

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

TWIN PINES MINERALS, LLC,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS;
CHRISTINE E. WORMUTH, Secretary of
the Army; MICHAEL L. CONNOR,
Assistant Secretary of the Army (Civil
Works); LTG. SCOTT A. SPELLMON,
Chief of Engineers; BG. JASON E. KELLY,
Commander, South Atlantic Division; COL.
JOSEPH R. GEARY, Commander, Savannah
District,

Defendants.

Civil Action No: 5:22-cv-00036-LGW-
BWC

**PLAINTIFF TWIN PINES MINERALS, LLC'S MOTION FOR PRELIMINARY
INJUNCTION AND BRIEF IN SUPPORT**

Pursuant to Local Rule 7 and Federal Rule of Civil Procedure 65, Plaintiff Twin Pines Minerals, LLC ("Twin Pines") files this Motion for Preliminary Injunction and Brief in Support. In support of its motion, Twin Pines shows the Court as follows:

INTRODUCTION

Twin Pines has been working with state and federal agencies for the past 5 years to obtain the permits necessary to construct a heavy mineral-sands mine in Charlton County. The mine site is a former commercial pine plantation denuded by fire in 2017. It is located downstream and 3 miles away from the southeast corner of the Okefenokee National Wildlife Refuge and will have no impact on it. The mine will not drain or pollute the swamp, and the State of Georgia will not grant the permits necessary to construct it if there is any risk that it will. The company understands the need for robust environmental review and is committed to participating fully in the permitting

process and protecting the environment. It is also committed to following the law. The United States Army Corps of Engineers (the “Corps”) does not appear to share that commitment, however.

Twin Pines commenced this lawsuit because the civilian leader of the Corps, the Assistant Secretary of the Army for Civil Works (“ASA”), on June 3, 2022, abruptly invalidated two approved jurisdictional determinations (“AJDs”) the Corps had issued to Twin Pines to confirm that federal Clean Water Act permits would not be required for the proposed mine. This decision will cause irreparable harm to Twin Pines each day until it is set aside. Reasonably relying on explicit written assurances provided in the AJDs, Twin Pines substantially changed its position by abandoning a federal permit application it had spent 27 months and millions of dollars pursuing. The ostensible basis for the ASA’s action is a post-issuance “policy decision” by the ASA that a request by the Muscogee (Creek) Nation to consult on the AJDs should have been granted, even though such consultations were explicitly prohibited by policies in effect at the time the AJDs were issued. The ASA’s decision to invalidate already-final AJDs violated long-established Corps policy and express assurances provided to Twin Pines. The ASA did not acknowledge or attempt to justify these violations. He also did not acknowledge or attempt to justify the harm they will cause to Twin Pines.

The justification given by the ASA appears to be pretextual. The stated objective of consulting with the tribe could easily have been accomplished without invalidating the AJDs and infringing upon Twin Pines’ vested rights. There was no reason for the ASA to invalidate the AJDs *before* ascertaining whether the tribes possess new information warranting such action. By acting first and asking questions later, however, and thus invalidating the AJDs without any substantive basis to do so, the ASA’s action will require Twin Pines to restart the federal permitting process from the very beginning with a new AJD based on the current Administration’s preferred definition

of “waters of the United States.” The new jurisdictional definition could not be applied to Twin Pines’ project unless and until the AJDs were invalidated. Hence the June 3 memorandum.

The public interest supports requiring the Corps to honor its commitments, acknowledge the reasons for its actions, and play by the rules it claims to follow. The public interest also supports allowing this project to proceed subject to the appropriate administrative and environmental review. As Georgia EPD will confirm before allowing the project to proceed, the mining process is clean and safe and poses no risk to the environment. The proposed mine will produce minerals, including titanium and zirconium, that have been identified by the federal government as “critical” because they are essential to the national economy and national defense but are in short supply. The project will also generate hundreds of high-paying jobs and double the county’s tax revenue. It is strongly supported by the Charlton County Board of Commissioners.

The ASA’s attempt to block this project by asserting jurisdiction the federal government does not possess — and by using pretextual justifications to achieve unstated objectives — is arbitrary and capricious and unlawful. Because the criteria for a preliminary injunction are met, the ASA’s attempt to invalidate the AJDs should be enjoined immediately.

LEGAL FRAMEWORK

I. The Clean Water Act and “Waters of the United States”

Congress enacted the Clean Water Act in 1972 “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To that end, the Act prohibits the unpermitted “discharge of any pollutant” into “navigable waters,” which the Act defines as the “waters of the United States, including the territorial seas.” *Id.* § 1311(a), § 1362(12), (7). Penalties for violations of the Act are severe. Unknowing violations are subject to civil penalties of up to \$59,973 per violation, per day. 33 U.S.C. § 1319(d); 87 Fed. Reg. 1676,

1678 (Jan. 1, 2022) (Table 1) (civil monetary penalty inflation adjustments). Even negligent violations are punishable by criminal fines and imprisonment. 33 U.S.C. § 1319(c)(1).

The Act requires anyone discharging pollutants into navigable waters to obtain a permit. *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1361 (S.D. Ga. 2018). Under Section 404 of the Act, permits authorizing the placement of “dredged or fill” material into waters of the United States are issued by the U.S. Army Corps of Engineers. 33 U.S.C. § 1344. Obtaining a Section 404 permit can cost hundreds of thousands of dollars and take years. *Pruitt*, 326 F. Supp. 3d at 1361; *see also Rapanos v. United States*, 574 U.S. 715, 721 (2006) (Scalia, J.); Ex. 1, Stanford Decl. ¶ 21. The costs and delays for major projects can be much more substantial, easily requiring several years to complete and costing tens-of-millions of dollars. Stanford Decl. ¶¶ 21-22.

Despite being the jurisdictional cornerstone of the Clean Water Act, the agencies charged with issuing and enforcing Clean Water Act permits — the Corps and the U.S. Environmental Protection Agency, respectively — have failed to develop a stable, consistent definition of “waters of the United States.” Each of the past three Administrations has adopted or proposed to adopt a new definition inconsistent with the definition proposed or adopted by the prior Administration.

The Obama Administration issued an expansive new definition, called the “WOTUS Rule,” in 2015. 80 Fed. Reg. 37054 (June 29, 2015). This Court preliminarily enjoined and ultimately set this rule aside. *Georgia v. Pruitt*, 326 F. Supp. 3d 1356 (S.D. Ga. 2018) (enjoining rule); *Georgia v. Wheeler*, 418 F. Supp. 3d 1336 (S.D. Ga. 2019) (granting plaintiffs’ motion for summary judgment and remanding rule). The Trump Administration took steps to rescind the WOTUS Rule almost immediately, *see* Exec. Order No. 13,778, 82 Fed. Reg. 12,497 (Mar. 3, 2017); *Pruitt*, 326 F. Supp. 3d at 1362, and issued a new definition, the “Navigable Waters Protection Rule” (“NWPR”), in 2020, 85 Fed. Reg. 2250 (Apr. 21, 2020). Just hours after taking office, President

Biden signed an Executive Order rescinding the prior Administration’s directives regarding the WOTUS Rule and instructing the agencies to review the NWPR. Exec. Order 13,990 (Jan. 20, 2021), 86 Fed. Reg. 7037 (Jan. 25, 2021). The Biden Administration on December 7, 2021, proposed a revised definition based on the Administration’s understanding of the Corps’ 1986 regulations, with “amendments in certain places.” 86 Fed. Reg. 69372 (Dec. 7, 2021) (proposed rule). No final action has been taken on this latest proposal, which also states that the Administration intends to promulgate an entirely new definition of waters of the United States in a future rulemaking that “would build upon [its] proposed rule.” 86 Fed. Reg. at 69374.

Meanwhile, challenges to the Trump Administration’s NWPR continued even after the Biden Administration declared it would rescind and revise it. In one challenge pending before the U.S. District Court for the District of Arizona, the agencies declined to defend the rule, instead requesting that it be remanded “while they work to revise or replace the rule and re-define ‘waters of the United States.’” *Pascua Yaqui Tribe v. EPA*, 557 F. Supp. 3d 949, 953 (D. Ariz. 2021). The court granted this request and vacated the NWPR pending reconsideration. *See id.* at 954–57. “In light of that order,” in which the agencies acquiesced, “the agencies have halted implementation of the [NWPR] nationwide and are interpreting ‘waters of the United States’ consistent with the pre-2015 regulatory regime until further notice.”¹

II. Section 404 Permits and Jurisdictional Determinations

The tug-of-war over Clean Water Act jurisdiction has created problems for landowners seeking to comply with it. Many activities result in a discharge of “dredged or fill material” (including dirt), and thus require a permit if undertaken on land the agencies consider “waters of

¹ *See* EPA, Definition of “Waters of the United States”: Rule Status and Litigation Update, available at <https://bit.ly/Rule-Status>.

the United States.” Moreover, the Corps has historically interpreted that phrase broadly “to include land areas occasionally or regularly saturated with water — such as ‘mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, [and] playa lakes’ — the ‘use, degradation or destruction of which could affect interstate or foreign commerce.’” *U.S. Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 594 (2016) (quoting 33 C.F.R. § 328.3(a)(3) (2012)). Given that the agencies have used this definition “to assert jurisdiction over ‘270–to–300 million acres of swampy lands in the United States—including half of Alaska and an area the size of California in the lower 48 States,’” it is often difficult at best “to determine whether a particular piece of property contains waters of the United States.” *Id.* (quoting *Rapanos*, 574 U.S. at 722 (Scalia, J.)). Given the “important consequences” and significant penalties for violations of the Clean Water Act, *see id.*, landowners need to know whether the agencies will consider their lands to be jurisdictional waters.

“Jurisdictional determinations” are the tools used by the Corps to answer this question for landowners. *Id.* at 595; 33 C.F.R. § 331.2. An “approved jurisdictional determination,” or “AJD,” is a “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.” 33 C.F.R. 331.1(a). Recognizing that the “regulated public” requires “certainty,” and thus must be “ab[le] to rely upon approved jurisdictional determinations ... for a definite period of time,” AJDs state they will remain valid for five years, during which time they can be revised only if warranted by “new information.”² Under a longstanding Memorandum of Agreement between the Corps and EPA, the Corps is tasked with issuing AJDs except in certain narrow circumstances not applicable

² Ex. 2, Regulatory Guidance Letter 05–02, Expiration of Geographic Jurisdictional Determinations of Waters of the United States, at 1 (June 14, 2005); *see also Hawkes*, 578 U.S. at 597–98.

here.³ AJDs issued “pursuant to the terms of th[e] MOA” are “binding on the Government and represent the Government’s position in any subsequent Federal action or litigation concerning that final determination.” *Hawkes*, 578 U.S. at 598 (quoting 1989 Memorandum of Agreement, §§ IV-C-2, VI-A).

III. Government-to-Government Consultations

The Corps engages in government-to-government consultation with state and tribal governments on many issues, but this practice has never included jurisdictional determinations. The Corps issued a “Tribal Consultation Policy” in 2012 to “affirm and formalize” the “tribal consultation procedures for the U. S. Army Corps of Engineers.”⁴ The Tribal Consultation Policy, which is still in effect today, does not require consultation regarding AJDs. Consistent with this policy and the Corps’ longstanding decision to restrict third parties’ participation in the AJD process, *see* 65 Fed. Reg. 16486, 16488 (Mar. 28, 2000), “the Corps does not currently conduct, nor has it historically conducted Tribal consultation ... on [jurisdictional determinations].”⁵

In January 2021, the prior ASA, R.D. James, issued a memorandum endorsing this longstanding practice and directing as a matter of “nationwide programmatic policy” that the Corps should not consult on jurisdictional determinations, even when specifically requested by a tribe.⁶ As explained in greater detail below, *infra* at 18, ASA James reasoned that tribal consultation can

³ *See* Memorandum of Agreement Between the DOA and EPA Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under 404(f) of the Clean Water Act (1989), *available at* <https://bit.ly/1989-MOA>.

⁴ *See* U.S. Army Corps of Engineers Tribal Consultation Policy and Related Documents at 1, *available at* <https://bit.ly/2012-Tribal-Consultation>.

⁵ Ex. 3, USACE, Tribal Engagement for Twin Pines SAS 2018-00554 at 1 (Apr. 5, 2022).

⁶ Ex. 4, U.S. Army Corps of Engineers (USACE) Tribal Consultation Associated With A Draft Approved Jurisdictional Determination (AJD) (Jan. 4, 2021).

have “no functional impact” on an AJD, because the views expressed by tribes are not relevant to the criteria for such determinations, which are prescribed by law, *id.* at 2.

After President Biden took office, Acting ASA Jamie Pinkham rescinded this directive in a memorandum issued on April 20, 2021.⁷ The April 20, 2021 memorandum did not, however, establish a new policy stating when and how such consultations would be conducted. Instead, the Acting ASA stated one of his first priorities would be to “review the existing USACE Tribal Consultation Policy” and “ensure any consultative requirements associated with the review and issuance of Approved Jurisdictional Determinations are included in a revised and updated policy.” *Id.* No “revised and updated policy” has been issued to date.

On June 3, 2022 — the same day the ASA invalidated Twin Pines’ AJDs based on alleged violations of the Corps’ evolving “policy” regarding tribal consultations — the Army announced that it “intends to address Tribal consultation requirements for approved jurisdictional determinations” in a future update to its current policies, and “solicit[ed] input on conducting Tribal consultations on approved jurisdictional determinations as a policy matter.” 87 Fed. Reg. 33756, 33758 (June 3, 2022). The public comment period remains open until August 2, 2022. *Id.*

FACTS

I. Twin Pines Seeks to Mine Heavy Mineral Sands in Charlton County, Georgia

Heavy minerals sands are sediments containing dense minerals that accumulate with sand, silt, and clay in coastal environments. Stanford Decl. ¶¶ 4-6. Minerals and metals derived from these sediments are in high demand around the world. Two such products — titanium and zirconium — have been identified by the federal government as “critical minerals,” which means

⁷ Ex. 5, Rescission of Previous Guidance — Tribal Consultation Associated with Approved Jurisdictional Determinations (AJD), at 1 (Apr. 20, 2021).

they have been determined to be essential to the economic or national security of the U.S. but are vulnerable to supply chain disruptions. Stanford Decl. ¶ 7; 87 Fed. Reg. 10381 (Feb. 24, 2022). The U.S. Geological Survey has found that the “extensive heavy-mineral sand deposits in the southeastern U.S. coastal plain represent an enormous, under-utilized domestic source of these mineral resources.” Stanford Decl. ¶ 6.

Since 2017, Twin Pines has been working to develop a heavy mineral-sands mine in Charlton County. Ingle Decl. ¶ 4. The mine site is located on “Trail Ridge,” approximately 3 miles away from the southeastern corner of the Okefenokee National Wildlife Refuge and even further from the swamp itself (approximately 11 miles from the nearest canoe trail accessible by the public). Stanford Decl. ¶¶ 8-9. The site was managed intensively as a commercial pine plantation for most of the past century before being denuded by the West Mims fire in 2017. *Id.* ¶ 9. It is bounded to the south by Highway 94 and the Norfolk Southern Railway. *Id.* To date, Twin Pines has invested more than \$47 million in the development of the mine, including more than \$14.7 million to acquire property for the mine, \$13.5 million to purchase, transport, and maintain mining and mineral processing equipment, \$3 million for exploration, research, and development costs, and more than \$16 million for permitting and engineering costs. Ex. 6, Ingle Decl. ¶ 4.

The state-of-the-art mining process developed by Twin Pines is clean and poses no risk to the Okefenokee Swamp or to the environment. The process consists of excavating sand; using water, gravity, and centrifugal force to separate heavy minerals from the sand; returning the remaining sand by conveyor to the excavation site; and then further separating and concentrating the minerals at the adjacent processing plant. Stanford Decl. ¶¶ 10-11. And because the mine site is at a higher elevation than the swamp — and the company will rarely, if ever, dig any lower than its surface elevation, *see id.* — there is literally no chance this operation will “drain the swamp.”

Nor is there any chance of polluting it. No chemicals will be used at any point, and the facility will discharge no water. All water used to separate heavy minerals from sand will be captured and either reused or evaporated. Because the site is located downstream of the swamp, any stormwater leaving the site would flow away from it, anyway. *Id.* ¶ 10.

Though clean and safe by nature, the mining operation will also be regulated by the State of Georgia. Twin Pines has applied to the Georgia Environmental Protection Division (“Georgia EPD”) for a Surface Mining Permit under the Georgia Surface Mining Act, Stanford Decl. ¶ 13; O.C.G.A. §§ 12-4-70 et seq.; Ga. Rules & Regs. r. 391-3-3, which requires Georgia EPD approval of Twin Pines’ mining plan to ensure the proposed mine is “consistent with land use in the area” and protective of “contiguous natural and other resources,” *id.* 393-3-3-.05. Other permits regulating specific environmental aspects will also be required. These include an NPDES Industrial Stormwater Permit to ensure that any rainwater leaving the site is clean; a Groundwater Withdrawal Permit to ensure that groundwater pumping does not deplete the aquifer; and an Air Quality Permit to ensure dust is controlled and air quality standards are met. Stanford Decl. ¶ 13.

II. Twin Pines Reasonably Relied on Jurisdictional Determinations Issued by the Corps

Based on the jurisdictional rules in effect at the time, Twin Pines applied to the Corps for an individual Section 404 permit on July 3, 2019. Stanford Decl. ¶ 25. Twin Pines’ original permit application covered approximately 2,400 acres. Based on comments received and discussions with the Corps, however, the company revised its application to reduce the project area substantially. The new concept was to proceed with a smaller project, the “Saunders Demonstration Mine,” that will be economically viable in its own right, while demonstrating that the mining operation will not harm the environment and that groundwater models (already subject to searching review) showing negligible impact are correct and properly calibrated. *Id.*

After the NWPR took effect in June 2020, Twin Pines requested an AJD on July 20, 2020 to delineate jurisdictional areas under the new rule. Stanford Decl. ¶ 26. During a site visit conducted on September 16, 2020, however, it became apparent that seven additional areas in the mine site were likely non-jurisdictional under the new rule. Twin Pines thus withdrew its initial request and submitted new requests covering the seven additional areas. The first of these, which covered areas 1 through 5, was submitted on September 25, 2020 and granted on October 15, 2020 (the “2020 AJD”). *Id.* ¶¶ 26-27, 29-33 & Ex. A; Ingle Decl. ¶ 7. The 2020 AJD explicitly states it will remain valid for 5 years. Stanford Decl., ¶ 33 & Ex. A at 1.

Based on the 2020 AJD, Twin Pines determined that the remaining jurisdictional areas within the proposed mine site could be preserved by redrawing the project boundary to avoid them. Thus, relying on the Corps’ assurance that the 2020 AJD would remain valid for five years, Twin Pines reconfigured its project to avoid jurisdictional areas and withdrew its application for a Section 404 Permit. The company submitted a Revised Surface Mining Permit Application for the new proposed area to Georgia EPD on November 13, 2020. *Id.* ¶¶ 35-37; Ingle Decl. ¶¶ 7-8.

After the 2020 AJD was issued, Twin Pines submitted a second request for an AJD on November 19, 2020, which covered areas 6 and 7, discussed above. Stanford Decl. ¶ 28. The Corps granted this request and issued a second AJD on March 24, 2021 (the “2021 AJD”). *Id.* ¶¶ 28-32, 34 & Ex. B. Twin Pines later revised its application to Georgia EPD on June 25, 2021 to incorporate one additional wetland deemed non-jurisdictional in the 2021 AJD. *Id.* ¶ 37.

III. After the NWPR was Vacated, the Corps Stated the AJDs Would Not Be Affected

After the district court in Arizona vacated the NWPR on August 30, 2021, opponents of Twin Pines’ project asserted that the court’s action “compel[ed] revocation” of Twin Pines’ AJDs. For example, the Southern Environmental Law Center urged EPA either to use the *Pascua Yaqui*

vacatur as a basis to revoke the AJDs or to “exercise its ‘special cases’ authority” under the 1989 Memorandum of Agreement, discussed above, to achieve the same result.⁸ EPA did neither.

The Corps addressed the effect of the *Pascua Yaqui* court’s decision on AJDs in a Regulatory Announcement dated January 5, 2022.⁹ While stating that the Corps would not rely upon approved jurisdictional determinations based on the NWPR for any future regulatory action, the Corps reiterated that AJDs remain “valid for five years unless new information warrants revision prior to the expiration date.” *Id.* at 2. Acknowledging that “the agencies’ actions are governed by the definition of ‘waters of the United States’ that is in effect at the time the Corps completes an AJD,” the Corps confirmed that, if no further agency action (such as a permit) is required, AJDs “completed prior to the court’s decision and not associated with a permit action ... will not be reopened until their expiration date” unless one of the criteria for revision under Regulatory Guidance Letter 05-02 is met. *Id.*

IV. On June 3, 2022, the ASA Invalidated Twin Pines’ AJDs Without Notice

On June 3, 2022, Senator Jon Ossoff announced on Twitter that he had “successfully secured restored protection of Okefenokee National Wildlife Refuge.”¹⁰ As Twin Pines soon learned from a reporter, the Senator’s press release was based on a directive issued by the ASA — according to Senator Ossoff, “at Senator Ossoff’s request.” *Id.* In a memorandum issued the same day, the ASA directed the Corps “to immediately notify” Twin Pines that it can no longer rely on

⁸ See E&E News, Ga. titanium mine caught in WOTUS crosshairs, Feb. 8, 2022, *available at* <https://www.eenews.net/articles/ga-titanium-mine-caught-in-wotus-crosshairs/>

⁹ Ex. 7, Headquarters, U.S. Army Corps of Engineers, 5 January 2022 – Navigable Waters Protection Rule Vacatur (Jan. 5, 2022), *available at* <https://bit.ly/NWPR-Jan5>.

¹⁰ See @Sen Ossoff (June 3, 2022), *available at* <https://bit.ly/Ossoff-Twitter>; see also Ex. 8, Statement of U.S. Sen. Ossoff, Sen. Ossoff Secures Restored Protection of Okefenokee National Wildlife Refuge (June 4, 2022), *available at* <https://bit.ly/Ossoff-Stmt>.

either AJD “to accurately delineate jurisdictional waters under the current regulatory regime” and that its “AJDs are not valid.”¹¹ The ostensible basis for this directive was a “policy decision” by the ASA “that the Corps should have honored” a prior request by the Muscogee Creek Nation to consult on Twin Pines’ AJDs. *Id.* The incidental impact of the decision is much greater than the stated objective of consulting with the tribe, however. As discussed below, the consultation will have no effect on the AJDs or Twin Pines, but the incidental effects will be enormous. As Senator Ossoff stated in his press release:

This action by the Army Corps, at Senator Ossoff’s request, will stop the proposed mining project from proceeding, protecting the Okefenokee Wildlife Refuge from potential destruction. If any mining company wanted to proceed with a project, they would have to start over from the beginning of the jurisdictional review process under the Biden Administration’s new rules. Ex. 8 at 3.

The record is unclear when or if the “prior request” cited by the ASA as a basis for this decision was made. The ASA cites an “April 10, 2020” letter from the Muscogee Creek Nation in which the tribe allegedly “stated that they had not been officially consulted on the Twin Pines AJDs as required.” Rescission Memo at 1, 2. Either the date of that letter or the ASA’s description of it is wrong, however, because Twin Pines did not even submit its initial AJD request until July 20, 2020, and the request resulting in the 2020 AJD was not submitted until September 25, 2020 — both well after the date cited by the ASA. Stanford Decl. ¶¶ 26-27. An April 5, 2022 memorandum prepared by the Savannah District, in contrast, states that the tribe had inquired “via email about the process for tribal consultation on JDs” at some point “during March 2021.” Ex. 3 at 3. It does not state whether this inquiry was made before or after the second AJD was issued on March 24, however. The Savannah District’s memo indicates that the Corps responded to this

¹¹ Ingle Decl., Ex. C, Approved Jurisdictional Determinations (AJDs) for the Rosemont and Twin Pines Parcels, at 2 (June 3, 2022) (“Rescission Memo”).

inquiry by providing a copy of the ASA’s directive prohibiting such consultations, and also that the tribe was notified when that policy was rescinded on April 20, 2021. *Id.*

Notwithstanding the alleged lack of tribal consultation, the Savannah District reports that it has held regular monthly “tribal consultation” meetings with representatives of the Muscogee Creek Nation since February 2020. Ex. 3 at 3. These consultations occur on the fourth Thursday of each month and continued at least until April 5, 2022, and presumably to this date. *Id.* Not surprisingly, there is no indication that the tribe ever used these consultations to provide information relevant to the Corps’ jurisdictional determinations.

ARGUMENT

Twin Pines is entitled to a preliminary injunction because “(1) [there is] a substantial likelihood of success on the merits of the underlying case, (2) the movant will suffer irreparable harm in the absence of an injunction, (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction is issued, and (4) an injunction would not disserve the public interest.” *Odebrecht Constr., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1273-74 (11th Cir. 2013) (quotation omitted).

I. Twin Pines is Likely to Succeed on the Merits

A. The ASA’s Invalidation of Twin Pines’ AJDs is Arbitrary, Capricious, and Contrary to Law

The ASA’s directive to invalidate Twin Pines’ AJDs is unlawful because it is not warranted by “new information.” The Corps has repeatedly assured landowners that AJDs “can be relied upon ... for five years” subject to the limited exceptions described in Regulatory Guidance Letter 05-02.¹² The Regulatory Guidance Letter specifies just two exceptions: an AJD can be revised

¹² See Ex. 9, Regulatory Guidance Letter 08-02, Jurisdictional Determinations, at 2 (June 26, 2008), available at <https://bit.ly/RGL08-02>; see also, e.g., Regulatory Guidance Letter 05-02 at 1,

(1) if “new information warrants revision of the determination before the expiration date”; or (2) if “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.” Regulatory Guidance Letter 05-02 at 2. The proposed mine site is not in an area identified as meriting frequent re-verification. Therefore, Twin Pines’ AJDs can be revised only based on new information. As directed by the Regulatory Guidance Letters, the Corps provided this same assurance on the face of the AJDs issued to Twin Pines, which both state they “will remain valid for a period of 5-years unless new information warrants revision prior to that date.” Stanford Decl., Ex. A at 1, Ex. B at 1.

These written and unequivocal statements about the duration of the AJDs bind the Corps. They were communicated directly to Twin Pines expressly to invite reliance on them. As explained in Regulatory Guidance Letter 05-02, these limitations exist specifically “to provide certainty to the regulated public” and to “ensure[] their ability to rely on approved jurisdictional determinations ... for a definite period of time.” Ex. 2 at 1. Based on these commitments, the United States Supreme Court has confirmed that AJDs remain in effect for five years and can be revised only based on “new information.” *See Hawkes*, 578 U.S. at 598. The Court also held that these restrictions are binding on the Corps. *Id.*

The ASA did not cite new information as a basis to rescind and invalidate Twin Pines’ AJDs. Instead, he cited his “policy decision that the Corps should have honored [the Muscogee Nation’s] government-to-government consultation request[.]” Rescission Memo p. 2 ¶ 5. As explained above, it is unclear whether the tribe actually inquired before either AJD was issued.

