



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT  
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JBER, AK 99506-0898

CEPOA-RDS-S

02 JUNE 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> POA-2024-00335, 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.

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. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area); see Figure 1 for the review area.

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)

3. REVIEW AREA. The review area is a 1.84-acre lot located northeast of the intersection of Church Road and Pittman Road (Figure 1). It is located within Section 20, T. 18 N., R. 1 W., Seward Meridian; Latitude 61.6286° N., Longitude 149.5105° W.; in Meadow Lakes, Alaska. The review area is currently undeveloped.

The current property owner intends to use the area as a laydown yard to stockpile overburden for proposed work adjacent to the review area. A wetland delineation and a Preliminary Jurisdictional Determination was completed on September 30, 2024, for the adjacent lot to this request. A site visit was conducted on the current review area on April 1, 2025.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Susitna River, which is listed as a non-tidal Section 10 of the Rivers and Harbors Act of 1899 waterbody and is located

approximately one (1) mile north of the review area. There are no aquatic resources present in the review area.<sup>6</sup>

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

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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.

<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.

- 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”).<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

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

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- 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).  
N/A

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. DOWL. April 17, 2025. MEA Overburden Stockpile Area, POA-2024-00336, Technical Memorandum.
- b. U.S. Army Corps of Engineers Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. Vicksburg, MS.
- c. U.S. Army Corps of Engineers Environmental Laboratory. 2007. Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Alaska Region (Version 2.0). Vicksburg, MS.
- d. U.S. Fish and Wildlife Service. 2025. National Wetlands Inventory website. U.S. Department of the Interior. Washing, D.C. <http://www.fws.gov/wetlands/>.
- e. National Wetland Plant List, Alaska Plant List Version 3.5. 2020. [https://cwbiapp.sec.usace.army.mil/nwpl\\_static/v34/home/home.html](https://cwbiapp.sec.usace.army.mil/nwpl_static/v34/home/home.html).
- f. United States Department of Agriculture, Natural Resources Conservation Service. 2022. Web Soil Survey. <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, Accessed: May 29, 2025.
- g. Matanuska-Susitna Borough Wetlands Viewer. <https://msb.maps.arcgis.com/apps/mapviewer/index.html?webmap=cabe52e23dd04999bda0e53d0e909285>. Accessed: May 29, 2025.
- h. Matanuska-Susitna Borough Parcel Viewer. [https://mapping.matsugov.us/Html5Viewer/index.html?viewer=MSB\\_Parcel\\_View](https://mapping.matsugov.us/Html5Viewer/index.html?viewer=MSB_Parcel_View)er. Accessed: May 29, 2025.

- i. DOWL. 2023. MEA McRea Transmission Line and New Substation Wetland Delineation Report.

#### 10. OTHER SUPPORTING INFORMATION.

- a. Vegetation: Based on the site visit of the review area on April 1, 2025, Photos A and B document a prevalence of vegetation primarily consisting of upland or facultative upland (FACU) species. Dominant species present included paper birch (*Betula neoalaskana* [FACU]), white spruce (*Picea glauca* [FACU]), bluejoint (*Calamagrostis canadensis* [FAC]), and prickly rose (*Rosa acicularis* [FACU]).

The National Wetland Inventory (NWI) shows a palustrine emergent wetland overlapping with the north end of the review area. NWI described vegetation in these areas as being comprised of herbaceous hydrophytes, excluding mosses and lichens. However, aerial imagery indicates that vegetation is dominated by tree species (likely similar to the species observed during the 2025 site visit), which are not indicator species of wetlands.

In reference to the 2023 DOWL delineation report, the review area is similar in vegetation to photo points 9 and 11 and test hole 10. Test hole 10 had dominant vegetation of paper birch (FACU), wood horsetail (*Equisetum sylvaticum* [FAC]), and norther starflower (*Tridentalis europaea* [FACU]).

- b. Soils: Soil pits were not dug during the April 1, 2025, site visit due to the seasonality of the visit and the inability to collect data from frozen soil.

The Web Soil Survey indicated that the review area is comprised of map unit symbol 116 (Cryaquepts, depression, 0 to 7 percent slopes) and 122 (Deception silt loam, rolling). Unit 116 is characterized by layers of zero (0) to seven (7) inches of slightly decomposed plant material, seven (7) to nine (9) inches of mucky gravelly silt loam, and nine (9) to 60 inches of variable material. The unit is rated as hydric. Unit 122 is characterized as having zero (0) to four (4) inches of slightly decomposed plant material, four (4) to nine (9) inches of silt loam, and nine (9) to 60 inches of very gravelly loam. The unit is not rated as hydric.

- c. Hydrology: During the April 1, 2025, site visit, a couple small frozen puddles were observed from recent spring breakup conditions; however, the site surface was mostly dry with no indication of hydrology.

The Web Soil Survey indicates the water table may be reached from zero (0) inches to more than 80 inches below surface level, depending on the type of soil.

