



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
69-A HAGOOD AVENUE
CHARLESTON, SC 29403

[CESAC-RD-SP]

[12SEP2025]

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-2009-01214] [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.)	JD or Non-JD	Section 404 / Section 10
Jurisdictional Tributary 1	0.1 AC	Jurisdictional	Section 404
Jurisdictional Wetland 1	0.2 AC	Jurisdictional	Section 404
Jurisdictional Wetland 2	0.05 AC	Jurisdictional	Section 404
Non-Jurisdictional Wetland 1	0.7 AC	Non-Jurisdictional	N/A
Non-Jurisdictional Wetland 2	0.15 AC	Non-Jurisdictional	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

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“CONTINUOUS SURFACE CONNECTION” UNDER THE DEFINITION OF
“WATERS OF THE UNITED STATES” UNDER THE CLEAN WATER ACT

3. REVIEW AREA.

- a. Project Area Size: 9.7-Acre
- b. Center Coordinates of Review Area: 32.918680, -80.118020
- c. Nearest City: North Charleston
- d. County: Dorchester
- e. State: South Carolina
- f. Previous AJD (SAC 2009-01214-2JH), issued by this office dated 17FEB2010

The Arden at Dorchester site is located on the southeast side of Netherby Lane, North Charleston, Dorchester County, South Carolina. The site consists of an approximate 9.7-acre parcel. According to the Dorchester County Geographic Information System (GIS) website, the Parcel Identification Numbers (PIN) is: 171-00-00-071 (9.7-acre). The site consists of commercial properties, open fields, and wooded lands that have experienced prior silvicultural activities. Surrounding properties consist of commercial property, multi-family residences, single-family residences, and wooded land.

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

- a. The nearest downstream TNW⁶ is Coosaw Creek, which is classified as “Navigable waters of the U.S.” documented in the Corps Navigability Study of 1977, Edisto River Area Report No. 03

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

- a. **Jurisdictional Tributary 1 (JT1):** JT1 is depicted and named on USGS topographic maps as Coosaw Creek and flows directly into the downstream TNW, the Ashley River.
- b. **Jurisdictional Wetland 1 (JW1):** JW1 has a continuous surface connection to JT1. Multiple onsite visits resulted in the observation of JW1

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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exhibiting a continuous surface connection to JT1, with no distance or physical barrier between the wetland (JW1) and the RPW (JT1).

- c. **Jurisdictional Wetland 2 (JW2):** JW2 has a continuous surface connection to JT1. Multiple onsite visits resulted in the observation of JW2 consisting of a continuous surface connection to JT1, with no distance or physical barrier between the wetland (JW2) and the RPW (JT1).
 - d. **Non-Jurisdictional Wetland 1 (NJW1) and Non-Jurisdictional Wetland 2 (NJW2):** NJW1 & NJW2 do not contain a continuous surface connection to a downstream requisite water.
6. **SECTION 10 JURISDICTIONAL WATERS⁷:** 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 10.⁸ **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**

⁷ 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.

⁸ 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.

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d. Impoundments (a)(4): **N/A**

e. Tributaries (a)(5):

(a)(5) Aquatic Resource	Size	Rationale
Jurisdictional Tributary 1 (JT1)	0.1 AC	JT1 is an onsite relatively permanent water (RPW) which exhibits all characteristics of perennial flow such as bed and bank, OHWM, absent vegetation, and the presence of flowing water. The USGS National Hydrography Dataset (NHD) depicts this feature as a blue line perennial tributary. Additionally, JT1 is named on USGS topographic maps as Coosaw Creek and flows directly into the downstream TNW, the Ashley River.

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

g. Adjacent wetlands (a)(7):

(a)(7) Aquatic Resource	Size	Rationale
Jurisdictional Wetland 1 (JW1)	0.2 AC	<p>JW1 is an onsite freshwater forested wetland. Review of the submitted data sheets and additional information included in this review, reveal that this feature contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0).</p> <p>During a site visit conducted on 18AUG2025, Corps staff verified that JW1 contained a continuous surface connection, draining directly into JT1 (an RPW), with no distance or physical barrier between the wetlands and the RPW.</p>
Jurisdictional Wetland 2 (JW2)	0.05 AC	<p>JW2 is an onsite freshwater forested wetland. Review of the submitted data sheets and additional information included in this review, reveal that this feature contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0).</p> <p>During a site visit conducted on 18AUG2025, Corps staff verified that JW2 contained a continuous surface connection, draining directly into JT1 (an RPW), with no</p>

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		distance or physical barrier between the wetlands and the RPW.
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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”).⁹ 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 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).

