



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

July 17, 2024

Regulatory Division
SAS-2024-00163

Mr. Ron Womack
Effingham BOE
405 N. Ash Street
Springfield, Georgia 31329

Dear Mr. Womack:

I refer to a letter dated February 20, 2024, submitted on your behalf by Mr. Brett Searing of Resource and Land Consultants, requesting an Approved Jurisdictional Determination (AJD) for an approximately 22.87-acre site located on Hodgeville Road, approximately 4.04 miles west of Georgia State Route 21, in Guyton, Effingham County, Georgia (Latitude 32.2478, Longitude -81.2816). This project has been assigned number SAS-2024-00163 and it is important that you refer to this number in all communication concerning this matter.

We have completed an approved JD for this site. Any wetlands on-site were delineated in accordance with criteria contained in the 1987 "Corps of Engineers Wetland Delineation Manual," as amended by the most recent regional supplements to the manual. I have enclosed an "AJD Memorandum for Record," which details whether aquatic resources present on the site are subject to the jurisdiction of the U.S. Army Corps of Engineers and how the Corps determined jurisdiction.

"Wetland A", "Wetland B", "Wetland C", and "Wetland D" as depicted on the enclosed exhibit entitled, "Hodgeville Road School Site Effingham County, Georgia Aquatic Resource GPS Exhibit", dated May 30, 2024, are not waters of the United States and are therefore not within the jurisdiction of Section 404 of the Clean Water Act (33 United States Code § 1344). The placement of dredged or fill material into non-jurisdictional waters would not require prior Department of the Army authorization pursuant to Section 404.

This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date. You may request an administrative appeal for any approved JD under the Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal form.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

If you intend to sell property that is part of a project that requires Department of the Army Authorization, it may be subject to the Interstate Land Sales Full Disclosure Act. The Property Report required by Housing and Urban Development Regulation must state whether, or not a permit for the development has been applied for, issued or denied by the U.S. Army Corps of Engineers (Part 320.3(h) of Title 33 of the CFR).

This communication does not convey any property rights, either in real estate or material, or any exclusive privileges. It does not authorize any injury to property, invasion of rights, or any infringement of federal, state or local laws, or regulations. It does not obviate your requirement to obtain state or local assent required by law for the development of this property. If the information you have submitted, and on which the U.S. Army Corps of Engineers has based its determination is later found to be in error, this decision may be revoked.

Thank you in advance for completing our on-line Customer Survey Form located at <https://regulatory.ops.usace.army.mil/customer-service-survey/>. We value your comments and appreciate your taking the time to complete a survey each time you have interaction with our office.

If you have any questions, please contact Shannon Martig, Regulatory Specialist, Coastal Branch, by email at Shannon.K.Martig@usace.army.mil or by telephone at (912) 652-5421.