In review of topography maps, the review area is higher in elevation than the surrounding area. The higher elevation may prevent long periods of time where the area would be inundated with water, limiting the ability for wetland hydrology to be present.

- d. Conclusion: Based on the vegetation, hydrology, and soil data available to the U.S. Army Corps of Engineers at the time of review, the review area would not meet all three (3) criteria to be characterized as a wetland. The 1.84-acre review area is comprised entirely of uplands.

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.



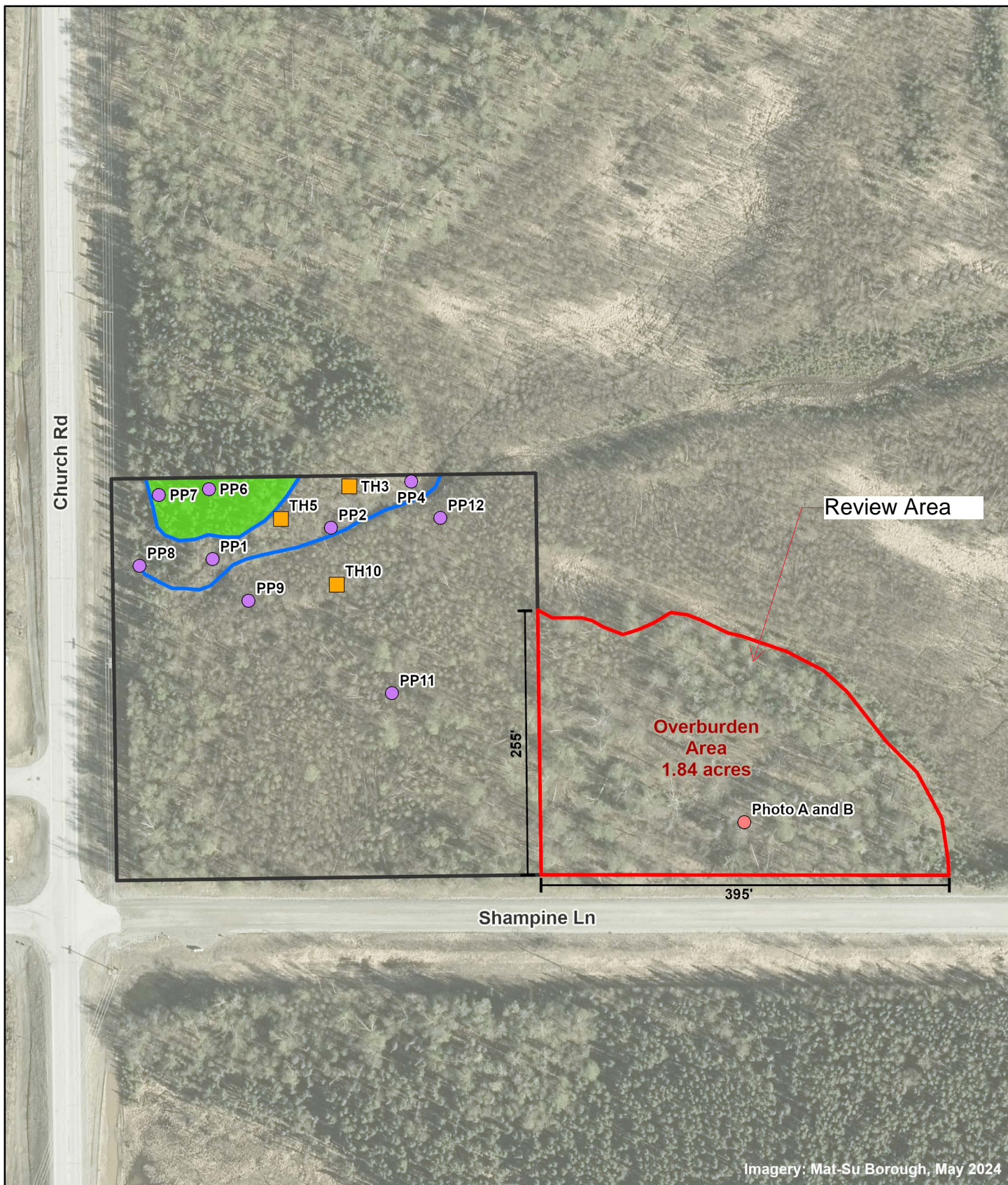


FIGURE 1 Review Area

POA-2024-00335  
 Proposed Activity Overburden Area  
 T 18N R 1W Sec 20 Seward Meridian

Latitude 61.628780° N Longitude 149.507596° W  
 Sheet:

Date 4/16/2025

- |                            |  |
|----------------------------|--|
| □ Test Hole (TH#)          | ▬ Overburden Area                      |
| ○ Photo Point (PP#)        | ▬ Previous Study Area (POA-2024-00336) |
| ○ Photo A and B Location   |  |
| <i>DOWL-mapped Wetland</i> |  |
| PF04A                      |  |
| — R3UBFx                   |  |

0 65 130 Feet

