



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT  
69A HAGOOD AVE  
CHARLESTON, SOUTH CAROLINA, 29403

CESAC-RD

February 27, 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),<sup>1</sup> SAC-2024-00801 (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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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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## 1. SUMMARY OF CONCLUSIONS.

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 parcel in question is comprised completely of dry land with no wetlands or WOUS onsite. A review of Digital Elevation Map (DEM), Hillshade Map, SCDNR IR aerial photo, topographic map, NRCS Soils Map, and the National Wetland Inventory Map (NWI) revealed the site is located at higher elevations. Utilizing the collected data mentioned in Section 9 of this document, along with the methods written in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0), It was determined that the review area was comprised entirely of dryland. Note: The southeastern portion of the parcel line / review area terminates at the indicated OCRM critical line on the plat. This boundary is the extent of the review area and does not include offsite tidally influenced area. The site is comprised entirely of 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. Project Area Size: 9.528 acres
- b. Center Coordinates of Review Area: Lat: 32.8380 Long: -79.9603
- c. Nearest City: North Charleston
- d. County: Charleston County
- e. State: South Carolina

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Tidal waters onsite are influenced by the directly adjacent Ashley River.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Tidal waters onsite are influenced by the directly adjacent Ashley River.
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> The site contains >> acres of waters subject to the ebb and flow of the tide.
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

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<sup>5</sup> 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.

<sup>6</sup> 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.

- 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”).<sup>7</sup> 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]

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<sup>7</sup> 51 FR 41217, November 13, 1986.

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- 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
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. Review performed for Site Evaluation: Office (desktop) Determination.  
Date: February 10, 2025
  - b. Map submitted by or on behalf of, the applicant/consultant: Agent supplied plat entitled "**PLAT OF: BOUNDARY SURVEY SHOWING UPDATED SCDES-BCM CRITICAL LINE / PREPARED FOR: / Holdings Company & FL Land Trust / TRACT B1 / LOCATED IN THE / CITY OF NORTH CHARLESTON / CHARLESTON COUNTY – SOUTH CAROLINA**" and dated August 8, 2024, prepared by Britt Land Surveying Inc.
  - c. Wetland Delineation Data Sheets: Prepared and submitted by or on behalf of the applicant/consultant. This office concurs with the data sheets/delineation report.
  - d. Site Photographs: Photos provided by Wetland Solutions, LLC, submitted as part of the JD request dated June 7, 2024.
  - e. USGS Topographic map: 7.5 Minute – Charleston: Quad depicts the review area as partially forested / partially unforested with waters depicted in the southeastern portion of the property.
  - f. USFWS National Wetland Inventory (NWI) Map Service: NWI depicts the review area as upland with one freshwater forested/shrub wetland. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=1eb5aab71973402fbdb879cbb7bd3595>
  - g. National Hydrographic Dataset (NHD): NHD does not depict any linear features within the review area.  
<https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer>

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- h. USDA-NCSS SSURGO and STATSGO digital soil survey. This layer displays soil map units derived from the SSURGO database. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=045a6ccb74954698892c0cc5106beee5>
- i. USGS 3D Elevation Program (3DEP) Map Service: <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=8ba4619c2e60467a909a1bc31e3a06cc>
- j. Aerial Imagery: ESRI base layer imagery, 2020 SCDNR IR Aerial\_2020\_NIR (Map Service)  
[https://tiles.arcgis.com/tiles/RvqSyw3dil7dTKo5/arcgis/rest/services/SC\\_2020\\_NIR/MapServer](https://tiles.arcgis.com/tiles/RvqSyw3dil7dTKo5/arcgis/rest/services/SC_2020_NIR/MapServer)

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.



# LEGEND:

- IS 5/8" RBS (REBAR SET)
- IF (IRON FOUND) SIZE/TYPER NOTED
- △ PK NAIL SET
- ▲ PK NAIL FOUND
- ✦ STK STAKE SET ON PROPERTY LINE
- ☒ MONITORING WELL
- ☒ CABLE TV
- ☒ WATER VALVE
- ☒ WATER METER
- ☒ ELECTRICAL TRANSFORMER
- ☒ ELECTRICAL BOX
- ☒ TELEPHONE BOX
- ✦ SPOT ELEVATION
- ✦ POWER POLE
- ☒ WATER SERVICE
- LOT LINE
- SCDES-BCM (MARSH GRASS LINE)
- ADJACENT LOT LINE
- X-X- FENCE
- DP-DP- OVERHEAD POWWR
- E- UNDERGROUND ELEC.

## DATUM:

SOUTH CAROLINA GRID SYSTEM  
NAD 1983 (2011 MODEL).

## NOTES:

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS; AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SURVEYOR.

THE SURVEY SHOWN HEREON REFLECTS THE ABOVE RECORDED REFERENCES. THE BEARINGS SHOWN HEREON ARE SOUTH CAROLINA GRID NAD 1983 (2007) MODEL.