2; Ex. 10, Regulatory Guidance Letter 16-01, Jurisdictional Determinations, at 3 (Oct. 2016), *available at* <https://bit.ly/RGL-16-01>; USACE Savannah District, Approved Jurisdictional Determinations, *available at* <https://bit.ly/SAS-JD>.

But even if it did, the ASA’s disagreement with the prior policy of not granting such requests is not “new information” warranting reconsideration of an already-final AJD.

Moreover, even assuming the Corps could break explicit promises intended to induce reliance in some circumstances, it must — at a minimum — provide a rational explanation of its reasons for doing so. “[A]n agency’s unexplained departure from precedent is arbitrary and capricious.” *Int’l Longshore & Warehouse Union v. Nat’l Lab. Rels. Bd.*, 971 F.3d 356, 360 (D.C. Cir. 2020). Reasoned decisionmaking demands that an agency disregarding established policy “display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original). “When its prior policy has engendered serious reliance interests”— as the Regulatory Guidance Letters and AJDs at issue here were expressly intended to do — “it would be arbitrary and capricious to ignore such matters.” *Id.* That is exactly what happened here.

B. The ASA’s Decision to Invalidate Twin Pines’ AJDs Based on Disagreement with Prior Policies is Impermissibly Retroactive

Given Twin Pines’ reasonable reliance on explicit promises in the AJDs, the ASA’s decision to invalidate them based on his post-issuance policy decision is impermissibly retroactive. Retroactive application of new regulations and policies is “highly disfavored” and is not justified in this case. *Sierra Club v. TVA*, 430 F.3d 1337, 1351 (11th Cir. 2005).

“A rule operates retroactively if it takes away or impairs vested rights.” *Arkema Inc. v. EPA*, 618 F.3d 1, 7 (D.C. Cir. 2010). A new policy that “changes the legal landscape,” is “substantively inconsistent” with a prior agency practice, or “attaches new legal consequences to events completed before its enactment” operates retroactively. *Id.* If used as a basis to invalidate

already-final AJDs, the ASA’s disapproval of the tribal consultation policies in effect when the AJDs were issued would do all of these things.

Agency rules can operate retroactively only if the agency has been authorized by statute to issue retroactive regulations; and even then, agency rules will be given retroactive effect only if their language requires this result. *See Jones Creek Invs., LLC v. Columbia Cnty., Georgia*, 2016 WL 593631 *5 & n.5 (S.D. Ga. Feb. 12, 2016); *Sierra Club*, 430 F.3d at 1351. In this case there is no rule to interpret, because the agency has never promulgated rules governing tribal consultation on AJDs. And, while policies developed through adjudication — a category encompassing all case-by-case decisionmaking — can sometimes be applied retroactively, this is only permissible if “the resulting inequities are ‘counterbalanced by sufficiently significant statutory interests.’” *Chadmoore Commc’ns, Inc. v. F.C.C.*, 113 F.3d 235, 240 (D.C. Cir. 1997). The ASA’s retroactive policy decision fails this test.

Here, the ASA invalidated the AJDs based on new procedural requirements adopted after they were issued and after Twin Pines had been induced to rely on them. Yet the ASA did not acknowledge the inequities that would result from this retroactive policy decision, let alone identify any interest sufficient to counterbalance them. By failing to provide any such justification, the ASA failed to establish any basis upon which his action could be sustained under *Chadmore*.

C. The ASA’s Decision to Invalidate Twin Pines AJDs Before Determining if the Tribe Has Relevant New Information Was Arbitrary and Capricious

The decision to invalidate Twin Pines’ AJDs without first determining if the tribe has “new information” warranting such action is the epitome of arbitrary and capricious agency action.

First, there is a reason “the Corps does not currently conduct, nor has it historically conducted” government-to-government consultation with either tribes or states regarding AJDs. Ex. 3 at 1. By law, jurisdictional determinations must be based on criteria established in the

applicable regulatory definition, which are limited to information about the physical and biological characteristics of a wetland or other water and their relation to other “waters of the United States.” *See, e.g.*, 40 C.F.R. §§ 120.2(1), (3)(i), (3)(xvi). The first step — the wetland delineation — is governed by technical protocols in the Corps’ 1987 Wetlands Delineation Handbook and guidance established by EPA. The second step is based on criteria in the regulatory definition. Stanford Decl. ¶ 19. Because the information needed to make these technical and legal determinations is readily available to the Corps based on site visits, satellite imagery, maps, and other similar information, *id.* ¶ 20, it is extraordinarily unlikely that a state, tribe or other third party will have relevant information that is not already available.

For these reasons, the previous ASA declared on January 4, 2021, as a matter of “nationwide programmatic policy,” that the Corps should not engage in government-to-government consultations on AJDs, even when specifically requested by a tribe. Ex. 4 at 3. While recognizing the importance of tribal consultations generally, ASA James explained that AJDs perform a very “limited function” — determining if the Corps has jurisdiction — upon which such consultation “can have no functional impact.” *Id.* at 2. The ASA noted that the regulatory definition of “waters of the United States” does not include a “public interest” component, and that other factors such as cultural impacts are also not relevant to the question of jurisdiction. *Id.*

The Corps provided a similar rationale in 1990 when it limited its administrative appeal process to landowners and others requesting an AJD — excluding third parties including states, tribes, and neighboring landowners. *See* 33 U.S.C. § 331.2 (restricting the definition of “affected part[ies]” with standing to appeal an AJD). As the Corps explained, third parties were excluded because AJDs are “primarily site-specific evaluations of technical criteria, such as tidelines or highwater marks, hydric soils, hydrophytic vegetation, wetland hydrology, and interstate

commerce connections” — factors third parties “do not typically have knowledge sufficient of, or sufficient interest in, ... to become involved in such determinations.” 65 Fed. Reg. 16486, 16488 (Mar. 28, 2000). The Corps also expressed concern that third parties given access to the appeal process would take the opportunity to inject considerations unrelated to the applicable criteria. The Corps noted that third party concerns often related to “issues other than effects to aquatic resources.” *Id.* It suggested that such issues are “better addressed by local land use plans and zoning ordinances rather than by seeking to control potential development by challenging Corps JDs.” *Id.* Similar considerations strongly support the Corps’ prior policy of not engaging in government-to-government consultation on jurisdictional determinations, where the view expressed by tribes can have no functional impact.

Second, even if the ASA determined that tribes should be consulted on AJDs going forward, there was no justification for his decision to invalidate already-approved AJDs to allow such consultations to occur. Rather than preemptively pulling the rug out from under Twin Pines, the ASA could have instructed the Corps to consult with the tribe without invalidating the AJDs. In the unlikely event the tribe provided relevant new information warranting a revision, this information could have been used to take appropriate action without infringing vested rights.

The ASA’s shoot first, ask questions later approach is especially troubling because the Corps has been holding regular monthly tribal consultation meetings from February 2020 to the present date. Ex. 3 at 3. If the tribe has information relevant to the AJDs, it has had ample opportunity to provide it both before and after the AJDs were issued. And the ASA has also had ample opportunity since taking office to direct the Corps to ascertain whether the tribe has relevant information to contribute. It was arbitrary and capricious for the ASA to invalidate the AJDs without pausing to ask this question, which would take no time to answer.

The ASA's precipitous decision to invalidate the AJDs when a less harmful but equally effective alternative was available suggests that invalidating the AJDs was the real objective. While citing the need for tribal consultation, the ASA also directed that a "new" AJD would be required, and that any new AJD would be based on the definition of "waters of the United States" in effect at the time of issuance. Rescission Memo p. 3 ¶ 5. This is the real significance of the ASA's directive. As Senator Ossoff's press release suggests, this impact, though ostensibly incidental, is far more consequential than requiring tribal consultation, a process that can have no functional impact on the AJDs for reasons discussed above. When the incidental impact of a decision vastly outweighs the asserted benefit, as here; and when the asserted benefit could have been obtained without causing such harmful impact; there is strong reason to believe the asserted justification is pretextual.

Finally, the ASA did not acknowledge, let alone justify, the severe impact his decision will have on Twin Pines. No effort was made to notify Twin Pines that its AJDs were in jeopardy, and the company was given no opportunity to explain the damage this would cause to its business and its employees. Twin Pines was not provided any "process" whatsoever. This complete failure by the ASA and the Corps to consider Twin Pines' vested rights and the other impacts resulting from the decision was arbitrary and capricious. *Wheeler*, 418 F. Supp. 3d at 1379 (agency action is arbitrary and capricious where an agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.") (quotations omitted).

II. Twin Pines Will Suffer Irreparable Harm Absent an Injunction

Twin Pines will suffer irreparable harm if the ASA's decision is not enjoined. *First*, as a direct result of the decision to rescind the AJDs, Georgia EPD has indefinitely halted all work

processing Twin Pines’ applications for permits it needs to construct and operate the mine. Before the Corps even notified Twin Pines of the ASA’s decision, Georgia EPD released a statement saying it was putting its pencils down:

Given the Corps’ recent action, Georgia EPD is deferring action on all applications for the Demonstration Mine until either any required 404 permit is issued by the Corps, the Corps determines that a new AJD is no longer needed, or the Corps determines that a 404 permit is not required. Following the conclusion of the federal process, EPD will assess what permits are required for the proposed Demonstration Mine and determine the best process for consideration of these permit applications moving forward.¹³

The indefinite delay in processing Twin Pines’ permit applications, and the resulting uncertainty the ASA’s decision has caused, is already harming Twin Pines’ business. It is directly preventing the company from contracting with buyers and is interfering with its ability to secure needed investment and capital for its project. Ingle Decl. ¶¶ 13, 15-22.

As this Court recently recognized, delay in securing needed permits from Georgia EPD and resulting interference with business and contracting is a “distinct injury” and “irreparable harm” that supports issuance of an injunction. *See Brantley Cnty. Dev. Partners, LLC v. Brantley Cnty.*, 540 F. Supp. 3d 1291, 1302–03, 1317–18 (S.D. Ga. 2021) (finding irreparable harm where county’s action caused “Plaintiff’s EPD permit application [to] remain pending indefinitely” and “hinder[ed], delay[ed], and obstruct[ed] Plaintiff’s right to develop its property” and “[w]ithout issuance of an injunction, the EPD permitting process [would] not go forward,” explaining: “Plaintiff suffers irreparable harm from the EPD’s delayed permitting decision because Plaintiff is precluded from entering and finalizing solid waste disposal contracts with market participants”); *see also Pine Ridge Recycling, Inc. v. Butts Cnty., Ga.*, 864 F. Supp. 1338, 1342 (M.D. Ga. 1994) (finding irreparable harm where Plaintiff had not received a permit from Georgia EPD,

¹³ Ingle Decl., Ex. B, Georgia EPD Permitting Update at 1–2.

could not begin construction of the proposed facility, and could not enter into disposal contracts). So too here.

Second, it is undisputed that the ASA's decision to invalidate the AJDs subjects Twin Pines to new — and significantly more expansive — jurisdictional rules than were in effect when the AJDs were issued. As a result, large areas of Twin Pines property that were not previously subject to Clean Water Act jurisdiction now will be. Ingle Decl. ¶ 16; Stanford Decl. ¶¶ 39-40. This precludes Twin Pines from developing those areas without renewing its application for a Section 404 permit — a process that would take years to complete. Ingle Decl. ¶ 17; Stanford Decl. ¶¶ 40-41. Given the business imperative to begin producing minerals soon, rather than waiting additional years, the company will have no choice but to amend its Surface Mining Permit application to avoid any potentially jurisdictional areas. Ingle Decl. ¶¶ 17-19. This decision will require the company to forgo development of 60% of its property, leaving minerals worth millions of dollars in the ground. *Id.*; Stanford Decl. ¶¶ 40, 42. If this is not irreparable harm then nothing is.

Finally, Twin Pines is continuing to incur costs that cannot be recouped each month that its project is delayed. The company has invested more than \$47 million in the Saunders Demonstration Mine, including more than \$28 million to purchase property for the mine and to purchase, transport and maintain mining and mineral processing equipment. Ingle Decl. ¶¶ 4, 23. The company must service debts on these purchases, and pay for ongoing storage, maintenance, and upkeep of the equipment it has purchased. *Id.* ¶ 23. Because the price that Twin Pines can charge for the minerals it produces “floats” — that is, it is set by the market price when the minerals are produced and become available for shipment — the company cannot pass these costs on to its customers. *Id.* Thus, any ongoing debt service and maintenance costs that Twin Pines incurs can never be recouped and come directly from the company's bottom line.

III. The Balance of Harms and Public Interest Strongly Favor an Injunction

Finally, the balance of harms and public interest strongly favor an injunction. *First*, no harm will result from enjoining the ASA's decision and reinstating the AJDs. As discussed above, the Corps has been conducting monthly tribal consultation meetings with the tribe since February 2020. It could easily use this process to ascertain whether the tribe has relevant new information warranting a revision to the AJDs. If relevant new information is produced at any time, it can be used as a basis to revise the AJDs without infringing vested rights. Furthermore, there is no risk that the company will take any action before such consultations could be completed, because Twin Pines must still obtain multiple permits from Georgia EPD before it can commence operation. Because these permits must be publicly noticed before they can be issued, there is more than enough time to determine if the tribes possess new information warranting a revision to the AJDs.

Conversely, Twin Pines will suffer extraordinary harm if the decision remains in effect pending a merits decision. Georgia EPD will not process its permit applications. *Id.* ¶ 11. Twin Pines cannot contract with purchasers or secure outside funding and capital investment. *Id.* ¶¶ 20-22. Employees will continue to lose the jobs they depend upon to feed their families. *Id.* ¶ 14. Twin Pines will continue to incur costs for debt service and equipment maintenance that can never be recovered. *Id.* ¶ 23. This balance of harms alone easily justifies an injunction.

Second, other public interest considerations weigh heavily in favor of granting preliminary relief. The mine will produce titanium and zirconium minerals, which have been designated as "critical minerals" important for the national economy and defense, but with supply chains vulnerable to disruption. *See* 30 U.S.C. § 1606(c); 87 Fed. Reg. 10381 (Feb. 24, 2022). The United States is currently heavily dependent upon adversarial foreign governments, including China, to

supply these minerals. The “concentration of global supply chains for strategic and critical material in China creates risk of disruption and of politicized trade practices.”^{14, 15}

As the Department of Defense recently explained: “Strategic and critical materials are the building blocks of a thriving economy and a strong national defense. They can be found in nearly every electronic device, from personal computers to home appliances, and they support high value-added manufacturing and high-wage jobs, in sectors such as automotive and aerospace.”¹⁶ Supply chains for these minerals “are at serious risk of disruption ... and are rife with political intervention and distortionary trade practices.” *Id.* “[T]his risk is more than a military vulnerability; it impacts the entire U.S. economy and our values.” *Id.*

Given these concerns, Congress,¹⁷ the Biden Administration,¹⁸ and the Trump Administration¹⁹ have all made clear that increasing domestic production of critical minerals and

¹⁴ Secretary of Defense Lloyd J. Austin III, Defense Department’s Strategic and Critical Materials Review (June 8, 2021), *available at* <https://bit.ly/DOD-Review>.

¹⁵ Notably, China has actively worked to limit U.S. supplies of critical minerals, even going so far as to stage a disinformation campaign earlier this year, posing as environmental activists to oppose construction of a rare-earth mineral processing facility in Texas. *See* U.S. Dept. of Defense, Statement on Reports of Disinformation Campaign Against Rare Earth Processing Facilities (June 28, 2022), *available at* <https://bit.ly/DOD-China>; American Military News, Chinese impersonated Texans to sabotage critical US rare earth minerals plant, June 29, 2022, *available at* <https://bit.ly/Military-News>.

¹⁶ The White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017 at 152 (June 2021), *available at* <https://bit.ly/100-Day-Review>.

¹⁷ *See* 30 U.S.C. § 1607(b) (finding that “critical minerals are fundamental to the economy, competitiveness, and security of the United States,” that “to the maximum extent practicable, the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States,” and that “the Federal permitting process” is “an impediment to mineral production and the mineral security of the United States.”).

¹⁸ *See* Exec. Order No. 14,017, 86 Fed. Reg. 11849 (Feb. 24, 2021).

¹⁹ *See* Exec. Order No. 13,953, 85 Fed. Reg. 62539 (Sept. 30, 2020); Exec. Order No. 13,817, 82 Fed. Reg. 60835 (Dec. 20, 2017).

reducing the nation's dependence on foreign sources is in the national interest. The ASA's decision is contrary to the public interest for causing the federal permitting process to stand in the way of developing reliable domestic supplies of these nationally important minerals.

Third, while this case is about the arbitrary and capricious rescission of Twin Pines AJDs and not the merits (or lack thereof) of claims regarding alleged environmental impacts from the mine, the environment will remain fully protected. The Saunders Demonstration Mine is subject to numerous state and federal environmental laws, and to the rigorous oversight and control of Georgia EPD through its environmental permitting. That process provides ample opportunity to evaluate, consider and address any concerns regarding environmental protections that may arise.

Finally, the public interest demands transparency, stability, and adherence to the rule of law. The circumstances of this case — including the Corps' representations regarding the term of AJDs and Twin Pines' reliance on them; the timing of the decision; statements from elected officials about the reasons for it; claimed justifications premised on an alleged complaint from April 2020 regarding the failure to consult on the AJDs that predates even the submission of Twin Pines' requests; and the complete failure to utilize obvious, readily available, and less harmful options to achieve its stated purpose — all call into question the basis for the decision. Too much is at stake for the regulated public not to be able to rely on their Government to follow its own policies and procedures, "to turn square corners," and to insist upon "reliability in their dealings with their Government." *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 61 (1984). These interests counsel in favor of enjoining the decision pending a ruling on the merits and, at the appropriate time, setting it aside.

Respectfully submitted this 8th day of July, 2022,

JONES FORTUNA LP

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I caused the foregoing Motion for Preliminary Injunction to be transmitted by U.S. Mail, Priority Mail Express, to the following recipients:

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Hon. Michael L. Connor
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Counsel for Twin Pines Minerals, LLC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

TWIN PINES MINERALS, LLC,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS;
CHRISTINE E. WORMUTH, Secretary of
the Army; MICHAEL L. CONNOR,
Assistant Secretary of the Army (Civil
Works); LTG. SCOTT A. SPELLMON,
Chief of Engineers; BG. JASON E. KELLY,
Commander, South Atlantic Division; COL.
JOSEPH R. GEARY, Commander, Savannah
District,

Defendants.

Civil Action No: 5:22-cv-00036-LGW-
BWC

DECLARATION OF CHRISTOPHER STANFORD

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Christopher Stanford. I am over the age of 18 and competent to testify.

The facts in this declaration are based on my personal knowledge regarding the events in question and are true and correct to the best of my knowledge and recollection. I offer this declaration in support of the Motion for Preliminary Injunction filed by Twin Pines Minerals, LLC (“Twin Pines”) and for any other lawful purpose.

2. I am a Staff Geologist and Environmental Scientist with TTL, Inc., an engineering and consulting firm with offices in Alabama, Georgia, Tennessee, and Texas. I have been with TTL since 2015. In that capacity, I assist individuals and companies with obtaining the environmental permits needed to develop their properties and conduct their businesses, including permits from the U.S. Army Corps of Engineers (“Corps”) under Section 404 of the Clean Water

Act authorizing the discharge of “dredged and fill material” into jurisdictional “waters of the United States.”

3. As I describe below, I have worked with Twin Pines since 2018 to secure the environmental permits needed to construct and operate a “heavy mineral-sands” mine in Charlton County, Georgia known as the “Saunders Demonstration Mine.”

Heavy Mineral Sands and the Mining Process

4. Heavy mineral sands consist of sediments that contain dense (“heavy”) minerals of economic value. Heavy mineral sand deposits form because of ancient geologic forces, in which heavy minerals are freed from inland rocks by weathering and erosion and transported to coastal areas by streams and rivers, as well as coastal events, where they are deposited. There, physical processes like waves and tides separate the minerals primarily based on their density, concentrating the heaviest minerals as layered sediments in coastal depositional environments.

5. Heavy mineral sands can be commonly observed at beaches and other areas, though they rarely are recognized as mineral deposits. For example, the photographs below show layers of heavy mineral sands clearly visible on beaches in northeast and central Florida.



Figure . Heavy mineral sands on a modern beach on Little Talbot Island, northeast Florida



Figure . Heavy mineral sands on a modern beach on Little Talbot Island, northeast Florida

¹ Reproduced from USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.

² Reproduced from USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.



Figure . Heavy mineral deposits at Vero Beach, Florida following Hurricane Frances



Figure . Heavy mineral deposits at Vero Beach, Florida following Hurricane Frances

³ Reproduced from USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.

⁴ Reproduced from USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.

6. Large deposits of heavy mineral sands exist locally in the coastal plain of the Southeastern United States. The heavy minerals from these coastal deposits contain titanium, zirconium, and “rare earth” elements, needed to manufacture, for example, modern electronics for consumer and defense applications. According to the U.S. Geological Survey, the “extensive heavy-mineral sand deposits in the southeastern U.S. coastal plain represent an enormous, under-utilized domestic source of these mineral resources.”⁵

7. According to the U.S. government, critical minerals are non-fuel minerals or mineral materials essential to the economic or national security of the U.S. and with a supply chain vulnerable to disruption. As the U.S. Geological Survey has also reported, the “United States is heavily reliant on imports of these mineral commodities, which are critical to the U.S. economy and security.”⁶ For this reason, the United States government has formally designated titanium and zirconium, two elements found in and recovered from, heavy mineral sands in the Southeastern coastal plain, as “critical minerals.”⁷ Critical minerals are also characterized as serving an essential function in the manufacturing of a product, the absence of which would have significant consequences for the economy or national security.

8. Significant heavy mineral sands deposits are found along “Trail Ridge,” a physiographic feature formed at the location of an ancient shoreline, which extends approximately 200 km from northeastern Florida through southeastern Georgia and Charlton County (Figure 5

⁵ USGS, Heavy-Mineral Sand Resources in the Southeastern U.S. (Apr. 2, 2018), available at [www.usgs.gov/centers/geology%2C-geophysics%2C-and-geochemistry-science-center/science/heavy-mineral-sand-resources overview](http://www.usgs.gov/centers/geology%2C-geophysics%2C-and-geochemistry-science-center/science/heavy-mineral-sand-resources%20overview)

⁶ USGS, Heavy-Mineral Sand Resources in the Southeastern U.S. (Apr. 2, 2018), available at [www.usgs.gov/centers/geology%2C-geophysics%2C-and-geochemistry-science-center/science/heavy-mineral-sand-resources overview](http://www.usgs.gov/centers/geology%2C-geophysics%2C-and-geochemistry-science-center/science/heavy-mineral-sand-resources%20overview)

⁷ USGS, 2022 Final List of Critical Minerals, 87 Fed. Reg. 10381 (Feb. 24, 2022).

and Figure 6). While deposits vary in size and grade, the U.S. Geological Survey reports that the Trail Ridge deposits have an average heavy-mineral content of about 4 percent.⁸



Figure . Map showing approximate location of Trail Ridge

⁸ USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.

⁹ USGS, Titanium Mineral Resources in Heavy-Mineral Sands in the Atlantic Coastal Plan of the Southeastern United States, Scientific Investigations Report No. 2018-5045.

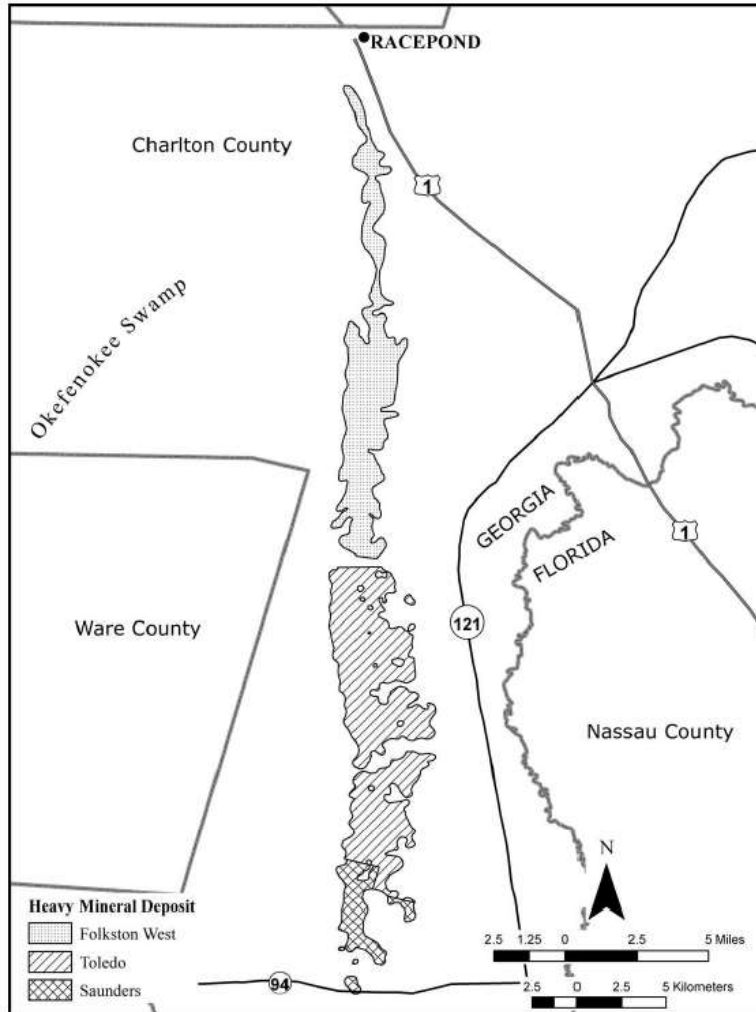


Figure . Location of select heavy mineral deposits along Trail Ridge in southeastern Georgia

The Saunders Demonstration Mine

9. The Saunders Demonstration Mine is located on property in Charlton County, Georgia. The mine site is located southeast of the Okefenokee National Wildlife Refuge, approximately 3 miles from the refuge’s southeastern corner and approximately 11 miles from the Okefenokee canoe trail and the nearest camping platform, which is approximately the distance from the federal courthouse in Brunswick to the Satilla River at its closest point. The site, which

¹⁰ Reproduced from Pirkle et al., Heavy-Mineral Mining in the Atlantic Coastal Plain and What Deposit Locations Tell Us About Ancient Shorelines, *Journal of Coastal Research*, 69(sp1):154-175.

was managed as a commercial pine plantation for most of the past century before being denuded by the West Mims Fire in 2017, is currently covered with scrub and pine saplings. It is bounded to the south by Highway 94 and the Norfolk Southern Railway. Maps showing the location of the mine site are included as Figure 7 and Figure 8 below. Figure 9 is a photograph depicting the general condition of the mine site.

