



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

CESAC-RDE

April 30, 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-2025-00415 (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.

CESAC-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00415

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	0.09 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

CESAC-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00415

3. REVIEW AREA.

- a. Project Area Size: 0.25 Acres
- b. Center Coordinates of Review Area: 33.7664°N, -78.8996°W
- c. Nearest City: Myrtle Beach
- d. County: Horry
- e. State: South Carolina

The 0.25 area of review is a residential homesite located within the Waterbridge community of Carolina Forest. The northern 0.09 acres of the property intersect isolated wetlands identified in SAC-2008-01251-3JH and labeled in such as 'W-14'.

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.

CESAC-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00415

- 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. An approximately 0.09-acre wetland is present within the northern section of the property. The wetland meets the parameters of a wetland as outlined in the 1987 manual however it was found to be isolated due to its hydrologic separation from other WOUS. No surface or subsurface connection was evident during the previous JD (SAC-2008-01251) site visit or could be found after review of aerial photography, soil survey or USGS topographic survey maps. All water is retained within the closed wetland boundary and percolates to an unknown depth. Because of the lack of discernable outfall, topography grades, and lack of evidence of chemical or biological connection, the wetland was determined to be isolated. Additionally, this wetland was determined to be isolated under the previous determination SAC-2008-01251 letter dated October 22, 2008.
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. USACE Desktop Review of Site Dated April 24, 2025
- b. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)
- c. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)

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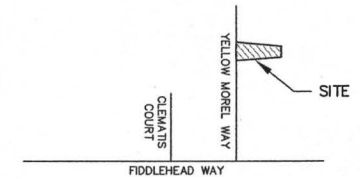
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2025-00415

- 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: Lynn Haven Sand. SSURGO database. The entirety of the site is mapped as Lynn Haven sand.
 - f. U.S. Geological Survey map(s): 7.5 Minute Index/ Nixonville / 1:240000; USGS topographic survey information depicts the area within the project boundary as partially vegetated and partially wetland.
10. OTHER SUPPORTING INFORMATION. Previous Approved Jurisdictional Determination encompassing project area SAC-2008-01251-3JH, and dated October 22, 2208
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.

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	417.00'	75.08'	37.64'	74.98'	N 80°25'28" E	10°18'59"

