



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

CESAC-RDS

11 July 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-2017-00303] [(MFR 1 of 1)]²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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 U.S. (WOUS)	Section 404/Section 10
Ditch-E	.15 ACRES	No	None
Ditch-L	.17 ACRES	No	None
Ditch-XX	.1 ACRES	No	None
Ditch-Z	.06 ACRES	No	None
Pond-A	.13 ACRES	No	None
Pond-BB	.14 ACRES	Yes	Section 404
Pond-C	.23 ACRES	No	None
Pond-EE	.89 ACRES	Yes	Section 404
Pond-F	.04 ACRES	No	None
Pond-G	.21 ACRES	No	None
Pond-HH	.05 ACRES	No	None
Pond-J	.54 ACRES	No	None

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Pond-JJ	.37 ACRES	Yes	Section 404
Pond-KK	.37 ACRES	No	None
Pond-N	.27 ACRES	No	None
Pond-P	.7 ACRES	Yes	Section 404
Pond-Q	.2 ACRES	No	None
Pond-R	.08 ACRES	No	None
Pond-V	1.1 ACRES	Yes	Section 404
Tributary-DD	.15 ACRES	Yes	Section 404
Tributary-D	.48 ACRES	Yes	Section 404
Tributary-U	.1 ACRES	Yes	Section 404
Wetland-AA	.03 ACRES	Yes	Section 404
Wetland-B	.32 ACRES	Yes	Section 404
Wetland-CC	.37 ACRES	Yes	Section 404
Wetland-FF	1.18 ACRES	Yes	Section 404
Wetland-H	1.02 ACRES	Yes	Section 404
Wetland-I	.06 ACRES	Yes	Section 404
Wetland-II	.54 ACRES	Yes	Section 404

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Wetland-K	.04 ACRES	Yes	Section 404
Wetland-M	.02 ACRES	Yes	Section 404
Wetland-O	.05 ACRES	Yes	Section 404
Wetland-S	.12 ACRES	Yes	Section 404
Wetland-T	.09 ACRES	Yes	Section 404
Wetland-W	.01 ACRES	Yes	Section 404
Wetland-X	.01 ACRES	Yes	Section 404
Wetland-Y	.09 ACRES	Yes	Section 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)
- e. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))
- f. [2008 Rapanos guidance](#)

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3. REVIEW AREA.

- a. Project Area Size: 96.156 acres
- b. Center Coordinates of the review area: Latitude: 32.2180 °N, Longitude: - 81.0775 °W
- c. Nearest City: Hardeeville
- d. County: Jasper
- e. State: South Carolina

The review area consists of an abandoned golf course. The review area received an Approved Jurisdictional Determination letter dated November 8, 2018, which included the same review area proposed in this AJD request. The review area is comprised of 0.73 acres of Jurisdictional Tributaries, 3.95 acres of Jurisdictional Wetlands, 3.2 acres of Jurisdictional Impoundments (JD Ponds), 2.6 acres of Non-Jurisdictional Features (excavated out of dryland Ditches and Ponds), and 85 acres of upland. Since the last verification, site conditions and management of the property have remained unchanged.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Savannah River, which is classified as “Navigable waters of the U.S.”⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Jurisdictional Tributary U, D, and DD flows onsite generally from south to north, accepting surface hydrology from wetlands directly abutting the features. Tributary U accepts water from Pond P and Wetland O, flows through Wetland S and Pond V, and continues offsite through a culvert. The tributary then re-enters the site (Tributary DD), where it flows through Pond EE and Pond JJ, and it then enters a drainage culvert. The tributary then flows offsite to the east, crossing U.S. Hwy 17 through an underground culvert. The tributary then discharges into an offsite wetland feature that is part of a larger contiguous wetland system that is directly abutting the TNW, the Savannah River. Jurisdictional tributary D flows offsite through a culvert system to the east directly discharging into wetlands that have a CSC to the Savannah River, a Traditionally Navigable Water (TNW).

⁶ 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.

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Jurisdictional Wetlands O, S, T, Y, X, W, FF, AA, CC and II, as well as Ponds P, V, EE, BB, and JJ all contain a continuous surface connection to Tributary U/DD. These wetlands and excavated wetlands flow into Tributary U/DD as it travels from south to north on the property. Tributary U/DD then carries flow offsite to the east into a larger contiguous wetland system that directly discharges into the Savannah River, a TNW.

