



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

CESAC-RDE

May 12, 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-2025-01105 (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
Jurisdictional Tributary 1	190 L.F.	JD	Section 404
Jurisdictional Tributary 2	483 L.F.	JD	Section 404
Non-Jurisdictional Feature (Pond)	1.93 Ac.	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. 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. 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: 46.04 Acres
- b. Center Coordinates of Review Area: 34.2699°N, -79.7105°W
- c. Nearest City: Florence
- d. County: Florence
- e. State: South Carolina

The 46.04-acre area of review is comprised of majority secondary successional growth and portions of cleared land with mowed first successional vegetation. An approximately 1.93-acre upland excavated pond is located at the southern portion of the property. An unnamed tributary of Black Creek loosely follows the western property line labeled as Jurisdictional Tributary 2 before leaving the area of review briefly, reentering the site as Jurisdictional Tributary 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 Great 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 Tributary 1 – 190 L.F.: The onsite tributary was determined to flow downgradient to the south beneath Interstate 95, onto property identified as TMS# 00202-01-091 and 00202-01-004. The tributary continues, joining the onsite tributary identified on TMS# 00202-01-004 under SAC-2023-01292 before joining Black Creek approximately 7.2 miles upstream of the Great Pee Dee River. Black Creek continues to meet the Great Pee Dee River approximately 1.24 miles southeast of Interstate 95.
- b. Jurisdictional Tributary 2 – 483 L.F.: The onsite tributary was determined to flow downgradient to the southwest, briefly exiting the area of review before flowing into 'Jurisdictional Tributary 1'. Jurisdictional Tributary 1 continues beneath Interstate 95, onto property identified as TMS# 00202-01-091 and 00202-01-004. The tributary continues, joining the onsite tributary identified on TMS# 00202-01-004 under SAC-2023-01292 before joining Black Creek approximately 7.2 miles upstream of the Great Pee Dee River. Black Creek continues to meet the Great Pee Dee River approximately 1.24 miles southeast of Interstate 95.

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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.**
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):
 - a. Jurisdictional Tributary 1 – 190 L.F.: Originates approximately 150 feet northwest of the southwestern corner of the area of review where the feature enters the site boundaries. The tributary is a relatively permanent water which flows year-round or at least seasonally and not just in

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.

response to the precipitation events. The tributary flows offsite into Black Creek, a tributary of the Grate Pee Dee River, a TNW.

- b. Jurisdictional Tributary 2 – 483 L.F.: Originates in the center of a concave landform in the southern portion of the site and flows downgradient to the west before exiting the area of review. The tributary is a relatively permanent water which flows year-round or at least seasonally and not just in response to the precipitation events. The tributary flows offsite before coming back onsite as Jurisdictional Tributary 1, then flowing offsite into Black Creek, a tributary of the Grate Pee Dee River, a TNW.

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”).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. One upland excavated pond (‘Non-Jurisdictional Feature *Pond*’) of approximately 1.93-acres, constructed for ornamental purposes. As stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) “Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.” 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.**
- 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

⁸ 51 FR 41217, November 13, 1986.

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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). **N/A.**
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 including upland datasheets and associated maps provided by The Brigman Company in the submittal dated October 2, 2024.
 - b. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)
 - c. Lidar: United States Geological Survey, 2024: 2022 Lidar DEM; Savannah Pee Dee, SC, <https://www.fisheries.noaa.gov/inport/item/65959>
 - d. USDA NRCS Soil Survey: Coxville fine sandy loam, Goldsboro loamy sand, Lakeland sand, Lynchburg sandy loam, Norfolk loamy sand, Rains sandy loam, Wagram sand. SSURGO database. The site is mapped majority Wagram sand and Rains sandy loam.

