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

CESAC-RDE March 6, 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-2024-00064, (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.

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**
Jurisdictional Wetland 1	4.88 Ac.	JD	Section 404
Impoundment 1	0.24 Ac.	JD	Section 404
Non-Jurisdictional Feature 1 (Pond)	1.13 AC.	Non-JD	N/A
Non-Jurisdictional Feature 2 (Pond)	2.69 AC.	Non-JD	N/A
Non-Jurisdictional Features (Ditch) Three Total	1,821 L.F.	Non-JD	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)

   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: 24.40-acres
    b. Coordinates of the review area: Latitude: 33.7773°N, Longitude: -79.1446°W
    c. Nearest City: Conway
    d. County: Horry
    e. State: South Carolina

The area of review is approximately 67% cleared land with all upland areas cleared of vegetation. At present, the onsite uplands contain two active borrow pits mined for sand and fill material. The review area contains one jurisdictional wetland (*Jurisdictional Wetland 1*) and one jurisdictional impoundment (*Impoundment 1*) that was determined to have been excavated from within the onsite wetlands. The review area contains a network of ditches spanning the length of the property draining onsite uplands and transferring stormwater runoff from Daffodil Drive into the southeastern upland borrow pit (*Non-Jurisdictional Feature 1*).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

    a. Nearest downstream TNW, Territorial Sea, or interstate water: The Little Pee Dee River is the nearest downstream TNW.

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

    a. *Jurisdictional Wetland 1* - 4.88 acre: The onsite wetland was determined to flow down gradient to the south into an unnamed tributary, crossing Society Drive before joining Sarah Branch. Sarah Branch flows west paralleling Pauley Swamp Road before crossing Pee Dee Highway and entering the Little Pee Dee River near Punch Bowl Landing.

    b. *Impoundment 1* - 0.24 acre: The onsite water was determined to be an impoundment of waters of the US. The impoundment was excavated from within wetlands (*Jurisdictional Wetland 1*) and determined to flow down gradient to the south into an unnamed tributary, crossing Society Drive before joining Sarah Branch. Sarah Branch flows west paralleling Pauley Swamp Road before crossing Pee Dee Highway and entering the Little Pee Dee River near Punch Bowl Landing.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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): '*Impoundment 1*' as depicted on the attached map of approximately 0.24 acres was created by means of excavation within onsite wetlands (*Jurisdictional Wetland 1*). A review of desktop resources revealed that the onsite wetlands and the impoundment are mapped within the same hydric soil series while LiDAR imagery depicts no distinct topographic feature separating the waters.

    e. Tributaries (a)(5): 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.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7): '*Jurisdictional Wetland 1*' as depicted on the referenced map of approximately 4.88 acres, flows into an unnamed tributary, crossing Society Drive before joining Sarah Branch. Sarah Branch flows west paralleling Pauley Swamp Road before crossing Pee Dee Highway and entering the Little Pee Dee River, a TNW, near Punch Bowl Landing.

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.

a. Two upland excavated borrow pits totaling-3.82 acres, constructed for the purpose of obtaining sand and fill material were found to be filled with water. Excavation and construction activity is ongoing within the uplands area and the borrow pit is deemed to be non-jurisdictional. Excavation activities are occurring under South Carolina Department of Environmental Services mine permit I-002409. 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.

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

a. A network of ditches totaling approximately 1,821 linear feet dug wholly in uplands, only draining uplands, and not carrying relatively permanent flow are located along the boundary between forested and cleared uplands and

[8] 51 FR 41217, November 13, 1986.

draining uplands and stormwater runoff from Daffodil Drive into the southeastern borrow pit.

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).

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. South Carolina Department of Environmental Services, SC Active Mines Viewer (Map Service), https://gis.dhec.sc.gov/activeminesviewer/.

   b. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by The Brigman Company in the submittal dated January 12, 2024.

   c. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)

d. Lidar: Office for Coastal Management, 2024: 2014 Lidar DEM; Horry County SC, https://www.fisheries.noaa.gov/inport/item/57194.