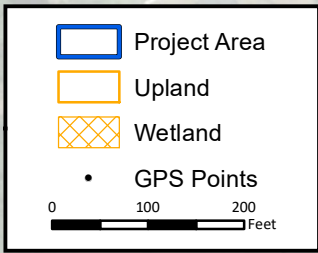
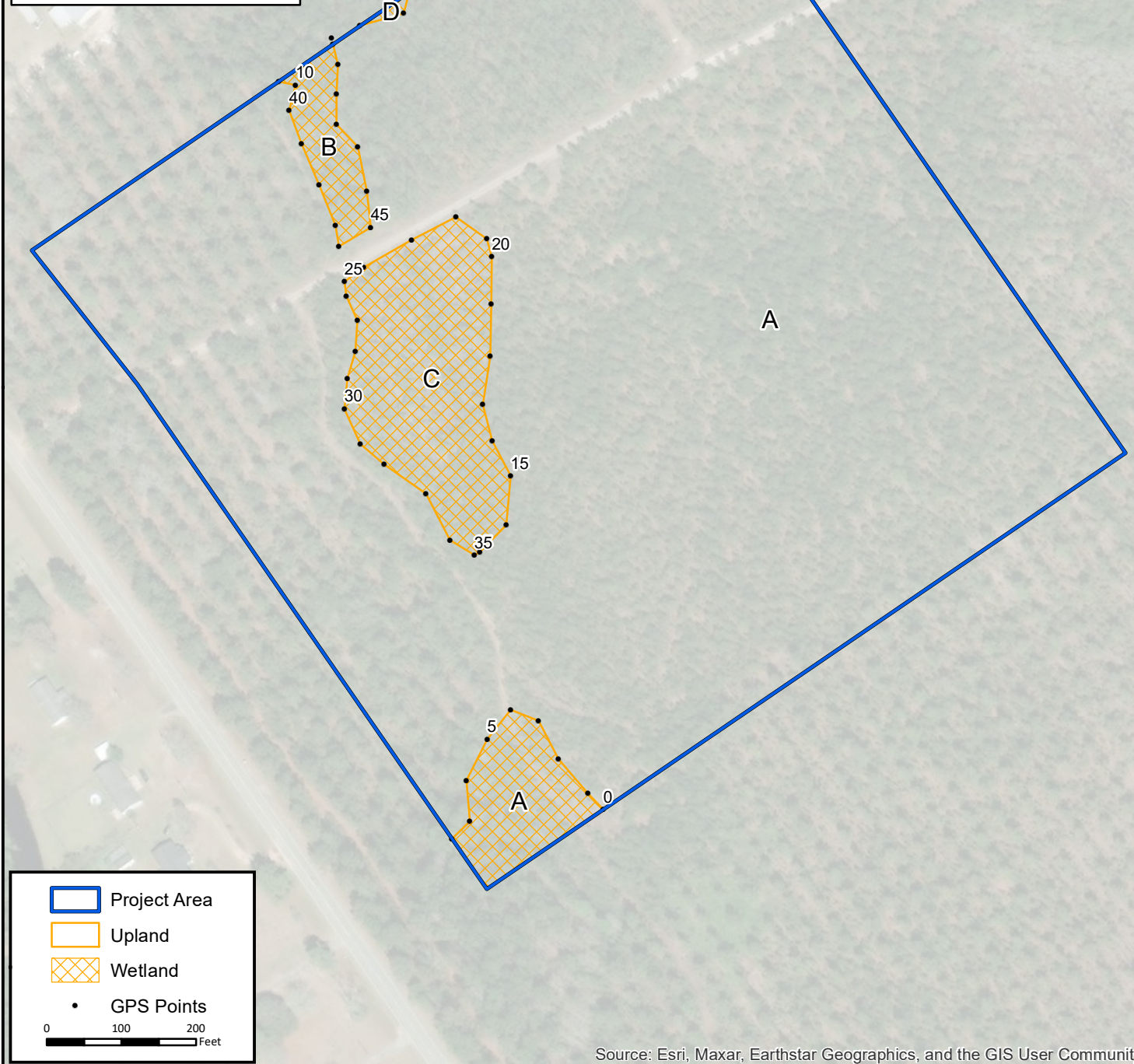
Sincerely,



Shawn R. Gill
Project Manager
Special Projects Team

Copy Furnished:
Enclosures

Feature		Size (Acres)
Upland	A	22.55
TOTAL		22.85
Wetland	A	0.59
Wetland	B	0.34
Wetland	C	1.53
Wetland	D	0.02
TOTAL		2.48
PROJECT AREA		25.33



RLC Project No.:	23-343
Figure No.:	8
Prepared By:	BS
Sketch Date:	5/30/2024
Map Scale :	1 inch = 200 feet

**Hodgeville Road
School Site**
Effingham County, Georgia

**Aquatic Resource
GPS Exhibit**
Prepared For: Effingham County Schools

RLC

RESOURCE+LAND
CONSULTANTS
41 Park of Commerce Way, Ste. 101
Savannah, Georgia 31405
912.443.5896 www.rland.com

Point	X	Y	Point	X	Y
0	-81.28190646	32.24595572	25	-81.28301009	32.24790595
1	-81.28197394	32.24601604	26	-81.28300138	32.24785269
2	-81.28209889	32.24614242	27	-81.28295572	32.24776315
3	-81.28218419	32.24628419	28	-81.28296457	32.2476498
4	-81.2823055	32.2463259	29	-81.28300032	32.24755142
5	-81.28240728	32.24621735	30	-81.28301301	32.24743784
6	-81.28249994	32.2460665	31	-81.28294605	32.24730794
7	-81.28248502	32.24591626	32	-81.28284304	32.24723354
8	-81.2825639	32.24585373	33	-81.28266443	32.24712326
9	-81.2832865	32.24864573	34	-81.2825618	32.24695165
10	-81.28321275	32.2486324	35	-81.28245606	32.2468966
11	-81.28302934	32.24870655	36	-81.2826925	32.24906209
12	-81.28305094	32.24878021	37	-81.28305749	32.24880254
13	-81.28243215	32.24690678	38	-81.28274247	32.24889193
14	-81.28231839	32.2470056	39	-81.2829345	32.2488488
15	-81.28229559	32.24718678	40	-81.28324235	32.24853784
16	-81.28237485	32.24731529	41	-81.28319018	32.24841578
17	-81.28241394	32.24744966	42	-81.28311583	32.24826494
18	-81.28238044	32.24762666	43	-81.2830471	32.24811414
19	-81.28237524	32.24781874	44	-81.283031	32.24803767
20	-81.28237115	32.24799336	45	-81.28289275	32.2481059
21	-81.2823913	32.24805991	46	-81.28290831	32.24823963
22	-81.28252388	32.24814146	47	-81.28294604	32.24840215
23	-81.28271752	32.24805817	48	-81.28303788	32.2484863
24	-81.28292564	32.24795966	49	-81.2830368	32.24859844

