



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
POST OFFICE BOX 867  
LITTLE ROCK, ARKANSAS 72203-0867  
www.swl.usace.army.mil

CESWL-RD

15 May 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),<sup>1</sup> **SWL-2026-00028**

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 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.

---

<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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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. Open Channel, Non-jurisdictional under Section 404 of CWA

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 totals approximately 14.56 acres in Rogers, Benton County, Arkansas. Legal description of the study area is parts of Section 8, Township 19 North, Range 30 West. The approximate geographic center of the project area is 36.332489°, -94.195371°.

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

The Illinois River is listed on the Tulsa District (SWT) List of Navigable Waters as the nearest TNW subject to Section 10 RHA (see Section 9b below for source information).<sup>5</sup>

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

The onsite channel drains southward through the site, exiting the southern review area by entering a piped drainage system of the neighboring apartment complex. Flow continues southward through the piped system, discharging into a retention basin located in the neighboring property. The retention basin drains southward through another piped drainage that discharges into an unnamed stream. The

unnamed stream flows southward into stream named Osage Creek Tributary, which discharges directly into Osage Creek. Osage Creek discharges directly into the Illinois River. The Illinois River continues westward, eventually crossing the state line near the town of Siloam Springs, AR and continuing into Oklahoma. The Illinois River becomes a TNW, northeast of the town of Tahlequah, Oklahoma (Lat/ Lon: 36.040570, -94.904086).

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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

---

<sup>5</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>6</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.

- 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>7</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

---

<sup>7</sup> 51 FR 41217, November 13, 1986.

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).

An open channel totaling approximately 415 linear feet within the review was identified in the applicant’s delineation report. The following characteristics were identified using remote resources:

- Approximate ordinary highwater mark (OHWM) height: 2 feet,
- Average stream width at the OHWM: 4.5 feet,
- Channel substrate consisted of cobble and vegetation, and
- Ephemeral flow regime.

Due to the characteristics identified above, it was determined the channel is a non-relatively permanent water (NRPW). Because of the classification as a NRPW and the lack of a continuous surface connection with downstream waters, the feature identified as Open Channel is 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. Office evaluation conducted May 15, 2026.
  - b. Imagery viewed using the Corps National Regulatory Viewer (NRV), which references the following resources: Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, iPC, State of Florida, Maxar, Microsoft, accessed May 15, 2026.
  - c. USFWS, National Wetlands Inventory (NWI) Mapper, May 15, 2026.
  - d. USGS 3D Elevation Program (3DEP) Bare Earth DEM, May 15, 2026.
  - e. Web Soil Survey, <https://websoilsurvey.nrcs.usda.gov/app/>accessed, May 15, 2026.
  - f. Google Earth Pro (years of record 1994-2025), May 15, 2026.

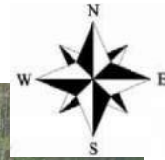
CESWL-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWL-2026-00028

- g. NAVIGABLE WATERS SUBJECT TO SECTION 10 RIVERS AND HARBORS ACT OF 1899, <https://www.swt.usace.army.mil/Missions/Regulatory/Section-10-Waters/>, May 15, 2026.
- h. The agent conducted a delineation report, dated April 16, 2026, in which they included pertinent information such as a formal delineation report, figures, drainage point data sheets, and photos of observed features.

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.



CEI ENGINEERING ASSOCIATES, INC.  
2600 NE 11TH ST, SUITE 300  
BENTONVILLE, AR 72712  
PHONE: (479) 273-9472  
FAX: (479) 273-0844



