



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 19, 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-2025-00239 (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
Non-Jurisdictional Wetland Area	3.2 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. 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

3. REVIEW AREA.

- a. Project Area Size: 39 Acres
- b. Center Coordinates of Review Area: 33.6646°N, -78.9730°W
- c. Nearest City: Myrtle Beach
- d. County: Horry

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e. State: South Carolina

The 39-acre area of review is comprised of previously timbered land with few mature hardwood trees and loblolly pines left standing. The remaining vegetation community is comprised of herbaceous first successional growth. A network of large ditches extends throughout the site from previous silviculture use. The northeast corner of the property adjacent to Highway 17 and Sheffield Parkway is devoid of these forestry ditches and exhibited hydric soils, hydrology, and hydrophytic vegetation. The onsite wetland is located in this region and does not maintain a connection to any features onsite which could comprise a continuous surface connection to any non-wetland jurisdictional water.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. **N/A.**
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS **N/A.**
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

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.

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): **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. **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

⁸ 51 FR 41217, November 13, 1986.

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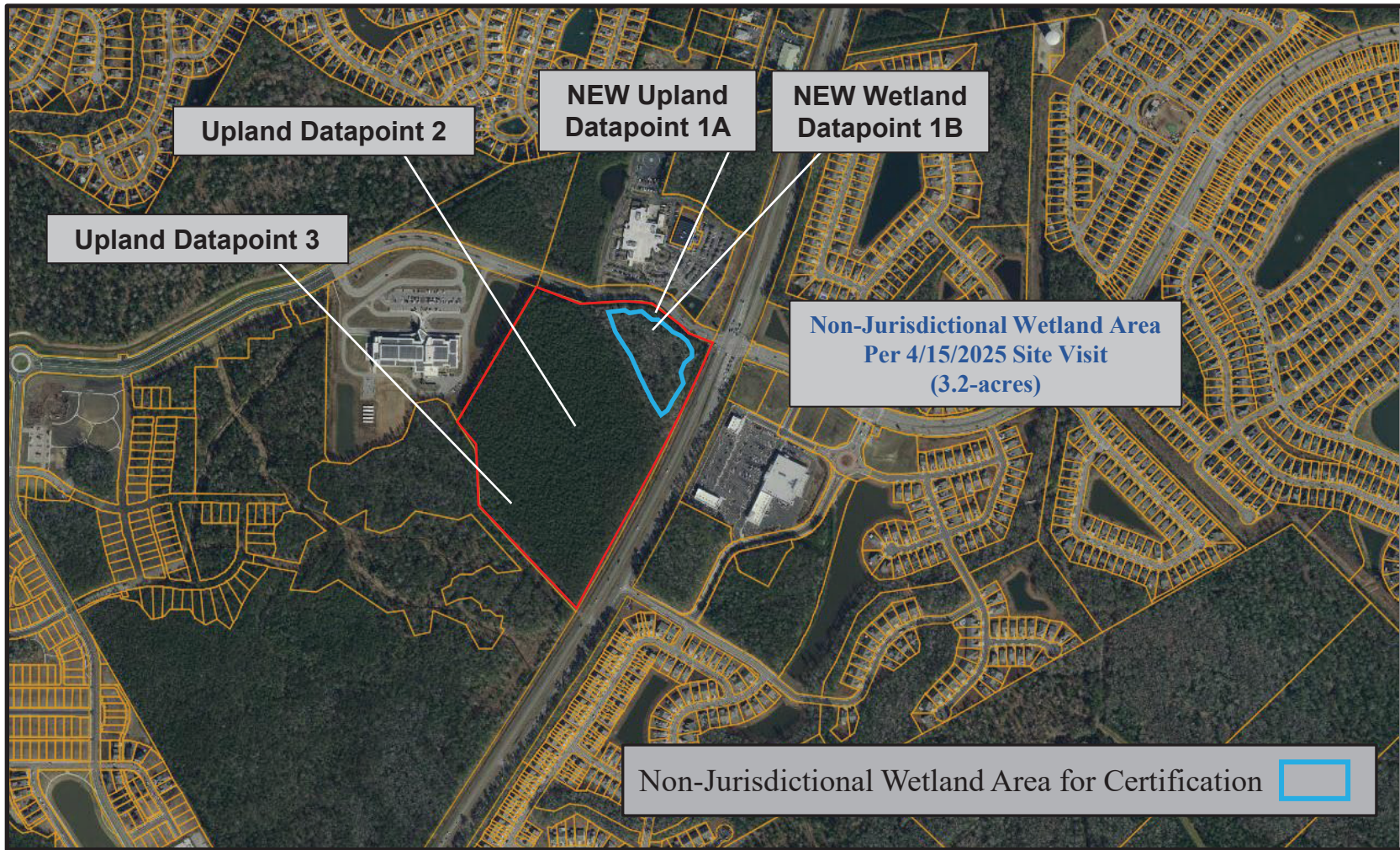
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- 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. **N/A.**
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do 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. Non-Jurisdictional Wetland Area (3.2-acres): The onsite wetland exists in a exceptionally low relief area of the site with no excavations present to alter hydrology. The entirety of the feature is mapped as Yonges fine sandy loam and onsite inspection confirms the presence of hydric soils. The wetland satisfied the criteria set forth in the 1987 Corps’ Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. There are no features connecting this wetland area to any non-wetland waters onsite or offsite which may potentially have jurisdictional status. Per the March 12, 2025, EPA Memorandum, “Non-Jurisdictional Wetland Area” was determined not to have a continuous surface connection to any (a)(1) through (6) 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. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by Hynes Land & Environmental Services in the submittals dated March 5, 2025, and April 21, 2025.
- b. Onsite inspection conducted April 15, 2025.

