Jurisdictional Wetlands	
NJW-A:	3.63 ac
NJW-B:	10.97 ac
NJW-C:	2.13 ac
NJW-D:	0.04 ac
NJW-E:	3.47 ac
Total NJWs: 20.24 acres	
Non-Jurisdictional Ponds	
NJP-1:	0.08 ac
NJP-2:	0.25 ac
Total NJPs: 0.33 ac	
Non-Jurisdictional Features (Agricultural-Silvicultural Ditches)	
NJF-1 (Ditch):	833 LF
NJF-2 (Ditch):	1,153 LF
NJF-3 (Ditch):	1,088 LF
NJF-4 (Ditch):	337 LF
NJF-5 (Ditch):	48 LF
Total NJF (Ditches): 3,459 LF	
Total Site Acreage: 92.07 ac	
Total WOUS: 0 ac	

Florence County TMS Numbers:

00169-31-014

00169-31-194

00169-31-287

- Non-Jurisdictional Feature (Agricultural-Silvicultural Ditch)
- Non-Jurisdictional Ponds (NJP)
- Non-Jurisdictional Wetlands (NJW)
- Approximate Boundary

0 500 1,000 FEET



Aerial Exhibit

Lake City Music Center +/- 92.07 Acres

Lake City, Florence County, South Carolina

Source: World Imagery 2024

SCALE:
1" = 500'

REVISED DATE:
3-18-25

PROJECT NUMBER
22390160

EXHIBIT NO.

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