



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

CESAC-RD

[23 January 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-2024-00917, [MFR 1 of 1]<sup>2</sup>

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>3</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>4</sup> For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</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

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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> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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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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 US (JD or Non-JD)	Section 404/Section 10
Wetland A	0.90 AC.	JD	Section 404
Wetland B	0.84 AC.	JD	Section 404
Wetland C	3.42 AC.	JD	Section 404
Wetland D	0.33 AC.	Non-JD	N/A
Wetland E	0.80 AC.	JD	Section 404
Critical Area Wetlands	4 AC.	JD	Section 10/404

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 size: 25.43 acres
- B. Coordinates: 32.7310°, -80.0184°
- C. John's Island, Charleston County, South Carolina
- D. Other associated Jurisdictional Determinations (including outcomes): None

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

Name of nearest downstream TNW, Territorial Sea, or interstate water: Stono River, which is a TNW.

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

Aquatic Resource Name	Resource Type	Flowpath
Wetland A	Jurisdictional Wetland	Wetland A is adjacent to tidal waters of the Stono River, an a(1) water.
Wetland B	Jurisdictional Wetland	Waters from Wetland B flow to the Stono River through a ditch located on the property boundary.
Wetland C	Jurisdictional Wetland	Waters from Wetland C flow to the Stono River through a ditch located on the property boundary.
Wetland E	Jurisdictional Wetland	Wetland E is adjacent to tidal waters of the Stono River, an a(1) water.
Critical Area Wetlands	Jurisdictional Wetlands	Critical Area Wetlands are tidally influenced and adjacent to tidal waters of the Stono River, an a(1) water.

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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.

Critical Area Wetlands	Wetland	Critical Area Wetlands is a tidally influenced wetland that is adjacent to or abutting a TNW with permanent flow.
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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

<sup>6</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.

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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):

Critical Area Wetlands	Wetland	Critical Area Wetlands is a tidally influenced wetland that is adjacent to or abutting a TNW with permanent flow.
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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):

Aquatic Resource Name	Resource Type	Reason the AR is jurisdictional
Wetland A	Wetland	Wetland A is a wetland that is adjacent to or abutting a TNW with permanent flow. The wetland was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual.
Wetland B	Wetland	Wetland B is a wetland that is adjacent to a ditch that is located off property that connects to a TNW with permanent flow. The wetland was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual.
Wetland C	Wetland	Wetland C is a wetland that is adjacent to a ditch that is located off property that connects to a TNW with permanent flow. The wetland was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual.
Wetland E	Wetland	Wetland A is a wetland that is adjacent to or abutting a TNW with permanent flow. The wetland was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual.

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

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Aquatic Resource Name	Resource Type	Reason the AR is not jurisdictional
Wetland D	Wetland	Wetland D was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual. Based on USGS 3D Elevation Program (3DEP) Map Service (LiDAR) the wetland appears to be a concave depressional feature. Based on a desktop resources and a field review, this wetland lacks a continuous surface connection to a TNW or tributary. All water flowing into and / or contained within Wetland D is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of an outfall, and minor topographic elevation differences that inhibited any surface hydrologic connection from this wetland to any other Waters of the US.

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: Desktop (office) review. Date: November 14, 2024. Site Visit Evaluation. Date: December 10, 2024.
  - b. Aquatic Resources Delineation submitted by, or on behalf of, the requestor: "Figure 6. Approximate Waters Map, Stono Retreat, Charleston County, SC" dated January 2, 2025 provided by Palmetto Environmental Consulting, Inc.
  - c. Photographs: Photos provided by Palmetto Environmental Consulting, Inc. submitted as part of the JD request dated July 24, 2024.
  - d. Aerial Imagery titled "Figure 3: NWI" submitted as part of the JD request dated July 24, 2024.
  - e. National Wetland Inventory Map titled "Figure 3: NWI" submitted as part of the JD request dated July 24, 2024.
  - f. "Figure 4: USGS Topo" submitted as part of the JD request dated July 24, 2024.
  - g. "Figure 2: Soils" submitted as part of the JD request dated July 24, 2024.