RLC Project No.:	23-343
Figure No.:	8
Prepared By:	BS
Sketch Date:	7/16/2024
Map Scale :	1 inch = 200 feet

**Hodgeville Road
School Site**
Effingham County, Georgia

**Aquatic Resource
GPS Exhibit**
Prepared For: Effingham County Schools

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SAS-RD-C

June 10, 2024

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 SAS-2024-00163

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00163

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	JD or Non-JD	Section 404/Section 10
Wetland A	Non-JD	N/A
Wetland B	Non-JD	N/A
Wetland C	Non-JD	N/A
Wetland D	Non-JD	N/A

Although labelled Wetland B and Wetland D, Wetland B and Wetland D function as one wetland (Wetland B/D).

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. __, 143 S. Ct. 1322 (2023)
 - e. 2008 Rapanos Guidance
3. REVIEW AREA. The review area is an approximately 22.87-acre site located on Hodgeville Road, approximately 4.04 miles west of Georgia State Route 21, in Guyton, Effingham County, Georgia (Latitude 32.2478, Longitude -81.2816).
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ Dasher Creek is the nearest TNW. The project review area is

⁵ 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

located approximately 1.48 miles from Dasher Creek; however, the aquatic resources within the review area are not connected to Dasher Creek. This determination was made based on a review of desktop data resources described in Section 9 of this memorandum and Corps site visit conducted on April 18, 2024.

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 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

(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.

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.

- 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 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

⁸ 51 FR 41217, November 13, 1986.

- 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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland A	0.59	Wetland lacks a continuous surface connection to water of the US
Wetland B/D Wetland B Wetland D	0.34 0.02	Wetland lacks a continuous surface connection to water of the US
Wetland C	1.53	Wetland lacks a continuous surface connection to water of the US

Wetland A, Wetland B, Wetland C, and Wetland D are wetlands that meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic Gulf Coastal Plain Regional Supplement. The non-jurisdictional wetlands total 2.48 acres located at the project area. The wetlands are approximately 1.48 miles from the nearest TNW (Dasher Creek). During the Corps site visit on April 18, 2024, an area of upland was observed between Wetland A and Wetland C. Wetland C is a closed wetland with no connection to nearby wetlands within the project review area. Wetland A continues outside the project area towards Hodgeville Road. When viewing LiDAR and aerial imagery, there is no connection observed between Wetland A and nearby wetlands. There is a lack of evidence to support a connection between Wetland A and a water of the US. Although labelled Wetland B and Wetland D, Wetland B and Wetland D function as one wetland (Wetland B/D). Wetland B/D continues outside of the project review area along the northwest boundary. There is a small ridge of higher elevation outside the project review area where Wetland B/D ends with no connection to any nearby wetlands. Wetland B/D is a closed depressional wetland that lacks a continuous surface connection to a water of the US. Based on these observations, site inspection and desktop review including data sources listed in Section 9, Wetland A, Wetland C, and Wetland B/D are determined to be non-jurisdictional.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00163

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. Office (Desk) Determination: June 2024.
Field Visit: April 18, 2024.
- b. Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Approved Jurisdictional Determination request and exhibit submitted by Resource and Land Consultants.
- c. Data sheets prepared/submitted by or on behalf of the applicant/consultant: submitted by Resource and Land Consultants.
- d. U.S. Geological Survey map(s): Effingham County 1'=2,000 ft.
- e. U.S. Geological Survey Hydrologic Atlas: HUC 12 - 030601090305.
- f. USDA Natural Resources Conservation Soil Survey: Effingham County, GA.
- g. National Wetlands Inventory map(s): Effingham County, GA.
- h. Photographs: 2023, 2022, 2011, 2008, and 2004 Google Earth Aerial Imagery and 2022 Ortho Aerial Imagery.
- i. FEMA/FIRM maps: Panel ID: 13103C0360E.
- j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
- k. Antecedent Precipitation Tool Analysis: RLC site visit on March 2, 2023, and Corps site visit on April 18, 2024.

10. OTHER SUPPORTING INFORMATION. N/A

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.

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS
AND REQUEST FOR APPEAL**

Applicant: Ron Womack		File Number: SAS-2024-00163	Date: July 17, 2024
Attached is:		See Section below	
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
<input type="checkbox"/>	PERMIT DENIAL		C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION		D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. The division engineer must receive this form within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Shannon Martig
U.S. Army Corps of Engineers, Savannah District
100 W. Oglethorpe Avenue, Savannah, Georgia 31401

Phone: (912) 652-5421
Email: Shannon.K.Martig@usace.army.mil

If you only have questions regarding the appeal process you may also contact:
Ms. Krista Sabin
Administrative Appeal Review Officer
CESAS-PDS-O
60 Forsyth Street, Room 10M15
Atlanta, Georgia 30303-8801

Phone: (904) 314-9631
Email: krista.d.sabin@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: