



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT  
600 VESTAVIA PARKWAY, SUITE 203  
THE SHELBY BUILDING  
VESTAVIA HILLS, AL 35216

CESAM-RD-N

13 August 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),<sup>1</sup> SAM-2024-00998-JDC; MFR #1 of #1<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 Alabama 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).
  - i. EPH1; non-relatively permanent water; non-jurisdictional.
  - ii. EPH2; non-relatively permanent water; non-jurisdictional.
  - iii. EPH3; non-relatively permanent water; non-jurisdictional.
  - iv. EPH4; non-relatively permanent water; non-jurisdictional.

## 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. 2003 SWANCC guidance

3. REVIEW AREA. The review area for this AJD is limited to the 4 features identified as EPH1, EPH2, EPH3, and EPH4 and is situated within a 73-acre project site west of U.S. Highway 231 in Vincent, Shelby County, Alabama, near Latitude 33.362869, Longitude -86.427362. The attached figure depicts the review areas outlined in orange.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

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The nearest TNW to which EPH2 and EPH4 are connected is the Coosa River. The Coosa River is on the Mobile District's Section 10 list.

EPH 1 and EPH3 are not connected to a TNW, interstate water, or territorial sea.<sup>6</sup>

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

First order tributaries EPH2 and INT11 converge to form INT1. INT1 and INT11 are not in the AJD review area. After precipitation events, EPH2 directs flow into INT1. INT1 flows north across the northern boundary of the project area. After leaving the project area, INT1 flows north for 0.47 mile before converging with a second order unnamed tributary (UT) to form a third order UT. The third order UT flows east for 0.18 mile and southeast for 1.71 miles before converging with another third order UT to form a fourth order UT. The fourth order UT meanders southeast for 2.62 miles before converging with Locust Creek. Locust Creek flows northeast for 1.76 miles, turns east, and continues flowing east for 1.14 miles before emptying into the Coosa River.

First order tributaries EPH4 and PER1 converge to form PER2. PER1 and PER2 are not in the AJD review area. After precipitation events, EPH4 directs flow into PER2. PER2 flows south across the boundary of the project area. After leaving the project area, PER2 flows into a scrub-shrub wetland abutting the off-site portion of Pond 1. Pond 1 is not in the AJD review area. The on-site portion of Pond 1 flows into INT4. INT4 is not in the AJD review area. INT4 flows for 115 feet within the project area before turning south and flowing across the boundary of the project area. After leaving the project area, INT4 converges with INT5 to form INT6. INT5 and INT6 are not in the AJD review area. INT6 enters the project area, flows southeast for 947 linear feet, then flows south across the southern boundary of the project area. After leaving the project area, INT6 continues flowing south for 0.18 mile before converging with a second order UT to form a third order UT in the southbound right-of-way of U.S. Highway 231. The third order UT flows through a culvert under U.S. Highway 231 for 0.06 mile. The third order UT exits the culvert, flows south for 0.74 mile, then flows east for 1.37 miles before draining into the fourth order UT described in the preceding paragraph. The fourth order UT flows into Locust Creek, and Locust Creek flows into the Coosa River as described above.

EPH1 and EPH3 are not connected to a TNW, interstate water, or territorial sea.

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<sup>6</sup> 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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6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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): N/A
  - f. The territorial seas (a)(6): N/A
  - g. Adjacent wetlands (a)(7): N/A

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<sup>7</sup> 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.

<sup>8</sup> 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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## 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”).<sup>9</sup> 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).

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<sup>9</sup> 51 FR 41217, November 13, 1986.

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EPH2 and EPH4 are non-relatively permanent waters. No flow was observed during the field visit on February 7, 2025. Based on the results of the APT, precipitation was drier than normal during the field visit and the area was experiencing a moderate drought. EPH2 and EPH4 lacked organic debris lines and soil-based evidence of a high water table. Additionally, these features had leaf litter in the channel and weak sinuosity along the thalweg. Based on observed stream characteristics, EPH2 and EPH4 only flow in response to rainfall events and do not have continuous flow at least seasonally. Therefore, EPH2 and EPH4 are non-jurisdictional. EPH2 is 548 feet long and centered at Latitude 33.3627868, Longitude -86.4340733. EPH4 is 70 feet long and centered at Latitude 33.3606804, Longitude -86.4344886.

EPH1 and EPH3 are non-relatively permanent waters. No flow was observed during the field visit on February 7, 2025. Based on the results of the APT, precipitation was drier than normal during the field visit and the area was experiencing a moderate drought. EPH1 and EPH3 lacked organic debris lines and soil-based evidence of a high water table. Additionally, these features had leaf litter in the channel and weak sinuosity along the thalweg. EPH1 and EPH3 did not flow into other aquatic resources, i.e., both features ended as overland sheet flow in uplands. Based on observed stream characteristics, EPH1 and EPH3 only flow in response to rainfall events and do not have continuous flow at least seasonally. Therefore, EPH1 and EPH3 are non-jurisdictional. EPH1 is 112 feet long and centered at Latitude 33.3640433, Longitude -86.434142. EPH3 is 263 feet long and centered at Latitude 33.363722, Longitude -86.431322.

