



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

March 10, 2025

Regulatory Division

Mr. Tim Lengen  
NVR, Inc.  
501 Wando Park Boulevard, Suite 100  
Mount Pleasant, South Carolina 29464  
tlengen@nvrinc.com

Dear Mr. Lengen:

This is in response to your request for an Approved Jurisdictional Determination (AJD) (SAC-2024-00273) received in our office on May 30, 2024, for a 16.73-acre site identified as TMS# 263-00-03-020 and located at 1023 Clements Ferry Road, Wando, Berkeley County, South Carolina (Latitude: 32.9282°, Longitude: -79.8222°). An AJD is used to indicate the Corps has identified the presence or absence of wetlands and/or other aquatic resources on a site, including their accurate location(s) and boundaries, as well as their jurisdictional status pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344) and/or navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. § 403).

The site is shown on the attached depiction entitled "16.73 Acre HWY 41 Tract, TMS#: 263-00-03-020, Wando, Berkeley County, SC" dated February 10, 2025, prepared by Red Bay Environmental, and revised by the Corps on February 20, 2025. Based on a review of aerial photography, topographic maps, National Wetlands Inventory maps, soil survey information, National Hydrographic Dataset maps, LiDAR imagery, and Wetland Determination Data Forms, we conclude the referenced depiction accurately reflects the location and boundaries of aquatic resources within the site. The site contains 0.08 acres of jurisdictional freshwater wetlands and 7.16 acres of jurisdiction tidal wetland subject to regulatory jurisdiction under both Section 404 of the CWA and Section 10 of the RHA.

The site also contains 0.80 acres of freshwater wetlands as federally defined by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplement; however, the 0.80 acres of freshwater wetlands are not subject to Corps' jurisdiction based upon U.S. Supreme Court decisions. The location and configuration of these non-jurisdictional areas are reflected on the above referenced depiction. It should be clearly noted that decisions of the U.S. Supreme Court to exclude certain waters and wetlands from federal jurisdiction under the CWA have no effect on any state or local government restrictions or requirements concerning wetlands. You are strongly cautioned to ascertain whether such restrictions or requirements exist for the area in question before undertaking any activity which might impact these aquatic resources.

Attached is a Memorandum for Record describing the basis of jurisdiction for the delineated area(s). Be aware that a Department of the Army (DA) permit may be required for certain activities in the areas subject to Corps' regulatory jurisdiction, and these areas may be subject to restrictions or requirements of other state or local government agencies.

If you submit a permit application as a result of this AJD, include a copy of this letter and the depiction as part of the application. Not submitting the letter and depiction will cause a delay while we confirm an AJD was performed for the proposed permit project area. Note that some or all of these areas may be regulated by other state or local government entities, and you should contact the South Carolina Department of Environmental Services, Bureau of Water, or Bureau of Coastal Management, to determine the limits of their jurisdiction.

This AJD is valid for five (5) years from the date of this letter unless new information warrants revision before the expiration date. This AJD is an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR Part 331. The administrative appeal options, process and appeals request form is attached for your convenience and use.

This AJD was conducted pursuant to Corps of Engineers' regulatory authority to identify the limits of Corps of Engineers' jurisdiction for the particular site identified in this request. This AJD may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

In all future correspondence, please refer to file number SAC-2024-00273. A copy of this letter is forwarded to State and/or Federal agencies for their information. If you have any questions, please contact Eileen Foss, Project Manager, at 843-329-8037, or by email at [Eileen.k.foss@usace.army.mil](mailto:Eileen.k.foss@usace.army.mil).

Sincerely,

A handwritten signature in blue ink that reads "T. Brian Hardee". The signature is written in a cursive, flowing style.