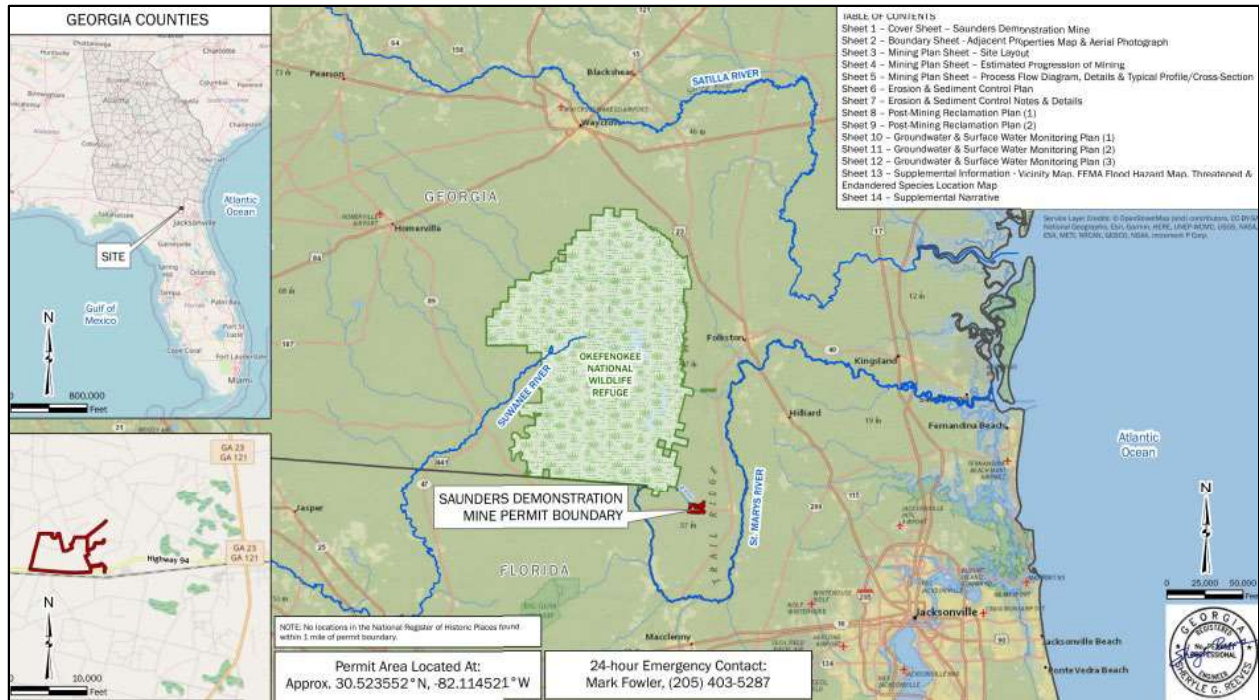


Figure . Location of Saunders Demonstration Mine

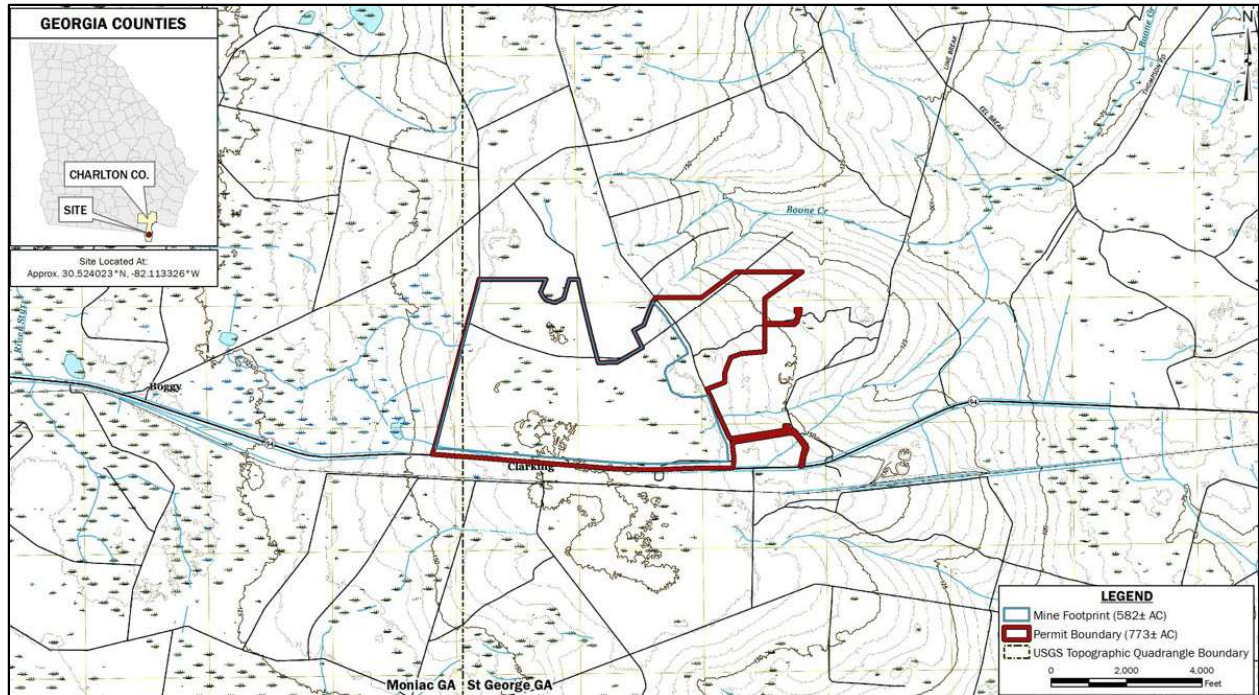


Figure . Location of Saunders Demonstration Mine



Figure . Aerial photograph of proposed mine site

10. At the Saunders Demonstration Mine, minerals will be extracted from heavy mineral sands primarily through the use of water and gravity. Prior to mining, topsoil will be excavated and stockpiled to be used in the reclamation process after mining is completed. Heavy

mineral sands will be excavated using an electric dragline, with excavation depths ranging from 20 to 50 feet below the land surface. With only extremely minor exceptions at three small, isolated areas of the mine, the mining depth will not extend below the 120-foot elevation contour, which is above the mean surface water elevation of the Okefenokee Swamp. The mine will use no chemicals to process extracted minerals. The mine will also be a “zero discharge” facility, meaning that no process water will be discharged from the site; instead, all process water will be retained, recycled, or evaporated.

11. Excavated sand will be transported via a conveyor to a “wet processing facility.” There, the excavated mineral sands will be processed in “spiral concentrators.” Spiral concentrators are helical sluices that use water, centrifugal force, and the differential densities of the minerals being processed to separate lower density granular and sandy material from the heavier target minerals. In this process, water and heavy mineral sands are fed into the top of the spiral. As the slurry moves down the spiral, lower density materials remain suspended or settle toward the outer edge of the coil, while the heavier target minerals settle out first and migrate toward the inside of the coil, where they are concentrated and collected. Photographs of spiral coil concentrators showing the separation of materials by density are included below as Figure 10 and Figure 11.

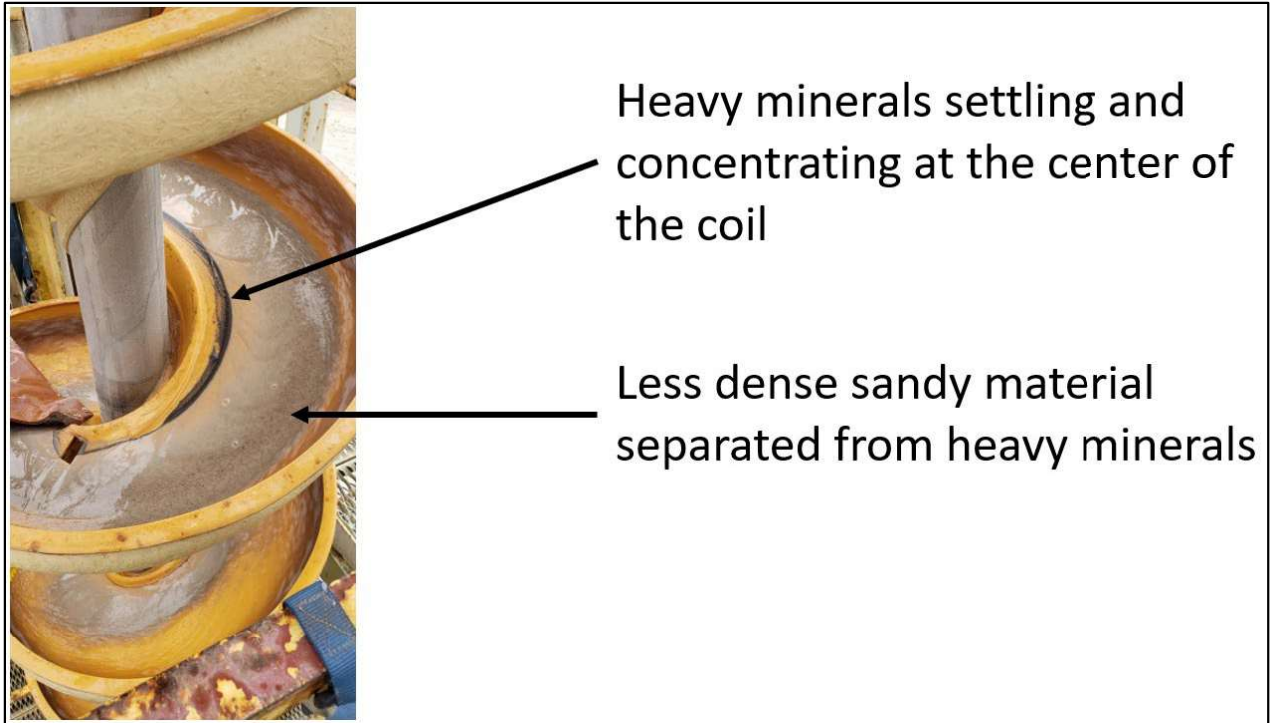


Figure . Spiral coil separator with visible heavy minerals

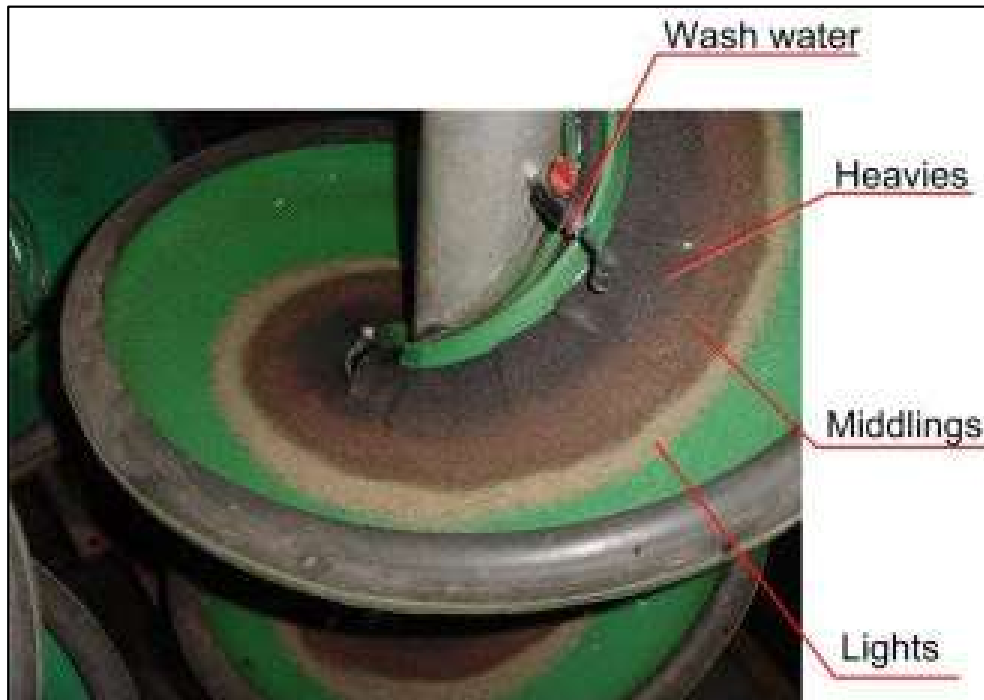


Figure . Spiral coil separator with bands of minerals visible

12. After the heavy minerals are separated and concentrated in the coils, the remaining sand — approximately 98% of what was removed — will then be returned to the excavation site

via another conveyor and redeposited. The mined area will then be reclaimed and restored using the original topsoil previously stockpiled from the site. The concentrated heavy minerals recovered from the spirals will then either be transported for sale as bulk concentrates or further processed in an adjacent “dry processing plant” (also known as the “minerals separation plant”), which uses electrostatic processes and magnets to further separate and refine the target minerals (e.g., titanium bearing minerals (ilmenite, rutile, leucoxene) and zircon). After processing, the final products will be containerized, bulk shipped, or loaded on truck or rail, depending on customers’ individual needs.

13. Beyond Section 404 of the Clean Water Act, which is discussed below, the Saunders Demonstration Mine is subject to strict environmental regulation and oversight by the Georgia Environmental Protection Division (“Georgia EPD”). It requires numerous environmental permits from the agency in order to commence and continue operations. These include a Surface Mining Permit issued under the Georgia Surface Mining Act; an NPDES Industrial Stormwater Permit under the Georgia Water Quality Control Act and the federal Clean Water Act to ensure that stormwater from the site meets all applicable regulatory requirements; a Groundwater Withdrawal Permit to ensure that water withdrawals do not deplete the underlying aquifer; and an Air Quality Permit to ensure that dust and point source emissions from the site meet air quality standards.

The 404 Permitting Process and Jurisdictional Determinations

14. Under the federal Clean Water Act, the Corps issues permits authorizing the placement of “dredged or fill” material into “waters of the United States,” including jurisdictional wetlands. Because Section 404 of the Clean Water Act authorizes the Corps to issue these permits, they are known as “404 permits.”

15. It is critical for landowners to know whether a water or wetland is subject to regulation under the Clean Water Act, because (unless it falls within certain narrow exemptions) an unpermitted discharge into jurisdictional waters violates the Clean Water Act. Therefore, at a landowners' request, the Corps will determine whether waters and wetlands constitute "waters of the United States" that are subject to Clean Water Act jurisdiction. These determinations by the Corps are known as "jurisdictional determinations" or "JDs."

16. The Corps may issue a jurisdictional determination in two forms, either a "preliminary jurisdictional determination," or "PJD," or an "approved jurisdictional determination," or "AJD," based on the landowner's request.

17. A PJD is a non-appealable, non-binding determination that indicates waters of the United States may be present on a property and may also provide approximate locations for those waters of the United States. A PJD is only advisory in nature.

18. An AJD is an official determination by the Corps that jurisdictional waters of the United States are present or absent on a landowner's property. If the Corps determines that jurisdictional waters are present, the Corps must clearly identify the waters on the project site that the agency considers to be jurisdictional. The Corps must also provide the basis for its jurisdictional determination, providing the documentation that supports the AJD. AJDs issued by the Corps are valid and binding on the agency for 5 years except in two narrow circumstances. First, an AJD may be reopened if "new information" that relates to whether a water meets the requirements to be jurisdictional is developed and warrants reopening the determination before the expiration date. Second, an AJD may be reopened before the expiration date if the District Engineer identifies, after notice and comment, specific geographic areas with rapidly changing environmental conditions that merit re-issuance on a more frequent basis. The Saunders

Demonstration Mine is not in an area that has been identified as having rapidly changing environmental conditions meriting more frequent reevaluation.

19. While some waters like the Savannah River are clearly jurisdictional, it can be difficult to tell whether other waters like ephemeral streams or wetlands that are not adjacent to traditional navigable water or tributary are subject to Clean Water Act regulation. Jurisdiction over these other waters is established based on a technical and legal analysis. First, a “wetlands delineation” is prepared that identifies and delineates all wetlands on the site according to the criteria and methods in the Corps’ 1987 Wetlands Delineation Manual and the appropriate Regional Supplement. Under the Corps’ 1987 Manual, wetlands are identified based on a technical evaluation of soil characteristics (the presence or absence of soils exhibiting characteristics that develop from inundation or saturation by groundwater or surface water); the prevalence of hydrophytic vegetation (vegetation typically adapted for life in saturated soil conditions); and the area’s hydrology. Second, after all wetlands and other waters on a site have been identified and delineated based on the technical criteria, through the AJD process the Corps applies the legal definitions in its regulations to determine whether individual waters and wetlands qualify as “waters of the United States.”

20. The information the Corps needs to prepare AJDs is readily available to the agency from a variety of sources. These sources include, but are not limited to, site visits by agency staff; verified wetlands delineations; government topographic, soil, and national wetland inventory maps; satellite and aerial imagery; hydrologic data; and the Corps’ Antecedent Precipitation Tool.

21. If waters of the United States are present, then the landowner must obtain a permit from the Corps before discharging any dredged or fill material into them. For a large and complex project like the Saunders Demonstration Mine, this typically requires the landowner to apply for

and obtain an individual Section 404 permit from the Corps. In my experience, obtaining an individual Section 404 permit for even a straightforward project may take several years and with compensatory mitigation can cost hundreds of thousands of dollars. Where a project is complex or controversial, both the time required and the costs increase significantly, often requiring the landowner to spend several years attempting to secure the permit. This is especially true if the Corps determines that an Environmental Impact Statement under the National Environmental Policy Act must be prepared to inform its permitting decision.

22. Section 404 permits require that adverse impacts to wetlands, streams and other aquatic resources be avoided and minimized to the extent practicable. Where impacts to jurisdictional waters cannot be avoided, the Corps can require mitigation from the permittee to replace the loss of wetland and aquatic resource functions in the watershed. Compensatory mitigation can be carried out through four methods: the restoration of a previously existing wetland or other aquatic site, the enhancement of an existing aquatic site's functions, the establishment (i.e., creation) of a new aquatic site, or the preservation of an existing aquatic site. At a complex mine site where jurisdictional wetlands are present, significant compensatory mitigation would almost certainly be required, with associated costs easily running into the tens-of-millions of dollars.

The Twin Pines AJDs

23. Throughout the period that Twin Pines has been developing the Saunders Demonstration Mine, the legal definition of the phrase "waters of the United States" has been in a state of extreme flux, resulting in significant uncertainty regarding which waters and wetlands were subject to Clean Water Act jurisdiction. For example, in 2015, the Obama Administration issued a new rule, known as the "Clean Water Rule" or the "WOTUS Rule," that substantially expanded the jurisdictional reach of the Clean Water Act and brought many new waters and

wetlands under the Corps' control. However, this rule was challenged in court and the Corps was blocked from applying it in certain states (including Georgia) but not in others. As a result, there was a patchwork of regulation, where whether a water was subject to regulation under the Clean Water Act depended on the state where the property was located.

24. Shortly after taking office, the Trump Administration took steps almost immediately to withdraw the WOTUS Rule and to replace it with a new jurisdictional rule more closely aligned with Justice Scalia's interpretation of the Clean Water Act in *Rapanos v. United States*. This rule, which is known as the "Navigable Waters Protection Rule" or "NWPR," was finalized in April of 2020.

25. On July 3, 2019, TTL submitted an application on behalf of Twin Pines for an individual Section 404 Permit. This application was prepared and submitted based on the assumption that wetlands on the site would be considered jurisdictional under the rules that were then in effect. The original permit application included a project boundary of approximately 2,414 acres and a 1,456-acre mine site. After discussions with the Corps and Georgia EPD, however, Twin Pines reduced the project boundary to 1,042 acres, and the mine site to 898, to proceed with a smaller "demonstration project." TTL submitted an application on behalf of Twin Pines for an individual Section 404 Permit for the smaller "demonstration project" on March 4, 2020. The demonstration project was intended to demonstrate that "mining can be conducted in an environmentally responsible manner" and to validate previously completed groundwater models showing that mining will have, at the very most, a negligible impact on local groundwater resources, surface water resources, and the Okefenokee Swamp.

26. After the NWPR became effective on June 22, 2020, Twin Pines applied for an AJD to confirm that certain wetlands were not jurisdictional. Twin Pines submitted its initial

request on July 20, 2020 and Corps staff visited the site to review the aquatic features on site on September 16, 2020. At that visit, it became apparent that many additional wetlands not included in the original request would also be considered non-jurisdictional. We thus withdrew our July request, grouped these wetlands into seven distinct “Review Areas,” and requested two separate AJDs to cover these areas — one for Reviews Areas 1-5 and the other for Reviews Areas 6-7.

27. The first request, for Review Areas 1-5, was submitted on September 25, 2020 and granted on October 15, 2020. This AJD (the “2020 AJD”) confirms that “waters of the United States” are not present on Review Areas 1 through 5. The non-jurisdictional features confirmed by the 2020 AJD include, but are not limited to, almost 300 acres of wetlands within the project boundary for the current proposed mine site. A true and correct copy of the Corps’ 2020 AJD is attached as Exhibit A to this declaration.

28. The second request, for Review Areas 6 and 7, was submitted on November 18, 2020 and granted on March 24, 2021. The “2021 AJD” confirms that “waters of the United States” are not present within Review Areas 6 through 7. The non-jurisdictional features confirmed by the 2021 AJD include many wetlands north of the project boundary and about 10 acres in its southeast corner. A true and correct copy of the Corps’ 2021 AJD is attached as Exhibit B to this declaration.

29. Both AJDs explain that the Corps based its determination on a “wetland delineation” conducted in accordance with the 1987 “Corps of Engineers Wetland Delineation Manual,” as amended, and a separate determination based on the regulatory definition of “waters of the United States” regarding the jurisdictional status of each aquatic feature identified within each Review Area.

30. Both AJDs document the Corps' determination that aquatic features present within the Review Areas are non-jurisdictional and state the basis for that determination for each aquatic feature identified in each area.

31. Both AJDs explain that these determinations were based on Corps' review of the following technical information:

- a. An evaluation and verification by the Corps of a wetlands delineation conducted using the Corps' 1987 Wetlands Delineation Manual and the most recent regional supplements
- b. A "connectivity report" prepared and submitted on behalf of Twin Pines;
- c. Aerial, satellite, and other imagery;
- d. U.S. Government soil maps, topographic maps, and national wetlands inventory maps;
- e. Information from the Corps' "Antecedent Precipitation Tool"; and
- f. The Corps' own observations collected during multiple visits to the property.

Exhibit A at 10-16; Exhibit B at 5-11.

32. Both AJDs specify that none of the aquatic features identified in any of the Review Areas "are subject to the jurisdiction of the Clean Water Act" and, thus, "the placement of dredged or fill material into these wetlands/other waters would not require prior Department of the Army authorization pursuant to Section 404 of the Clean Water Act." Exhibit A at 1; Exhibit B at 1.

33. The 2020 AJD stated:

There are aquatic resources within the review area that are not waters of the United States and are therefore not subject to the jurisdiction of the Clean Water Act. Specifically, wetlands WC, WD, WE, WF, WG, WH, WJ, WK, WA-2, WA-3, WA-4, WA-6, WA-7, WA-8, WA-9, and ditches D1, D2, D3, and D5 as identified on the enclosed exhibits entitled "Review Area 1", "Review Area 2", "Review Area 3", "Review Area 4", and "Review Area 5", approved by this office on October 14, 2020 are non-jurisdictional. The placement of dredged or fill material into these wetlands/other waters would not require prior

Department of the Army authorization, pursuant to Section 404 of the Clean Water Act (33 United States Code § 1344).

This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date.

Exhibit A at 1.

34. The 2021 AJD states:

We have completed an approved JD for the site. The wetlands were delineated in accordance with criteria contained in the 1987 "Corps of Engineers Wetland Delineation Manual," as amended by the most recent regional supplements to the manual. I have enclosed an "Approved JD Form," which details whether streams, wetlands and/or other waters present on the site are subject to the jurisdiction of the U.S. Army Corps of Engineers and how the Corps determined jurisdiction.

There are aquatic resources within the review area that are not waters of the United States and are therefore not within the jurisdiction of Section 404 of the Clean Water Act (33 United States Code § 1344). Specifically, ditches "6Ditch-6 NWPR, 6Ditch-2 NWPR, 7Ditch-1 NWPR, 7Ditch NWPR, 7Ditch-KEY NWPR, 7Ditch-ADK NWPR," and the wetlands labeled "Non-Adjacent Wetland" as identified on the enclosed exhibits entitled "Review Area 6" and "Review Area 7" dated November 16, 2020. The placement of dredged or fill material into these wetlands/other waters would not require prior Department of the Army authorization pursuant to Section 404.

This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date.

Exhibit B at 1.

**Twin Pines' Reliance on the AJDs and its Revisions
to the Saunders Demonstration Mine**

35. Based on 2020 AJD, Twin Pines directed TTL to revise and reconfigure the design of the Saunders Demonstration Mine to avoid jurisdictional waters. TTL redrew the project boundary accordingly, substantially reducing the overall project boundary and the number of acres to be mined. Working with other engineers, TTL also reconfigured the layout of the minerals processing areas, water treatment systems, and other project infrastructure so the project could move forward without a Section 404 Permit from the Corps.

36. TTL submitted a revised application to Georgia EPD for a Surface Mining Permit reconfigured to avoid jurisdictional areas on November 13, 2020, approximately one month after the 2020 AJD was issued. The second was submitted on June 25, 2021. The reconfigured mine site is shown in Figure 12 below. Areas excluded from the mine to avoid jurisdictional waters can be seen in the alterations to the project boundary along the northern edge of the mine site.

37. In reliance on the 2020 AJD, TTL formally withdrew Twin Pines' application for an individual Section 404 permit from the Corps in October 2020. At the time the permit application was withdrawn, Twin Pines had been working for more more than 27 months to secure the permit. It had gone through three separate public meetings concerning the project and the Section 404 permit, which were held in St. George, Georgia, Folkston, Georgia, and virtually via WebEx by the Corps.