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- 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: Wahee fine sandy loam, Yemassee loamy fine sand, Yonges fine sandy loam. SSURGO database. The site is mapped majority Yonges fine sandy loam.
 - f. National Wetland Inventory (NWI): NWI
<https://fwspublicservices.wim.usgs.gov/wetlandsmapping/rest/services/Wetlands/MapServer/0>
 - g. U.S. Geological Survey map(s): 7.5 Minute Index/ Myrtle Beach / 1:240000; USGS topographic survey information depicts the area within the project boundary as forested and wetland.
10. OTHER SUPPORTING INFORMATION. Larger tract depicting wetlands onsite SAC-2001-12154 f.k.a. 2001-1X-013.
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.



 <p>Hynes Land & Environmental Services</p> <p>2411 Oak Street, Ste 305B Myrtle Beach, SC 29577 (843) 458-1272</p>	<p><small>Disclaimer: Hynes Land & Environmental Services and partner companies, as well as any other Divisions are hereby known as Hynes Environmental.</small></p> <p><small>The User agrees not to use this document, in whole or in part, for any purpose or project other than the project which is the subject of this Agreement. User agrees to waive all claims against Hynes Environmental resulting in any way from unauthorized changes or reuse of the document by anyone other than Hynes Environmental. In addition, User agrees to the fullest extent permitted by law, to indemnify and hold Hynes Environmental harmless from any damage, liability or costs, including reasonable attorneys fees and cost of defense arising from any changes made by anyone or entity other than Hynes Environmental. This document may not be used, copied, electronically altered or submitted in whole or in part without the prior written consent of Hynes Environmental.</small></p> <p><small>The information on this map has been compiled from various sources. The information is not guaranteed, either expressly or implied. The results of any subsequent environmental studies or surveys required could materially alter the map as shown.</small></p>	<p>Approved Jurisdictional Determination Exhibit</p> <p>Project: South Strand Medical Center (39-acres)</p> <p>HCA Project Number: 3400300024</p> <p>TMS: 185-00-03-074</p> <p>Date: April 21, 2025</p> 	<p>FIGURE:</p> <p>6</p>
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