



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

CESAC-RDE

January 23, 2024

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-2020-01775, 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.

- 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).

The 80-acre review area does not contain any waters of the United States and/or navigable waters of the United States. The site consists of forested uplands with seven non-jurisdictional ditches totaling 6,814 linear feet and one non-jurisdictional pond totaling 0.62 acre. According to the NWIs and the topographic map, a linear feature is depicted along the eastern property boundary that continues south. The hillshade, aerials, and information submitted by the agent found no linear feature at this location. Therefore, this feature was determined to not exist.

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: 80 acres.
- b. Center Coordinates of the review area: Latitude: 34.2125°N, Longitude - 79.6872°W
- c. Nearest City: City of Florence
- d. County: Florence
- e. State: South Carolina

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The 80-acre review area is a forested, undeveloped site located immediately west of SC Highway 327. The project site was previously delineated in November 2020, and an Approved Jurisdictional Determination (AJD) was issued on June 2, 2021, under the former Navigable Waters Protection Rule. Under the NWPR, excluded wetlands and linear features were present; however, no jurisdictional waters were present. Based on the updated delineation, conducted in 2023, seven non-jurisdictional ditches and one non-jurisdictional pond are present on site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>5</sup> The review area was determined to be void of any jurisdictional aquatic resources.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
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.<sup>7</sup> 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

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<sup>5</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>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.

<sup>7</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.

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>8</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.

The review area contains one upland excavated pond depicted as “Non-jurisdictional Pond” on the associated map. The upland excavated pond was determined to be a Preamble Waters (51 FR 41217) Reference page 16 of 59: [https://archives.federalregister.gov/issue\\_slice/1986/11/13/41202-41260.pdf](https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf)

Preamble waters (51 FR 41217), in part, are: *Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. (51 FR 41217).*

According to the aerials submitted by the agent, which date back to 1950, this site was predominately agricultural fields and the onsite non-jurisdictional pond was constructed between 1950 and 1959. This pond is surrounded by uplands

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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according to the delineation provided by the agent, and it is mapped PUBHx, which represents a man-made, permanently flooded pond, on the NWIs.

- 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.

Upland excavated ditches

Name of feature(s)	Size (in linear feet)	Rapanos Guidance
NJF 1	220 LF	Onsite NJF 1 was constructed in dry land and drains only dryland. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 2	694 LF	Onsite NJF 2 was constructed in dry land and drains only dryland. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 3	2,235 LF	Onsite NJF 3 was constructed in dry land and drains only dryland. Although the soil survey maps this non-jurisdictional feature as Coxville, a hydric soil, the NWIs map this feature as uplands. Therefore, the onsite ditch was determined to be <i>excavated wholly in</i>

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		<i>and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 4	268 LF	Onsite NJF 4 was constructed in dry land and drains only dryland. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 5	1,484 LF	Onsite NJF 5 was constructed in dry land and drains only dryland. Although the soil survey maps this feature as Rains, a hydric soil, this linear feature was determined to be surrounded by uplands. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 6	1,750 LF	Onsite NJF 6 was constructed in dry land and drains only dryland. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
NJF 7	162 LF	Onsite NJF 7 was constructed in dry land

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		and drains only dryland. Therefore, the onsite ditch was determined to be <i>excavated wholly in and draining only dry lands and do not carry a relative permanent flow of water.</i>
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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).  
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. Aquatic Resources delineation submitted by, or on behalf of, the requestor:

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Wetland delineation package including data sheets and maps for the Envision Training Center Site provided by S&ME, Inc., in the submittal received on December 20, 2023.

- b. USGS 3D Elevation Program (3DEP) Bare Earth Digital Elevation Model (DEM) Hillshade
- c. USDA NRCS Soil Survey: Norfolk loamy sand, Orangeburg loamy sand, Goldsboro loamy sand, Coxville fine sandy loam, and Rains sandy loam. SSURGO database.
- d. USGS topographic maps: 7.5 Minute – Florence East Quad: Quad depicts the review area as cleared uplands with a pond and linear feature depicted. The pond has been determined to be non-jurisdictional. Based on a review of the aerials, hillshade, and information submitted by the agent, the linear feature at this location is not present. No other symbols representing WOUS are depicted.
- e. National Wetland Inventory (NWI): NWI depicts the review area as uplands with the onsite pond mapped PUBHx and a linear feature located along the eastern property boundary mapped R4SBC. This linear feature is not located on site according to the aerials, hillshade, and information submitted by the agent.  
<https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0>
- f. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC\_2020\_NIR (Map Service). The aerials depict this site as undeveloped, forested land.

10. OTHER SUPPORTING INFORMATION. Previous Navigable Waters Protection Rule (NWPR) Approved Jurisdictional Determination (AJD) documented SAC 2020-01775 letter dated June 2, 2021.

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:\Florence-1639\Projects\2023\23630081\_Thomas and Hutton\_Envision Training Center Aerial Exhibit.mxd plotted by chandley 01-18-2024

**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  
34.2127, -79.6872

Florence County TMS No.  
00240-01-007  
00240-01-018

Feature Information

Non-JD Pond: 0.62 ac

Non-Jurisdictional Features (Ditches)






NJF-1: 220 LF  
NJF-2: 694 LF  
NJF-3: 2,235 LF  
NJF-4: 268 LF  
NJF-5: 1,484 LF  
NJF-6: 1,750 LF  
NJF-7: 162 LF

Total NJFs: 6,814 LF

Total Site Acreage: 80 Acres

Site Location Coordinates

1. 34.215265, -79.689936  
2. 34.215627, -79.684052  
3. 34.210183, -79.684106  
4. 34.209765, -79.690681

-  Site Location
-  Upland Data Point Locations
-  Non-Jurisdictional Feature (Ditch)
-  Non-Jurisdictional Pond
-  Approximate Boundary

0 500 1,000 FEET



**Aerial Exhibit**

Envision Training Center +/- 80 Acres

Florence, Florence County, South Carolina

Source: World Imagery 2021

SCALE:  
1" = 500'

REVISION DATE:  
1-18-24

PROJECT NUMBER  
23630081

EXHIBIT NO.

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