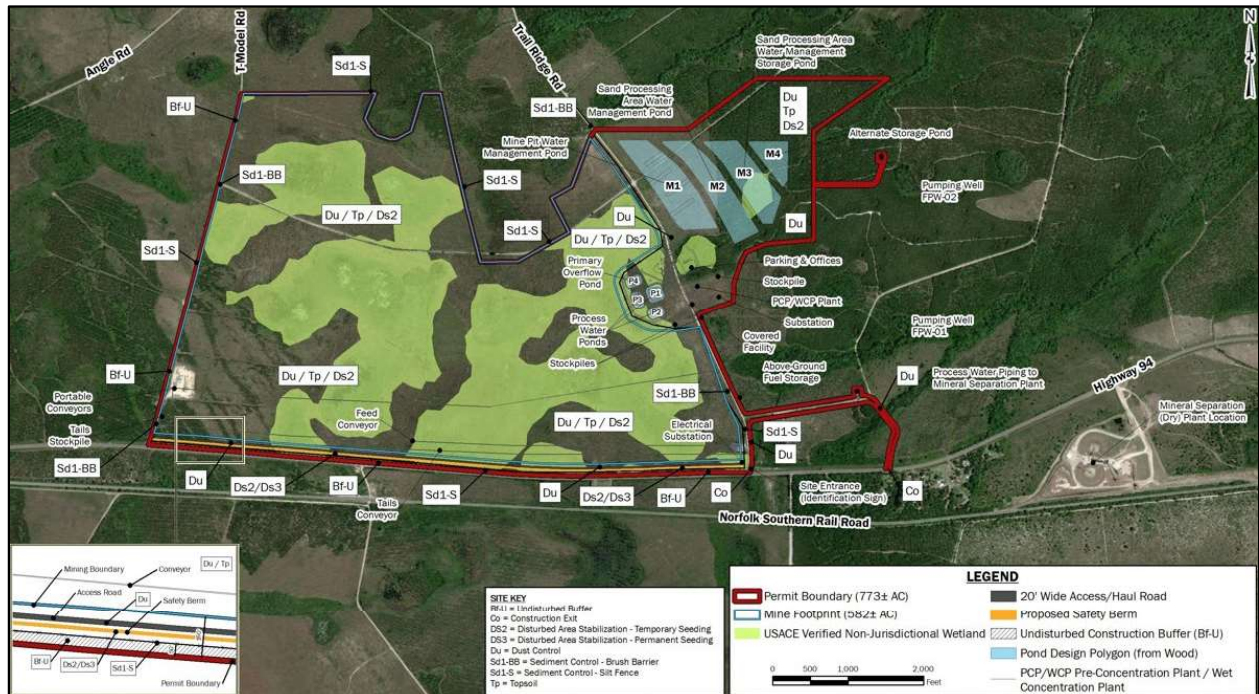


Figure . Mine site reconfigured to avoid urisdictional waters

The Decision Rescinding Twin Pines' AJDs

38. I have reviewed the decision issued by the Assistant Secretary of the Army (Civil Works) (the "ASA") rescinding the AJDs issued to Twin Pines. Although the AJDs should remain valid until 2025 and 2026 respectively, the ASA's decision states that Twin Pines' AJDs are no longer valid. It also states that any new AJD will be prepared using the Corps jurisdictional rules in effect when the new AJD is issued.

39. The Corps currently utilizes the "pre-2015" regulations to determine its jurisdiction under the Clean Water Act. These are the regulations that were in effect prior to the Obama Administration's promulgation of the WOTUS Rule in 2015. Under these regulations, the Corps considers significantly more waters and wetlands to be jurisdictional than it did under the NWPR, which was in effect when the AJDs were issued to Twin Pines. The Corps has proposed to adopt these regulations and stated that it intends to further expand its jurisdictional rule through a subsequent rulemaking.

40. The decision to rescind the AJDs and force Twin Pines to apply for new AJDs prepared under more expansive jurisdictional rules will result in significant areas of Twin Pines' property being considered waters of the United States subject to Clean Water Act jurisdiction. As a result, Twin Pines must choose between (a) applying for and obtaining a Section 404 permit from the Corps authorizing the placement of dredged and fill material into these newly jurisdictional areas or (b) limiting its mining activities to upland areas that will not be considered jurisdictional, even under the new and expanded test.

41. Twin Pines will incur significant costs under either scenario. If Twin Pines pursues an individual Section 404 permit, the permit would not likely be issued for several years. I am confident in this projection because the Corps has informed TTL it intends to prepare a full Environmental Impact Statement under the National Environmental Policy Act before any

permitting decision is made. The costs associated with preparing the permit application, navigating the public permitting process, and completing any required compensatory mitigation will easily run into the tens-of-millions of dollars.

42. Twin Pines only other alternative is to limit its mining activities to upland areas that would not be considered jurisdictional. To analyze this option, TTL has evaluated the site of the Saunders Demonstration Mine and calculated the number of upland acres that could be mined without impacting any areas that would likely to be considered jurisdictional under the pre-2015 rules, and thus without first obtaining a Section 404 permit from the Corps. More than 300 acres of wetlands need to be excluded from the current proposed mine site — reducing it approximately 60%. While this option would allow Twin Pines to move forward without the delay that reapplying for a Section 404 permit would entail, it would force Twin Pines to abandon highly valuable mineral deposits in the areas to be excluded. This change would also result in a more difficult approach to mining that would also slow the mining effort.

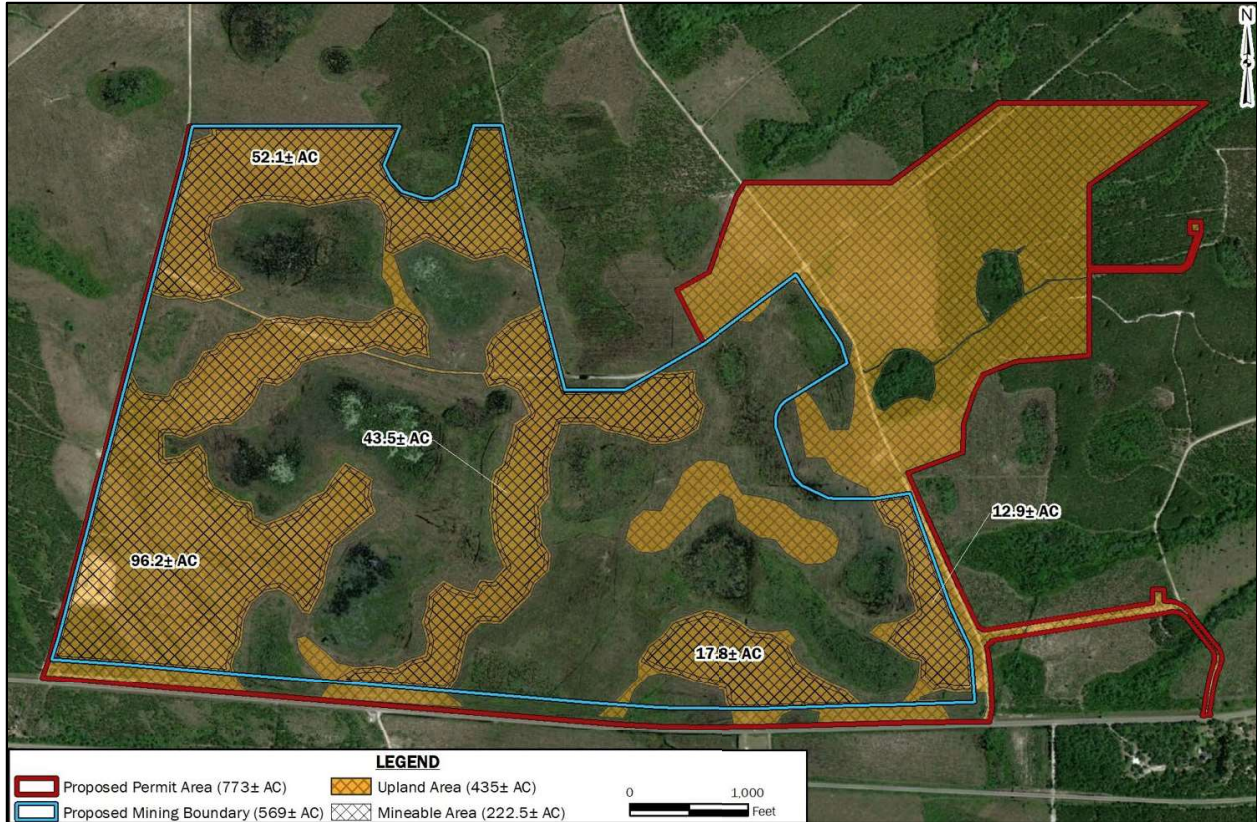


Figure . Movable upland areas at the Saunders Demonstration Mine

43. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of July, 2022.

Christopher Stanford

STANFORD DECLARATION

EXHIBIT A



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

15 OCT 2020

Regulatory Division
SAS-2018-00554

Steven R. Ingle (single@twinpinesminerals.com)
Twin Pines Minerals, LLC
2100 Southbridge Parkway,
Birmingham, Alabama 35209

Dear Mr. Ingle:

I refer to a letter submitted on your behalf by TTL, requesting an Approved Jurisdictional Determination (JD) for your sites located West of the town of Saint George, and North of State Route 94, in Charlton County, Georgia (Latitude 30.525932, Longitude -82.124468). This project has been assigned number SAS-2018-00554 and it is important that you refer to this number in all communication concerning this matter.

We have completed an approved JD for the site. The wetlands were delineated in accordance with criteria contained in the 1987 "Corps of Engineers Wetland Delineation Manual," as amended by the most recent regional supplements to the manual. I have enclosed an "Approved JD Form," which details whether the aquatic resources within the review area are subject to the jurisdiction of the U.S. Army Corps of Engineers and how the Corps determined jurisdiction.

There are aquatic resources within the review area that are not waters of the United States and are therefore not subject to the jurisdiction of the Clean Water Act. Specifically, wetlands WC, WD, WE, WF, WG, WH, WJ, WK, WA-2, WA-3, WA-4, WA-6, WA-7, WA-8, WA-9, and ditches D1, D2, D3, and D5 as identified on the enclosed exhibits entitled "Review Area 1", "Review Area 2", "Review Area 3", "Review Area 4", and "Review Area 5", approved by this office on October 14, 2020 are non-jurisdictional. The placement of dredged or fill material into these wetlands/other waters would not require prior Department of the Army authorization, pursuant to Section 404 of the Clean Water Act (33 United States Code § 1344). This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date.

You may request an administrative appeal for any approved JD under the Corps regulations at 33 Code of Federal Regulations (C.F.R.) Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal form.

- 2 -

If you intend to sell property that is part of a project that requires Department of the Army Authorization, it may be subject to the Interstate Land Sales Full Disclosure Act. The Property Report required by Housing and Urban Development Regulation must state whether, or not a permit for the development has been applied for, issued or denied by the U.S. Army Corps of Engineers (Part 320.3(h) of Title 33 of the C.F.R.).

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular sites identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This communication does not convey any property rights, either in real estate or material, or any exclusive privileges. It does not authorize any injury to property, invasion of rights, or any infringement of federal, state or local laws, or regulations. It does not obviate your requirement to obtain state or local assent required by law for the development of this property. If the information you have submitted, and on which the U.S. Army Corps of Engineers has based its determination is later found to be in error, this decision may be revoked.

A copy of this letter is being provided to the following party: Cindy House-Pearson chpearson@ttlusa.com.

Thank you in advance for completing our on-line Customer Survey Form located at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. We value your comments and appreciate your taking the time to complete a survey each time you have interaction with our office.

If you have any questions, please call Holly Ross, at (678) 422-2727.

Sincerely,

RUTLIN.WILLIA
M.M.1390465064

Digitally signed by
RUTLIN.WILLIAM.M.139046506
4
Date: 2020.10.15 13:51:52
-04'00'

William Rutlin
Coastal Branch Chief

Enclosures



REVIEW AREA 1

USACE Reviewed Jurisdictional
Determination Area (red polygon)
Approved 14 OCTOBER 2020



LEGEND

-  Jurisdictional Determination (70± AC)
-  Non-Adjacent Wetland
-  Ditch "D-1" (412± LF)

0 500 Feet

DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 9/23/2020
REVISION DATE: 10/7/2020
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 500 ft

REVIEW AREA 1: WATERS OF THE U.S. FEATURES MAP

TWIN PINES MINERALS

ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).





REVIEW AREA 2

USACE Reviewed Jurisdictional Determination Area (red polygon)
Approved 14 OCTOBER 2020

LEGEND

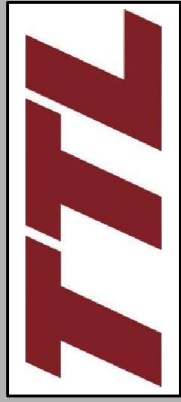
- Jurisdictional Determination (56± AC)
- Non-Adjacent Wetland
- Culvert Location



DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 9/23/2020
REVISION DATE: 10/7/2020
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 400 ft

REVIEW AREA 2: WATERS OF THE U.S. FEATURES MAP
TWIN PINES MINERALS
 ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).





REVIEW AREA 3

USACE Reviewed Jurisdictional
Determination Area (red polygon)
Approved 14 OCTOBER 2020



LEGEND

Jurisdictional Determination (67± AC)

Non-Adjacent Wetland

Roadside Ditch & Drainage Direction
"D-2" (1,090± LF)

Culvert Location



REVIEW AREA 3: WATERS OF THE U.S. FEATURES MAP

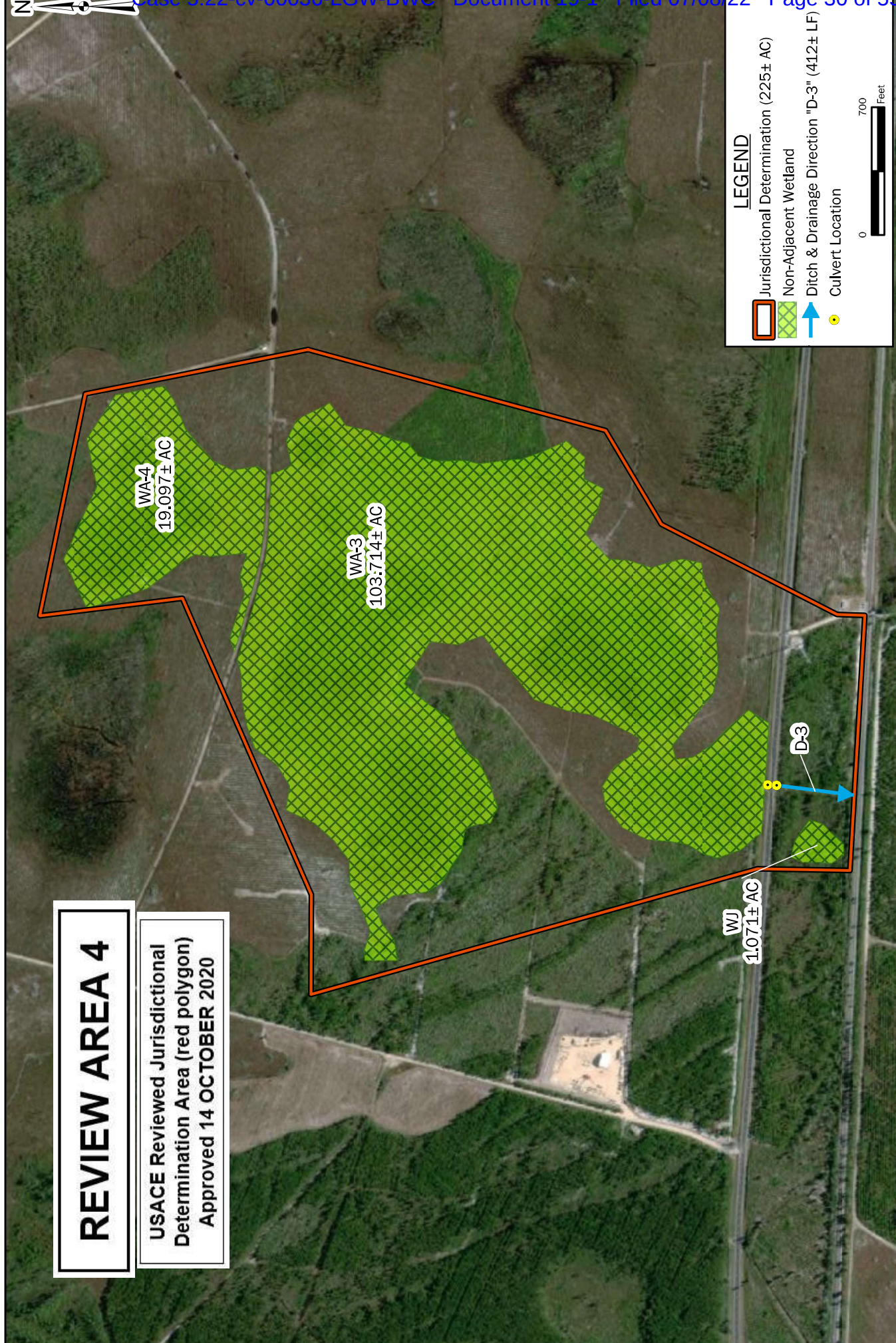
TWIN PINES MINERALS

ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).

DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 9/23/2020
REVISION DATE: 10/7/2020
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 300 ft





LEGEND

- Jurisdictional Determination (225± AC)
- Non-Adjacent Wetland
- Ditch & Drainage Direction "D-3" (412± LF)
- Culvert Location

0 700 Feet

REVIEW AREA 4

USACE Reviewed Jurisdictional Determination Area (red polygon)
Approved 14 OCTOBER 2020

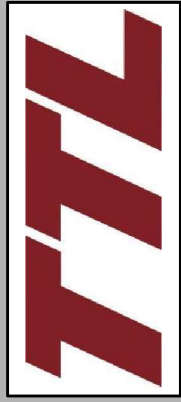
DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 9/23/2020
REVISION DATE: 10/7/2020
TTL JOB NO.: 000180200604.00
APPROX. SCALE: 1 in = 700 ft

REVIEW AREA 4: WATERS OF THE U.S. FEATURES MAP

TWIN PINES MINERALS

ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).





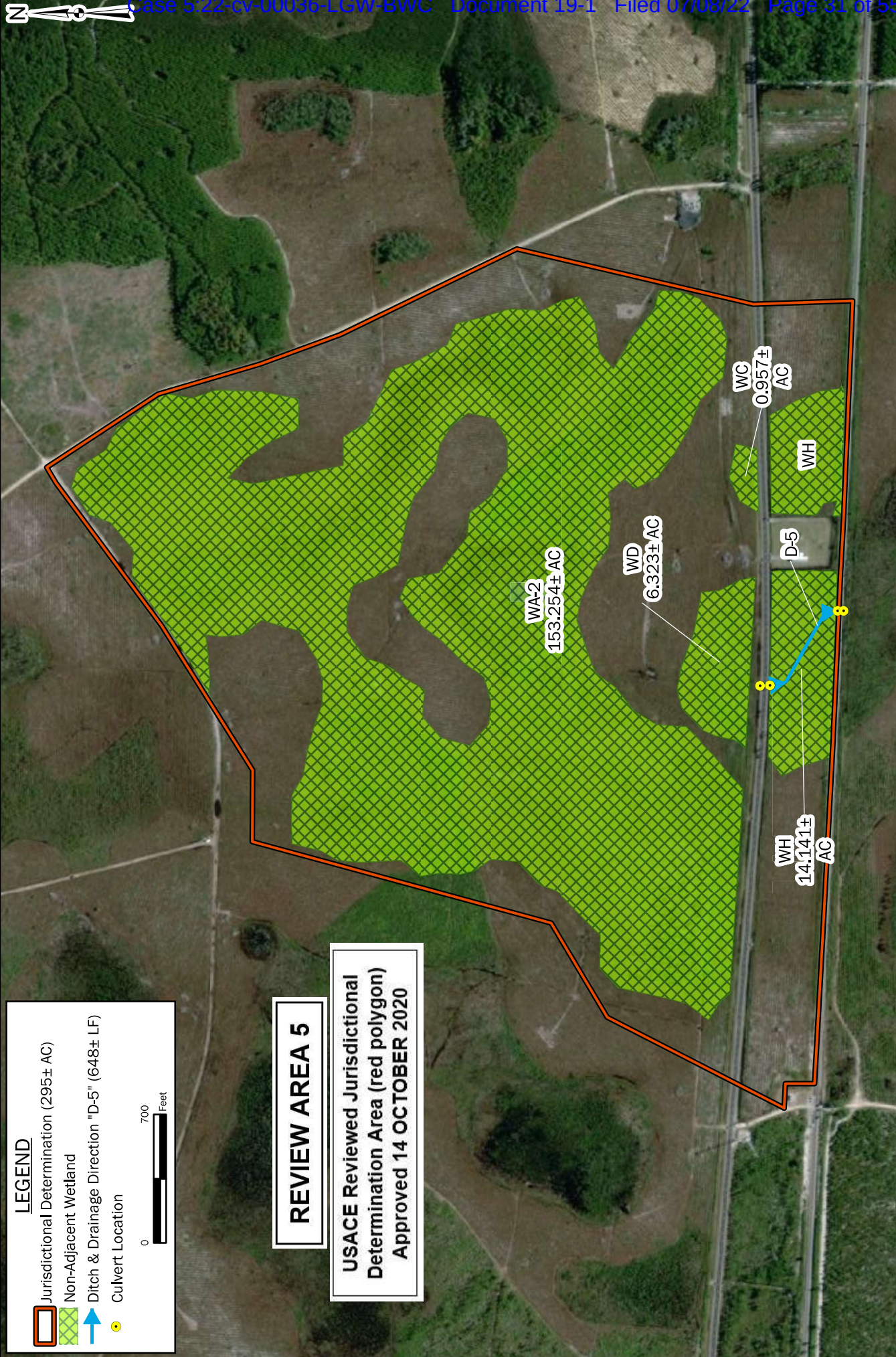
LEGEND

- Jurisdictional Determination (295± AC)
- Non-Adjacent Wetland
- Ditch & Drainage Direction "D-5" (648± LF)
- Culvert Location

0 700 Feet

REVIEW AREA 5

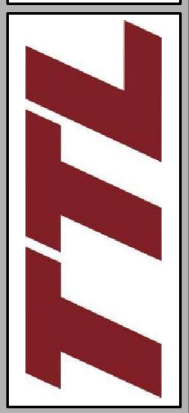
USACE Reviewed Jurisdictional Determination Area (red polygon) Approved 14 OCTOBER 2020



DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 9/23/2020
REVISION DATE: 10/7/2020
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 700 ft

REVIEW AREA 5: WATERS OF THE U.S. FEATURES MAP
TWIN PINES MINERALS
 ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).



**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS
AND REQUEST FOR APPEAL**

Applicant: Steven R. Ingle		File Number: SAS-2018-00554	Date: October 15, 2020
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 C.F.R. § Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. The division engineer must receive this form within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
 Holly A. Ross
 US Army Corps of Engineers, Savannah District
 1104 North Westover Blvd, Suite 9
 Albany, Georgia 31707
 678-422-2727

If you only have questions regarding the appeal process you may also contact:
 Mr. Philip Shannin
 Administrative Appeal Review Officer
 CESAS-PDS-O
 60 Forsyth Street Southwest, Floor M9
 Atlanta, Georgia 30303-8803
 Phone: (404) 562-5136; Fax: (404) 562-5138
 Email: Philip.a.shannin@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:
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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 14-OCT-2020

ORM Number: SAS-2018-00554

Associated JDs: N/A

Review Area Location¹:

State/Territory: GA City: County/Parish/Borough: Charlton County

Center Coordinates of Review Area: Latitude 30.525932 Longitude -82.124468

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Review Area 1 D1	412 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	This feature appears to be a man-dug ditch that was constructed to drain depressional wetland areas. This feature was dug through wetland WE, a non-adjacent wetland, and continues east through upland areas. This ditch does not appear to modify or relocate a natural channel, nor was it constructed through an adjacent wetland. Further, this ditch did not meet the flow requirements to be considered a tributary under the NWPR. Based on this, the ditch is best defined as a paragraph (b)(5) non-jurisdictional water under the NWPR
Review Area 1 WE	4.22 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters
Review Area 1 WF	4.05 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters
Review Area 1 WG	5.55 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters
Review Area 1 WH	3.18 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters
Review Area 2 WA-8	1.3 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters
Review Area 2 WA-9	16.98 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters

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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

Review Area 2 WK	2.5 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. This wetland feature is connected via culvert to an off-site b(1) wetland which also does not meet any of the adjacency criteria.
Review Area 3 D2	1090 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	This feature appears to be road-side ditch that was constructed adjacent to the road. The road was constructed prior to 1970 and thus prior to Clean Water Act regulation. This feature follows along the north-south road and beside wetland WA-7, a non-adjacent wetland, and continues north through upland areas to a culvert. This ditch does not appear to modify or relocate a natural channel, nor was it constructed through an adjacent wetland. Further, this ditch did not meet the flow requirements to be considered a tributary under the NWPR. Based on this, the ditch is best defined as a paragraph (b)(5) non-jurisdictional water under the NWPR.
Review Area 3 WA-6	28.79 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. This wetland feature is disconnected from downstream waters via an artificial structure (road) that does not allow direct hydrologic surface connection through or over in a typical year. The road was constructed prior to 1970 and thus prior to Clean Water Act regulation.
Review Area 3 WA-7	11.6 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. This wetland feature is disconnected from downstream waters via an artificial structure (road) that does not allow for a direct hydrologic surface connection through or over in a typical year. Water discharged from the wetland flows north through a road-side ditch that does not meet the flow requirements to be considered a tributary under the NWPR, nor would this ditch be considered an adjacent wetland under the NWPR. The ditch crosses under the road several hundred feet north of WA-7 and traverses another 200 feet before intersecting with potentially adjacent wetlands west of WA-7. The road was constructed prior to 1970 and thus prior to Clean Water Act regulation.
Review Area 4	412 feet	(b)(5) Ditch that is not an (a)(1) or	This feature appears to be a man-dug ditch constructed

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

D3		(a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	in uplands. Overland flow from wetland WA-3 drains through a culvert under Georgia Highway 94 and into this ditch. This ditch does not appear to modify or relocate a natural channel, nor was it constructed through an adjacent wetland. Further, this ditch did not meet the flow requirements to be considered a tributary under the NWPR. Based on this, the ditch is best defined as a paragraph (b)(5) non-jurisdictional water under the NWPR.
Review Area 4 WA-3	103.71 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. Water discharged from the wetland flows south through a culvert and an excluded b(5) ditch, constructed in uplands, that does not meet the definition of an a(1) – a(4) water.
Review Area 4 WA-4	19.1 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. This wetland feature is disconnected from downstream waters via an artificial structure (road) that does not allow direct hydrologic surface connection through or over in a typical year. The road was constructed prior to 1970 and thus prior to Clean Water Act regulation. Wetland WA-4 is upgradient of WA-3 and therefore non-adjacent regardless of the artificial separation, due to WA-3's exclusion.
Review Area 4 WJ	1.07 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters.
Review Area 5 D5	648 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	This feature appears to be a man-dug ditch that was constructed to drain depressional wetland areas. This feature was dug through wetland WH, a non-adjacent wetland. The ditch starts at a culvert under Georgia Highway 94, continues southeast, ends at a culvert under the railroad tracks which drains to the south to an off-site property. This ditch does not appear to modify or relocate a natural channel, nor was it constructed through an adjacent wetland. Further, this ditch did not meet the flow requirements to be considered a tributary under the NWPR. Based on this, the ditch is best defined as a paragraph (b)(5) non-jurisdictional water under the NWPR.
Review Area 5	153.25 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

