



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

CESAC-RD

[31 JAN 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),¹ [SAC-2023-00522]

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2023-00522]

- 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. Present on site is one (1) non-jurisdictional ditch.

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: 0.5 acre
- b. Center Coordinates of Review Area: Lat. 33.5798 °, Long. -79.0181 °
- c. City: Murrells Inlet
- d. County: Horry County
- e. State: South Carolina

The project site is a mostly developed residential lot located in an urban area with a mix of commercial and residential development. The project site is surrounded by development on all sides.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A.]⁵

⁵ 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.

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2023-00522]

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.

- 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. [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.
 - The review area contains on upland excavated ditch. This feature is identified as Non-Jurisdictional Ditch on the submitted plat. This feature was determined to have been excavated wholly in and draining only dry lands and does not carry a relative permanent flow of water.
- 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

⁸ 51 FR 41217, November 13, 1986.

CESAC-RD

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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.

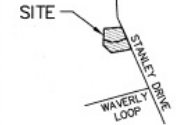
- a. Office Determination: January 19, 2024
- b. U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Index/ /1:240000/ Brookgreen Quad; USGS topographic survey information depicts a forested area within an urban area void of wetland symbology.
- c. USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS / Soil Survey Geographic Database (SSURGO), Map service dated March 31, 2021, updated April 26, 2021; Soil survey information depicts the project boundary as Leon find sand.
- d. National wetlands inventory map(s). Cite name: Wetlands Raster REST Map Service dated December 6, 2021, updated July 14, 2023; NWIs map the project area as entirely uplands.
- e. Photographs: Aerial SCDNR 2020, Google Earth Street View January 2023 and Site photos submitted by the agent dated 4/6/2023.
- f. Horry County Hillshade and USGS 3D Elevation Program(3DEP) Bare Earth DEM.
- g. National Hydrography Dataset (NHD): NHD did not identify any stream/river, artificial paths, or canal/ditches onsite.

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.

- NOTES:
1. REFERENCE PLAT BY S.D. COX DATED JUNE 30, 1955 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR Horry County.
 2. NON-JURISDICTIONAL DITCH LOCATED 03-21-23. NON-JURISDICTIONAL DITCH DETERMINED BY OTHERS.
 3. UPLAND DESIGNATION PER AMANDA HYNES.

US HIGHWAY 17 BUSINESS



LOCATION MAP

DARREN K. COOPER
470-08-01-0028

FIRETHORN PROPERTIES, LLC
470-08-01-0014

JOHN DILLON
470-08-01-0012

MARK DANIELS
470-08-01-0010

—X— = FENCE
RB = REBAR
P = PAVERS
CONC = CONCRETE
CO = CLEAN OUT
W = WOOD WALK
PP = POWER POLE
PH = PUMP HOUSE
OT = OPEN TOP PIPE
IPF = IRON PIN FOUND
ST = STORAGE BUILDING
CC = COVERED CONCRETE
TPED = TELEPHONE PEDESTAL
CWP = COVERED WOOD PATIO
IPS = IRON PIN SET 1/2" REBAR

0' 30' 60' 90'
SCALE 1" = 30'

FIRM MAP #: 45051C0784 K
DATED: 12-16-21 ZONE: "X" & "X IN 0.2"

NOTE: FLOOD ZONE LOCATIONS ARE SCALED FROM CURRENT FEMA RATE MAPS.

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT. NO CERTIFICATION IS MADE TO THE EXISTENCE OR NONEXISTENCE OF WETLANDS. ALL DIMENSIONS RELATING TO STRUCTURES ARE TO OUTSIDE WALLS. THIS PLAT IS THE PROPERTY OF HUNTLEY AND ASSOCIATES, INC., IS CERTIFIED ONLY TO THE PERSONS OR ENTITY NAMED HEREIN, AND MUST HAVE AN ORIGINAL SIGNATURE AND RAISED SEAL TO BE VALID.

STANLEY DRIVE
30' RIGHT-OF-WAY



STATE OF SOUTH CAROLINA
Horry County

SOCASSEE TOWNSHIP
LOTS 15-B AND 16-B

SURVEY FOR
DAVID L. THOMAS

HUNTLEY
AND ASSOCIATES, INC.
LAND SURVEYING
7780 FALLEN TIMBER DRIVE
MYRTLE BEACH, S.C. 29588
(843) 238-8745
huntleysurveying@gmail.com

REF. PLAT BOOK	SEE ABOVE
REF. DEED BOOK	3509-1816
PIW	470-08-01-011
PARTY CHIEF	JBH
DRAWN	WBH
DATE	09-15-2022
DWG. NO.	26226



**Hynes Land &
Environmental Services**

2411 Oak Street, Ste 305B
Myrtle Beach, SC 29577
(843) 458-1272

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The information on this map has been compiled from various sources. The information is not guaranteed, either expressly or implied. The results of any subsequent environmental studies or surveys required could materially alter the map as shown.

2023 SURVEY by HUNTLEY

Project: 431 Stanley Drive Project Site

SAC: 2023-00040

Area: 0.5-acres

Date: 2023 April 6



FIGURE:

7