## REFERENCE:

1. SURVEY MAPS AND RECORDS OF DEEDS AND PLATS IN THE PUBLIC RECORDS OF THE STATE OF SOUTH CAROLINA.

## FLOOD NOTE:

THIS PROPERTY IS SITUATED IN A FLOOD ZONE(S) AE 14 AND AE 15 AS SHOWN GRAPHICALLY. SEE FLOOD MAP(S) 45010C0503 AND 45010C0504 DATED NOVEMBER 17, 2004.

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES  
BUREAU OF COASTAL MANAGEMENT

## SCDES-BCM CRITICAL LINE CERTIFICATION

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY OBTAINING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

*Dean L. Britt* 08/09/2024  
SIGNATURE DATE

THE CERTIFIED LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.



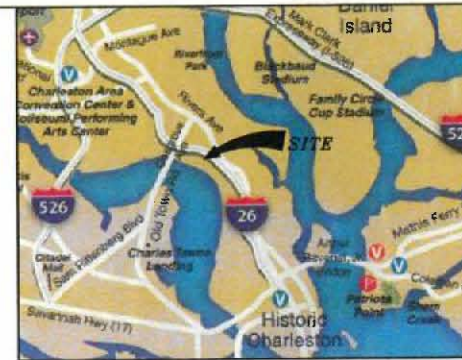
I, Dean L. Britt, a Registered Professional Land Surveyor in the State of South Carolina, certify to owner(s) shown hereon that this survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and which meets or exceeds the requirements for a class of survey as specified therein.

DEAN L. BRITT PLS S.C. REG. NO. 15792  
Date: August 08, 2024

DRIPTWOOD HEALTHCARE REALTY LLC  
2375 BAKER HOSPITAL BLVD.  
TMS # 469-00-00-016  
DEED BOOK 0300-914  
PLAT BOOK ED-63

CHARLESTON COUNTY PARK AND RECREATION COMMISSION  
2381 BAKER HOSPITAL BLVD.  
TMS # 469-00-00-020  
DEED BOOK 2287-992  
PLAT BOOK ES-568

ALBRIGHT AND WILSON INC  
2151 KING STREET EXT.  
TMS # 469-00-00-017  
DEED BOOK X144-184  
PLAT BOOK C-33



LOCATION MAP N.T.S.

## SCDES-BCM CRITICAL LINE

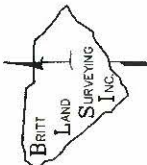
LINE	BEARING	DISTANCE
L1	S86°24'45"W	28.92
L2	S55°24'45"W	5.86
L3	S65°40'38"W	32.88
L4	N75°50'00"W	31.52
L5	S72°43'52"W	26.23
L6	N85°11'31"W	24.66
L7	N87°27'15"W	21.17
L8	N77°52'50"W	11.69
L9	S80°25'01"W	13.73
L10	S67°46'52"W	22.37
L11	S77°28'24"W	13.43
L12	S50°11'39"W	38.35
L13	S45°27'55"W	44.85
L14	S45°44'18"W	31.10
L15	S72°04'25"W	29.94
L16	S68°13'08"W	32.96
L17	S61°17'24"W	20.22
L18	S59°23'55"W	33.95
L19	S50°50'58"W	18.15
L20	S41°59'01"W	27.85
L21	S77°45'14"W	16.57
L22	S68°25'02"W	13.85
L23	S33°24'41"W	11.38
L24	S59°34'52"W	29.94
L25	S57°48'10"W	25.18
L26	S45°32'05"W	17.18
L27	S75°29'45"W	25.10
L28	S84°49'43"W	13.67
L29	S64°49'43"W	8.88

## ZONING:

Parcel ID: 469-00-00-017  
Council District: 10 (Michael A. Brown)  
Current Zoning: B-2 (GENERAL BUSINESS DISTRICT)  
Special Zoned (Internal use): no  
Future Land Use: MULTI-FAMILY RESIDENTIAL  
Overlay District: No Overlay Found  
Annexation Ordinance: 1980-007  
Subdivision: ASHLEY RIVER CENTER

FRONT SETBACK = 10'  
SIDE SETBACK = 10'  
REAR = 10'  
CRITICAL LINE BUILDING SETBACK = 50'  
CRITICAL LINE BUFFER = 50'

BRITT LAND SURVEYING, INC.  
P.O. BOX 80333  
CHARLESTON, SC 29416  
843-766-2707



PLAT OF:  
BOUNDARY SURVEY SHOWING UPDATED SCDES-BCM CRITICAL LINE  
PREPARED FOR:  
Holdings Company & FL Land Trust  
TRACT B1  
LOCATED IN THE  
CITY OF NORTH CHARLESTON  
CHARLESTON COUNTY - SOUTH CAROLINA

LOCATION: 2376 BAKER HOSPITAL BLVD. - 29405  
TAX MAP NO.: 469-00-00-017  
DATE: AUGUST 08, 2024  
JOB NO. 245991  
COUNTY/STATE: CHARLESTON, S.C.  
FIELD BY: DIB / S. HUFFMAN  
DRAWN BY: DIB