WA-2			as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. This wetland feature is disconnected from adjacent waters to the north via an artificial structure (road) that does not allow direct hydrologic surface connection through or over in a typical year. The road was constructed prior to 1970 and thus prior to Clean Water Act regulation.
Review Area 5 WC	0.96 acres	(b)(1) Non-adjacent wetland	<p>This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. It appears that wetland WC was historically connected to wetland WH, but a road was constructed through this wetland separating the two wetlands. There is no evidence of a direct hydrologic surface connection between WC and WH through or over the road. A roadside ditch does expand from WC to WD and to a culvert under the road to wetland WH, but this roadside ditch does not meet the flow requirements to be considered a tributary under the NWPR. Further, it does not appear to have been created in an adjacent wetland nor is there evidence to suggest that the ditch modified or relocated a natural channel.</p> <p>This ditch drains south through culverts to an off-site property that was inaccessible for field review. A review of aerial imagery and USGS topography maps indicate that there are potential wetlands directly south of wetlands WC, WD, and WH. However, these wetland areas south of the road appear to be situated on top of a flat ridge and surrounded by upland areas based on the aerial imagery and USGS Topo Maps. Based on this, Wetlands WC, WD and WH would not meet the definition of an adjacent wetland under the NWPR and are best defined as a (b)(1) non-adjacent wetland.</p>
Review Area 5 WD	6.3 acres	(b)(1) Non-adjacent wetland	This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. It appears that wetland WC was historically connected to wetland WH, but a road was constructed through this wetland separating the two wetlands. There is no evidence of a direct hydrologic surface connection between WC and WH through or over the road. A roadside ditch does expand from WC to WD and to a culvert under the road to wetland WH, but this roadside ditch does not meet

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REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

			<p>the flow requirements to be considered a tributary under the NWPR. Further, it does not appear to have been created in an adjacent wetland nor is there evidence to suggest that the ditch modified or relocated a natural channel.</p> <p>This ditch drains south through culverts to an off-site property that was inaccessible for field review. A review of aerial imagery and USGS topography maps indicate that there are potential wetlands directly south of wetlands WC, WD, and WH. However, these wetland areas south of the road appear to be situated on top of a flat ridge and surrounded by upland areas based on the aerial imagery and USGS Topo Maps. Based on this, Wetlands WC, WD and WH would not meet the definition of an adjacent wetland under the NWPR and are best defined as a (b)(1) non-adjacent wetland.</p>
Review Area 5 WH	14.14 acres	(b)(1) Non-adjacent wetland	<p>This wetland is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated or have a direct surface water connection to any (a)(1)-(a)(3) waters in a typical year. This wetland is physically separated from all (a)(1)-(a)(3) waters. It appears that wetland WC was historically connected to wetland WH, but a road was constructed through this wetland separating the two wetlands. There is no evidence of a direct hydrologic surface connection between WC and WH through or over the road. A roadside ditch does expand from WC to WD and to a culvert under the road to wetland WH, but this roadside ditch does not meet the flow requirements to be considered a tributary under the NWPR. Further, it does not appear to have been created in an adjacent wetland nor is there evidence to suggest that the ditch modified or relocated a natural channel.</p> <p>This ditch drains south through culverts to an off-site property that was inaccessible for field review. A review of aerial imagery and USGS topography maps indicate that there are potential wetlands directly south of wetlands WC, WD, and WH. However, these wetland areas south of the road appear to be situated on top of a flat ridge and surrounded by upland areas based on the aerial imagery and USGS Topo Maps. Based on this, Wetlands WC, WD and WH would not meet the definition of an adjacent wetland under the NWPR and are best defined as a (b)(1) non-adjacent wetland.</p>

III. SUPPORTING INFORMATION

- A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

- Information submitted by, or on behalf of, the applicant/consultant: *WOTUS Delineation Report, September 28, 2018 and WOTUS Connectivity Screening, September 2020.*
This information is sufficient for purposes of this AJD.
Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *(aerial and other) USGS Earth Explorer 03/18/1963, 01/21/1970; USGS EROS NHAP, 02/14/1984; USGS EROS NAPP 02/18/1993; USGS Express Aerials Imagery 02/01/2006; Google Earth, 03/06/2018; Vivid 03/06/2018 & 11/20/2019; Twin Pines Orthoimagery 09/2018. Site photographs provided in September 28, 2018 delineation report*
- Corps Site visit(s) conducted on: *November 2018 and September 16, 2020.*
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Web Soil Survey map provided for the areas in the September Delineation Report.*
- USFWS NWI maps: *NWI Mapping provided in the September Delineation Report.*
- USGS topographic maps: *Moniac, Florida and Saint George, GA USGS 7.5 Minute Quad Maps, 2017 provided in Approved Jurisdictional Request submission; Moniac, Florida and Saint George, GA USGS 7.5 Minute Quad Maps, 1994 provided in September 28, 2018 delineation report.*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** APT was run for the review areas for September 16, 2020 (date of most recent Corps site visit). APT output indicated normal conditions and the Drought Index (PDSI) indicated "Incipient Wetness". The site is in a typical year and experiencing conditions that are within the normal ranges for a typical year.
- C. Additional comments to support AJD:** The five review areas contain non-adjacent wetlands and ditches. The wetlands are not adjacent to any a(1), a(2), or a(3) waters, and are not inundated by any a(1), a(2), or a(3) water in a typical year. None of the ditches meet the criteria to be considered an (a)(2) water and are excluded (b)(5) waters.

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⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

STANFORD DECLARATION

EXHIBIT B



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

MARCH 24, 2021

Regulatory Division
SAS-2018-00554-ACM

Mr. Steven R. Ingle (single@twinpinesminerals.com)
Twin Pines Minerals, LLC
2100 Southbridge Parkway
Birmingham, Alabama 35209

Dear Mr. Ingle:

I refer to your letter submitted on your behalf by TTL, requesting an Approved Jurisdictional Determination (JD) for your sites located West of the town of Saint George and North of State Route 94, in Charlton County (Latitude 30.525932, Longitude -82.124468). This project has been assigned number SAS-2018-00554-ACM and it is important that you refer to this number in all communication concerning this matter.

We have completed an approved JD for the site. The wetlands were delineated in accordance with criteria contained in the 1987 "Corps of Engineers Wetland Delineation Manual," as amended by the most recent regional supplements to the manual. I have enclosed an "Approved JD Form," which details whether streams, wetlands and/or other waters present on the site are subject to the jurisdiction of the U.S. Army Corps of Engineers and how the Corps determined jurisdiction.

There are aquatic resources within the review area that are not waters of the United States and are therefore not within the jurisdiction of Section 404 of the Clean Water Act (33 United States Code § 1344). Specifically, ditches "6Ditch-6 NWPR, 6Ditch-2 NWPR, 7Ditch-1 NWPR, 7Ditch NWPR, 7Ditch-KEY NWPR, 7Ditch-ADK NWPR," and the wetlands labeled "Non-Adjacent Wetland" as identified on the enclosed exhibits entitled "Review Area 6" and "Review Area 7" dated November 16, 2020. The placement of dredged or fill material into these wetlands/other waters would not require prior Department of the Army authorization pursuant to Section 404.

This approved JD will remain valid for a period of 5-years unless new information warrants revision prior to that date. You may request an administrative appeal for any approved JD under the Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal form.

If you intend to sell property that is part of a project that requires Department of the Army Authorization, it may be subject to the Interstate Land Sales Full Disclosure Act. The Property Report required by Housing and Urban Development Regulation must

- 2 -

state whether, or not a permit for the development has been applied for, issued or denied by the U.S. Army Corps of Engineers (Part 320.3(h) of Title 33 of the CFR).

This communication does not convey any property rights, either in real estate or material, or any exclusive privileges. It does not authorize any injury to property, invasion of rights, or any infringement of federal, state or local laws, or regulations. It does not obviate your requirement to obtain state or local assent required by law for the development of this property. If the information you have submitted, and on which the U.S. Army Corps of Engineers has based its determination is later found to be in error, this decision may be revoked.

Thank you in advance for completing our on-line Customer Survey Form located at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. We value your comments and appreciate your taking the time to complete a survey each time you have interaction with our office.

If you have any questions, please contact Ms. Allison C. Murphy, Project Manager, Coastal Branch, via telephone at 912-652-5133 or email at Allison.c.murphy@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "William M. Rutlin". The signature is fluid and cursive, with the first name being more prominent.

William M. Rutlin
Chief, Coastal Branch

Copies Furnished: Cindy House-Pearson (chpearson@ttlusa.com) TTL

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS
AND REQUEST FOR APPEAL**

Applicant: Steven R. Ingle		File Number: SAS-2018-00554	Date: March 24, 2021
Attached is:		See Section below	
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/>	PERMIT DENIAL	C	
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D	
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. The division engineer must receive this form within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
 ALLISON C. MURPHY
 U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
 100 W. OGLETHORPE AVENUE, SAVANNAH, GEORGIA 31401

 PHONE: (912) 652-5133
 EMAIL: ALLISON.C.MURPHY@USACE.ARMY.MIL

If you only have questions regarding the appeal process you may also contact:
 Mr. Philip Shannin, Administrative Appeal Review Officer
 CESAS-PDS-O
 60 Forsyth Street Southwest, Floor M9
 Atlanta, Georgia 30303-8803

 Phone: (404) 562-5136; Fax: (404) 562-5138
 Email: Philip.a.shannin@usace.army.mil -8801

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:
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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 24-MAR-2021

ORM Number: SAS-2018-00554-ACM

Associated JDs: [SAS-2018-00554](#)

Review Area Location¹:

State/Territory: GA City: County/Parish/Borough: Charlton County

Center Coordinates of Review Area: Latitude 30.525932 Longitude -82.124468

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
6Ditch-6 NWPR	1,088 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch does not alter or relocate a naturally occurring surface water channel. Further, no evidence was observed to indicate that this feature was dug in an (a)(4) adjacent wetland. This feature appears to be primarily constructed in uplands as well as a (b)(1) wetland. This feature did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water and briefly flow during, and after, precipitation events.
6Ditch-2 NWPR	2,045 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	These roadside ditches do not alter or relocate a naturally occurring surface water channel. Further, no evidence was observed to indicate that these features were dug in an (a)(4) adjacent wetland. These features appear to be primarily constructed in uplands as well as (b)(1) wetlands. These features did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water and briefly flow during, and after, precipitation events.
6WB NWPR	2.194 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

			and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.
6WC NWPR	2.523 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.
6WF NWPR	0.704 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.
6WG NWPR	5.97 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.
7 Ditch NWPR	1,268 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch does not alter or relocate a naturally occurring surface water channel. Further, no evidence was observed to indicate that this feature was dug in an (a)(4) adjacent wetland.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

			This feature appears to be primarily constructed in a (b)(1) wetland with the downstream, eastern portion being constructed in upland. This feature did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water and briefly flow during, and after, precipitation events.
7 Ditch-KEY NWPR	297 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch does not alter or relocate a naturally occurring surface water channel. Further, no evidence was observed to indicate that this feature was dug in an (a)(4) adjacent wetland. This feature is primarily constructed in an uplands. This feature did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water and briefly flow during, and after, precipitation events.
7 Ditch-ADK NWPR	199 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch does not alter or relocate a naturally occurring surface water channel. Further, no evidence was observed to indicate that this feature was dug in an (a)(4) adjacent wetland. This feature is primarily constructed in an uplands. This feature did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water and briefly flow during, and after, precipitation events.
7 Ditch-1 NWPR	5,267 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of	These roadside ditches do not alter or relocate a naturally occurring surface water channel. Further, no evidence

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

		(c)(1)	was observed to indicate that these features were dug in an (a)(4) adjacent wetland. These features appear to be primarily constructed in (b)(1) wetlands as well as upland. These features did not exhibit intermittent or perennial flow on numerous dates of observation throughout 2018-2020 and appeared to pond water during and after precipitation events.
7WA-1 NWPR	161.637 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.
7WA-5 NWPR	7.936 acres	(b)(1) Non-adjacent wetland	This feature is not adjacent to any (a)(1)-(a)(3) waters as defined by the NWPR. This wetland does not abut any (a)(1)-(a)(3) waters, is not inundated by any (a)(1)-(a)(3) waters, is physically separated from all (a)(1)-(a)(3) waters and does not have a direct hydrologic surface connection to any (a)(1)-(a)(3) waters in a typical year.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

 x Information submitted by, or on behalf of, the applicant/consultant: WOTUS Delineation Reports 09/28/2018 and 07/03/2019

This information *is* sufficient for purposes of this AJD. Rationale: *N/A or describe rationale for insufficiency (including partial insufficiency).*

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

- ___ Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- ___ Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s)*.
- x** Corps Site visit(s) conducted on: November 27-28, 2018 & October 21-25, 2019
- x** Previous Jurisdictional Determinations (AJDs or PJDs): SAS-2018-00554
- x** Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- x** USDA NRCS Soil Survey:
- Review Area 6
- FIGURE 4: NATURAL RESOURCES CONSERVATION SERVICE (NRCS) SOILS MAP; Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).
- Review Area 7
- FIGURE 4: NATURAL RESOURCES CONSERVATION SERVICE (NRCS) SOILS MAP; Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).
- x** USFWS NWI maps:
- Review Area 6
- FIGURE 5: NATIONAL WETLAND INVENTORY (NWI) MAP; Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).
- Review Area 7
- FIGURE 5: NATIONAL WETLAND INVENTORY (NWI) MAP; Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).
- x** USGS topographic maps:
- Review Area 6
- FIGURE 1A: SITE LOCATION & TOPOGRAPHIC MAP (1918); Moniac, Georgia USACE & War Department Map, 1918
 - FIGURE 1B: SITE LOCATION & TOPOGRAPHIC MAP (1942); Moniac, Georgia USACE & War Department Map, 1942
 - FIGURE 1C: SITE LOCATION & TOPOGRAPHIC MAP (1966/1967); Moniac (West, 1967) & Saint George (East, 1966), Georgia USGS 7.5 Minute Quadrangle Map
 - FIGURE 1D: SITE LOCATION & TOPOGRAPHIC MAP (1980); Okefenokee Swamp, Georgia USGS Quadrangle Map 1980
 - FIGURE 1E: SITE LOCATION & TOPOGRAPHIC MAP (1981); Saint George, Georgia USGS 7.5 Minute Quadrangle Map, 1981
 - FIGURE 1F: SITE LOCATION & TOPOGRAPHIC MAP (1994); Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 1994
 - FIGURE 1G: SITE LOCATION & TOPOGRAPHIC MAP (2017); Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 2017
 - FIGURE 1H: SITE LOCATION & TOPOGRAPHIC MAP (2020); Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 2020

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

Review Area 7

- **FIGURE 1A: SITE LOCATION & TOPOGRAPHIC MAP (1942)**; Moniac, Georgia USACE & War Department Map, 1942
- **FIGURE 1B: SITE LOCATION & TOPOGRAPHIC MAP (1966 & 1967)**; Moniac (West, 1967) & Saint George (East, 1966), Georgia USGS 7.5 Minute Quadrangle Map
- **FIGURE 1C: SITE LOCATION & TOPOGRAPHIC MAP (1981)**; Moniac (West, 1967) & Saint George (East, 1981), Georgia USGS 7.5 Minute Quadrangle Map
- **FIGURE 1D: SITE LOCATION & TOPOGRAPHIC MAP (1994)**; Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 1994
- **FIGURE 1E: SITE LOCATION & TOPOGRAPHIC MAP (2017)**; Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 2017

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Agent provided WOTUS connectivity screening Review Area 7.

B. Typical year assessment(s):

APT was ran for the center of the review area for August 20-31, 2018 (dates of site visit). The APT output indicated "normal", and the Drought Index (PDSI) indicated "Normal".

APT was ran for the center of the review area for March 8-22, 2019 (dates of site visit). The APT output indicated "wet season", and the Drought Index (PDSI) indicated "Mid drought".

C. Additional comments to support AJD: N/A or provide additional discussion as appropriate.

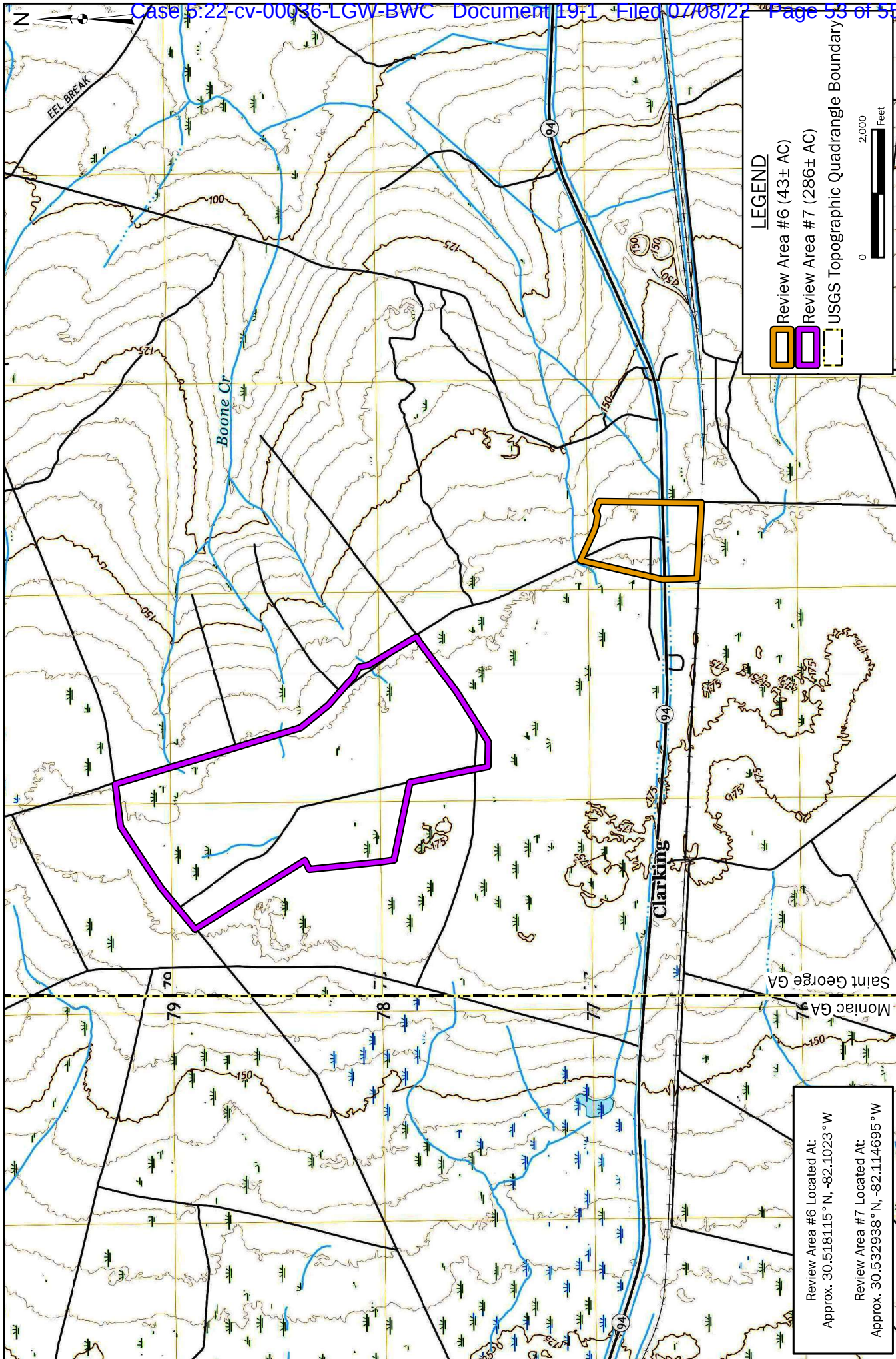
¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



LEGEND

-  Review Area #6 (43± AC)
-  Review Area #7 (286± AC)
-  USGS Topographic Quadrangle Boundary

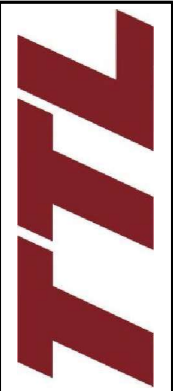
Review Area #6 Located At:
Approx. 30.518115° N, -82.1023° W

Review Area #7 Located At:
Approx. 30.532938° N, -82.114695° W

DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 11/16/2020
REVISION DATE: N/A
TTL JOB NO.: 000180200604.00
APPROX. SCALE: 1 in = 2,000 ft.

FIGURE 1: REVIEW AREA LOCATIONS & TOPOGRAPHIC MAP
TWIN PINES MINERALS
 ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Moniac (W) & Saint George (E), Georgia USGS 7.5 Minute Quadrangle Map, 2020 (10-ft Contour Interval).





LEGEND

- Review Area #6 (43± AC)
- Non-Adjacent Wetland (10,687± AC)
- 6 Ditch-6 NWPR (1,088± LF)
- 6 Ditch-2 NWPR (2,045± LF)
- Culvert Location

0 400 Feet

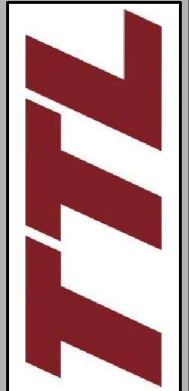
DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 11/16/2020
REVISION DATE: 3/17/2021
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 400 ft

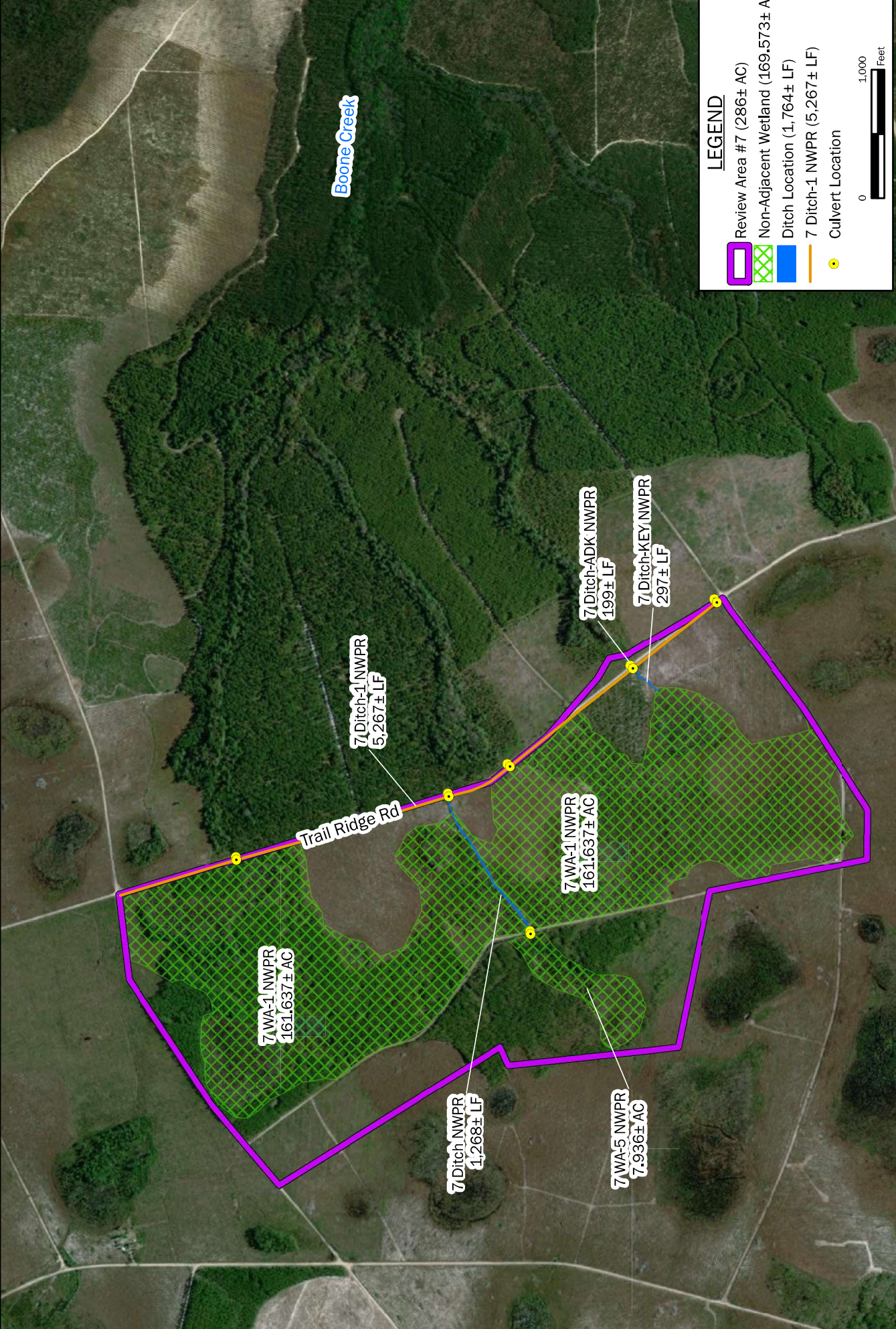
REVIEW AREA 6 APPROVED JURISDICTIONAL DETERMINATION MAP

TWIN PINES MINERALS

ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).





LEGEND

-  Review Area #7 (286± AC)
-  Non-Adjacent Wetland (169,573± AC)
-  Ditch Location (1,764± LF)
-  7 Ditch-1 NWPR (5,267± LF)
-  Culvert Location

0 1,000 Feet

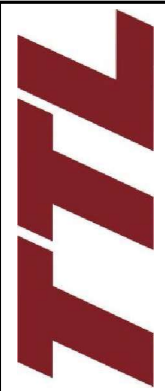
DRAWN BY: DEK
CHECKED BY: CMS
DRAWING DATE: 11/17/2020
REVISION DATE: 3/17/2021
TTL JOB NO.: 00018020060400
APPROX. SCALE: 1 in = 1,000 ft

REVIEW AREA 7 APPROVED JURISDICTIONAL DETERMINATION MAP

TWIN PINES MINERALS

ST. GEORGE, CHARLTON COUNTY, GEORGIA

BASEMAP: Maxar, Vivid Imagery, 11/20/2019 (0.5 m Resolution, West), 3/24/2018 (0.46 m Resolution, East).





**US Army Corps
of Engineers®**

REGULATORY GUIDANCE LETTER

No. 05-02

Date: June 14, 2005

SUBJECT: Expiration of Geographic Jurisdictional Determinations of Waters of the United States

1. Purpose and Applicability

a. Purpose. The purpose of this guidance is to provide a consistent national approach to reevaluating jurisdictional determinations, including wetland delineations. This provides certainty to the regulated public and ensures their ability to rely upon approved jurisdictional determinations (formerly called final jurisdictional determinations) for a definite period of time. Approved and preliminary jurisdictional determinations are defined in the Corps regulation at 33 CFR 331.2. This Regulatory Guidance Letter (RGL) reaffirms that all approved geographic jurisdictional determinations completed and/or verified by the Corps must be in writing and will remain valid for a period of five years, unless new information warrants revision of the determination before the expiration date, or a District Engineer identifies specific geographic areas with rapidly changing environmental conditions that merit re-verification on a more frequent basis. Preliminary jurisdictional determinations are not definitive determinations of the presence or absence of areas within regulatory jurisdiction and do not have expiration dates. This RGL rescinds and replaces RGL 94-01 and its predecessor RGL 90-06.

b. Applicability. This guidance applies to all approved jurisdictional determinations for waters of the United States made pursuant to Section 404 of the Clean Water Act and for navigable waters of the United States made pursuant to Sections 9 or 10 of the Rivers and Harbors Act of 1899. This RGL does not apply to Special Cases or 404(f) exempted wetlands designated by the U.S. Environmental Protection Agency.

