



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 9, 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-2024-00956 (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
Non-Jurisdictional Wetland 1	0.11 AC.	Non-JD	N/A
Non-Jurisdictional Wetland 2	0.31 AC.	Non-JD	N/A
Non-Jurisdictional Pond 1	0.45 AC.	Non-JD	N/A
Non-Jurisdictional Pond 2	0.24 AC.	Non-JD	N/A
Non-Jurisdictional Pond 3	0.30 AC.	Non-JD	N/A
Non-Jurisdictional Pond 4	0.04 AC.	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)

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- e. 1980s Preamble Language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))
- f. 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

3. REVIEW AREA.

- a. Project Area Size: 45.47 Acres
- b. Center Coordinates of Review Area: 33.8711°N, -78.6350°W
- c. Nearest City: North Myrtle Beach
- d. County: Horry
- e. State: South Carolina

The area of review currently exists as a public golf course partially forested with small stands of pine and hardwood trees throughout the site. Local topography has been altered significantly to create golf course features. Prior to development, the site existed as majority pine savannah with no major depressive features. A review of historic aerial photography suggested the presence of small Carolina Bay features or small palustrine forested wetlands. The area of review appeared devoid of ponds and or stream features in historic aerials. No remnants of these features currently exist within the area of review. A series of four upland excavated ornamental ponds associated with the design of the golf course are located through the site. Two isolated wetlands, also associated with previously upland dug ponds are also on site. A jurisdictional determination issued in 2017 for the same area of review concurred with the status of the ornamental ponds, but listed the two wetland features as jurisdictional. In light of the EPA memorandum dated March 12, 2025, and incorporated here by reference, these features lack a continuous surface connection to any (a)(1) through (6) water, thus excluding them from jurisdictional status under the CWA. Additionally, the size of the wetland located in the northwestern corner of the site decreased from 0.35 to 0.11 acres. This reduction in acreage is partially due to the shifting east of the approximated property boundary between the 2021 and 2024 AJD submittal.

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

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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 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

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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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.

a. The review area contains four (4) upland excavated ornamental ponds depicted as “Non-Jurisdictional Pond 1, Non-Jurisdictional Pond 2, Non-Jurisdictional Pond 3, and Non-Jurisdictional Pond 4” on the associated map. These ponds qualify as preamble waters based on guidance found in (51 FR 41217) Reference page 16 of 59:
https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf. Preamble waters (51 FR 41217), in part, are: Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons are Preamble waters (51 FR 41217). The acreage of these ponds are 0.45, 0.24, 0.31, and 0.04 acres respectively.

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

⁸ 51 FR 41217, November 13, 1986.

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- 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).
 - a. “Non-Jurisdictional Wetland 1” (0.11 AC.) as depicted on the referenced map exists within a depressional feature between the onsite ornamental pond “Non-Jurisdictional Pond 1” and an offsite upland excavated pond. Wetland 1 was previously determined, after a site visit dated July 26, 2017, and documented under an Approved Jurisdictional Determination (AJD) (SAC-2017-00821), dated August 3, 2017, to be adjacent, non-abutting an offsite TNW (Cedar Creek). The 2017 AJD documented that Wetland 1 directly abutted a “...*large pond located off-site to the south*”. The 2017 AJD made no determination for the offsite pond only indicating that the wetland was abutting the pond; however, the wetland was determined in the 2017 AJD to be adjacent to an offsite TNW and not an offsite impoundment of waters of the US. The wetland is mapped within the Ogeechee loamy fine sand soil series, a poorly drained hydric soil. The depressional wetland 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. There are no features connecting this wetland area to either “Non-Jurisdictional Pond 1” or the offsite upland excavated pond. Per the March 12, 2025, EPA Memorandum, “Non-Jurisdictional Wetland 1” was determined not to have a continuous surface connection to any (a)(1) through (6) water.
 - b. “Non-Jurisdictional Wetland 2” (0.31 AC.) as depicted on the referenced map encompasses a shallow ornamental pond. The area of this wetland is located within a small depression, soils are mapped as Blanton sand an otherwise well drained soil. Due to the ornamental pond existing within this shallow depression, hydrophytic vegetation and soils have developed around the perimeter of the pond creating this wetland. The previous AJD

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(SAC-2017-00821) dated August 3, 2017, documents Wetland 2 overflowing through two PVC pipes and drains into a non-jurisdictional storm water pond located near the southeast corner of the property. The pond then drains into a storm water catch basin and leaves the site beneath the adjacent parking lot and Horseshoe Road. Based on the above and per the March 12, 2025, EPA Memorandum, "Non-Jurisdictional Wetland 2" was determined not to have a continuous surface connection to any (a)(1) through (6) water.

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 The Brigman Company in the submittal dated August 12, 2024.
 - b. Review Performed for Site Evaluation: Office (Desk) Determination. Date: March 21, 2025.
 - c. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)
 - 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: Blanton sand, Ogeechee fine sandy loam, Udorthents and Udipsammments, well drained. SSURGO database. The site is mapped as majority Blanton fine sand.
 - 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/ Wampee / 1:240000; USGS topographic survey information depicts the area within the project boundary as cleared land.
10. OTHER SUPPORTING INFORMATION. Previous jurisdictional determination, SAC-2017-00821, dated August 3, 2017.

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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.



Wetland Delineation/Determination

Harbour View Tract

Horry County, South Carolina
Tax Map Number 131-00-01-001, & 058

Area Summary:

Jurisdictional Wetlands	0.11
Non-Jurisdictional Wetlands	0.31
Non-Jurisdictional Ponds	1.03
Uplands	45.05
Total	45.47

Notes

1. Potential wetland/non-wetland areas depicted here on have not been verified by the US Army Corps of Engineers. Areas depicted as wetlands were identified using the 1987 Wetland Delineation Manual in conjunction with the Atlantic and Gulf Coastal Plain Region Supplement. Prior to any land disturbing activities, a final jurisdictional determination should be obtained from the US Army Corps of Engineers.
2. Boundary information taken from Horry County GIS/Tax Parcel information.
3. Onsite inspection was conducted on 6/26/24.

Legend

Line Legend

Boundary	
Adjacent Boundary	
Right of Way	
Jurisdictional Ditch	
Non-Jurisdictional Ditch	
Dirt Road	
Bulkhead	

Hatch Legend

Jurisdictional Wetland	
Non-Jurisdictional Wetland	
Critical Area/Section 10	

Symbol Legend

Data Point	
Photo Point	
Property Corner	

Prepared For	BW Strategies
Job #	02432-24191
Date	6-28-24

Graphic Scale