VENTURE PARK  
MULTI-FAMILY DEVELOPMENT  
S. DODSON RD. AND VENTURE PARK BLVD.  
BENTON COUNTY, ARKANSAS

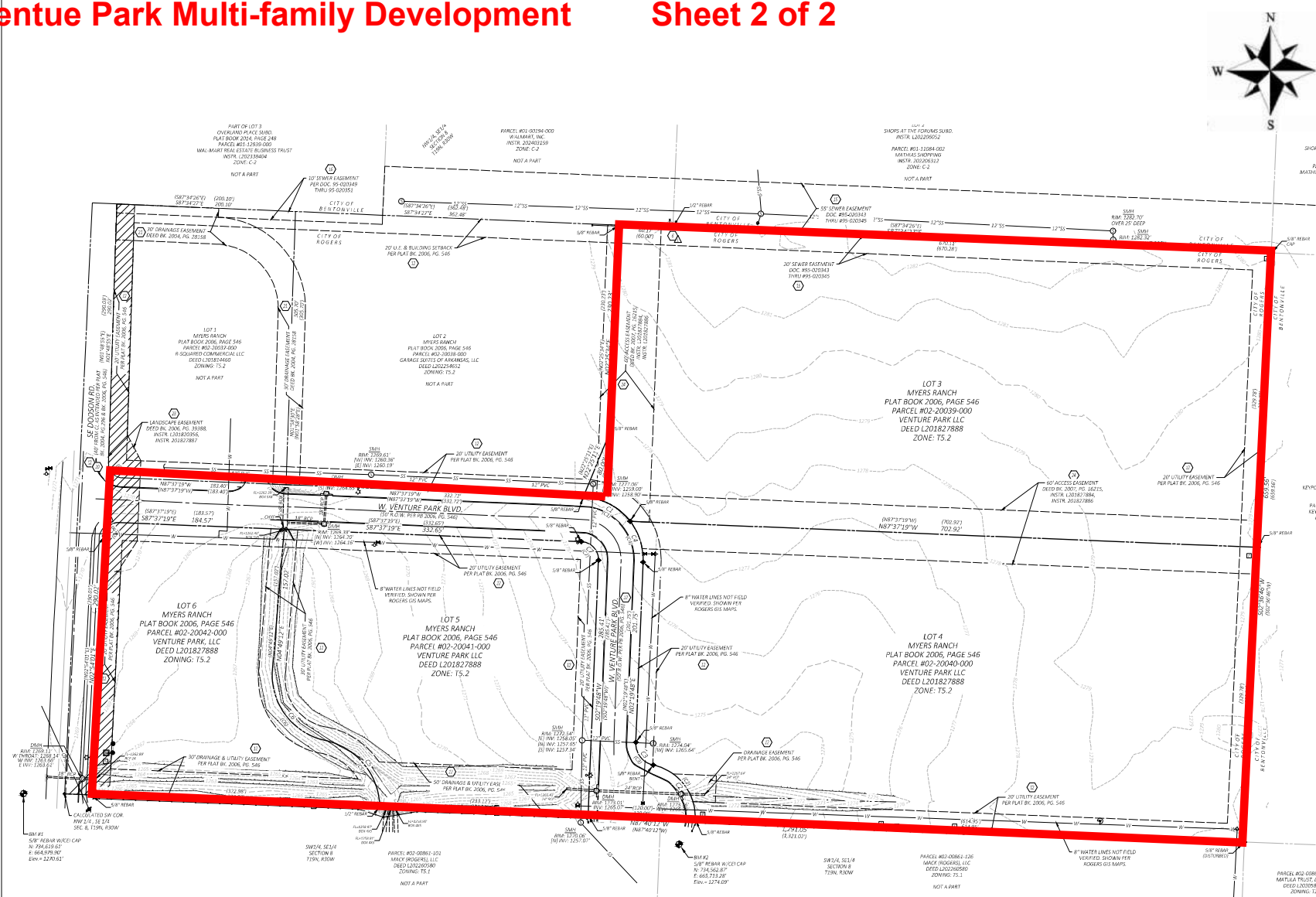
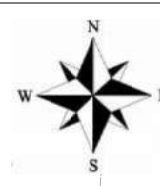
CEI PROJECT NUMBER	34427
DATE	3/6/25
REVISION	REV-0

SITE MAP  
SHEET TITLE  
SHEET NUMBER

NOT TO SCALE



CEI ENGINEERING ASSOCIATES, INC.  
2600 NE 11TH ST, SUITE 300  
BENTONVILLE, AR 72712  
PHONE: (479) 273-9472  
FAX: (479) 273-0844



**VENTURE PARK  
MULTI-FAMILY DEVELOPMENT**  
S. DODSON RD. AND VENTURE PARK BLVD.  
BENTON COUNTY, ARKANSAS

CEI PROJECT NUMBER	34427
DATE	3/6/25
REVISION	REV-0

TOPOGRAPHY  
SHEET TITLE  
SHEET NUMBER

NOT TO SCALE

2