2. General Considerations

a. As part of its permit program, the Corps must determine the extent of its geographic jurisdiction. Title 33 CFR Parts 328 and 329 define “waters of the United States” and “navigable waters of the United States”, respectively, and prescribe policy, practice and procedures to be used in determining the extent of such jurisdiction. In addition, Title 33 CFR Part 331, Administrative Appeal Process, provides terms and definitions for jurisdictional determinations. Since wetlands and other waters of the United States are affected over time by both natural and man-made activities, local changes in jurisdictional boundaries can be expected to occur. As such, jurisdictional determinations cannot remain valid for an indefinite period of time.

b. Procedures for making jurisdictional determinations for waters of the United States are also detailed in the Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act (MOA), dated 19 January 1989, later amended on 4 January 1993. Among other items, the MOA states that all approved jurisdictional determinations must be in writing.

c. The Corps has issued past guidance regarding the expiration of geographical jurisdictional determinations, including RGL 94-01. Due to Department of Army and Department of Agriculture withdrawal from the 1994 *Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act*, and amendments to the Food Security Act in Farm Bills since 1994, elements of RGL 94-01 are no longer valid.

3. Guidance.

a. All approved jurisdictional determinations must be verified in writing in the form of a letter to the project proponent. The Corps must include a statement that the determination is valid for a period of five years from the date of the letter, 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.

b. When making wetland delineations, it is very important to have complete and accurate documentation that substantiates the Corps decisions. At a minimum, decisions must be documented on the standardized jurisdictional determination information sheet established by Headquarters and provided to the districts on August 13, 2004 (or as further amended by Headquarters). Documentation must allow for a reasonably accurate replication of the delineation or determination at a future date. In this regard, documentation will normally include information such as data sheets, site visit memoranda, maps (including office resource documents), sketches, and in some cases surveys, photographs documenting the Ordinary High Water Mark, tributary connections, etc.

c. Written wetland delineations made prior to 14 August 1990 (effective date of RGL 90-06) with a specified time limit imposed by the Corps, will be valid until the date specified. Oral confirmations of Corps geographic jurisdiction have not been valid since 14 August 1990. Effective immediately, all written wetland jurisdictions without a specific time limit are no longer valid.

d. Wetland delineations and/or jurisdictional determinations should be finalized as soon as practicable considering weather, workload, and other factors, so that property owners may initiate the appeals process should they choose to do so.

e. Additional guidance for expiration of jurisdictional determinations on lands designated as prior converted cropland (PC) by the Natural Resources Conservation Service is addressed in a separate regulatory guidance letter.

f. Districts retain flexibility in deciding the degree of investigation and resource allocation needed when revising a jurisdiction determination.

g. Jurisdictional delineations associated with issued permits and/or authorization are valid until the expiration date of the authorization/permit.

4. Duration. This guidance remains in effect unless revised or rescinded.



DON T. RILEY
Major General, US Army
Director of Civil Works



TRIBAL ENGAGEMENT FOR TWIN PINES SAS 2018-00554

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

Regulatory Program

5 April 2022

Subject: Summary of USACE's Tribal Coordination with the Muscogee (Creek) Nation (MCN) Regarding the Twin Pines Minerals Project

Overview: The Twin Pines Minerals (Twin Pines) mining project is a proposed titanium mine located in the vicinity of the Okefenokee National Wildlife Refuge in South Georgia. Tracts associated with the Twin Pines mining project include more than 12,000 acres.

The U.S. Army Corps of Engineers (Corps) is responsible for implementing Section 404 of the Clean Water Act (CWA), which regulates the discharge of dredged or fill material into waters of the United States (WOTUS). Because the Twin Pines mining project would result in the discharge of dredged or fill material into aquatic resources, including wetlands, the project may be subject to regulation by the Corps under the CWA. The Corps' Savannah District (district) has been working with Twin Pines for the past several years to 1) identify aquatic resources that are or may be subject to regulation under Section 404 of the CWA and 2) process and evaluate CWA permit application materials that Twin Pines has submitted to the district in support of the proposed project. A major concern that has been identified with respect to the Twin Pines mining project is its potential to affect the hydrology of the surrounding landscape.

Timeline: Beginning in 2018 and continuing through 2020, the district reviewed and verified multiple delineations of aquatic resources on numerous tracts associated with the Twin Pines mining project. A verified wetland delineation can be used to support a Section 404 permit application. When evaluating an application without an associated jurisdictional determination (JD), the Corps presumes that all delineated aquatic resources are jurisdictional under the CWA. Under the regulations in effect at that time, most wetlands and other aquatic resources would have been considered jurisdictional, so it was common for permit applicants to forgo the JD process and for the district to process permit applications supported by a verified wetland delineation. In this manner, Twin Pines proceeded with development of its CWA permit application materials based simply on the aquatic resources delineations that had been verified by the district, and no formal JD was requested by Twin Pines at that time.

It should be noted that the Corps does not currently conduct, nor has it historically conducted Tribal coordination specifically on verifications of aquatic resource delineations or JDs. Aquatic resource delineation verifications and JDs are based on regulation, policy and guidance administered by the Corps and the U.S. Environmental Protection Agency (EPA). Delineation of wetlands is based on the presence or absence of three indicators: hydric soils, hydrophytic vegetation and wetland hydrology of the site, and JDs are based on traditional navigable waters (TNWs), hydrologic connectivity to TNWs, and the physical, chemical, and biological effects that aquatic resources have on downstream TNWs.

SUBJECT: Twin Pines and the Muscogee (Creek) Nation (MCN)

05 April 2022

Twin Pines first submitted a CWA Section 404 permit application for the Twin Pines mining project on 5 July 2019, and the district issued a public notice for that initial application on 12 July 2019. The initial Twin Pines mining project proposal was based on the aquatic resource delineations that the district verified between 2018 – 2020 and included temporary impacts to 522 acres of wetlands and 2,454 linear feet of tributaries and permanent impacts to 65 acres of wetlands and 4,658 linear feet of tributaries.

The public notice for the initial Twin Pines mining project closed on 12 September 2019 (the comment period was extended to 60 days to allow additional time for agency and public comment). More than 21,000 comments were received during the public comment period. As a result of interest expressed by the Muscogee (Creek) Nation (MCN) in response to this public notice, beginning in February 2020, the district Archeologist and Tribal Liaison initiated monthly calls with the MCN to facilitate increased communication with regards to the Twin Pines mining project.

Staff from the district's Regulatory Program office met with Twin Pines on 11 December 2019 and again on 15 January 2020 to discuss the likelihood that the Twin Pines mining project could require preparation of an Environmental Impact Statement (EIS). Based on comments received in response to the public notice for the original mining proposal, Twin Pines withdrew its application on 7 February 2020 and stated that it would prepare a new application for a smaller scale demonstration project. The district Archeologist continued the ongoing monthly calls with the MCN following the withdrawal of Twin Pines original application and, during the February 2020 call, the MCN expressed concern about the Twin Pines project's potential impacts to ecological resources, sacred sites, and historic properties.

On 6 March 2020, Twin Pines submitted an application for a smaller demonstration project (Twin Pines Demonstration Project) consisting of a total project footprint of 898 acres. Like its original (2019) permit application, the Twin Pines Demonstration Project relied on verified wetland delineations to document the (presumed) jurisdictional aquatic resources within the project area. The district issued a public notice for the Twin Pines Demonstration Project on 13 March 2020. By letter dated 10 April 2020 addressed to the District Engineer, the MCN requested that the public notice comment period be extended. Due to considerable public interest in the Twin Pines Demonstration Project, the original 30-day comment period was extended to 28 May 2020, and a virtual public meeting was held on 13 May 2020. The virtual public meeting was attended by 139 on-line attendees, including representatives from the MCN, and 85 call-in only attendees. More than 30,000 comments were received during the public notice comment period.

During the district's review of the Twin Pines project there were numerous changes to the tracts of land involved and to the areas for which delineations and JDs were requested, issued, or withdrawn. The changes were due to several factors, including changes in Twin Pines' property rights on numerous tracts of land owned by other entities, changes in jurisdictional regimes, and changes to the mining plans. On 22 June 2020 the Navigable Waters Protection Rule (NWPR) became effective and Twin Pines submitted requests for three (3) approved JDs (AJDs) under the NWPR on 28 September 2020, 16 December 2020, and 21 June 2021. These 3 AJD requests covered three separate areas and included portions of the larger areas on which the district had previously verified aquatic resource delineations on during 2018 –

SUBJECT: Twin Pines and the Muscogee (Creek) Nation (MCN)

05 April 2022

2020. While the requests for AJDs were being reviewed under the NWPR, the district continued to process the application for the Twin Pines Demonstration Project.

The Corps issued the first of the 3 requested AJDs under the NWPR (NWPR AJD #1) on 15 October 2020, verifying 376 acres of non-jurisdictional, non-adjacent wetlands, resulting in a contiguous 1,060 acres of land with no federal jurisdiction under Section 404 of the CWA. As a result of the non-jurisdictional determination under NWPR AJD #1, Twin Pines withdrew their permit application for the Twin Pines Demonstration Project on 21 October 2020, and the Corps announced this withdrawal via public notice on the same date. The second AJD issued under the NWPR (NWPR AJD #2) was issued on 24 March 2021, and verified 180 acres of non-jurisdictional wetlands, resulting in an additional 329 contiguous acres with no federal jurisdiction under the CWA. NWPR AJD #1 and #2 together resulted in 1,389 contiguous acres with no federal jurisdiction under the CWA and covered a substantial portion of the permit area for the original Twin Pines mining project and all of the permit area for the Twin Pines Demonstration Project.

On 30 August 2021, the NWPR was vacated. The third pending request for an AJD under NWPR (NWPR AJD #3), which was submitted on 21 June 2021, was not issued prior to the vacatur of the NWPR and was withdrawn.

During March of 2021, the MCN inquired to the district via email about the process for tribal consultation on JDs. In response, on 16 April 2021, the district provided the MCN with the 4 January 2021 USACE Memorandum from Assistant Secretary of the Army for Civil Works, Mr. R.D. James, directing the Corps' Regulatory Program to not consult with tribes regarding AJDs. On 20 April 2021, that Memorandum was rescinded, and the MCN was notified of the rescission of the Memo during the subsequent regular monthly consultation teleconferences. The district's monthly consultation teleconferences with the MCN have continued to present day. The district does not currently have any pending regulatory action associated with Twin Pines.

Points of Contact: Mr. Tuner Hunt-Tribal Historic Preservation Officer with MCN.

Path Forward: Continue monthly tribal consultation meetings with Tribal Historic Preservation staff, including MCN. The district-MCN tribal consultation meetings are held on the 4th Thursday of each month.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

4 January 2021

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: U.S. Army Corps of Engineers (USACE) Tribal Consultation Associated With A Draft Approved Jurisdictional Determination (AJD)

1. References:

- a. USACE Tribal Consultation Policy dated November 01, 2012, and associated references.
- b. Consultation and Coordination with Indian Tribal Governments, Executive Order 13175, dated November 06, 2000.
- c. Department of the Army American Indian and Alaska Native Policy dated October 24, 2012.
- d. Letter dated December 8, 2020 from Earthjustice to BG Helmlinger, Commanding General, Northwestern Division, U.S. Army Corps of Engineers, *et al.*, subject: Supplemental Letter on Clean Water Act Section 404 Permit No. SPL-2008-0816-MB for the Rosemont Copper Mine.
- e. Letter dated December 17, 2020 from COL Balten, Commander, Los Angeles District, U.S. Army Corps of Engineers, to Earthjustice, subject: Tribal Consultation Concerning HudBay Minerals' Approved Jurisdictional Determination Requests.

2. Purpose. The purpose of this memorandum is to provide direction to the U.S. Army Corps of Engineers (USACE) on tribal consultation requirements when issuing an approved jurisdictional determination (AJD) and to direct that the letter dated December 17, 2020 (reference e) be rescinded immediately.

3. Background. An AJD is issued by USACE as a public service. AJDs perform a limited function to state the presence or absence of waters of the United States on a parcel, or provide a written statement and map identifying the limits of waters of the United States on a parcel (see 33 CFR 331.2). As such, AJDs simply determine whether the criteria of the rule defining waters of the United States is satisfied for a given parcel, which would then confer federal jurisdiction over that parcel. A corollary to this is that factors unrelated to whether the criteria of the applicable waters of the United States rule is satisfied for a parcel, such as the assertion that a finding (or lack thereof) of jurisdiction would have effects on a tribe, is irrelevant to the determination of whether the parcel is in fact jurisdictional, which is the sole function performed by an AJD. In *U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S.Ct. 1807 (2016), the Supreme Court held that AJDs constitute final agency action and are therefore subject to judicial review. *Id.* at 1814; however, the fact that AJDs constitute final agency action does not necessitate the conclusion that tribal consultation must therefore be undertaken. The federal government regularly takes final action for which it does not consult with tribes if such action

SACW

SUBJECT: U.S. Army Corps of Engineers (USACE) Tribal Consultation Associated With A Draft Approved Jurisdictional Determination (AJD)

does not have an effect on tribes. To accept the premise that *Hawkes* compels consultation simply because an AJD is a final agency action, would require concluding that USACE is bound to consult with tribes on matters for which consultation can have no functional impact because its discretion is constrained by law. The Supreme Court has held consultation is not required under such circumstances in the context of the Endangered Species Act. See *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 671 (2007) (holding that an agency lacks authority to add separate prerequisites when considering whether enumerated statutory criteria were satisfied); see also *Alaska Wilderness League v. Jewell*, 788 F.3d 1212, 1225 (9th Cir. 2015) (“[D]etermining whether the statutory criteria have been achieved does not trigger ESA’s consultation requirement”) (emphasis in original). This is instructive with respect to tribal consultation on AJDs because USACE similarly lacks discretion to consider factors other than the criteria set forth in the rule defining waters of the United States when determining whether a parcel contains jurisdictional waters.

4. The Navigable Waters Protection Rule (NWPR) (33 CFR 328.3) sets forth the definition for what is/is not jurisdictional under the Clean Water Act (CWA).¹ There was substantial tribal consultation during the rulemaking for the NWPR, which was the appropriate time for tribes to provide information as to which waters they thought should be jurisdictional under the CWA. Aquatic resources may also be subject to the Rivers and Harbors Act of 1899 (RHA). Aquatic resources on a parcel are already subject to the CWA and/or RHA, or not, based on the law. An AJD merely provides the public with specific information on the status of federal jurisdiction for the particular aquatic resources on the subject parcel for future planning and decision-making purposes. Moreover, USACE lacks authority to consider factors other than whether waters on the parcel meet the definition of waters of the United States when determining whether it has jurisdiction over the parcel, which would render any tribal consultation at the AJD stage as moot.

5. Existing Tribal Consultation Policies. Under the various references listed in paragraph 1, each agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. An AJD is not an action that “affects” tribal governments. Although the Tribal Consultation Policy (paragraph 1.a) states that, “Requests for consultation by a Tribe to USACE will be honored,” the intent behind what triggers consultation is laid out in the references in paragraph 1 and would not include an AJD action. The relevant action that may affect tribes is determining the definition of which waters are waters of the United States rather than a separate determination by USACE that a given water meets the regulatory definition. As stated in the previous section, there was fulsome tribal consultation on the NWPR which provides the current definition.

6. For example, under Executive Order 13175 (paragraph 1.b), consultation and coordination with Tribal Governments occurs during the development of Federal policy. Policies that have tribal implications which trigger such requirements “refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

¹ The NWPR is currently enjoined in the State of Colorado.

SACW

SUBJECT: U.S. Army Corps of Engineers (USACE) Tribal Consultation Associated With A Draft Approved Jurisdictional Determination (AJD)

Government and Indian tribes.” An AJD does not fall under one of those categories as described above in paragraph 3.

7. The DoD policy in paragraph 1.c. states that the policy “recognizes the importance of understanding and addressing the concerns of Federally-recognized Tribes prior to reaching decisions on matters that may have the potential to significantly affect tribal rights, tribal lands or protected tribal resources.” In addition, under paragraph 1.a, consultation is defined as, “Open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect and shared responsibility. To the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions are taken; an active and respectful dialogue concerning actions taken by the USACE that may significantly affect tribal resources, tribal rights (including treaty rights) or Indian lands.” The same Tribal Consultation Policy lays out that “individual projects, programs, permit applications, real estate actions, promulgation of regulations and policies” would be actions that trigger tribal consultation, and an AJD is not included as a similar action to those listed. As provided in paragraph 3, an AJD has no room for deliberation or “shared responsibility” and there is no option for a “mutual consensus.” An AJD is not an action that could “significantly affect tribal resources, tribal rights...or Indian lands.” There is no opportunity for tribal input on USACE’s determination other than if a tribe wishes to provide information they believe may help inform USACE’s AJD as USACE uses various sources of information and data to inform their determination; however, such information sharing can be provided outside of the consultation arena.

8. Directive. In light of the foregoing, I direct the Los Angeles District Commander's letter initiating tribal consultation on the draft AJD for the Rosemont Copper Mine Project be rescinded. I further direct that, as a matter of nationwide programmatic policy, USACE shall not initiate tribal consultation on any future AJDs. Should a tribe request consultation with respect to a given project, such consultation should be undertaken at the permit stage rather than on any AJD that may be requested.

9. Under no circumstances shall the guidance and processes established in this memorandum be modified, supplemented, amended, or rescinded, directly or indirectly, nor shall USACE take action not in accordance with the guidance herein, without the express written approval from the ASA(CW).

10. Questions regarding this memorandum may be directed to Stacey Jensen, at 703-695-6791 or stacey.m.jensen.civ@mail.mil.



R.D. JAMES
Assistant Secretary of the Army
(Civil Works)

CF:
DCG-CEO, USACE
DCW, USACE
CECC-ZA, USACE



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

20 April 2021

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Rescission of Previous Guidance — Tribal Consultation Associated With Approved Jurisdictional Determinations (AJD)

1. References:

a. Memorandum for Commanding General, U.S. Army Corps of Engineers dated January 4, 2021 from the Assistant Secretary of the Army (Civil Works), subject: U.S. Army Corps of Engineers (USACE) Tribal Consultation Associated with a Draft Approved Jurisdictional Determination (AJD).

b. Memorandum for the Heads of Executive Departments and Agencies dated January 26, 2021 from President Joseph R. Biden, subject: Tribal Consultation and Strengthening Nation-to-Nation Relationships.

2. In his January 26, 2021 memorandum, President Biden reaffirmed the Federal government's enduring commitment to consultation as a means of strengthening the sovereign relationship between the United States and our Tribal Nations (reference 1.b.). The memorandum directs all Federal agencies to engage in regular, meaningful, and robust consultation with Tribal Nations. The Army's Civil Works program has a long history of productive consultation with Tribal Nations on its projects, rules, and regulatory permit actions, and the Army Civil Works program is committed to maintaining and enhancing its record on consultation.

3. On January 4, 2021, the Assistant Secretary of the Army (Civil Works) issued a memorandum stating that as a "matter of nationwide programmatic policy, USACE shall not initiate tribal consultation on any future AJDs" (reference 1.a.). Today, I am rescinding the January 4th guidance memorandum.

4. Among my first priorities are to review the existing USACE Tribal Consultation Policy to ensure it is consistent with, and fulfills, the commitments announced in the President's January 26th memorandum. I will ensure any consultative requirements associated with the review and issuance of Approved Jurisdictional Determinations are included in a revised and updated policy.

SACW

SUBJECT: Rescission of Previous Guidance — Tribal Consultation Associated With Approved Jurisdictional Determinations (AJD)

5. Questions regarding this matter may be directed to Stacey Jensen, Assistant for Regulatory and Tribal Affairs, Office of the Assistant Secretary of the Army (Civil Works), at (703) 459-6026 or stacey.m.jensen.civ@mail.mil.

A handwritten signature in blue ink, appearing to read 'Jaime A. Pinkham', is written over the printed name.

JAIME A. PINKHAM
Acting

CF:
DCG-CEO, USACE
DCW, USACE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

TWIN PINES MINERALS, LLC,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS;
CHRISTINE E. WORMUTH, Secretary of
the Army; MICHAEL L. CONNOR,
Assistant Secretary of the Army (Civil
Works); LTG. SCOTT A. SPELLMON,
Chief of Engineers; BG. JASON E. KELLY,
Commander, South Atlantic Division; COL.
JOSEPH R. GEARY, Commander, Savannah
District,

Defendants.

Civil Action No: 5:22-cv-00036-LGW-
BWC

DECLARATION OF STEVEN R. INGLE

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Steven R. Ingle. I am over the age of 18 and competent to testify. The facts in this declaration are based on my personal knowledge regarding these events and are true and correct to the best of my knowledge and recollection. I offer this declaration in support of the Motion for Preliminary Injunction filed by Twin Pines Minerals, LLC (“Twin Pines”) and for any other lawful purpose.

2. I am the President of Twin Pines Minerals, LLC, a position I have held since 2014. As the President of the company, I oversee and am responsible for Twin Pines’ operations, including its efforts to develop, construct and operate a heavy mineral-sands mine in Charlton County, Georgia known as the Saunders Demonstration Mine.

3. The Saunders Demonstration Mine will use state-of-the-art techniques to recover heavy minerals, including titanium and zirconium, from deposits underlying Twin Pines' property in Charlton County. The mine will provide good-paying jobs and economic development in Charlton County and the surrounding areas. The project is expected to provide between 100 and 200 full-time jobs. The mine will also provide a significant boost to the local and regional economies, while generating millions in state and local tax revenues. In fact, the project will almost double Charlton County's tax base when it is completed. The project has been expressly endorsed and is supported by the Board of Commissioners of Charlton County and the City of Folkston and Charlton County Development Authority, where it will be located. True and correct copies of a Proclamation of Support adopted by the Charlton County Board of Commissioners and a letter of support from the Development Authority are attached as Exhibit A to this declaration.

4. Twin Pines has been working since at least 2017 to develop the mine and has invested enormous sums in the effort. To date, Twin Pines has invested more than \$47 million in the project to secure property rights; characterize the property's geology, hydrology, and natural and cultural resources; purchase equipment; and apply for the necessary permits and approvals. These expenditures include:

- More than \$14.7 million to acquire property for the mine site in Charlton County;
- \$13.5 million to purchase, transport, and maintain mining and mineral processing equipment;
- \$3 million for exploration, research, and development costs, including costs for drilling core samples and conducting lab analyses to characterize and establish the mineral composition of the mine site; and
- More than \$16 million for permitting and engineering costs, including costs for drilling wells, developing groundwater models to demonstrate that the mine will not harm groundwater resources, and preparing applications for the necessary permits, which must be supported by detailed technical information including site plans, engineering drawings, hydrologic models, and wetland delineations.

Further, as I discuss in more detail below, Twin Pines continues to incur costs on an ongoing basis. These costs will continue to accrue every month that Saunders Demonstration Mine is delayed.

5. A substantial portion of the \$16 million in permitting costs reported above was incurred to apply for a Section 404 Permit from the U.S. Army Corps of Engineers. We originally applied to the Corps for a 404 permit in July 2019. At the Corps' suggestion, a revised application for a smaller project — the “Saunders Demonstration Mine” — was submitted on March 4, 2020. Expenditures in support of the Section 404 Permit application included assembling a large team of experts to anticipate and address permit requirements related to its Section 404 permit, including but not limited to the Army Corps of Engineers' “public interest review” and “mitigation requirements.”

6. Twin Pines also participated in a virtual public meeting in support of the Section 404 Permit on May 13, 2020. This public meeting resulted in tens of thousands of comments being submitted, including substantive comments by the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Agency. The Corps provided these comments to Twin Pines, and our team spent hundreds of hours and hundreds of thousands of dollars preparing responses to be provided to the Corps.

7. After the Navigable Waters Protection Rule became effective on June 22, 2020, Twin Pines sought and obtained “approved jurisdictional determinations,” or “AJDs,” to determine if areas within the proposed mine site would still be considered jurisdictional. The first AJD was issued on October 15, 2020. While it showed that some areas within the proposed mine footprint would still be considered jurisdictional, I determined that our project would still be economically viable without including those areas. Therefore, in reliance on the AJD, I instructed our team to revise the project boundary to avoid jurisdictional areas, withdraw the Section 404 permit

application, and redouble our efforts to obtain the necessary permits and approvals from the State of Georgia.

8. The 404 Permit application was withdrawn on October 21, 2020. By revising the project area to avoid jurisdictional areas delineated in the AJDs, I made a decision to forgo substantial mineral deposits that could have been mined from those areas. This decision was made in reliance on the Corps' written assurance that the AJDs would remain valid for a period of five years, and thus that federal permits would not be needed — and the attendant delays could be avoided — if we stay out of those areas. The company then submitted a revised Surface Mining Permit Application to Georgia EPD in November 2020, which reduced the size of the project to avoid all jurisdictional areas.

9. We submitted a second request for an approved jurisdictional determination covering additional areas in November 2020. It was granted on March 24, 2021. We subsequently revised our Surface Mining Permit Application again to one of the wetlands deemed non-jurisdictional to the proposed project boundary.

10. Both of the AJDs issued to Twin Pines stated in writing that they would “remain valid for a period of 5 years.” Despite these Corps' assurances, however, Assistant Secretary of the Army (Civil Works) Michael Connor (the “ASA”) issued a memorandum on June 3, 2022 rescinding Twin Pines' AJDs. Twin Pines did not receive prior notice about this decision, or about the fact it was even being considered, from the Corps or from the Office of the Assistant Secretary. I learned about it on June 3 from a reporter who forwarded a copy of Senator Ossoff's press release stating the ASA had granted the Senator's request to “restore protection” to the Okefenokee Swamp.

11. On June 7, 2022, Georgia EPD issued a “Permitting Update” stating that the agency was halting work on all of Twin Pines’ pending permit applications. The update stated that Georgia EPD would not resume processing those applications “until either any required 404 permit is issued by the Corps, the Corps determines that a new AJD is no longer needed, or the Corps determines that a 404 permit is not required.” Georgia EPD further stated that it would reassess “what permits are required for the Demonstration Mine” and “determine the best process for consideration of these permit applications” only after “the conclusion of the federal process.” A true and correct copy of Georgia EPD’s Permitting Update is attached as Exhibit B to this declaration.