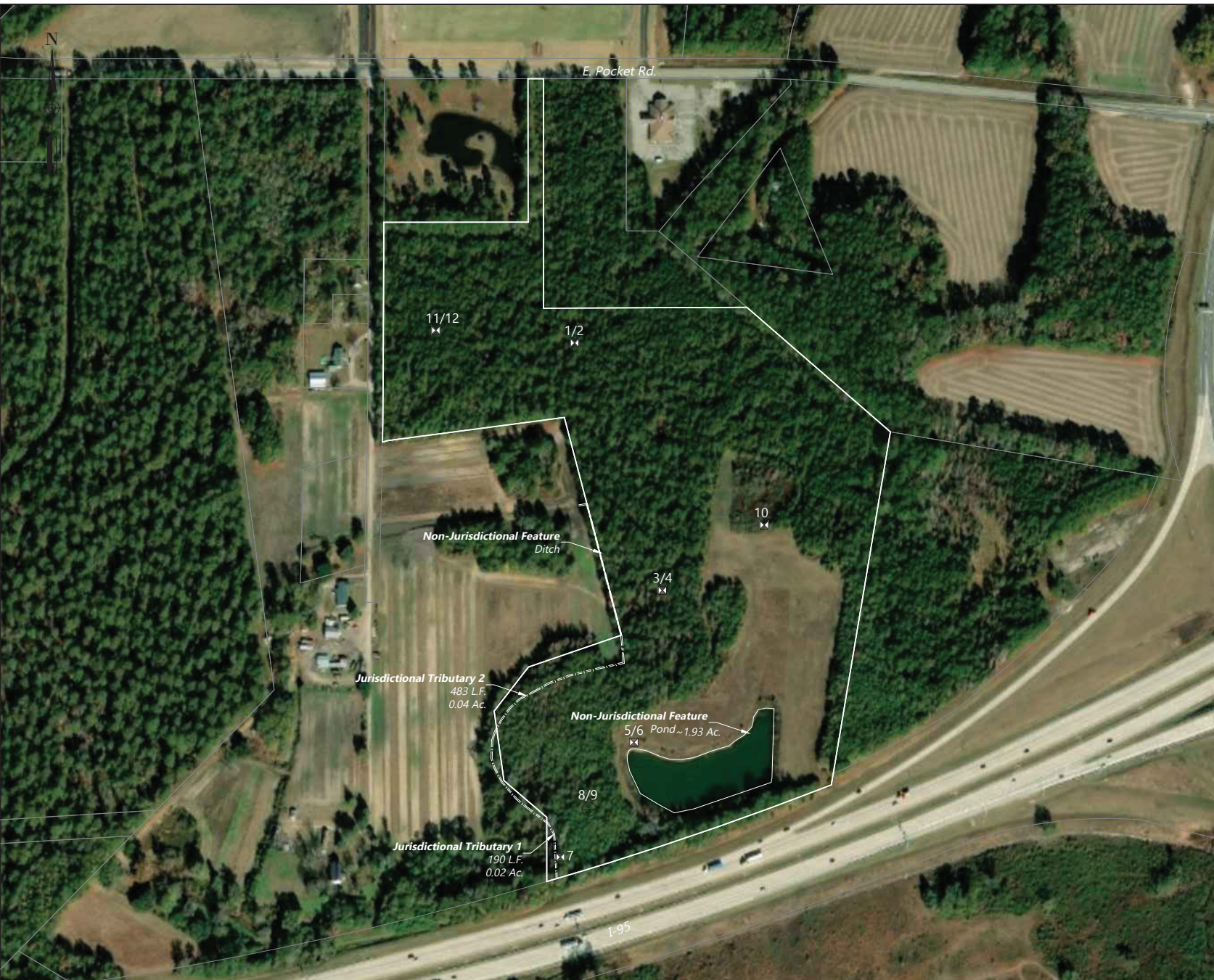
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- e. National Wetland Inventory (NWI): NWI
<https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0>
- f. U.S. Geological Survey map(s): 7.5 Minute Index/ Witherspoon Island / 1:240000; USGS topographic survey information depicts the area within the project boundary as forested and wetland, with an intermittent stream.

10. OTHER SUPPORTING INFORMATION. Adjacent site SAC-2023-00705.

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

Rogers Court Property

Florence County, South Carolina
Tax Map Number 00202-01-014, & 00202-01-046

Area Summary:

Jurisdictional Wetlands	0.00
Non-Jurisdictional Wetlands	0.00
Jurisdictional Tributary	(673 L.F.) 0.06
Uplands	45.98
Total	46.04

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 the 1987 Wetland Delineation Manual in conjunction with the Atlantic and Gulf Coastal Plain Region Supplement. Prior to any land disturbing activities, a final jurisdictional determination should be obtained from the US Army Corps of Engineers.
2. Boundary information taken from Florence County GIS/Tax Parcel information.
3. Onsite inspection was conducted on 9-18-24.

Legend

Line Legend

Boundary
Adjacent Boundary
Right of Way
Jurisdictional Ditch
Non-Jurisdictional Ditch
Dirt Road
Bulkhead



Hatch Legend

Jurisdictional Wetland
Non-Jurisdictional Wetland
Critical Area/Section 10



Symbol Legend

Data Point
Photo Point
Property Corner



Prepared For

Darrell Conner

Job #

02564-24277

Date

9-20-24

Graphic Scale

SCALE IN FEET
300' 0 300'



TBC
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