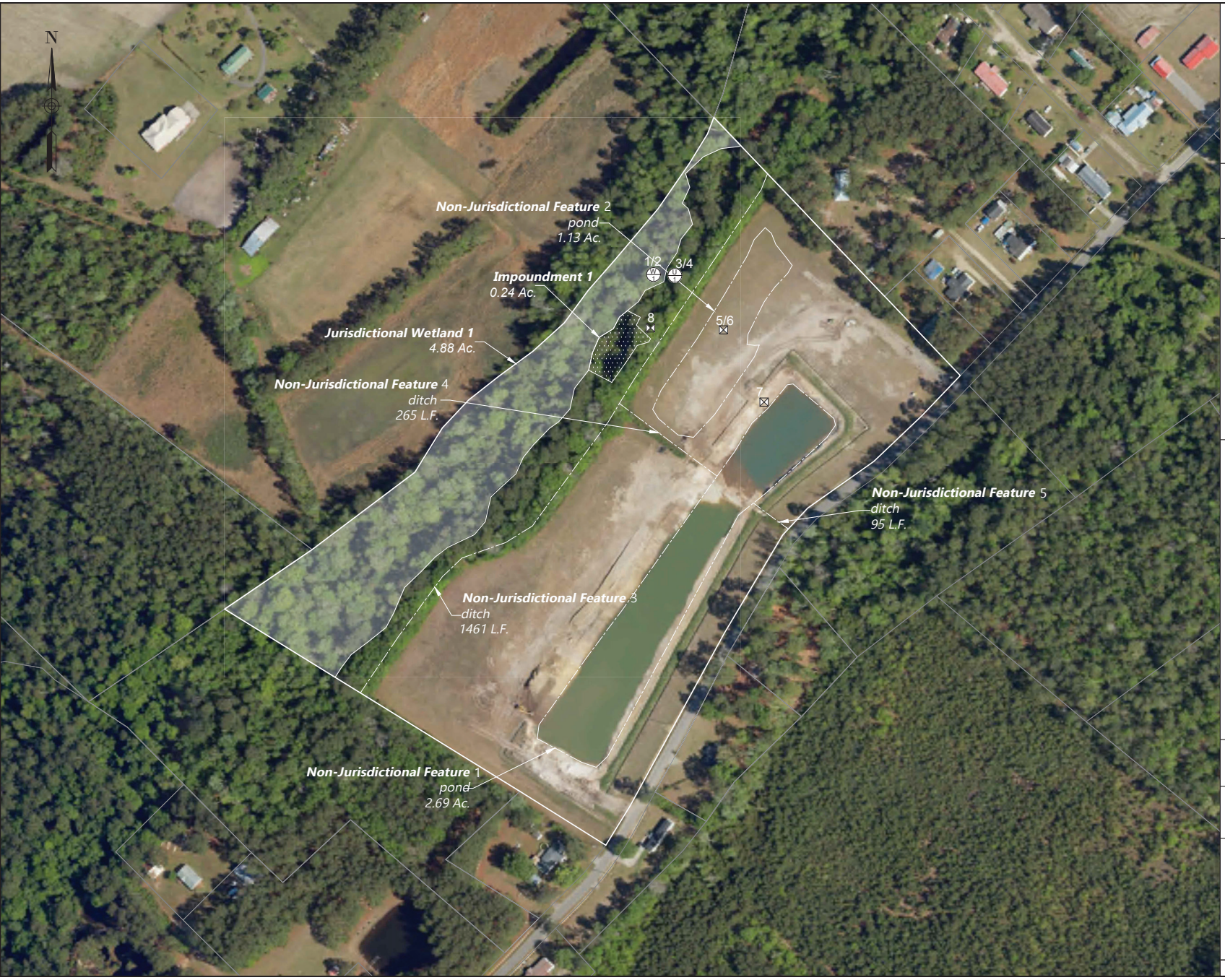
e. USDA NRCS Soil Survey: Hobcaw fine sandy loam, Centenary fine sand. SSURGO database. The site is mapped majority as Centenary fine sand, Hobcaw fine sandy loam, a hydric soil, exists within the mapped wetlands onsite.

f. National Wetland Inventory (NWI): NWI https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0

g. U.S. Geological Survey map(s): 7.5 Minute Index / Dongola / 1:240000; USGS topographic survey information depicts the area within the project boundary as partially uplands and wetlands.

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.



Wetland Delineation/Determination

Vivian Brown-Daffodil Drive Tract

Horry County, South Carolina
Tax Map Number 159-00-01-078

Area Summary:

Jurisdictional Wetland	4.88
Jurisdictional Tributary	0.00
WOUS	0.24
Uplands	19.28
Total	24.40

Notes

1. Potential wetland/non-wetland areas depicted here on have not been verified by the US Army Corps of Engineers. Areas depicted as wetlands were identified using a combination of available remote sensing and onsite investigation. Prior to any land disturbing activities, or land transactions a final jurisdictional determination should be obtained from the US Army Corps of Engineers.

2. Boundary information taken from Horry County GIS/Tax Parcel information.

3. Onsite inspection was conducted on 1-8-24.

Legend

Line Legend

- Boundary
- Adjacent Boundary
- Right of Way
- Non-Jurisdictional Feature
- Jurisdictional Tributary
- Dirt Road
- Bulkhead

Hatch Legend

- Wetland
- WOUS

Symbol Legend

- Data Point
- Photo Point
- Property Corner

Prepared For	Diamond Shores
Job #	01887-21245
Date	1/10/24

Graphic Scale

SCALE IN FEET
200' 0 200'

THE BRIGMAN CO.
P.O. Box 1532 - Conway, SC 29528 - p(843) 248-9388 f(843) 248-9596