Aquatic Resource	Size	Rationale
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⁹ 51 FR 41217, November 13, 1986.

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Non-Jurisdictional Wetland 1 (NJW1)	0.7 AC	<p>NJW2 is a non-tidal freshwater forested wetland situated in a depression on the landform that does not have a continuous surface connection to a jurisdictional water.</p> <p>Review of the submitted data sheets and additional information included in this review, reveal that this feature contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0).</p> <p>NJW1 was previously documented as a jurisdictional feature on the AJD (SAC-2009-01214-2JH), Form 2 of 2, issued by this office dated 17FEB2010. The letter determined this feature was jurisdictional based on the Significant Nexus test. During the Corps field site visit on 18AUG2025, it was determined that this wetland is surrounded by nonwetland uplands, and does not have a continuous surface connection to a requisite water of the United States.</p> <p>Due to the reasons listed above, it was determined, this feature does not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in Sackett.</p>
Non-Jurisdictional Wetland 2 (NJW2)	0.15 AC	<p>NJW2 is a non-tidal freshwater forested wetland situated in a depression on the landform that does not have a continuous surface connection to a jurisdictional water.</p> <p>Review of the submitted data sheets and additional information included in this review, reveal that this feature contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0).</p> <p>NJW2 was previously documented as a jurisdictional feature on the AJD (SAC-2009-01214-2JH), Form 2 of 2, issued by this office dated 17FEB2010. The letter determined this feature was jurisdictional based on the Significant Nexus test. During the Corps field site visit on 18AUG2025, it was determined that this wetland is</p>

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		<p>surrounded by nonwetland uplands, and does not have a continuous surface connection to a requisite water of the United States.</p> <p>Due to the reasons listed above, it was determined, this feature does not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in <i>Sackett</i>.</p>
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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. Agent report dated 08JUL2025
 - I. Depiction entitled "WETLANDS EXHIBIT" and dated July 9, 2025 (REVISED August 20, 2025)
 - II. Field photos
 - III. Wetland Determination Field Data Sheets
 - IV. Feature Description Narratives
 - V. NRCS Soil Map
 - VI. USFWS NWI Map
 - VII. USGS Topo and USDA Soils Maps
- b. USACE field visit conducted 18AUG2025
 - I. Site Visit Notes
 - II. Site Visit photos
- c. National Regulatory Viewer Layers accessed 18AUG2025
 - I. USGS 3D Elevation Program (3DEP) Map Service
 - II. USGS 3DEP Bare Earth DEM Dynamic Map Service
 - III. National Hydrography Dataset

10. OTHER SUPPORTING INFORMATION.

- a. Previous AJD (SAC 2009-01214-2JH), issued by this office dated 17FEB2010

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.

THE APPROXIMATE WETLAND
BOUNDARIES DEPICTED ON THIS
MAP ARE NOT FINAL AND ARE
SUBJECT TO CHANGE BY THE
U.S. ARMY CORPS OF ENGINEERS.

Non-Jurisdictional Wetland 1
~0.7 acre

Non-Jurisdictional Wetland 2
~0.15 acre

Jurisdictional Wetland 1
~0.2 acre

Jurisdictional Tributary 1
~0.1 acre

Jurisdictional Wetland 2
~0.05 acre

EXTERNAL SOURCES: NAIP 2023 TRUE COLOR AERIAL, U.S. CENSUS ROADS,
DORCHESTER COUNTY GIS PARCEL

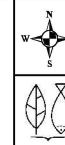
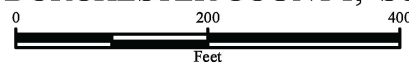
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Date Created: July 9, 2025
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Disclaimer: This map is a graphic representation of data obtained from various
sources. All efforts have been made to warrant the accuracy of this map. However,
Sabine & Waters, Inc. disclaims all responsibility and liability for the use of this map.

REVISED: 8/20/2025

WETLANDS EXHIBIT
BVO CAPITAL - 5402 NETHERBY LN TRACT
DORCHESTER COUNTY, SC



LEGEND

- PROPERTY BOUNDARY: +/- 9.7 AC
- NON-JURISDICTIONAL WETLANDS: +/- 0.85 AC
- JURISDICTIONAL WETLANDS: +/- 0.25 AC
- JURISDICTIONAL TRIBUTARY: +/- 0.1 AC
- ROADS

Long: -80.118132
Lat: 32.918718