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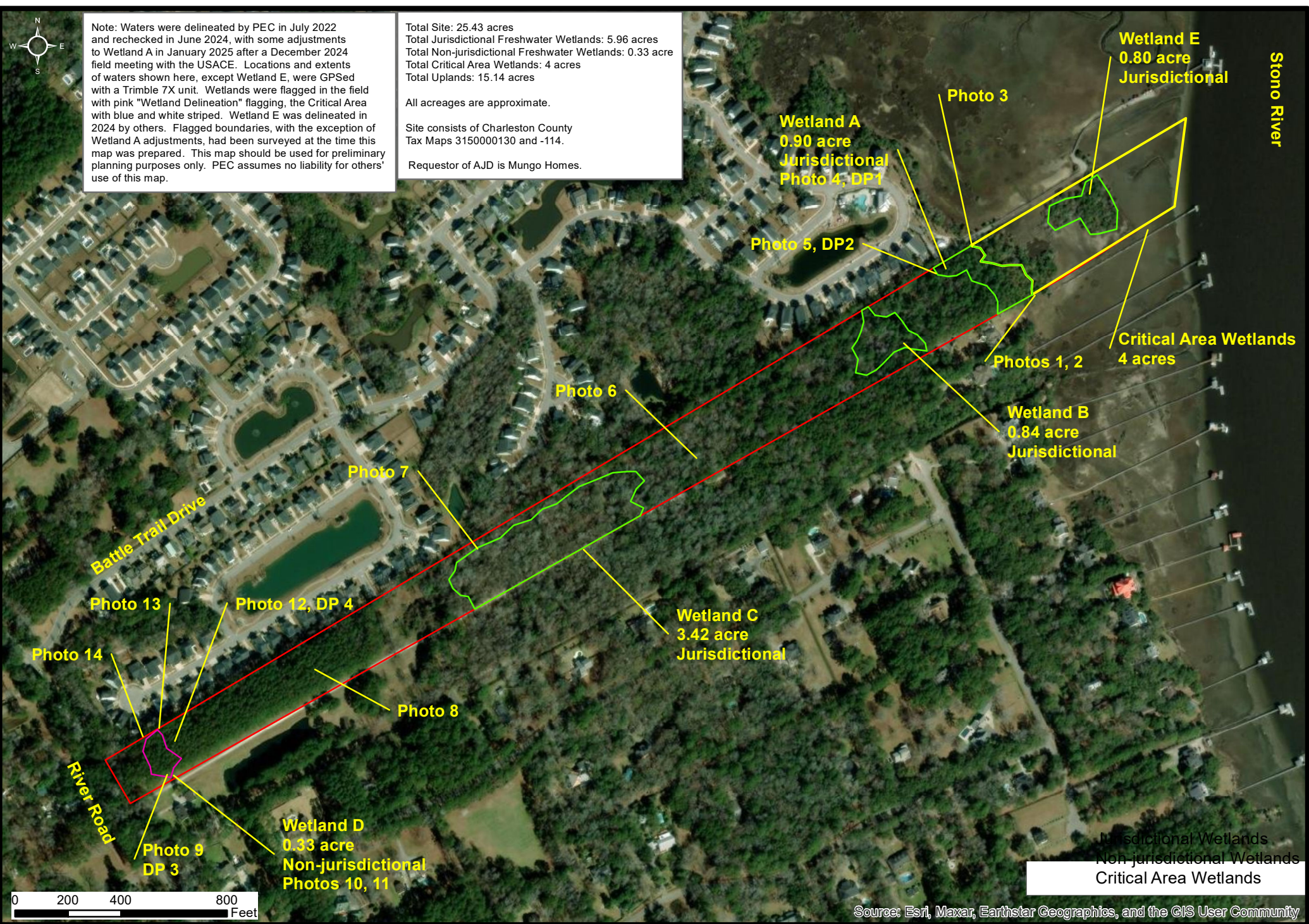
- h. Wetland Determination Data Forms submitted as part of the JD request dated July 24, 2024.
- i. National Hydrography Dataset prepared by the Corps November 14, 2024.
- j. NRCS SSURGO Map Service prepared by the Corps November 14, 2024.
- k. USGS 3D Elevation Program (3DEP) Map Service (LiDAR) prepared by the Corps November 14, 2024.

10. OTHER SUPPORTING INFORMATION. N/A

- a. Memorandum on NWK-2022-00809, U.S. Environmental Protection Agency and U.S. Department of the Army (June 25, 2024)
- b. Memorandum on SWG-2023-00284, U.S. Environmental Protection Agency and U.S. Department of the Army (June 25, 2024)

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.





Note: Waters were delineated by PEC in July 2022 and rechecked in June 2024, with some adjustments to Wetland A in January 2025 after a December 2024 field meeting with the USACE. Locations and extents of waters shown here, except Wetland E, were GPSed with a Trimble 7X unit. Wetlands were flagged in the field with pink "Wetland Delineation" flagging, the Critical Area with blue and white striped. Wetland E was delineated in 2024 by others. Flagged boundaries, with the exception of Wetland A adjustments, had been surveyed at the time this map was prepared. This map should be used for preliminary planning purposes only. PEC assumes no liability for others' use of this map.

Total Site: 25.43 acres  
Total Jurisdictional Freshwater Wetlands: 5.96 acres  
Total Non-jurisdictional Freshwater Wetlands: 0.33 acre  
Total Critical Area Wetlands: 4 acres  
Total Uplands: 15.14 acres

All acreages are approximate.

Site consists of Charleston County  
Tax Maps 3150000130 and -114.

Requestor of AJD is Mungo Homes.

Jurisdictional Wetlands  
Non-jurisdictional Wetlands  
Critical Area Wetlands

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community