T. Brian Hardee  
Team Lead – South Branch

Attachments:

Memorandum for Record

Notification of Appeal Options

16.73 Acre HWY 41 Tract, TMS#: 263-00-03-020, Wando, Berkeley County, SC

Copies Furnished:

Mr. Judd Goff

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Mount Pleasant, South Carolina 29464

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SCDES – Bureau of Water

2600 Bull Street

Columbia, South Carolina 29201

[WQCWetlands@des.sc.gov](mailto:WQCWetlands@des.sc.gov)

SCDES – Bureau of Coastal Management

1362 McMillan Avenue, Suite 400

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DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT  
64A HAGOOD AVE  
CHARLESTON, SOUTH CAROLINA 29403

CESAC-RDS

10 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),<sup>1</sup> SAC-2024-00273, (MFR #1 of 1)<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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).
  - i. Wetland A (non-tidal), jurisdictional, Section 404
  - ii. Wetland B (non-tidal), non-jurisdictional
  - iii. Wetland C (non-tidal), non-jurisdictional
  - iv. Wetland D (non-tidal), non-jurisdictional
  - v. Wetland E (tidal), jurisdictional, Section 10 and 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. 651, 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. Review Area size: 16.73 acres
- b. Center Coordinates of Project Latitude: 32.9282° N, Longitude: -79.8222° W
- c. Nearest City: Wando
- d. County: Berkeley
- e. State: South Carolina

The review area is identified as TMS# 263-00-03-020 and located at 1023 Clements Ferry Road, Wando, Berkeley County, South Carolina and contains a single-family residence and undeveloped forested land and tidal marsh.

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

The Wando River, which is directly adjacent to the site, is a TNW. Navigable limits are documented in the Corps' Navigability Study of 1977, Coastal Supplement

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

Wetland E (Tidal) Jurisdictional: Wetland E is 7.16 acres in size and directly abuts the Wando River, a TNW.

### 6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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.

Wetland A (non-tidal) Jurisdictional: Wetland A is a non-tidal wetland that is 0.08 acres in size. This wetland directly abuts Wetland E, a jurisdictional tidal wetland, which directly abuts the Wando River, a TNW.

Wetland E (Tidal) Jurisdictional: Wetland E is a tidal wetland that is 7.16 acres in size. This tidal wetland directly abuts the Wando River, a TNW.

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

g. Adjacent wetlands (a)(7): The review area contains two (2) jurisdictional wetlands: Wetland A (non-tidal) and Wetland E (Tidal).

Wetland E (Tidal) is 7.16 acres in size, subject to the ebb and flow of tidal forces, and is located directly adjacent to the Wando River, a named TNW.

Wetland A (non-tidal) is 0.08 acres in size and is located directly adjacent to Wetland E, which is located directly adjacent to the Wando River, a TNW.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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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”).<sup>8</sup> 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. NA.
- 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).

Wetland B (non-tidal) non-jurisdictional: Wetland B is 0.34 acres in size and does not abut or have a discernable CSC / connection to a requisite water, TNW, or

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<sup>8</sup> 51 FR 41217, November 13, 1986.



tributary with relatively permanent flow. Wetland A is an isolated forested wetland system located within a depressional land feature that does not contain a continuous connection or flowpath which would provide evidence of surface flow to a jurisdictional water of the U.S.

Wetland C (non-tidal) non-jurisdictional: Wetland C is 0.35 acres in size and does not abut or have a discernable CSC / connection to a requisite water such as a, TNW, or tributary with relatively permanent flow. Wetland A is an isolated forested wetland system located within a depressional land feature that does not contain a continuous connection or flowpath which would provide evidence of surface flow to a jurisdictional water of the U.S.

Wetland D (non-tidal) non-jurisdictional: Wetland D is 0.11 acres in size and does not abut or have a discernable CSC / connection to a requisite water such as a, TNW, or tributary with relatively permanent flow. Wetland A is an isolated forested wetland system located within a depressional land feature that does not contain a continuous connection or flowpath which would provide evidence of surface flow to a jurisdictional water of the U.S.