12. The Corps’ Savannah District finally informed me of the ASA’s directive by letter dated June 8, 2022. The letter stated:

As directed by the ASA(CW), I am notifying you that the NWPR AJDs are invalid and that you cannot rely on those AJDs to accurately delineate jurisdictional waters under the current regulatory regime. You may however request a new AJD. Any newly issued AJD must follow the applicable regulatory regime for the definition of “waters of the United States” at the time of AJD issuance. With the vacatur of the NWPR, AJD requests are currently being completed consistent with the pre-2015 regulatory regime.

A true and correct copy of the June 8, 2022 letter from the Savannah District is attached as Exhibit C to this declaration.

13. The Corps’ decision to rescind the AJDs has harmed Twin Pines and the people who depend on the company for their livelihoods. These harms have already begun, and they will continue to grow each day the decision remains in effect.

14. On June 9, 2022, the day after Twin Pines received notice of the ASA’s decision from the Savannah District, I had to lay-off three workers from our Charlton County site and transfer a fourth to a location across the country in California. The company cannot afford to

continuing paying employees to wait for a project that is stayed indefinitely. The layoffs caused by the ASA's action hurt our people, and it also hurt our company and our culture, because we lost valuable employees and because we are committed protecting our employees' well-being.

15. The delays caused by the ASA will also cause Twin Pines to suffer substantial monetary harm in the form of lost minerals, lost business opportunities, lost work product, and additional permitting costs.

16. The ASA's action, if upheld, will result in substantial acreage within the current proposed mine site being deemed jurisdictional. This outcome will not result from the ASA's directive to consult with the Muscogee Nation, but from his decision to "invalidate" the AJDs pending such consultation. The ASA has stated that any "new" AJD must comport with the regulatory definition of "waters of the United States" in effect when they are issued. My understanding is that more than 300 acres of wetlands within the current project boundary are likely to be considered jurisdictional under the current definition.

17. If these wetlands are deemed jurisdictional, Twin Pines will either have to abandon them (and the minerals they contain) or reapply for a Section 404 permit. My company cannot forgo revenue indefinitely while spending millions of dollars to pursue a new Section 404 permit, as would be required to recover minerals from the newly-jurisdictional areas. As Senator Ossoff noted in his press release, any company seeking a 404 permit to mine this area will now be required to restart the permitting process essentially from the beginning. This is not an option after the delays we have already experienced. It is a business imperative to bring minerals to market as soon as possible.

18. Therefore, if the ASA's action is not set aside in short order, I have directed my team to revise our application to Georgia EPD to reduce the project boundary and carve-out newly

jurisdictional areas resulting from the ASA's rescission of Twin Pines' AJDs. If forced to take this action, the company will again be forced to leave heavy mineral deposits worth millions in the ground — deposits that could be recovered, and would be, if not for the ASA's action.

19. If we are forced to revise our permit application to Georgia EPD, it is possible that this change will be permanent. I have been informed by my staff that Georgia EPD has stated that no modifications to Twin Pines' Surface Mining Permit will be approved after a permit is issued. While I do not understand the basis of this assertion, and the agency would clearly have discretion to approve a modification, there is no guarantee that Georgia EPD will change its mind. Therefore, there is a high risk that the company's change in position based on the ASA's decision to rescind our AJDs will be permanent and irreversible, even if the ASA's action is subsequently set aside.

20. In addition to lost profit, the immediate delay caused by the ASA's action — including the fact that it caused Georgia EPD to stop work on our pending permit application — is causing irreversible harm to Twin Pines' business in the form of lost business opportunities and lost financing.

21. The Corps' rescission of the AJDs is preventing Twin Pines from contracting with buyers. Heavy minerals from the Saunders Demonstration Mine will be sold pursuant to "offtake" agreements, which obligate buyers agree to purchase predetermined quantities of minerals meeting specified grades during each year of the contract. Twin Pines has received signed letters of intent from numerous prospective purchasers stating their desire to enter into such agreements with us. Because buyers commit to have funds available to purchase minerals when they become available, they need to know, at least in general terms, when the minerals will be available. Few are willing to enter into offtake agreements for a project that has been indefinitely delayed. The delays and

uncertainty caused by the ASA's action are thus preventing buyers from executing these agreements with the company.

22. This same uncertainty is harming Twin Pines' ability to secure outside investment and the capital needed to develop the Sanders Demonstration Mine. Like Twin Pines' buyers, investors need some reasonable assurance that the mine will ultimately be permitted, and its timeline for commencing operations, before they invest significant sums in a mining project. Twin Pines cannot provide investors the information they need, however, when the process for obtaining the necessary permits and approvals is indefinitely delayed due to the ASA's decision.

23. Delays caused by the ASA's action also impose a direct cost on Twin Pines, which must continue to spend substantial sums to maintain the equipment it has already purchased. As previously noted, the company has already invested more than \$28 million to purchase the land and mining equipment for the mine. Twin Pines must pay to service debt on these investments each month the project is delayed. And it is incurring substantial monthly expenses to store and maintain its equipment in working order. Because mineral prices are dictated by the global market, Twin Pines is unable to pass these costs through to its buyers, meaning that costs it incurs while the mine is delayed are sunk costs that cannot be recouped.

24. Last but not least, Twin Pines will also be forced to spend substantial sums to revise its permit applications to Georgia EPD to avoid the newly designated jurisdictional wetlands. Work product that cost hundreds of thousands of dollars to produce will have to be redone. As noted, Twin Pines has already invested \$16 million to obtain federal and state permits, which it would have received already if the rules of the game had not changed.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of July, 2022.

Steven R. Ingle
Steven R. Ingle

INGLE DECLARATION

E H I T A

**BOARD OF COMMISSIONERS
CHARLTON COUNTY, GEORGIA
PROCLAMATION OF SUPPORT OF
TWIN PINE MATERIALS, LLC**

WHEREAS, the Charlton County Board of Commissioners is the governing authority of Charlton County, Georgia;

WHEREAS, economic development and quality, high-paying jobs are of vital importance to all local governments;

WHEREAS, the proposed heavy metal mining operation of Twin Pine Materials, LLC will result in approximately one hundred fifty (150) local high-paying jobs with benefits in Charlton County;

WHEREAS, the proposed capital investment of Twin Pine Minerals, LLC will result in substantial yearly tax revenue to the County;

WHEREAS, the estimated tax revenue from Twin Pine Minerals, LLC will allow Charlton County, Georgia to increase the level of service it provides to its citizens;

WHEREAS, the Charlton County Board of Commissioners finds and determines that the proposed operation of Twin Pine Minerals within Charlton County will result in economic development that is beneficial to all of Charlton County;

NOW, THEREFORE, the Charlton County Board of Commissioners, subject to approval by any other authority having jurisdiction, hereby proclaims and expresses support of Twin Pine Minerals, LLC proposed heavy mineral sand mining.

This 15th day of August 2019.


James E. Everett, Chairman
Charlton County Board of Commissioners

The City of Folkston and Charlton County Development Authority
PO Box 82
Folkston, Georgia 31537
912-390-9573

June 03, 2021

Georgia Environmental Protection Division
Richard E. Dunn, Director
2 Martin Luther King Jr. Drive, SE
14th Floor East Tower - Suite 1456
Atlanta, GA 30334-9000

Dear Director Dunn:

Members of the Charlton County Development Authority write today in unanimous support of the mining project proposed by Twin Pines Minerals in our county. We trust the experts at the Georgia Environmental Protection Division to objectively evaluate the facts in the permit applications and make a fair decision that will help our county and protect the environment.

We firmly believe the project can be undertaken without threatening the Okefenokee or the region's environment. We would not support this proposal if we felt it could jeopardize the swamp in any way as that is a major part of our local economy.

As businesspeople, we know that when a company invests \$300 million in a project, as Twin Pines is doing in our community, the last thing they would want is to put it at risk. We have reviewed the project as proposed and look forward to the additional information Twin Pines is assembling per the EPD's direction. So far, nothing has given us reason to believe this project can't be a big success and that the county can't reap the benefits.

We need good jobs and significant new sources of tax revenue, both of which Twin Pines will create. We're talking hundreds of good paying jobs with benefits, and tax payments that could more than double the amount we take in each year.

We know from our own interactions with friends and neighbors that a large percentage of the people in Charlton County are confident that Twin Pines will fulfill the environmental protections required in the permits and are looking forward to operations getting underway.

Thank you for your diligent work in guiding the permitting process.

Sincerely,
Andy Gowen, President
Josh Popham, Vice President
Nancy Zetmeir, Secretary
Jim Gowen, Board Member
Al Reed, Board Member
Mark Pickren, Board Member
Joe Timmon, Board Member
Ashley Gowen, Executive Director

INGLE DECLARATION

E H I T B



Twin Pine Minerals, LLC Permitting Update

Many projects or facilities, like the proposed Twin Pines Minerals, LLC (Twin Pines) heavy minerals sands demonstration mine in Charlton County, Georgia (Demonstration Mine) necessitate both federal and state environmental permits. The permits issued by the Georgia Environmental Protection Division (EPD) are separate and independent of any related federally-issued permits—*both* federal and state regulatory requirements must be fulfilled before a project can begin operations. For these projects, EPD does not complete its evaluation of state permit applications until the related federal approvals have been issued. This conserves EPD resources and avoids unnecessary duplication of effort by EPD and federal permitting authorities.

In November 2020, Twin Pines submitted its surface mining permit application to EPD for the Demonstration Mine. Twin Pines has since submitted related addenda and additional substantive documents. EPD has also received materials related to other potential state permits for the Demonstration Mine, including groundwater withdrawal, wastewater management, and air emissions.

The initial surface mining application followed an Approved Jurisdictional Determination (AJD) issued by the US Army Corps of Engineers (Corps) Savannah District Office on October 15, 2020. That AJD, and the one issued by the Corps Savannah District Office on March 24, 2021, concluded that 556 acres of wetlands were excluded from federal regulation. The Demonstration Mine has been the subject of intense community interest, shown in part by the number of comments received by the Corps during its review of the jurisdictional determination requests.

Because the Corps concluded that the wetlands were outside of federal jurisdiction in 2020, no federal permit was required and therefore the public would not have the opportunity to comment on such a permit. In response, EPD established a multi-step process for the review of applications for the proposed Demonstration Mine to allow for extensive public input in the evaluation of potential environmental impacts on the natural resources of the state. *See Twin Pines Minerals, LLC Permitting Fact Sheet* posted on February 8, 2021, at <https://epd.georgia.gov/twin-pines>. That fact sheet also outlined the requirement for an environmental provisions addendum for the Demonstration Mine, requesting information and material that would, in part, have been sought by Corps during its federal permitting review.

On June 3, 2022, EPD learned that the Corps concluded that requisite tribal consultation had not occurred before the October 15, 2020 and March 24, 2021 AJDs were issued. Consequently, the Corps directed its Savannah District Office to inform Twin Pines that it could not rely on those AJDs but could submit a request for a new AJD. If the Corps' new AJD establishes jurisdiction over areas affected by the proposed Demonstration Mine, a Section 404 permit will be required. In that event, it is likely that permit process laid out in EPD's February 2021 *Twin Pines Minerals, LLC Permitting Fact Sheet* will be revised. Additionally, the shape, form, and

structure of the proposed Demonstration Mine may undergo significant revision or may be affected by any required wetlands mitigation under a 404 permit.

Given the Corps' recent action, Georgia EPD is deferring action on all applications for the Demonstration Mine until either any required 404 permit is issued by the Corps, the Corps determines that a new AJD is no longer needed, or the Corps determines that a 404 permit is not required. Following the conclusion of the federal process, EPD will assess what permits are required for the proposed Demonstration Mine and determine the best process for consideration of these permit applications moving forward.

All updates from EPD on the project will continue to be posted on <https://epd.georgia.gov/twin-pines>.

INGLE DECLARATION

E H I T C



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

June 8, 2022

Regulatory Division
SAS-2018-00554

Mr. Steven R. Ingle (single@twinpinesminerals.com)
Twin Pines Minerals, LLC
2100 Southbridge Parkway
Birmingham, Alabama 35209

Dear Mr. Ingle:

As you are aware, after the Navigable Waters Protection Rule (NWPR) went into effect on June 22, 2020, Twin Pines Minerals submitted requests for three approved jurisdictional determinations (AJDs) under the NWPR in September 2020, December 2020, and June 2021. After the Corps issued the first of the three requested AJDs on October 15, 2020, Twin Pines Minerals withdrew its Clean Water Act (CWA) permit application for the Twin Pines Demonstration Project since the NWPR AJD resulted in a contiguous 1,060 acres of land that was under no federal CWA jurisdiction. The Corps issued the second AJD on March 24, 2021, which resulted in an additional 329 contiguous acres with no federal jurisdiction under the CWA. On August 30, 2021, the NWPR was vacated by a Federal District Court and the third requested AJD was withdrawn.

In a memorandum dated June 3, 2022, the Assistant Secretary of the Army for Civil Works (ASA(CW)) determined that the NWPR AJDs issued to Twin Pines Minerals are not valid because government-to-government consultations with the Muscogee Creek Nation (MCN) regarding the AJDs were not conducted. As directed by the ASA(CW), I am notifying you that the NWPR AJDs are invalid and that you cannot rely on those AJDs to accurately delineate jurisdictional waters under the current regulatory regime. You may however request a new AJD. Any newly issued AJD must follow the applicable regulatory regime for the definition of "waters of the United States" at the time of AJD issuance. With the vacatur of the NWPR, AJD requests are currently being completed consistent with the pre-2015 regulatory regime. The ASA(CW)'s June 3, 2020 memorandum is enclosed for your reference.

If you have any questions, please contact Mr. William Rutlin, Coastal Branch Chief, at 912-652-5893.

Sincerely,

A handwritten signature in black ink that reads "Jason D. O'Kane".

Jason D. O'Kane
Chief, Regulatory Division

Enclosures



DEPARTMENT OF THE ARMY
ENGINEERING CENTER
08 ARM PENTAGON
ANNEX 20008

SACW

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Approved Jurisdictional Determinations (AJDs) for the Rosemont and Twin Pines Parcels

1. References:

- a. Memorandum for the Heads of Executive Departments and Agencies dated January 26, 2021 from President Joseph R. Biden, subject: Tribal Consultation and Strengthening Nation-to-Nation Relationships.
- b. Memorandum for Commanding General, U.S. Army Corps of Engineers dated April 20, 2021, from the Acting Assistant Secretary of the Army (Civil Works), subject: Rescission of Previous Guidance Tribal Consultation Associated with a Draft Approved Jurisdictional Determination (AJD).
- c. Letter to Mr. Stuart Gillespie of Earthjustice dated January 8, 2021, from the Los Angeles District Commander of the U.S. Army Corps of Engineers, subject: Tribal Consultation Concerning HudBay Minerals Approved Jurisdictional Determination Requests (AJDs) Relating to the Rosemont Copper Mine.
- d. Letter to Col. Daniel Hibner, Savannah District Commander of the U.S. Army Corps of Engineers dated April 10, 2020, from Mr. Turner Hunt, Muscogee Creek Nation (MCN) Historic and Cultural Preservation Department.

2. Background. The U.S. Army Corps of Engineers (Corps) makes formal determinations stating the presence or absence of waters of the United States on a parcel through the issuance of an AJD. See 33 CFR 331.2. The Corps applies the criteria set forth in the rule defining waters of the United States when determining whether a parcel contains jurisdictional waters. See 33 CFR 328.3. The Navigable Waters Protection Rule (NWPR) was issued on April 21, 2020, to define waters of the United States. (85 FR 22250). On August 30, 2021, the NWPR was vacated nationwide (**r** **r** **r**).

In his January 26, 2021 memorandum, President Biden reaffirmed the Federal government's enduring commitment to consultation as a means of strengthening the sovereign relationship between the United States and our Tribal Nations (reference 1.a.). The memorandum directs all Federal agencies to engage in regular, meaningful,

SACW

SUBJECT: Approved Jurisdictional Determinations (AJDs) for the Rosemont and Twin Pines Parcels

and robust consultation with Tribal Nations on Federal actions that have Tribal implications. The Army's Civil Works program has a long history of consultation with Tribal Nations on its projects, rules, and regulatory permit actions, and the Army Civil Works program is committed to maintaining and enhancing its record on consultation.

The Acting Assistant Secretary of the Army for Civil Works issued a memorandum on April 20, 2021 (reference 1.b.). The April 20 memorandum rescinded a previous memorandum that precluded tribal consultation associated with a draft AJD.

3. Rosemont Parcels AJD. On January 8, 2021, the Los Angeles District (LA District) of the Corps sent a letter to Mr. Stuart Gillespie of Earthjustice which rescinded the offer of government-to-government consultation with the Tohono O'odham Nation, the Pascua Yaqui Tribe, and the Hopi Tribe on the AJD requests received for the Rosemont parcels pursuant to the memorandum rescinded by reference 1.b. (reference 1.d.). On March 14, 2021, the LA District issued an AJD for the Rosemont parcels which determined that all ephemeral waters present on the site were excluded per regulation codified by the NWPR.

4. Twin Pines Parcel AJDs. In a letter dated April 10, 2020, MCN stated that they had not been officially consulted on the Twin Pines parcel AJD as required (reference 1.e.). Additionally, the MCN later asked the Savannah District of the Corps (Savannah District) in a March 2021 email about the process to consult on JDs. The Savannah District provided a copy of the memo dated January 4, 2021, which had precluded tribal consultation associated with a draft AJD and was later rescinded on April 20, 2021 (reference 1.b.). The Savannah District provided two AJDs on October 15, 2020, and March 24, 2021. These two AJDs concluded that 556 acres of wetlands were excluded under the NWPR.

5. This memorandum directs the Corps to immediately notify the AJD recipients for the Rosemont and Twin Pines parcels that they cannot rely on those AJDs to accurately delineate jurisdictional waters under the current regulatory regime and that their NWPR AJDs are not valid because the government-to-government consultations for the Federal actions regarding the determinations of jurisdictional status of waters on the parcels were not conducted as requested by the Tribes. As noted earlier, the Corps previously determined that the government-to-government consultation request for the Rosemont AJD was to be honored and the MCN previously inquired about government-to-government consultation for the Twin Pines AJDs. Given the specific circumstances associated with these AJDs, it is my policy decision that the Corps should have honored these government-to-government consultation requests.

SACW

SUBJECT: Approved Jurisdictional Determinations (AJDs) for the Rosemont and Twin Pines Parcels

The Corps is also directed to notify the Rosemont and Twin Pines project proponents of their option to request a new AJD. Any newly issued AJD must follow the applicable regulatory regime for the definition of waters of the United States at the time of AJD issuance. With the vacatur of the NWPR, AJD requests are currently being completed consistent with the pre-2015 regulatory regime. If a new AJD request is received, the Corps shall extend government-to-government consultation requests to the Tohono Oodham Nation, the Pascua Yaqui Tribe, and the Hopi Tribe for the Rosemont parcels and the MCN for the Twin Pines parcel, as well as any other Tribal Nations who may be implicated by the respective AJDs. If consultation is initiated, no new AJD will be issued until the conclusion of such consultation.

6. Upon conclusion of any tribal consultations that may occur, and prior to the District making any decisions on the path forward for any AJD requested, the Corps shall provide an update to the ASA(CW) in the form of a briefing on the consultation process conducted with the Tribes.

. These circumstances are unique to the Rosemont and Twin Pines parcels AJDs. Accordingly, the direction in this memorandum is limited to these AJDs and is not intended to establish or rescind any separate, nationwide policy guidance.

8. Questions regarding this matter may be directed to Stacey Jensen, Assistant for Regulatory and Tribal Affairs, Office of the Assistant Secretary of the Army (Civil Works), at (303) 459-6026 or stacey.m.jensen.civ@army.mil.



MICHAEL L. CONNOR
Assistant Secretary of the Army
(Civil Works)

cf: DCG-CEO
DCW



US Army Corps
of Engineers®

HQ USACE Regulatory

Announcements

5 January 2022 – Navigable Waters Protection Rule Vacatur

Published Jan. 5, 2022

The Environmental Protection Agency and U.S. Army Corps of Engineers (“the agencies”) are in receipt of the U.S. District Court for the District of Arizona’s August 30, 2021, order vacating and remanding the Navigable Waters Protection Rule in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency*. In light of this order, the agencies have halted implementation of the Navigable Waters Protection Rule (“NWPR”) nationwide and are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice. The agencies are working expeditiously to move forward with the rulemakings [announced on June 9, 2021](#), in order to better protect our nation’s vital water resources that support public health, environmental protection, agricultural activity, and economic growth. The agencies remain committed to crafting a durable definition of “waters of the United States” that is informed by diverse perspectives and based on an inclusive foundation.

On November 18, 2021, the agencies announced the signing of [a proposed rule to revise the definition of “waters of the United States.”](#) This proposal marks a key milestone in the regulatory process announced in June 2021. The agencies propose to put back into place the pre-2015 definition of “waters of the United States,” updated to reflect consideration of Supreme Court decisions. This familiar approach would support a stable implementation of “waters of the United States” while the agencies continue to consult with states, tribes, local governments, and a broad array of stakeholders in both the current implementation and future regulatory actions.

A durable definition of “waters of the United States” is essential to ensuring clean and safe water in all communities—supporting human health, animal habitat, agriculture,

watersheds, flood management, local economies, and industry. This rulemaking process follows a review conducted by the agencies as directed by the January 20, 2021 [Executive Order 13990](#) on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.”

Further details about the agencies’ plans, including information regarding the upcoming public meetings and proposed rule docket, [can be found here](#).

An approved jurisdictional determination (“AJD”) is a document provided by the Corps 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. See 33 C.F.R. § 331.2. Under existing Corps’ policy, AJDs are generally valid for five years unless new information warrants revision prior to the expiration date. See U.S. Army Corps of Engineers, [Regulatory Guidance Letter No. 05–02](#), § 1(a), p. 1 (June 2005) (Regulatory Guidance Letter (RGL) 05–02).

As a general matter, the agencies’ actions are governed by the definition of “waters of the United States” that is in effect at the time the Corps completes an AJD, not by the date of the request for an AJD. AJDs completed prior to the court’s decision and not associated with a permit action (also known as “stand-alone” AJDs under [RGL 16-01](#)) will not be reopened until their expiration date, unless one of the criteria for revision is met under RGL 05-02. A NWPR AJD could also be reopened if the recipient of such an AJD requests a new AJD be provided pursuant to the pre-2015 regulatory regime. In that case, the Corps will honor such request recognizing that if the recipient of a NWPR AJD intends to discharge into waters identified as non-jurisdictional under the NWPR but which may be jurisdictional under the pre-2015 regulatory regime, such recipient may want to discuss their options with the Corps. AJD requests pending on, or received after, the Arizona court’s vacatur decision will be completed consistent with the pre-2015 regulatory regime.

As the agencies’ actions are governed by the regulatory definition at the time of the action, permit decisions made prior to the court’s decision that relied on a NWPR AJD will not be reconsidered in response to the NWPR vacatur. Permit decisions may be modified, suspended, or revoked per 33 C.F.R. § 325.7 where the regulatory criteria are met. The Corps will not rely on an AJD issued under the NWPR (a “NWPR AJD”) in making a new permit decision. The Corps will make new permit decisions pursuant to the currently applicable regulatory regime (i.e., the pre-2015 regulatory regime).

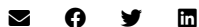
Therefore, for any currently pending permit action that relies on a NWPR AJD, or for any future permit application received that intends to rely on a NWPR AJD for purposes of permit processing, the Corps will discuss with the applicant, as detailed in RGL 16-01, whether the applicant would like to receive a new AJD completed under the pre-2015 regulatory regime to continue their permit processing or whether the applicant would like to proceed in reliance on a preliminary JD or no JD whatsoever.

[Navigable Waters Protection Rule](#) [EPA](#)

Click here for resources for U.S. citizens/nationals in Ukraine (/ukraine)

Jon Ossoff

Home (<https://www.ossoff.senate.gov/>) / Press Releases (<https://www.ossoff.senate.gov/press-releases/>) / Sen. Ossoff Secures Restored Protection of Okefenokee National Wildlife Refuge (<https://www.ossoff.senate.gov>)



Sen. Ossoff Secures Restored Protection of Okefenokee National Wildlife Refuge

June 4, 2022

Sen. Ossoff succeeds after a year-long campaign to restore protections for Okefenokee Wildlife Refuge, Wilderness, and surrounding wetlands

Photos and B-Roll (https://www.dropbox.com/sh/t4wvbyn1idgcdyf/AAD_CrI4M3N0gCxUX8VF1fh0a?dl=0)

of Sen. Ossoff at the Okefenokee last May

Washington, D.C. — U.S. Senator Jon Ossoff has successfully secured restored protection of the Okefenokee National Wildlife Refuge and surrounding wetlands.

Yesterday, in response to Sen. Ossoff's year-long effort, the U.S. Army Corps of Engineers granted Sen. Ossoff's request to restore key protections over the wildlife refuge, wilderness, and surrounding wetlands to protect them from proposed strip mining, which the U.S. Fish and Wildlife Service warned posed a dire threat to the Okefenokee.

The Okefenokee is the largest blackwater swamp in North America. It contains a National Wildlife Refuge and U.S. Wilderness Area and is one of Georgia's top sites for outdoor recreation and tourism, drawing more than 600,000 visitors per year, and one of Georgia's most beloved and environmentally significant wild places.

Since inspecting the Refuge, Wilderness, and surrounding wetlands last year, Sen. Ossoff has relentlessly pressed the U.S. Army Corps of Engineers, the EPA, and the U.S. Department of the Interior to restore protection of the Okefenokee.

On Friday, the

Army Corps granted Sen. Ossoff's request (<https://www.savannahnow.com/story/news/2022/06/03/army-corps-engineers-reverses-wetlands-decision-okefenokee-mine/7506056001/>)

, reversing a prior decision that would have permitted strip mining around the Okefenokee.

The U.S. Fish and Wildlife Service and Department of the Interior, responding to Sen. Ossoff's request for analysis of risks to the Wildlife Refuge, had warned that the strip mining risked permanent damage to the wetlands by reducing the water level, killing endangered wildlife, and causing destructive fires.

“For the last year, I’ve fought relentlessly to protect the Okefenokee from destruction. Today I am pleased to announce the restoration of protection for this wildlife refuge and its surrounding wetlands. The Okefenokee is a natural wonder and one of Georgia’s most precious lands. I will continue fighting to protect it for future generations,” **said U.S. Senator Jon Ossoff.**

“We celebrate the Biden administration’s restoration of protections to nearly 400 acres of wetlands that sit at the doorstep of the Okefenokee Swamp, one of the most celebrated natural resources in the world,” **said Kelly Moser, senior attorney and leader of the Clean Water Defense Initiative at the Southern Environmental Law Center.** “Senator Ossoff led this fight, and we thank him for stepping up to protect this iconic place. Failing to consult with the Muscogee (Creek) Nation epitomizes the prior administration’s unlawful exclusion of these wetlands from clean water safeguards, and today’s announcement restores integrity to the federal process as well as protections for this ecological treasure admired by Georgians, visitors from across the country, and people worldwide.”

