



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA 29526

CESAC-RDE

July 21, 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),¹ SAC-2012-00490 (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. (JD or Non-JD)	Section 404/Section 10
JW-1	0.97 Ac.	JD	404
JW-2	2.03 Ac.	JD	404
NJDW-1	1.15 Ac.	Non-JD	N/A
IWUS	19.96 Ac.	JD	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. 651, 143 S. Ct. 1322 (2023)
- e. EPA Memorandum dated March 12, 2025, titled "MEMORANDUM TO THE FIELD BETWEEN THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONCERNING THE PROPER IMPLEMENTATION OF "CONTINUOUS SURFACE CONNECTION" UNDER THE DEFINITION OF "WATERS OF THE UNITED STATES" UNDER THE CLEAN WATER ACT

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3. REVIEW AREA.

- a. Project Area Size: 59.74 Acres
- b. Center Coordinates of Review Area: 33.8085°N, -778.7753°W
- c. Nearest City: North Myrtle Beach
- d. County: Horry
- e. State: South Carolina

The 59.74-acre area of review is located adjacent to the interchange of S.C. Highways 22 and 31 and surrounded to south by residential development and a golf course. Onsite is a 19.96-acre impoundment of waters of the US (IWUS 1). The impoundment was created circa 2001 and 2002 for barrow material utilized for the construction of S.C. Highway 22. There has been one previous AJD for the review area documented under SAC-2012-00490-3JH, dated June 1, 2012, and one Delineation Concurrence documented under SAC-2012-00490, dated August 21, 2023. Within the area of review, Wetland (NJDW-1) is part of a larger wetland connected to Atlantic Intracoastal Waterway (AIWW) by a series of stormwater ponds and drainage ditches. This determination has determined that NJDW-1 does not have a continuous surface connection to any (a)(1) through (a)(6) waters as defined in the EPA Memorandum dated March 12, 2025.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. AIWW.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. JW-1 and JW-2 are directly abutting the onsite impoundment of waters of the US (IWUS-1). IWUS-1 flows through a series of non-jurisdictional stormwater ponds and drainage ditches and directly outfalls into the AIWW. See the 2012 flow map located in the file.
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.**

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

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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 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): IWUS-1 19.96 acres. IWUS-1 was previously determined to have been excavated from within jurisdictional freshwater wetlands under the AJD documented under SAC-2012-00490-3JH, letter dated June 1, 2012. The previous AJD determined and documented the following: *The 19.96-acre open water impoundment, was excavated from within freshwater wetlands. Freshwater wetlands are located directly adjacent (both north and south) to the impoundment. Review of the Horry County Survey reveals that the impoundment was excavated for the hydric soil types of Pocomoke, Lynn Haven, and Leon.*
 - e. Tributaries (a)(5): **N/A.**
 - f. The territorial seas (a)(6): **N/A.**
 - g. Adjacent wetlands (a)(7): Wetlands JW-1 and JW-2 totaling 3.0 acres are directly abutting the onsite impoundment of waters of the US (IWUS-1).

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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. 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. **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).
 - a. NJDW-1 of approximately 1.15 acre is present within the review area. The wetland meets the parameters of a wetland as outlined in the 1987 manual however it was found to be non-jurisdictional. Wetland (NJDW-1)

⁸ 51 FR 41217, November 13, 1986.

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is part of a larger wetland connected to Atlantic Intracoastal Waterway (AIWW) by a series of stormwater ponds and drainage ditches. This determination has determined that NJDW-1 does not have a continuous surface connection to any (a)(1) through (a)(6) waters as defined in the EPA Memorandum dated March 12, 2025.

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. AJD Submittal, or on behalf of the requestor: Wetland Determination package provided by the Brigman Company in the submittals dated July 11, 2025.
 - b. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)
 - c. Lidar: 3DEP Digital Elevation Model (DEM)
<https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer>
 - d. USDA NRCS Soil Survey: hydric soils types Pocomoke, Leon and Lynn Haven for the areas identified as wetlands/waters of the U.S. and Echaw a non-hydric soil. SSURGO database.
 - e. National Wetland Inventory (NWI): NWI HorryNW depicts the project area as PFO4/SS3Bd (forested wetlands) and PUBHx (Pond)

<https://fwspublicservices.wim.usgs.gov/wetlandsmapping/rest/services/Wetlands/MapServer/0>
 - f. U.S. Geological Survey map(s): 7.5 Minute Index/ Hand quad; Quad depicts the wetland areas and the impoundment as a wetland with a wetland symbol.
10. OTHER SUPPORTING INFORMATION. Previous AJD, SAC-2012-00490-3JH letter June 1, 2012, and a Delineation Concurrence documented under SAC-2012-00490, letter dated August 21, 2023.
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.



TBC
THE BRIGMAN CO.

Approved Jurisdictional Determination Exhibit

Barefoot Lake Tract
TMS# 142-00-01-225
Horry County, SC
July 11, 2025



1" = 400'