



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

CESAC-RDE

April 10, 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-2024-00227 (MFR 1 of 1)²

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	Acres (AC.)/Linear Feet (L.F.)	Waters of the U.S. (JD or Non-JD)	Section 404/Section 10
Wetland 1	11.37 Ac.	Non-JD	N/A
Wetland 2	4.57 Ac.	Non-JD	N/A
Wetland 3	2.52 AC.	Non-JD	N/A
Non-Jurisdictional Ditch 1	193 L.F.	Non-JD	N/A
Non-Jurisdictional Ditch 2	48 L.F.	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. 651, 143 S. Ct. 1322 (2023)
- e. EPA Memorandum dated March 12, 2025, titled "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

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3. REVIEW AREA.

- a. Project Area Size: 50.08 Acres
- b. Center Coordinates of Review Area: 33.8931°N, -78.6478°W
- c. Nearest City: Longs
- d. County: Horry
- e. State: South Carolina

The review area contains a prior silviculture operation that has been timbered and lain fallow for approximately six years based on aerial reconnaissance. Primary secessional growth dominates the site and saturation can be observed in aerial photography in areas where wetlands have been identified. The review area is surrounded by development. The site is located on the Jaluco-Cainhoy paleo beach ridge, a relatively high elevation area of the county. By review of archived historical USGS topographical maps, an offsite unnamed tributary can be observed extending to the review area as far back as 1943. In modernity, this tributary has been extensively modified to create several impoundments, golf course water features, and a marina basin where it joins the AIWW. All major depressive features onsite only maintain connection to this relic tributary through a series of upland excavated ditches, culverts and pipes between impoundments and a large upland excavated drainage ditch crossing under Highway 17. The flow path of these onsite, non-tidal wetlands to jurisdictional waters does not qualify as a continuous surface connection as outlined in the in the EPA Memorandum dated March 12, 2025.

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
- 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

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.

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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
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

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.

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.

⁸ 51 FR 41217, November 13, 1986.

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- 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.
 - a. ‘Non-Jurisdictional Ditch 1’ (193 L.F.) as depicted on the referenced map totaling approximately 193 L.F. dug wholly in uplands, does not carry a relatively permanent flow, and provides no permanent conveyance of waters from ‘Wetland 3’ to ‘Wetland 2’.
 - b. ‘Non-Jurisdictional Ditch 2’ (48 L.F.) as depicted on the referenced map totaling approximately 48 L.F. dug wholly in uplands, does not carry a relatively permanent flow, and only drains stormwater runoff from Little River Road into ‘Wetland 1’ in response to precipitation events.
- 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).

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- a. 'Wetland 1' – 11.37 Ac. as depicted on the referenced map is a large depressive feature associated with the headwaters of an unnamed tributary of the AIWW. Per the March 12, 2025, EPA Memorandum, 'Wetland 1' was determined not to have a continuous surface connection to any (a)(1) through (6) water. 'Wetland 1' is surrounded by uplands and lacks a direct connection to any (a)(1)-(6) waters.
 - b. 'Wetland 2' – 4.57 Ac. as depicted on the referenced map is a depressive feature associated with the headwaters of an unnamed tributary of the AIWW. Per the March 12, 2025, EPA Memorandum, 'Wetland 2' was determined not to have a continuous surface connection to any (a)(1) through (6) water. 'Wetland 2' is surrounded by uplands with the exception of 'Non-jurisdictional Ditch 1' and lacks a direct connection to any (a)(1)-(6) waters.
 - c. 'Wetland 3' - 0.43 Ac. as depicted on the referenced map is a small depressional feature not associated with the morphological drainage feature of the unnamed tributary of Little River and the AIWW. An upland dug ditch 'Non-Jurisdictional Ditch 1' connects this feature to the larger 'Wetland 2'. Per the March 12, 2025, EPA Memorandum, 'Wetland 3' was determined not to have a continuous surface connection to any (a)(1) through (6) water. 'Wetland 3' is surrounded by uplands and lacks a direct connection to any (a)(1)-(6) waters. The only potential connection between this wetland and an (a)(5) water would be through the above mentioned upland excavated drainage ditch. A ditch cannot render an otherwise isolated wetland an adjacent wetland unless the ditch itself is a tributary, which in this case it is not.
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. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by Passarella & Associates Inc. in the submittal dated February 15, 2025.
 - b. Review Performed for Site Evaluation: Office (Desk) Determination.
Date: March 28, 2025.
 - c. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)

