



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

CEPOA-RDS-SS

February 10, 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (USACE) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),<sup>1</sup> [POA-2025-00525] [MFR 1 of 1]<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a USACE 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 USACE 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

---

<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.

CEPOA-RDS-SS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POA-2025-00525

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).

Based on a review of the best available information, the review area is comprised entirely of uplands. The information available shows that the vegetation, soil, and hydrology do not meet wetland criteria. There are no waterbodies in the review area regulated under Section 10 of the Rivers and Harbors Act of 1899 and no aquatic resources that would be regulated under Section 404 of the Clean Water Act.

## 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 an 11.52-acre lot located within Section 33, T. 19 N., R. 1 E., Seward Meridian; Latitude 61.6916° N, Longitude 149.2889° W; 6689 E. Edgerton Parks Road, in Palmer, Alaska.

The review area has been developed since 1985, when a single-family home was constructed.

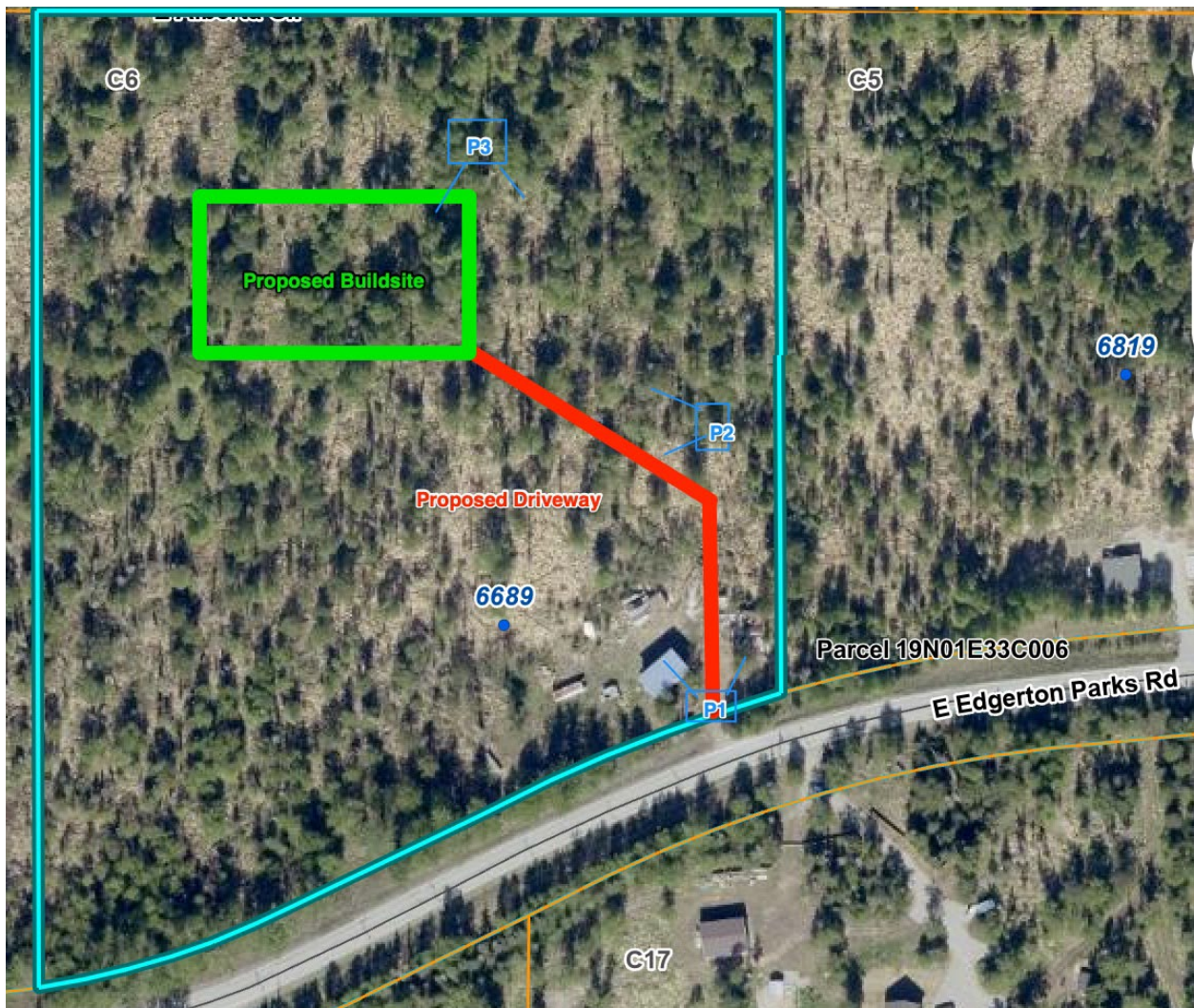


Figure 1: POA-2025-00525 Review Area

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

The nearest TNW is the Matanuska River, which is listed as a non-tidal Section 10 Navigable Water under the Rivers and Harbors Act of 1899 and is located approximately seven (7) miles east of the review area. There are no aquatic resources present in the review area.<sup>6</sup>

<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

CEPOA-RDS-SS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POA-2025-00525

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
  - d. Impoundments (a)(4): N/A
  - e. Tributaries (a)(5): 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.