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. A Mobile District project manager conducted a field visit with the applicant's authorized agent on February 7, 2025. An in-office evaluation using desktop resources was completed on August 7, 2025.
  - b. Consultant's delineation report dated November 6, 2024, and revised delineation maps received on February 24, 2025.
  - c. Antecedent Precipitation Tool accessed August 7, 2025.
  - d. National Regulatory Viewer (aerial imagery map layer, USGS topographic map layer, USDA-NRCS Web Soil Survey map layer, and Digital Elevation Model map layer) accessed August 7, 2025.

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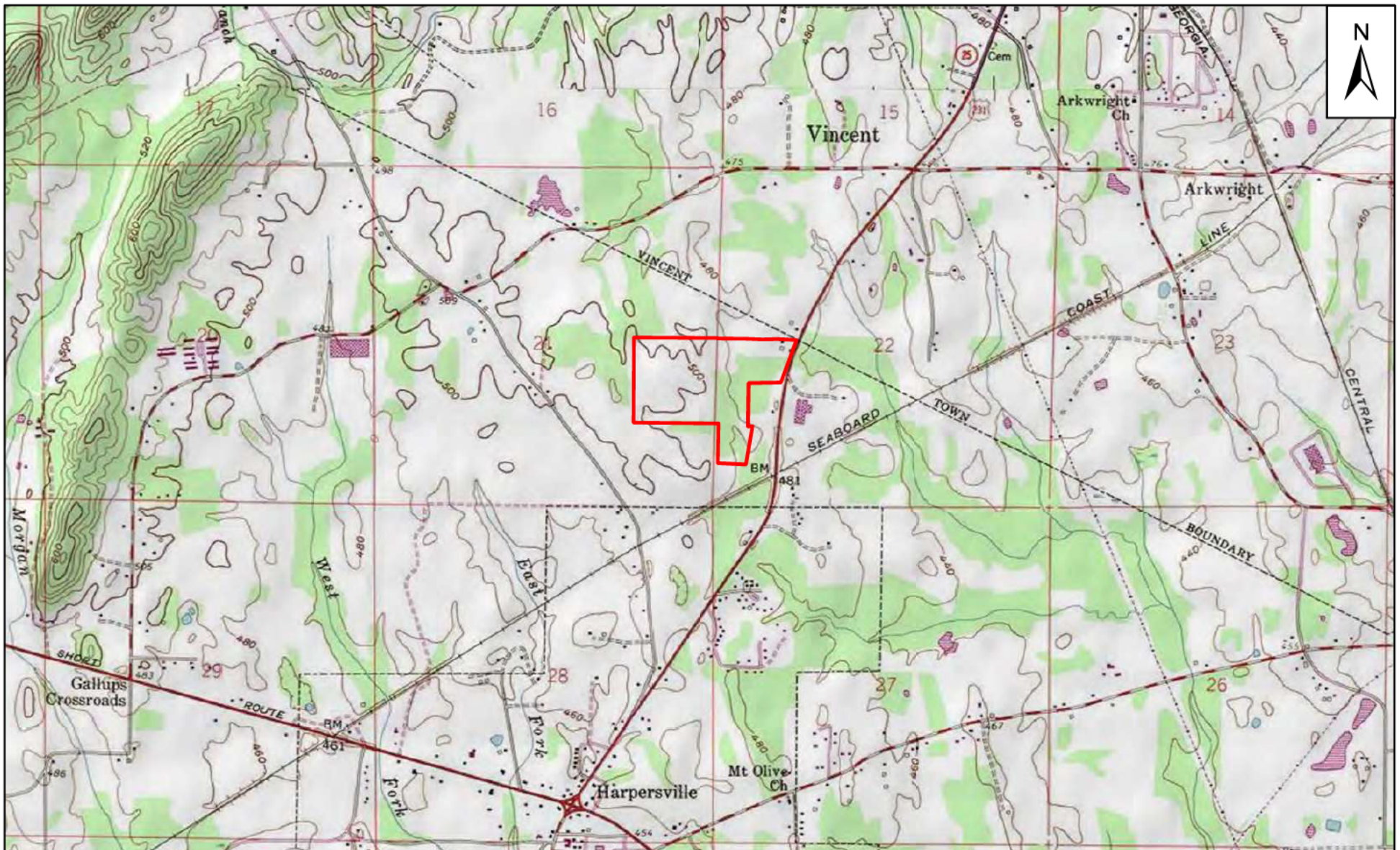
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- e. USGS National Map at <https://apps.nationalmap.gov/viewer/>. Accessed on August 7, 2025.
- f. EPA WATERS Geoviewer at <https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=074cfede236341b6a1e03779c2bd0692>. Accessed on August 7, 2025.

10. OTHER SUPPORTING INFORMATION.

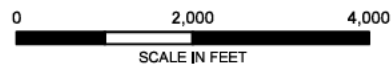
- a. “Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning Proper Implementation of ‘Continuous Surface Connection’ Under the Definition of ‘Waters of the United States’ Under the Clean Water Act”, March 12, 2025.
- b. U.S. Environmental Protection Agency and U.S. Army Corps of Engineers “Memorandum on MVS-2023-00288”.

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.



**LEGEND**

PROJECT BOUNDARY



SITE LOCATION MAP  
HWY 25  
VINCENT, SHELBY COUNTY, ALABAMA  
2024

