



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 6898
JBER, AK 99506-0898

CEPOA-RDS-N

10 April 2026

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 POA-2025-00289

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.

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. Wetland 1 (3.2 acres), is not a water of the United States (WOTUS)

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. "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" (March 12, 2025)

3. REVIEW AREA. The review area is located within Section 13, T. 12 N., R. 4 W., Seward Meridian, USGS Quad Map Anchorage A-8 NW, Latitude 61.13645 ° N., Longitude 149.893136° W.; Lot 1, Block 9 of the Laurel Acres Subdivision, in Anchorage, Alaska. The approximately 3.2-acre review area borders the Dimond Estates Mobile Home Park to the north with largely undeveloped land to the south, west, and east.

The applicant supplied a Wetland Delineation Report for Laurel Acres Subdivision, dated October 2025. 3-Tier Alaska (3TA) was contracted to conduct the delineation. Dury a site visit on July 3, 2025, 3TA determined the entire 3.2-acre review area is a wetland using the three-parameter approach as described in the *USACE Wetlands Delineation Manual (1987)* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0) (2007)*. Utilizing the Corps Antecedent Precipitation Tool (APT), Version 2.0, 3TA determined a

climatic/hydrologic index score of '15' for the site visit date indicating conditions were wetter than normal.

According to the report, the review area consists of a palustrine scrub shrub/forested (PSS/FO) wetland with no infrastructure or evidence of recent disturbance. The site is relatively flat (average slope is approximately 0.3%) with an elevation of 82-feet above mean sea level (MSL) at the southern property boundary dropping to 80-feet above MSL at the northwest corner of the property boundary. The review area is predominantly vegetated with black spruce (*Picea mariana*), shrubby cinquefoil (*Dasiphora fruticosa*), horsetail (*Equisetum variegatum*), water sedge (*Carex aquatilis*), and tall cotton grass (*Eriophorum angustifolium*). The soils within the review area were identified as Histosol or Histel (A1) comprised of peat up to 30 inches thick. During the site visit, 3TA collected data at 2 representative sample points which contained the three wetland indicators (hydrophytic vegetation, hydric soils, and wetland hydrology). 3TA's findings align with the Municipality of Anchorage (MOA) Wetland Map and the United States Fish and Wildlife Service National Wetlands Inventory (NWI) map. USACE concurs with the location and geographic extent of the wetland described and documented in the provided delineation report.

Although no relatively permanent waters (RPWs) were observed within or adjacent to the review area, 3TA did observe stagnant water in a constructed ditch bordering the review area along the southern property boundary. Flow in the ditch does not appear to connect to any natural or constructed waterbodies. Based on the photographic documentation provided, an ordinary high water mark (OHWM) is not visibly present.

In the early 2000s, the MOA constructed an approximately 45-acre palustrine freshwater man-made wetland approximately 800-ft southeast of the subject property. Per the MOA, the wetland is designated as moderately valuable. The man-made wetland receives storm water from an area of concentrated urban development between King Street and Independence Drive to the east. Upon exiting the man-made wetland, water spills over a sheet pile dam and enters an approximately 1-mile-long pipe buried generally 2 to 3 feet below ground surface that carries flow westward before discharging to Campbell Lake. The buried pipe lays approximately 800 feet south of the ditch bordering the review area and directly abuts the northern boundary of the man-made wetland.

No other water enters or exits the pipe stream between the sheet pile dam and Campbell Lake. MOA signed record drawings indicate the pipe stream is part of a closed pipe system that discharges into the "97th Avenue and C Street Area Sedimentation Basin" southwest of the review area.

The area directly south of the buried pipe is mapped as wetlands in both the MOA Wetland Mapper and NWI. Signed record drawings provided by 3TA indicate excavation of the pipe stream extended to the peat layer/mineral soil interface and a combination of Type II foundation material, Class C bedding, and a thin layer of native material were used to backfill at the surface. Based on this information, it is reasonable to assume the A1-Histosol or Histel hydric soil indicator was effectively removed during construction and hydric soils are not present within the immediate proximity of the buried pipe. Hence, the fill around the buried pipe obstructs any shallow surface flow between the subject wetland and the wetlands situated to the south. Thus, it is sufficient to infer that the subject wetland is separate from the wetland south of the buried pipe and outside of the review area; the two wetlands are not functioning as one.

Based on a review of the best available data, the review area consists of an undeveloped wetland that lacks a continuous surface water connection to an RPW or any other jurisdictional water and is therefore non-jurisdictional under Section 404.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵
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

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 (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

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
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

329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

⁸ 51 FR 41217, November 13, 1986.

- 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).

Under the pre-2015 regulatory regime, consistent with the *Sackett v EPA et al* decision, wetlands within the review area do not directly abut a WOTUS and lack of a continuous surface connection or conveyance to WOTUS. Therefore, they are considered non-jurisdictional.

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. National Regulatory Viewer (NRV) accessed March 27, 2026

CEPOA-RDS-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POA-2025-00289

- b. Web soil survey accessed March 27, 2026
- c. National Wetland Inventory accessed March 27, 2026
- d. Municipality of Anchorage (MOA) Wetland Map accessed March 27, 2026
- e. Applicant supplied Wetland Delineation Report for Laurel Acres Subdivision, dated October 2025

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.