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: August 22, 2024.
  - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Jurisdictional Determination Request package including upland data sheets, associated data maps, and aquatic resource map titled "16.73 Acre HWY 41 Tract, TMS#: 263-00-03-020, Wando, Berkeley County, SC" dated February 10, 2025, prepared by Red Bay Environmental, and revised by the Corps on February 20, 2025.
  - c. Wetland Delineation Data Sheets: Prepared and submitted by or on behalf of the applicant/consultant, dated January 10, 2024. This office concurs with the data sheets/delineation report.
  - d. Site Photographs: Additional photos provided by Red Bay Environmental as additional information by email on January 10, 2025.

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- e. USGS Topographic map: 7.5 Minute – Cainhoy: Quad depicts the review area as partially forested / partially unforested. No symbols that typically represent potential waters of the US are depicted on the USGS topographic maps.
- f. USFWS National Wetland Inventory (NWI) Map Service: NWI depicts the review area as upland with one estuarine and marine wetland. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=1eb5aab71973402fbd879cbb7bd3595>
- g. National Hydrographic Dataset (NHD): NHD depicts one “streamriver” in the tidal marsh within the review area.  
<https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer>
- h. USDA NRCS Soil Survey: Soil survey depicts the following soil types: Lynchburg fine sandy loam (0 to 2 percent slopes), Goldsboro loamy sand (0 to 2 percent slopes), and Capers association. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=045a6ccb74954698892c0cc5106beee5>
- i. USGS 3D Elevation Program (3DEP) Map Service: <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=8ba4619c2e60467a909a1bc31e3a06cc>
- j. Aerial Imagery: ESRI base layer imagery, 2020 SCDNR IR Aerial\_2020\_NIR (Map Service)  
[https://tiles.arcgis.com/tiles/RvqSyw3diI7dTKo5/arcgis/rest/services/SC\\_2020\\_NIR/MapServer](https://tiles.arcgis.com/tiles/RvqSyw3diI7dTKo5/arcgis/rest/services/SC_2020_NIR/MapServer)

10. OTHER SUPPORTING INFORMATION.

- a. EPA / HQ joint memo **NWP-2023-00602**

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.



Property Boundary

Freshwater Wetland Boundaries

Critical Lines

Total Acreage: 16.73

Upland Acreage: 8.69

Tidal Wetland Acreage (jurisdictional: 7.16)

FW Wetland Acreage (jurisdictional: 0.08)

Revised by the Corps on  
2/20/2025 with information  
provided by the agent

Wetland A (Non-tidal)  
~0.08 Acres (Juris.)

Jurisdictional

Wetland E (Tidal)  
~7.16

Jurisdictional

Wetland B (Non-tidal)  
~0.34 acres (NJD)

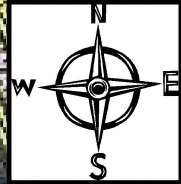
Non-Jurisdictional

Wetland C (Non-tidal)  
~0.35 acres (NJD)

Non-Jurisdictional

Wetland D (Non-tidal)  
~0.11 Acres (NJD)

Non-Jurisdictional



1 of 2

2/10/2025  
16.73 Acre HWY 41 Tract  
TMS#: 263-00-03-020  
Wando, Berkeley County, SC



Property Boundary ———

Critical Lines ———

Total Acreage: 16.73 Upland Acreage: 8.69

Tidal Wetland Acreage (jurisdictional: 7.16)

FW Wetland Acreage (jurisdictional: 0.08)

Wetland E (Tidal)  
~7.16 (Juris.)

Jurisdictional

2630003020

2630003022

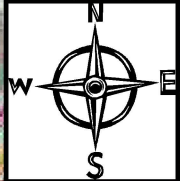
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2690401013

2690401014

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WATER

HWY 41

41

LOW TIDE CT

PORT JACKSON

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2/10/2025  
16.73 Acre HWY 41 Tract  
TMS#: 263-00-03-020  
Wando, Berkeley County, SC