Jurisdictional Wetland B flows southwest through non-jurisdictional ditch XX into a non-jurisdictional pond A. The pond then has a culverted outfall where it discharges offsite into the channel of the jurisdictional Tributary D. Jurisdictional Wetlands M, K, I, and H flow west and then south through non-jurisdictional ditch L into non-jurisdictional pond C, where it exits the pond via culvert and flows into the Jurisdictional tributary D. During the wet season and in response to precipitation events, water would be transported via confined flow through Jurisdictional tributary D offsite to the TNW (Savannah River).

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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.

⁷ 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.

⁸ 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.

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- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4):

Jurisdictional Pond JJ, EE, BB, P, and V: The review area contained 3.2 acres of jurisdictional ponds. These open water aquatic resources were determined to be excavated from previous waters of the U.S. Currently these ponds contain a continuous surface connection to jurisdictional tributary U/DD.

- e. Tributaries (a)(5):

Jurisdictional Tributary U and DD: Based on a review of USGS Quad maps, aerial imagery, and USGS 3D Elevation Program (3DEP) Map Services, it appears that Tributary UU/D was manipulated in order to accept surface runoff and drainage in order to assist with water control for the previously utilized golf course facility onsite. However, the features do exhibit seasonal flow, bed and bank, and an OHWM. Tributary U/DD has a drainage area that is currently utilized for residential space, as well as for a prior commercial golf course. The tributary exhibits flow characteristics of seasonally flowing system, such as interspersed sediment sorting and lack of aquatic vegetation. Based on the above information, it has been determined that the tributary has a relatively permanent flow regime.

Jurisdictional Tributary D: has an approximate drainage area of 200 acres which consists of numerous wetlands. However, most of this area is currently utilized as residential space, or for prior commercial golf course use. Jurisdictional tributary D appears to be man-made, as it is wholly excavated out of wetlands, and exhibits flow characteristics of an intermittent flow regime. Evidence of flow regime included characteristics such as leaf litter in the channel and a defined OHWM.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

Jurisdictional Wetland FF, II, W, CC, AA, Y, S, T, O, B, H, I, K, X, and M: The review area contains 3.95 acres of Section 404 freshwater wetlands. Review of

the submitted Wetland Determination Data Forms and additional information included in this review reveal these features contain all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0). Flow for the on-site jurisdictional wetlands occurs regularly during the wet season and in response to precipitation events when the soils within the wetlands become saturated and reach storage capacity.

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”).⁹ 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 2.12 acres of non-jurisdictional ponds (Pond A, N, J, C, F, G, Q, R, KK, and HH). These ponds were excavated wholly out of uplands and do not meet the three parameters of a wetland. In addition, as stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) “waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and resulting body of water meets the definition of waters of the United States” are generally not considered waters of the U.S. For these reasons, these features were not considered to be waters of the United States.

- 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.

⁹ 51 FR 41217, November 13, 1986.

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- 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).

There are 4 non-jurisdictional ditches (Ditch XX: 0.1 acres, Ditch E: 0.15 acres, Ditch L: 0.17 acres, and Ditch Z: 0.06 acres) within the review area of this form. These ditches do not carry a relatively permanent flow, are excavated wholly out of dryland, and do not exhibit a bed and bank, nor Ordinary High-Water Mark.

- 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 (Desk) Determination. Date: July 5, 2024. Field Determination. Date: N/A.
 - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including wetland determination forms, associated data maps, and aquatic resource map titled “Supplemental Wetland Exhibit” dated February 17, 2023, prepared by Resource+Land Consultants and edited by Corps.
 - c. Aerial Imagery Map: “Ortho Aerial” source: ESRI Basemap, World Imagery; prepared by Resource+Land Consultants dated November 6, 2023.

