



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

CESAC-RDP

28 February 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-2025-00080] [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).
  - i. Wetland A (0.14 acre) - non-jurisdictional
  - ii. Wetland B (0.26 acre) - non-jurisdictional
  - iii. Wetland C (4.32 acre) - non-jurisdictional
  - iv. Wetland D (1.87 acre) - non-jurisdictional
  - v. Wetland E (0.93 acre) - non-jurisdictionalThe above wetlands add up to 7.52 acres.

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (13 November 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (25 August 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* (2 December 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size – 97 acres
- b. Center Coordinates of the Project Area – Latitude: 33.9249°, Longitude: - 81.0612°
- c. City – West Columbia
- d. County – Lexington County
- e. State – South Carolina
- f. Figure – map entitled “Aerial Exhibit 97-Acre Site”
- g. Preliminary Jurisdictional Determination (PJD) SAC-2007-00190 was completed by this office dated 10 May 2007 on a 110-acre area which includes the subject 97-acre review area. The PJD assumes jurisdiction of the aquatic resources within the review area. The wetland delineations have minor variations due to the changing environment within the review area.

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- h. Delineation Concurrence SAC-2019-01863 was completed by this office dated 27 April 2020 on a 111.0-acre area which includes the subject 97-acre review area. The wetland delineations have minor variations due to the changing environment within the review area.
  - i. Approved Jurisdictional Determination SAC-2012-00245 was completed by this office dated 4 September 2012 (under the pre-2015 regime) on a 113.82-acre area which includes the subject 97-acre review area. The wetland delineations have minor variations due to the changing environment within the review area. It was determined the 113.82-acre area contained 5.85 acres of jurisdictional wetlands and 0.123 acres of non-jurisdictional wetlands. The non-jurisdictional wetlands within the subject 97-acre review area were determined to be isolated. The jurisdictional wetlands within the subject 97-acre review area were determined to be wetlands adjacent to but not directly abutting RPWs with significant nexus provided by non-jurisdictional ditches. The non-jurisdictional ditches are documented as having no ordinary high-water mark and being vegetated.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>6</sup> N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</sup> N/A

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<sup>6</sup> 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.

<sup>7</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>8</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.

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").<sup>9</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

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<sup>9</sup> 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*. 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).

This office verified Wetlands A through E contain all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Plain Regional Supplement (Version 2.0). A recent wetland delineation was completed by S&ME on 6 November 2024. Furthermore, this office completed a desktop review on 26 February 2025 utilizing aerial imagery, hydric soils information, LiDAR imagery, etc.

Wetlands D and E are isolated with no discrete surface conveyance of hydrologic flow. Wetlands A, B, and C have a surface conveyance of hydrologic flow by means of a roadside ditch which runs approximately 817 linear feet from Wetland B under a roadway to an underground catch basin. The roadside ditch is not a relatively permanent water (RPW) and has weak indicators of flow frequency with no ordinary high-water mark. The flow into the catch basin with other storm system conveyances does not qualify as a discrete feature that can serve as a continuous surface connection (Memorandum on NWP-2023-00602).

Furthermore, the Wetlands A, B, and C physical connection to a downstream RPW is for a relatively long distance within ditches, culverts, and a catch basin.

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The flow path from Wetland B to the nearest RPW (a tributary to Congaree Creek) is approximately 2,600 linear feet.

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. Wetland delineation completed by the agent SM&E on 6 November 2024 and submitted to this office on 6 December 2024.
  - b. An Office (Desk) Review was completed on 26 August 2025 which relied heavily on flow information provided by the agent SM&E in the 6 December 2024 wetland delineation package, and supplemental information provided on 2 February 2025.
  - c. LIDAR: 3DEP Digital Elevation Model (DEM) prepared by the Corps during the 26 August 2025, desk review.  
<https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer>
  - d. USDA NRCS Soil Survey (USDA NRCS, Esri) prepared by the Corps during 26 August 2025 desk review.
  - e. USGS topographic maps - 7.5 Minute Index: Gaston. Prepared by the Corps during 26 August 2025 desk review.
10. OTHER SUPPORTING INFORMATION.
  - a. MEMORANDUM ON NWP-2023-00602 with EPA and USACE.
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.



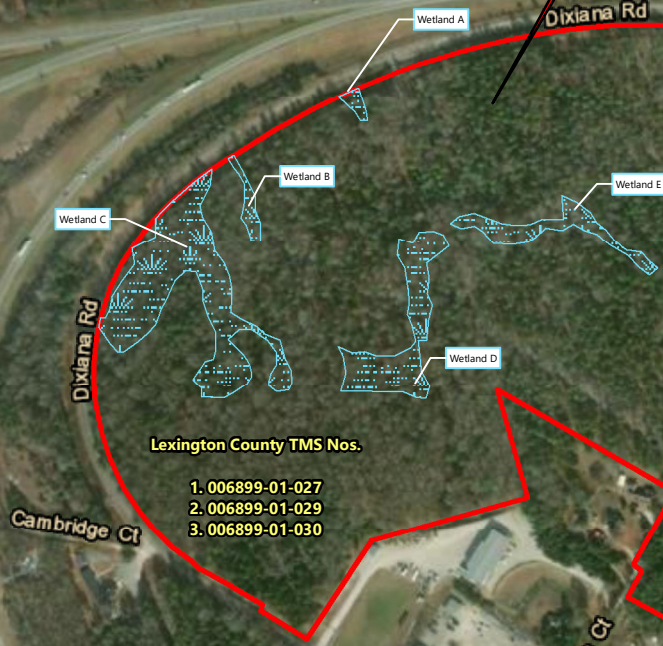
Drawing Path: T:\Columbia-1610\Projects\2024\24610486\_Techon-Bloc Corp\_97-Acre Site Due Diligence\_Cayce, SC\ENV\GIS\mxd\97-Acre Site Updated Aerial Exhibit 2-28-25.mxd plotted by chandley 02-28-2025

**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**  
33.9261, -81.0610



**Lexington County TMS Nos.**

1. 006899-01-027
2. 006899-01-029
3. 006899-01-030

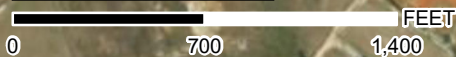
Feature Information

Wetlands

Wetland A: 0.14 ac  
Wetland B: 0.26 ac  
Wetland C: 4.32 ac  
Wetland D: 1.87 ac  
Wetland E: 0.93 ac

Total Wetlands: 7.52 ac

Total Site Acreage: 97 ac



Wetlands



Approximate Boundary



**Aerial Exhibit**

97-Acre Site

Dixiana, Lexington County, South Carolina

Source: World Imagery 2023

SCALE:  
1" = 700'

DATE:  
2-28-25  
PROJECT NUMBER  
24610486

EXHIBIT NO.

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