<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.

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
- 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

---

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

CEPOA-RDS-SS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POA-2025-00525

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. Discharge Slope Wetlands. Kenai Watershed Forum. (n.d.). <https://www.kenaiwatershed.org/cook-inlet-wetlands/wetland-types/discharge-slope-wetlands/>.
  - b. iNaturalist. 2026. iNaturalist Observations, [https://www.inaturalist.org/observations?place\\_id=any&subview=map](https://www.inaturalist.org/observations?place_id=any&subview=map), Accessed: January 28, 2026.
  - c. Matanuska-Susitna Borough. 2023. Mat-Su Borough Wetlands Webmap – MOA Wetlands Mapping Tool, <https://msb.maps.arcgis.com/home/item.html?id=cabe52e23dd04999bda0e53d0e909285>, Accessed: January 28, 2026.
  - d. National Wetland Plant List, Alaska Plant List Version 3.5 (2020). [https://cwbi-app.sec.usace.army.mil/nwpl\\_static/v34/home/home.html](https://cwbi-app.sec.usace.army.mil/nwpl_static/v34/home/home.html).
  - e. U.S. Army Corps of Engineers Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Vicksburg, MS.
  - f. U.S. Army Corps of Engineers Environmental Laboratory. 2007. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0). Vicksburg, MS.
  - g. U.S. Army Corps of Engineers. 2026. National Regulatory Viewer [online viewer]. Scale Not Given. <https://arcportal-ucop-corps.usace.army.mil/s0portal/apps/experiencebuilder/experience/?id=e0217d1dcd204601991adbf36f8c032e>, Accessed January 28, 2026.
  - h. U.S. Department of Agriculture, Natural Resources Conservation Service. 2022. Web Soil Survey. <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, Accessed: January 26, 2026.

- i. U.S. Fish and Wildlife Service. 2023. National Wetlands Inventory website. U.S. Department of the Interior, Fish, and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/>.
- j. U.S. Geological Survey. 2023. National Hydrography Dataset. <https://www.usgs.gov/national-hydrography/national-hydrography-dataset>, Accessed: January 26, 2026.

#### 10. OTHER SUPPORTING INFORMATION.

- a. Vegetation: Aerial imagery, photos provided by the requestor, and other online resources were consulted to gather information about the vegetation that exists throughout the property. Based on vegetation signatures, the area is moderately forested with some sparse pockets of land. iNaturalist observations for vegetation within the vicinity of the project location show the landscape is likely to support species such as fairy slipper orchid (*Calypso bulbosa* [FAC]) and red elder (*Sambucus racemosa* [FACU]). Photos provided by the applicant show the area supports birch (*Betula neoalaskana* [FACU]), willow (*Salix spp.* [FAC]), and white spruce (*Picea glauca* [FACU]). A site visit on a nearby property was conducted on August 30, 2025, and show the landscape supports species such as bluejoint grass (*Calamagrostis canadensis* [FAC]) and devil's club (*Oplopanax horridus* [FACU]).

Due to the apparent lack of hydrophytic vegetation, it can be inferred the dominance test/prevalence index would not be satisfied to characterize the property as supporting wetland flora.

- b. Soils: The Web Soil Survey identifies three (3) soil types within the applicant's property. Soil 116 (Cryaquepts, depressional, 0 to 7 percent slopes) is characterized as very poorly drained and is rated as hydric. Soil 116 comprises approximately 46% of the subject property and generally forms a horizontal belt through the middle of the property. Soil 132 (Estelle silt loam, sloping and moderately steep) is characterized as well drained and is not rated as hydric. Soil 132 comprises approximately 43% of the subject property and is located in the southern portion of the parcel. Soil 136 (Estelle, undulating-disappoint complex) is characterized as well drained and is not rated as hydric. Soil 136 comprises approximately 11% of the subject property and is located in the northwestern corner of the parcel. Because the area where the proposed driveway would be located is not rated as hydric (Soil 132), nor is the area likely to support hydrophytic vegetation, it can be inferred the soil would not meet the required criteria to be characterized as hydric soil.

CEPOA-RDS-SS

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POA-2025-00525

- c. Hydrology: The National Wetland Inventory does not characterize any portion of the project location as wetlands. However, the Matanuska-Susitna Borough Wetland Mapper shows a discharge slope wetland through the subject property, which is a wetland that occurs “over hydric mineral soils where shallow groundwater discharges at or near the surface” (Kenai Watershed Forum, n.d.). Based on aerial imagery and the photos provided by the applicant, there is no standing water or evidence of wetland hydrology within the applicant’s parcel.

Therefore, it can be inferred the proposed project location lacks at least one (1) of the three (3) characteristics required to be classified as a wetland. The 11.52-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.