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- d. Lidar: Office for Coastal Management, 2024: 2014 Lidar DEM; Horry County SC, <https://www.fisheries.noaa.gov/inport/item/57194>.
- e. USDA NRCS Soil Survey: Bladen fine sandy loam, Hobcaw fine sandy loamy, Kenansville fine sand, Ogeechee loamy fine sand, and Yauhannah fine sandy loam. SSURGO database. The site is mapped as majority Hobcaw fine sandy loam. Depressional areas and regions associated with the drainage field of the unnamed tributary are rated higher hydric soils while regions not associated with this area are more typical of paleo beach ridge fine sands.
- f. National Wetland Inventory (NWI): NWI <https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0>
- g. U.S. Geological Survey map(s): 7.5 Minute Index / Longs / 1:240000; USGS topographic survey information depicts the area within the project boundary as partially forested, cleared, and wetlands.
- h. U.S. Geological Historical Survey map(s) 1943: 7.5 Minute Index/ Wampee / 1:240000;

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.

J:\SOUTH CAROLINA\2023\SC-23PGI4126\AERIAL WITH BOUNDARY COORDINATES AND FEATURES.MXD



Map No.	Latitude	Longitude
1	33.893245	-78.649288
2	33.893594	-78.646255
3	33.893097	-78.645495
4	33.892503	-78.645817
5	33.892074	-78.644575
6	33.892572	-78.644339
7	33.891472	-78.641440
8	33.889630	-78.644220
9	33.889392	-78.644466
10	33.891656	-78.646991
11	33.891592	-78.647369
12	33.887471	-78.646117
13	33.887947	-78.647606

LEGEND

BLOOMS ROAD TRACT

WETLAND

DITCH

PROJECT ACREAGE TABLE			
TYPE	ACREAGE	LINEAR FEET	% OF TOTAL
UPLAND	33.70 Ac.±	-	67.3%
WETLAND	16.36 Ac.±	-	32.7%
NON-JURISDICTIONAL DITCH	0.01 Ac.±	241 LF. ±	0.0%
TOTAL	50.08 Ac.±	241 LF. ±	100.0%

COE JURISDICTIONAL DETERMINATION INFORMATION

PROJECT NAME: BLOOMS ROAD TRACT

APPLICANT: PULTE HOME COMPANY, LLC
COASTAL CAROLINAS DIVISION
1150 62ND AVENUE NORTH
PINE BEACH, NC 28570

COUNTY: HORRY COUNTY

STATE: SOUTH CAROLINA

DATE: 02/08/2024

NOTES:

AERIAL PHOTOGRAPHS ESTIMATED FROM GOOGLE EARTH PER ESRI, MAXAR, GEEYE, EARTHSAT GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRIID, AND IGN WITH A FLIGHT DATE OF APRIL, 2022.

PROPERTY BOUNDARY ESTIMATED FROM THE HORRY COUNTY PROPERTY APPRAISER'S GIS WEBSITE.

UPLAND/WETLAND LIMITS HAVE NOT BEEN REVIEWED BY ANY REGULATORY AGENCY AND ARE SUBJECT TO CHANGE.

REVISIONS	DATE	DRAWN BY L.C.	DATE 02/08/24	363 Wando Place Drive Suite 200 Mt. Pleasant, SC 29464 Phone (843) 971-8520 Fax (843) 971-8522		BLOOMS ROAD TRACT AERIAL WITH BOUNDARY COORDINATES AND FEATURES	DRAWING No. SC-23PGI4126
		DESIGNED BY S.R.	DATE 02/08/24				SHEET No.
		REVIEWED BY S.R.	DATE 02/08/24				FIGURE 7