



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

CESAC-RDS

28 March 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-2023-01361, (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
NJDW-A	0.30 AC.	No	N/A
NJDW-B	0.46 AC.	No	N/A
NJDW-C	0.17 AC.	No	N/A
NJDW-D	0.13 AC.	No	N/A
NJDW-E	0.05 AC.	No	N/A
NJDW-F	0.10 AC.	No	N/A
NJDW-G	2.59 AC.	No	N/A
NJDW-H	7.41 AC.	No	N/A
NJDW-I	0.73 AC.	No	N/A
NJDW-J	1.2 AC.	No	N/A
NJDD-A	913 L.F.	No	N/A
NJDD-B	352 L.F.	No	N/A

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)

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- 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))

3. REVIEW AREA.

- a. Project Area Size: 85 acres
- b. Center Coordinates of the review area: Latitude: 33.8366° Longitude: -79.8031°
- c. Nearest City: Mount Pleasant
- d. County: Charleston
- e. State: South Carolina

The Rifle Range Tract is located at 2364 Rifle Range Road in Mt. Pleasant, South Carolina. The site is currently known as Hamlin Park, a Town of Mt. Pleasant public park with several walking trails and grassed roads. A small gravel parking lot is located on the southwest corner of the property. The park is primarily a mix of undeveloped secondary growth wetland and non-wetland forested land which has experienced prior silvicultural land use activities in the early 1900s. No structures are located on the project site. The subject property is located in a primarily residential area of Rifle Range Road in Mt. Pleasant, South Carolina. The Tax Map Sequence Numbers (TMS#s) within this review area are portions of 578-00-00-066 and 578-00-00-065.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is Hamlin Sound, which is classified as “Navigable waters of the U.S.” documented in the Corps Navigability Study of 1977, Cooper River Area Report No. 04.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

NJDD-A: This non-relatively permanent man-made relic agricultural drainage ditch carries flow downstream, approximately 300 Linear Feet, to a culvert that carries the flow under Rifle Range Road, directly connecting to an offsite linear conveyance system for approximately 1 mile and discharging directly into Hamlin Sound (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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NJDD-B: This non-relatively permanent man-made relic agricultural drainage ditch carries flow downstream, approximately 100 Linear Feet, then ties into the main ditch (NJDD-A), which carries the flow approximately 400 linear feet to a culvert that carries the flow under Rifle Range Road, directly connecting to an offsite linear conveyance system for approximately 1 mile and discharging directly into Hamlin Sound (TNW).

Non-jurisdictional wetlands: NJDW-A, NJDW-B, NJDW-C, NJDW-D, NJDW-E, NJDW-F, NJDW-G, NJDW-H, NJDW-I, NJDW-J do not contain a continuous surface connection to a requisite water such as a TNW, interstate water, or other territorial sea.

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.
 - a. TNWs (a)(1): N/A.
 - b. Interstate Waters (a)(2): N/A.

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.

- 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”).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. 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

⁹ 51 FR 41217, November 13, 1986.

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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).

NJDW-A (0.30 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1.25 miles to the southeast.

NJDW-B (0.46 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-C (0.17 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-D (0.13 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-E (0.05 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-F (0.10 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent

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chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-G (2.59 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-H (7.41 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-I (0.73 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDW-J (1.2 AC.): is a freshwater wetland that is surrounded by non-wetland uplands, and has no apparent CSC, subsurface connection, no apparent chemical connection, or any apparent biological connection to a requisite water of the United States. The nearest jurisdictional water is approximately 1 mile to the southeast.

NJDD-A (913 L.F.): Is a relic, man-made, first order, agricultural/silvicultural ditch. The feature does contain an ordinary high-water mark, however flow characteristics that best represent the entire reach were characterized, and do not show signs of relative permanent flow. During assessment, the bed of the ditch consists of unbroken masses of leaf material and no standing water. This feature generally flows only in response to precipitation and does not carry a relatively permanent flow of water.

NJDD-B (352 L.F.): Is a relic, man-made, first order, agricultural/silvicultural ditch. The feature does contain an ordinary high-water mark, however flow characteristics that best represent the entire reach were characterized, and do not display signs of relative permanent flow. During the assessment, the bed of the ditch consists of leaf material and no standing water. This feature generally

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flows only in response to precipitation and does not carry a relatively permanent flow of water.

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: March 5, 2025.
 - 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 "Approximate Wetlands Depiction" dated March 5, 2025, prepared by S&ME, Inc.
 - c. Photographic Log: Provided by S&ME, Inc. dated November 6, 2024.
 - d. Aerial Imagery Map: "Aerial Photograph Exhibit" Provided by S&ME, Inc. Dated August 21, 2023.
 - e. National Wetland Inventory Map: "USFWS National Wetland Inventory Exhibit" provided by S&ME, Inc. Dated August 21, 2023.
 - f. Natural Resource Conservation Survey: "USDA-NRCS Soil Survey Exhibit" prepared by S&ME, Inc. Dated August 21, 2023.
 - g. U.S. Geological Survey Map: "USGS Quad Map" provided by S&ME, Inc. And SW Seamon Whiteside dated September 12, 2024.
 - h. NOAA LiDAR Elevation Map: " Surface Flow Path LiDAR Exhibit" Provided by S&ME, Inc. dated November 6, 2024.
 - i. USGS 3D Elevation Program (3DEP) Map Service – Hillshade and LiDAR prepared by the Corps' dated January 22, 2025.
 - j. FEMA Flood Hazard Map: "FEMA" prepared by the Corps' dated January 24, 2025.
10. OTHER SUPPORTING INFORMATION.

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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:\Charleston-1130\Projects\2023\23130285_Liollio Architecture, Inc.-Rifle Range Road Park Charleston SC\ENV\GIS\LA Rifle Range Park Site 110624.mxd plotted by BDavis 03-05-2025

Name	Lat	Long
A	32.8398	-79.8083
B	32.8397	-79.8079
C	32.8413	-79.8052
D	32.8416	-79.8046
E	32.8403	-79.8026
F	32.8409	-79.8007
G	32.8413	-79.7994
H	32.841	-79.7981
I	32.8384	-79.7998
J	32.8371	-79.8019
K	32.8373	-79.8021
L	32.8372	-79.8023
M	32.8369	-79.802
N	32.8356	-79.8039
O	32.838	-79.8057
P	32.8374	-79.8067

Non-Jurisdictional Wetlands (NJDW)

NJDW-A 0.30 Ac.
NJDW-B 0.46 Ac.
NJDW-C 0.17 Ac.
NJDW-D 0.13 Ac.
NJDW-E 0.05 Ac.
NJDW-F 0.10 Ac.
NJDW-G 2.59 Ac
NJDW-H 7.41 Ac
NJDW-I 0.73 Ac.
NJDW-J 1.2 Ac.

Non-Jurisdictional Ditch (NJDD)

NJDD-A 913 LF
NJDD-B 352 LF



REFERENCE:

THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. ALL FEATURE LOCATIONS DISPLAYED ARE APPROXIMATED. THEY ARE NOT BASED ON CIVIL SURVEY INFORMATION, UNLESS STATED OTHERWISE.

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap,

- Project Boundary Coordinates
- ▭ Project Boundary
- ▭ Non-Jurisdictional Wetland (NJDW)
- - - Non-Jurisdictional Ditches (NJDD)



Approximate Wetlands Depiction

Town of Mt. Pleasant Rifle Range Park
Rifle Range Road
Mt. Pleasant, Charleston County, South Carolina

SCALE:
1:5,000

DATE:
3/5/2025
PROJECT NUMBER
23130285

FIGURE NO.

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