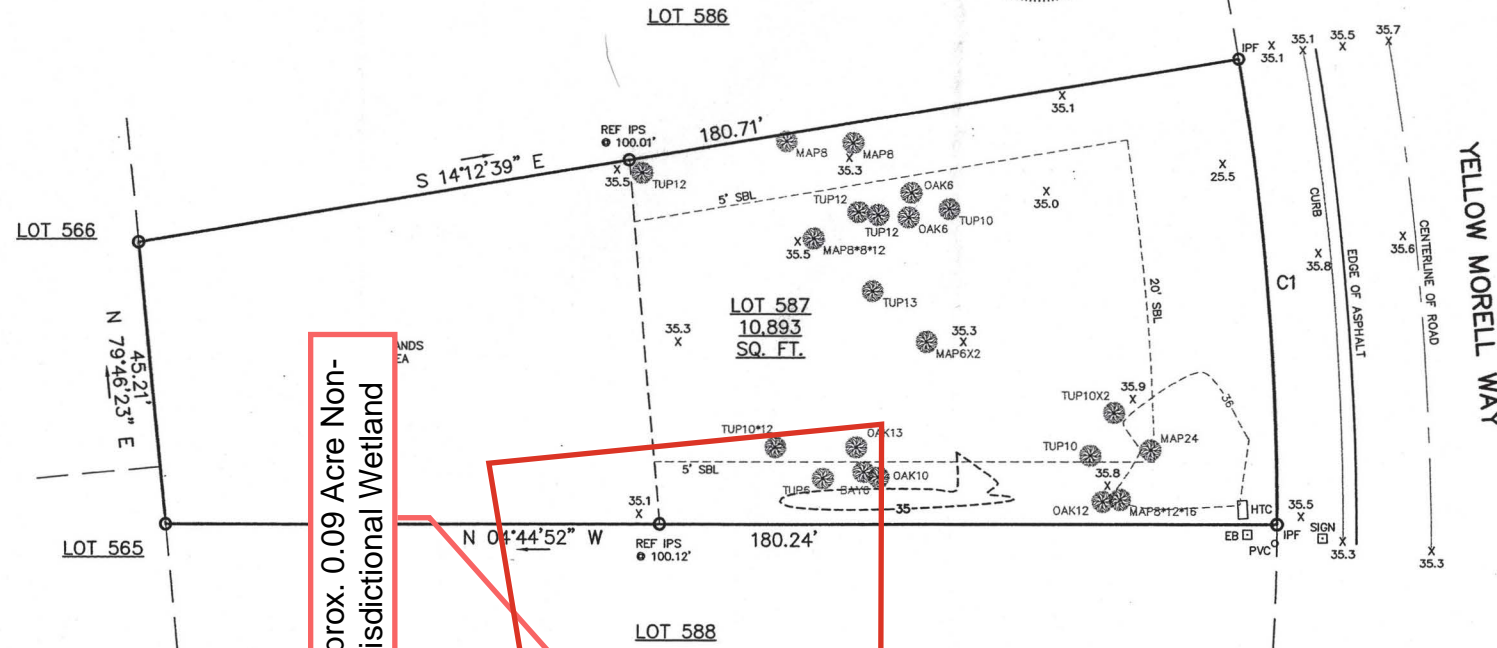


PVC = PVC PIPE
 REF = REFERENCE
 HTC = HTC VAULT
 EB = ELECTRIC BOX
 SBL = SETBACK LINE
 IPS = IRON PIN SET 1/2" REBAR
 IPF = IRON PIN FOUND 1/2" REBAR



LOCATION MAP

NOTE: SETBACKS SHOWN WERE OBTAINED FROM HORRY COUNTY PLANNING. OTHER SETBACKS MAY APPLY. SETBACKS SHOULD BE OBSERVED PRIOR TO ANY ACTION CONCERNING THIS PROPERTY.



YELLOW MORELL WAY

FIRM MAP #: 450104-0545-H
 DATED: 08-23-99 ZONE: "X"

NOTE: FLOOD ZONE LOCATIONS ARE SCALED FROM CURRENT FEMA RATE MAPS. SCALES VARY FROM 1"=500 TO 1"=2,000 AND ARE NOTED AS BEING APPROXIMATE ON SAID MAPS. HUNTLEY & ASSOCIATES, INC. DOES NOT CERTIFY TO OR ASSUME RESPONSIBILITY FOR THE ACCURACY OF THE FLOOD ZONE LINES.

0' 20' 40' 60'
 SCALE 1"= 20'

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT. NO CERTIFICATION IS MADE TO THE EXISTENCE OR NONEXISTENCE OF WETLANDS. THIS IS A RESURVEY OF A PIECE, PARCEL OR LOT OF LAND PREVIOUSLY RECORDED IN BOOK 217 PAGE 12. ALL DIMENSIONS RELATING TO STRUCTURES ARE TO OUTSIDE WALLS. THIS PLAT IS THE PROPERTY OF HUNTLEY AND ASSOCIATES, INC., IS CERTIFIED ONLY TO THE PERSONS OR ENTITY NAMED HEREIN, AND MUST HAVE AN ORIGINAL SIGNATURE AND RAISED SEAL TO BE VALID.



RLS: W.B. HUNTLEY III
 NO: 8809

STATE OF SOUTH CAROLINA
 HORRY COUNTY

WATERBRIDGE
 LOT 587 - PHASE I

SURVEY FOR
 FERNANDO DE ABREU TEIXEIRA

HUNTLEY
 & ASSOCIATES
 LAND SURVEYOR
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REF. PLAT BOOK	217-12
REF. DEED BOOK	4467-659
TAX MAP	164-33-01-097
PARTY CHIEF	JBH
DRAWN	WBH
DATE	10-21-2021
DWG. NO.	25310