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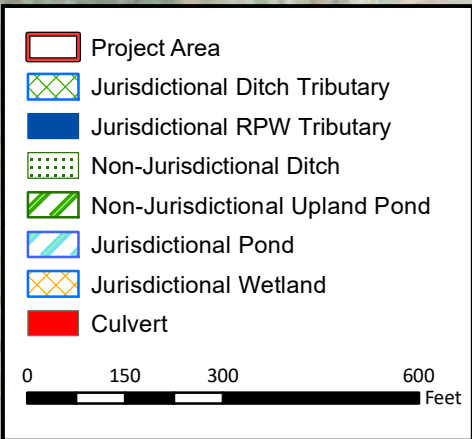
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- d. National Wetland Inventory Map: “National Wetlands Inventory” source: USFWS NWI, Jasper County, SC; ESRI Basemap, World Imagery; prepared by Resource+Land Consultants dated November 6, 2023.
- e. Natural Resource Conservation Survey: “NRCS Soil Map” sources: USDA Soil Survey of Jasper County, SC; ESRI Basemap, World Imagery; prepared by Resource+Land Consultants dated November 6, 2023.
- f. U.S. Geological Survey Map: “USGS Topographic Map” source: USGS Topographic Survey Limehouse Quad; prepared by Resource+Land Consultants dated November 6, 2023.
- g. NOAA LiDAR Elevation Map: “NOAA Topographic Lidar” source: 2018 NOAA Digital Coast Lidar, ESRI Basemap, World Imagery prepared by Resource+Land Consultants dated November 6, 2023.
- h. FEMA Flood Hazard Map: “NOAA Topographic Lidar” prepared by Resource+Land Consultants dated November 6, 2023.
- i. Infrared Imagery: “2006 Color-Infrared Imagery” source: 2006 Colored-Infrared Imagery, Jasper County, SC prepared by Resource+Land Consultants dated November 6, 2023.
- j. Previous Approved Jurisdictional Determination: SAC-2017-00303 letter dated November 8, 2018.

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.

Resource Name	Area (acres)	Jurisdictional Status
Ditch D	0.48	Jurisdictional RPW Ditch Tributary
Total	0.48	
Pond JJ	0.37	Jurisdictional Pond
Pond EE	0.89	Jurisdictional Pond
Pond V	1.1	Jurisdictional Pond
Pond BB	0.14	Jurisdictional Pond
Pond P	0.7	Jurisdictional Pond
Total	3.2	
Tributary DD	0.15	Jurisdictional RPW Tributary
Tributary U	0.1	Jurisdictional RPW Tributary
Total	0.25	
Wetland II	0.54	Jurisdictional Wetland
Wetland FF	1.18	Jurisdictional Wetland
Wetland W	0.01	Jurisdictional Wetland
Wetland CC	0.37	Jurisdictional Wetland
Wetland AA	0.03	Jurisdictional Wetland
Wetland Y	0.09	Jurisdictional Wetland
Wetland S	0.12	Jurisdictional Wetland
Wetland T	0.09	Jurisdictional Wetland
Wetland O	0.05	Jurisdictional Wetland
Wetland B	0.32	Jurisdictional Wetland
Wetland H	1.02	Jurisdictional Wetland
Wetland I	0.06	Jurisdictional Wetland
Wetland K	0.04	Jurisdictional Wetland
Wetland X	0.01	Jurisdictional Wetland
Wetland M	0.02	Jurisdictional Wetland
Total	3.95	
Ditch L	0.17	Non-Jurisdictional Ditch
Ditch E	0.15	Non-Jurisdictional Ditch
Ditch Z	0.06	Non-Jurisdictional Ditch
Ditch XX	0.1	Non-Jurisdictional Ditch
Total	0.48	
Pond HH	0.05	Non-Jurisdictional Upland Pond
Pond KK	0.37	Non-Jurisdictional Upland Pond
Pond Q	0.2	Non-Jurisdictional Upland Pond
Pond N	0.27	Non-Jurisdictional Upland Pond
Pond A	0.13	Non-Jurisdictional Upland Pond
Pond C	0.23	Non-Jurisdictional Upland Pond
Pond G	0.21	Non-Jurisdictional Upland Pond
Pond F	0.04	Non-Jurisdictional Upland Pond
Pond J	0.54	Non-Jurisdictional Upland Pond
Pond R	0.08	Non-Jurisdictional Upland Pond
Total	2.12	



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

RLC Project No.:	16-105
Figure No.:	INDEX
Prepared By:	BS
Sketch Date:	2/17/2023
Map Scale :	1 inch = 294 feet

**Pintail Creek
Golf Course**
Jasper County, South Carolina

**Supplemental Wetland
Exhibit**
Prepared For: Low Country Golf Investors, Inc.

RLC

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