“Senator Ossoff first visited the Okefenokee within his first months in office to observe its impact on our local community and economy,” **said Kim Bednarek, Executive Director of Okefenokee Swamp Park.** “Today, Senator Ossoff is delivering on his promise to our community by protecting and investing in the health of the Okefenokee. We are proud to have worked with the Senator and his team to save our Refuge.”

Additional background on Senator Ossoff’s year-long effort to protect the Okefenokee Wildlife Refuge:

- Senator Ossoff has relentlessly fought to protect the Okefenokee Wildlife Refuge since his first few months in office.
- Over a year ago, Sen. Ossoff **launched an inquiry, (https://www.warnock.senate.gov/wp-content/uploads/2021/04/04.28.2021-Letter-FWS-Okefenokee-Refuge.pdf)** raising concerns with the U.S. Fish and Wildlife Service about the potential environmental impacts of the proposed mining development on the Okefenokee Wildlife Refuge.
- In May 2021, Sen. Ossoff **visited (https://www.ossoff.senate.gov/press-releases/photos-and-video-sen-ossoff-surveys-okefenokee-swamp-briefed-by-u-s-fish-and-wildlife-service-on-protection-of-wildlife-refuge/)** the Okefenokee to conduct a thorough environmental review, bringing along senior U.S. Fish and Wildlife Service officials to survey the swamp’s conservation status and biological and hydrological conditions.
- Following the review, U.S. Fish and Wildlife Service officials, at his request, **(https://www.savannahnow.com/story/news/2021/05/14/ossoff-visits-briefed-mining-imperiled-okefenokee-swamp-hydrology-wildlife-refuge-environmental-protection/5091047001/)** Sen. Ossoff on their ongoing efforts to assess the environmental impacts of the mining development on the edge of the Refuge.
- Last December, Sen. Ossoff pushed the **Environmental Protection Agency (https://www.ossoff.senate.gov/wp-content/uploads/2022/01/21.12.20-Letter-to-EPA-re-Okefenokee.pdf)** (EPA) and the **U.S. Army Corps of Engineers (https://www.ossoff.senate.gov/wp-content/uploads/2022/01/21.12.20-Letter-to-Army-Corps-re-Okefenokee.pdf)** to conduct an in-depth review of the proposed mineral mining project and assess the potential threats to the Okefenokee’s environmental, cultural, and economic integrity.

- Soon after the Senator's inquiry, **the Department of the Interior affirmed (https://www.ossoff.senate.gov/wp-content/uploads/2022/06/ASFWP-signed-076308-Connor.pdf)** in a letter to USACE Sen. Ossoff's assessment that the proposed mining project "poses risks to the Okefenokee swamp ecosystem including the Okefenokee National Wildlife Refuge."
- Last week, Sen. Ossoff gathered local leaders to discuss his ongoing efforts to protect the Okefenokee Wildlife Refuge—**detailing (https://www.youtube.com/watch?v=Vp0rer4wh0Q)** his work to push the EPA, preserve this region, and reinstate federal protections to the 400 acres of wetlands around the Okefenokee.
- On Thursday at the conclusion of their review, the U.S. Army Corps of Engineers briefed Senator Ossoff that **they plan to vacate their previous approved jurisdictional determination (https://www.ossoff.senate.gov/wp-content/uploads/2022/06/Final-Rosemont-Mine-and-Twin-Pines-AJD-Memo.pdf)** given the lack of required consultation with tribal stakeholders, in this case the Muscogee (Creek) Nation.
- This action by the Army Corps, at Senator Ossoff's request, will stop the proposed mining project from proceeding, protecting the Okefenokee Wildlife Refuge from potential destruction. If any mining company wanted to proceed with a project, they would have to start over from the beginning of the jurisdictional review process under the Biden Administration's new rules.




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Directions [↗\(https://goo.gl/maps/eSAgBM7tHcjRCTeNA\)](https://goo.gl/maps/eSAgBM7tHcjRCTeNA)

D.C. Office

Russell Senate Office Building
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Washington, DC 20510
Phone: 202-224-3521
Fax: 202-224-2575

Directions [↗\(https://goo.gl/maps/Xp4PT1TqvbLK1jnd7\)](https://goo.gl/maps/Xp4PT1TqvbLK1jnd7)



**US Army Corps
of Engineers®**

REGULATORY GUIDANCE LETTER

No. 08-02

Date: 26 June 2008

SUBJECT: Jurisdictional Determinations

1. Purpose. Approved jurisdictional determinations (JDs) and preliminary JDs are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance on when an approved JD is required and when a landowner, permit applicant, or other “affected party”¹ can decline to request and obtain an approved JD and elect to use a preliminary JD instead.

a. This guidance does not address which waterbodies are subject to CWA or RHA jurisdiction. For guidance on CWA and RHA jurisdiction, see Corps regulations, “Memorandum re: Clean Water Act (CWA) Jurisdiction Following U.S. Supreme Court Discussion in *Rapanos v. United States*,” dated 19 June 2007, and the documents referenced therein.

b. This guidance takes effect immediately, and supersedes any inconsistent guidance regarding JDs contained in RGL 07-01.

2. Approved JDs. An approved JD is an official Corps determination that jurisdictional “waters of the United States,” or “navigable waters of the United States,” or both, are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA/RHA. (See 33 C.F.R. 331.2.)

a. The Corps will provide (subject to the limitation contained in paragraph 5.b. below) an approved JD to any landowner, permit applicant, or other “affected party” when:

(1) a landowner, permit applicant, or other “affected party” requests an approved JD by name or otherwise requests an official jurisdictional determination, whether or not it is referred to as an “approved JD”;

¹ As defined at 33 CFR 331.2 “affected party” means a permit applicant, landowner, a lease, easement or option holder (i.e., an individual who has an identifiable and substantial legal interest in the property) who has received an approved JD, permit denial or has declined a proffered individual permit.

(2) a landowner, permit applicant, or other “affected party” contests jurisdiction over a particular water body or wetland, and where the Corps is allowed access to the property and is otherwise able to produce an approved JD; or

(3) the Corps determines that jurisdiction does not exist over a particular water body or wetland.

b. An approved JD:

(1) constitutes the Corps’ official, written representation that the JD’s findings are correct;

(2) can be relied upon by a landowner, permit applicant, or other “affected party” (as defined at 33 C.F.R. 331.2) who receives an approved JD for five years (subject to certain limited exceptions explained in RGL 05-02);

(3) can be used and relied on by the recipient of the approved JD (absent extraordinary circumstances, such as an approved JD based on incorrect data provided by a landowner or consultant) if a CWA citizen’s lawsuit is brought in the Federal Courts against the landowner or other “affected party,” challenging the legitimacy of that JD or its determinations; and

(4) can be immediately appealed through the Corps’ administrative appeal process set out at 33 CFR Part 331.

c. The District Engineer retains the discretion to use an approved JD in any other circumstance where he or she determines that is appropriate given the facts of the particular case.

d. If wetlands or other water bodies are present on a site, an approved JD for that site will identify and delineate those water bodies and wetlands that are subject to CWA/RHA jurisdiction, and serve as an initial step in the permitting process.

e. Approved JDs shall be documented in accordance with the guidance provided in RGL 07-01. Documentation requires the use of the JD Form published on June 5, 2007, or as modified by ORM2 or subsequent revisions to the June 5, 2007 JD form approved by Corps Headquarters. Districts will continue to post approved JDs on their websites.

3. A permit applicant’s option to decline to request and obtain an approved JD. While a landowner, permit applicant, or other “affected party” can elect to request and obtain an approved JD, he or she can also decline to request an approved JD, and instead obtain a Corps individual or general permit authorization based on either a preliminary JD, or, in appropriate circumstances (such as authorizations by non-reporting nationwide general permits), no JD whatsoever. The Corps will determine what form of JD is appropriate

for any particular circumstance based on all the relevant factors, to include, but not limited to, the applicant's preference, what kind of permit authorization is being used (individual permit versus general permit), and the nature of the proposed activity needing authorization.

4. Preliminary JDs. Preliminary JDs are non-binding “. . . written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed.” (See 33 C.F.R. 331.2.)

a. A landowner, permit applicant, or other “affected party” may elect to use a preliminary JD to voluntarily waive or set aside questions regarding CWA/RHA jurisdiction over a particular site, usually in the interest of allowing the landowner or other “affected party” to move ahead expeditiously to obtain a Corps permit authorization where the party determines that is in his or her best interest to do so.

b. It is the Corps' goal to process both preliminary JDs and approved JDs within 60 days as detailed in paragraph 5 below, so the applicant or other affected party's choice of whether to use a preliminary JD or approved JD should not affect this goal.

c. A landowner, permit applicant, or other “affected party” may elect to use a preliminary JD even where initial indications are that the water bodies or wetlands on a site may not be jurisdictional, if the affected party makes an informed, voluntary decision that is in his or her best interest not to request and obtain an approved JD.

d. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

e. Preliminary JDs are also commonly used in enforcement situations because access to a site may be impracticable or unauthorized, or for other reasons an approved JD cannot be completed in a timely manner. In such circumstances, a preliminary JD may serve as the basis for Corps compliance orders (e.g., cease and desist letters, initial corrective measures). The Corps should support an enforcement action with an approved JD unless it is impracticable to do so under the circumstances, such as where access to the site is prohibited.

f. When the Corps provides a preliminary JD, or authorizes an activity based on a preliminary JD, the Corps is making no legally binding determination of any type regarding whether CWA/RHA jurisdiction exists over the particular water body or wetland in question.

g. A preliminary JD is “preliminary” in the sense that a recipient of a preliminary JD can later request and obtain an approved JD if that later becomes necessary or appropriate during the permit process or during the administrative appeal process. If a

permit applicant elects to seek a Corps individual permit based on a preliminary JD, that permit applicant can later raise jurisdictional issues as part of an administrative appeal of a proffered permit or a permit denial, as explained in paragraph 6 below.

h. In all circumstances where an approved JD is not required by the guidance in paragraph 2 of this RGL, District Engineers retain authority to use preliminary JDs. The Corps may authorize an activity with one or more general permits, a letter of permission, or a standard individual permit, with no “official” JD of any type, or based on a preliminary JD, where the District Engineer determines that to be appropriate, and where the permit applicant has been made aware of his or her option to receive an approved JD and has declined to exercise that option. Generally, approved JDs should be used to support individual permit applications, but the applicant should be made aware of his or her option to elect to use a preliminary JD wherever the applicant feels doing so is in his or her best interest.

5. Processing approved and preliminary JDs. Every approved JD and preliminary JD should be completed and provided to the person, organization, or agency requesting it as promptly as is practicable in light of the district’s workload, and site and weather conditions if a site visit is determined necessary.

a. Corps districts should not give preliminary JDs priority over approved JDs. Moreover, every Corps district should ensure that a permit applicant’s request for an approved JD rather than a preliminary JD will not prejudice the timely processing of that permit application. It is the Corps’ goal that every JD requested by an affected party should be completed within 60 calendar days of receiving the request. Regulatory Project Managers will notify their supervisors and develop a schedule for completion of the JD if it is not practicable to meet this 60 day goal.

b. The Corps should not provide either an approved JD or a preliminary JD to any person if the Corps has reason to believe that person is seeking a JD for any purpose relating to a CWA program not administered by the Corps (e.g., CWA Section 402, 303, or 311). In such circumstances the Corps should decline to perform the JD and instead refer the person who requested it to the Federal or state agency responsible for administering that program.

6. JDs and appeals. In any circumstance where a permit applicant obtains a Corps proffered individual permit or a permit denial, based on a preliminary JD, and where the permit applicant elects to pursue an administrative appeal of the proffered permit or the permit denial, the appeal “may include jurisdiction issues,” as stated at 33 C.F.R. 331.5(a)(2). However, if an affected party during the appeal of a proffered permit or a permit denial challenges or questions jurisdiction, those jurisdictional issues must be addressed with an approved JD. Therefore, if, during or as a result of the administrative appeal of the permit denial or the terms and conditions of the proffered permit, it becomes necessary to make an official determination whether CWA/RHA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps should provide an approved JD as soon as is practicable, consistent with the

goal expressed in paragraph 5 above. Such an approved JD would be subject to the same procedures as other approved JDs, such as requirements for coordinating approved JDs with EPA.

7. Key distinction between approved JDs and preliminary JDs. By definition, a preliminary JD can only be used to determine that wetlands or other water bodies that exist on a particular site “may be” jurisdictional waters of the United States. A preliminary JD by definition cannot be used to determine either that there are no wetlands or other water bodies on a site at all (i.e., that there are no aquatic resources on the site and the entire site is comprised of uplands), or that there are no jurisdictional wetlands or other water bodies on a site, or that only a portion of the wetlands or waterbodies on a site are jurisdictional. A definitive, official determination that there are, or that there are not, jurisdictional “waters of the United States” on a site can only be made by an approved JD. The Corps retains the ability to use a “no-permit-required” letter to indicate that a specific proposed activity is not subject to CWA/RHA jurisdiction when that is determined appropriate, but a “no-permit-required” letter cannot make any sort of determination regarding whether there are jurisdictional wetlands or other waterbodies on a site.

8. Mandatory use of the preliminary JD form. In each and every circumstance where a preliminary JD is used, the Corps district must complete the “Preliminary Jurisdictional Determination Form” provided at Attachment 1, which sets forth in writing the minimum requirements for a preliminary JD and important information concerning the requesting party’s option to request and obtain an approved JD, and subsequent appeal rights. The signature of the affected party who requested the preliminary JD will be obtained on the preliminary JD form wherever practicable (e.g., except for enforcement situations, etc.). Where a preliminary JD form covers multiple water bodies or multiple sites, the information for each can be included in the table provided with the preliminary JD form. Information in addition to the minimum of data required on the preliminary JD form can be included on that form, but only if such information pertains to the amount and location of wetlands or other water bodies at the site. Corps regulatory personnel are expected to continue to exercise appropriate judgment and use appropriate information when making technical and scientific determinations as to what areas on the site qualify as water bodies or wetlands. Any such additional information included on the preliminary JD form should not purport, or be construed, to address any legal determination involving CWA/RHA jurisdiction on the site.

9. Data collection. Information about the quality and quantity of the aquatic resources that would be affected by the proposed activity, the types of impacts that are expected to occur, and compensatory mitigation, are obtained by the Corps during the processing of an individual permit application and are included in pre-construction notification for reporting NWP. For example, NWP pre-construction notifications must contain a “description of the proposed project; the project’s purpose; direct and indirect adverse environmental effects the project would cause; . . . a delineation of special aquatic sites and other waters of the United States on the project site.” (Reissuance of Nationwide Permits Notice, 72 Fed. Reg. 11092, at 11194-95 (March 12, 2007).) Applicants should

provide a delineation of special aquatic sites in support of an individual permit or “letter of permission” application.

a. The information on a preliminary JD form should be limited to the amount and location of wetlands and other water bodies on the site and should be sufficiently accurate and reliable that the effective presumption of CWA/RHA jurisdiction over all of the wetlands and other water bodies at the site will support a reliable and enforceable permit decision. When a preliminary JD is used to support a request for a permit authorization, the information on the preliminary JD form is also relevant to the processing of that permit application (e.g., to calculate compensatory mitigation requirements). During the permit process, information in addition to the data on the preliminary JD form is developed and relied upon to support the Corps permit decision; that additional information should be carefully documented as part of the permit process (e.g., through an environmental assessment, 404(b)(1) analysis, combined decision document, or decision memorandum). This additional information for the permit decision should *not* be captured on a preliminary JD form.

b. The type of information collected to support the decision on the permit application will be the same for permit applications supported by approved JDs and for those supported by preliminary JDs. Therefore, decisions and judgments regarding environmental impacts, public interest determinations, and mitigation requirements should be adequately supported regardless of the type of JD used. For this reason, the data necessary to quantify and defend the Corps Regulatory Program’s performance will be available for a permit application regardless of whether it was supported by an approved JD or a preliminary JD.

c. The information used to support an approved JD should be reliable and verifiable. Traditionally, this information has been obtained or verified through a site visit, but now, with information from new, highly sensitive technology and imaging, site visits may not always be required for approved JDs.

d. When documenting preliminary JDs, any available technical, scientific, and observational information about the wetlands or other water bodies can be entered into ORM2 regardless of whether it is the type of information that could inform a formal jurisdictional determination (e.g., discussion of the ecological relationship between water bodies), so long as legal conclusions about jurisdictional status are not included. Any additional, available information that is entered into ORM2 must be accompanied by the warning that the information has not been verified, that it is not an official determination by the government, and that it cannot later be relied upon to determine whether an area is or is not jurisdictional.

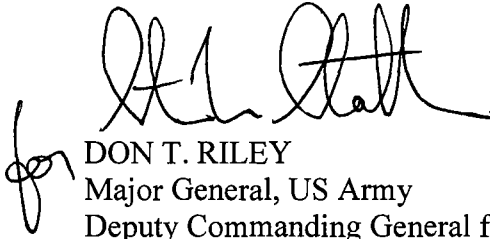
10. Coordination with U.S. Environmental Protection Agency (EPA) and posting.

Districts will continue to post approved JDs on their web sites. Consistent with historical practice, preliminary JDs will not be coordinated with EPA or posted on District websites. Corps Headquarters is modifying the ORM2 data base to collect information regarding use of preliminary JDs, and regarding permit authorizations based on

preliminary JDs, or based on no official form of JD. Until ORM2 is modified to collect and access information related to preliminary JDs, every District should collect basic information, to the maximum extent practicable, on those subjects for purposes of documenting District workload.

11. This guidance remains in effect until revised or rescinded.

Attachment


for DON T. RILEY
Major General, US Army
Deputy Commanding General for Civil and
Emergency Operations

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: County/parish/borough: City:

Center coordinates of site (lat/long in degree decimal format): Lat. °

Pick List, Long. ° **Pick List**.

Universal Transverse Mercator:

Name of nearest waterbody:

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Other information (please specify): .

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

SAMPLE

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
1				0.1 acre	section 10 – tidal
2				100 linear feet	section 10 – non-tidal
3				15 square feet	non-section 10 – wetland
4				0.01 acre	non-section 10 – non-wetland



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 16-01

Date: October 2016

SUBJECT: Jurisdictional Determinations

1. Purpose. Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an AJD as opposed to a PJD, or when it may be appropriate to not prepare any JD whatsoever.

The Corps has long provided JDs as a public service. In U.S. Army Corps of Engineers v. Hawkes Co., 136 S.Ct. 1807 (2016), the Supreme Court held that AJDs are subject to judicial review, and several members of the Court highlighted that the availability of AJDs is important for fostering predictability for landowners. The Corps recognizes the value of JDs to the public and reaffirms the Corps commitment to continue its practice of providing JDs when requested to do so, consistent with the guidance below. This clarification RGL does not change or modify the definitions of AJDs and PJDs included in Corps regulations, the documentation practices for each type of JD, or when an AJD is required by the terms of its definition (e.g., only an AJD can be used to determine presence/absence of waters of the U.S.). This RGL also does not address which aquatic resources are subject to CWA or RHA jurisdiction.

The aim of this RGL is to encourage discussions between Corps districts and parties interested in obtaining the Corps views on jurisdiction to ensure that all parties have a common understanding of the different options for addressing CWA and RHA geographic jurisdiction so that the most appropriate mechanism for addressing the needs of a person requesting a JD can be identified. This RGL does not limit the discretion afforded a district engineer by the regulations to ultimately determine, consistent with the guidance below, how to respond to a request for a JD. After a requestor is fully informed of the options available for addressing geographic jurisdiction, the Corps will continue its current practice of providing an AJD consistent with this guidance if the party continues to request one. The uniform understanding of the different types of JDs and the well-reasoned use of discretion in the manner described in this guidance is of substantial importance within the Regulatory Program. The district engineer should set reasonable priorities based on the district's workload and available regulatory resources. For example, it may be reasonable to give higher priority to a JD request when it accompanies a permit request. This RGL addresses similar issues included in RGLs 07-01 and 08-02. Both RGL 07-01 and 08-02 are hereby superseded by this RGL.

2. Background. The regulations implementing the CWA and RHA introduced the concept of JDs when they "... authorized its district engineers to issue formal determinations of the applicability of the [CWA or RHA] to . . . tracts of land." 33 C.F.R. 320.1(a)(6). The use of such determinations was not addressed by either statute, and the regulations make their use discretionary and do not create a right to a JD. The regulations authorize their use as a service to the public, and the Corps has developed a practice of providing JDs when requested, and in appropriate circumstances.

Corps practice has evolved to address questions of jurisdiction through the use of AJDs and PJDs. However, some jurisdictional inquiries may be resolved without a JD. For example, a letter confirming that no Corps permit is required for activities on a site may be sufficient for responding to requests in a particular case. These different means of addressing questions of jurisdiction are discussed further below.

It is the Corps responsibility to ensure that the various types of JDs, their characteristics, and the reasons behind the JD request, have been adequately discussed with the requestor so requestors can make an informed decision regarding what type of documentation will best serve their needs. The JD requestor, after being advised by the Corps, will determine what form of JD, if any, is best for his/her particular circumstance, based on all the relevant factors. These factors include, but are not limited to, the requestor's preference and reasons for the request, whether any kind of permit authorization is associated with the request for a JD (e.g., individual permit or general permit), and the nature of any proposed activity needing authorization. Such factors are also relevant to how such requests are prioritized by the district engineer. The Corps regulations implementing the CWA and RHA leave the decision of whether to issue a JD to the discretion of the district engineer. However, it will continue to be the agency's practice to honor requests for JDs unless it is impracticable to do so, such as when the Corps is unable to gain access to a site to complete a JD or the Corps lacks other information necessary to respond to the request based on a sound technical record.

3. Approved JDs. An AJD is defined in Corps regulations at 33 CFR 331.2. A definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a parcel and the identification of the geographic limits of jurisdictional aquatic resources on a parcel can only be made by means of an AJD. AJDs may be either "stand-alone" AJDs or AJDs associated with permit actions. Some "stand-alone" AJDs may later be associated with permit actions, but at time of issuance are not related to a permit application. A "stand-alone" AJD may be requested so that impacts to jurisdictional aquatic resources may be avoided or minimized during the planning stages of a project, or it may be requested in order to fulfill a local/state authorization requirement.

- a. Except as provided otherwise in this RGL, and provided that the Corps is allowed legal access to the property and is otherwise able to complete an AJD, the Corps will issue an AJD upon receiving a request for a formal determination regarding the jurisdictional status of aquatic resources on a parcel, whether or not the request specifically refers to an "AJD."

- b. An AJD:
 - (1) will be used if the Corps is determining the presence or absence of jurisdictional aquatic resources on a parcel;
 - (2) will be used if the Corps is identifying the geographic limits of

jurisdictional aquatic resources on a parcel;

(3) will remain valid for a period of five years (subject to certain limited exceptions explained in RGL 05-02);

(4) can be administratively appealed through the Corps administrative appeal process set out at 33 CFR Part 331; and,

(5) may be requested through the use of the enclosed "Request for Corps Jurisdictional Determination (JD)" in Appendix 1. Even if the JD requestor does not use the enclosed "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request.

4. Preliminary JDs. A PJD is defined in Corps regulations at 33 CFR 331.2. When the Corps provides a PJD, or authorizes an activity through a general or individual permit relying on an issued PJD, the Corps is making no legally binding determination of any type regarding whether jurisdiction exists over the particular aquatic resource in question. A PJD is "preliminary" in the sense that a recipient of a PJD can later request and obtain an AJD if that becomes necessary or appropriate during the permit process or during the administrative appeal process. See Appendix 2 for the PJD form.

a. A PJD:

(1) may be requested in order to move ahead expeditiously to obtain a Corps permit authorization where the requestor determines that it is in his or her best interest to do so;

(2) may be requested even where initial indications are that the aquatic resources on a parcel may not be jurisdictional, if the requestor makes an informed, voluntary decision that it is in his or her best interest not to request and obtain an AJD;

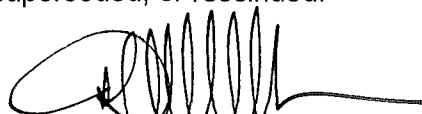
(3) may be used as the basis for a permit decision; however, for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a PJD will treat all aquatic resources that would be affected in any way by the permitted activity on the parcel as jurisdictional;

(4) may include the delineation limits of all aquatic resources on a parcel, without determining the jurisdictional status of such aquatic resources; and,

(5) may be requested through the use of the enclosed "Request for Corps Jurisdictional Determination (JD)" in Appendix 1. Even if the JD requestor does not use the enclosed "Request for Corps JD", the same information and signature provided in the "Request for Corps JD" should be submitted to the Corps district with each JD request.

5. No JD Whatsoever. The Corps generally does not issue a JD of any type where no JD has been requested and there are certain circumstances where a JD would not be necessary (such as authorizations by non-reporting nationwide general permits). In some circumstances, including where the Corps verifies general permits or issues letters of permission and/or standard permits, jurisdictional questions may not arise. In other circumstances, where no DA permit would be required because the proposed activity is not a regulated activity or is exempt under Section 404(f) of the CWA and is not recaptured, preparation of a "no permit required" letter may be appropriate, and no JD is required, so long as that letter makes clear that it is not addressing geographic jurisdiction.

6. Processing. The "Request for Corps Jurisdiction (JD)" in Appendix 1 of this RGL is intended to help both the requestor and the Corps in determining which type of JD, if any, is appropriate. When the Corps receives a request for a JD, the Corps should first explain to the requestor the various types of JDs and their characteristics to ensure that an informed decision is made by the requestor as to the type of JD the Corps will issue, if any. The Corps should discuss with the requestor the intent and purpose of the JD request rather than responding to the request through issuance of a JD without such understanding. Providing an explanation upfront as to the differences between the types of JDs and discussing what the requestor may need can help clarify which JD type may be appropriate for the requestor, if any. It is agency practice to honor requests for JDs unless it is clearly impracticable to do so, such as when the Corps is unable to gain access to a site to complete a JD or the Corps lacks other information necessary to respond to the request based on a sound technical record.
7. Coordination with U.S. Environmental Protection Agency (EPA) and posting. The Corps will continue to coordinate with EPA per applicable memoranda. The Corps will also continue to post final AJDs on Corps websites until the AJDs expire (generally five years, see RGL 05-02). PJDs will not be coordinated with EPA or posted on Corps websites.
8. This RGL remains in effect unless revised, superseded, or rescinded.



DONALD E. JACKSON
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

31 Oct 2016

Date

Appendices

Appendix 1 - REQUEST FOR CORPS JURISDICTIONAL DETERMINATION (JD)

To: District Name Here

- I am requesting a JD on property located at: _____
(Street Address)
City/Township/Parish: _____ County: _____ State: _____
Acreage of Parcel/Review Area for JD: _____
Section: _____ Township: _____ Range: _____
Latitude (decimal degrees): _____ Longitude (decimal degrees): _____
(For linear projects, please include the center point of the proposed alignment.)
- Please attach a survey/plat map and vicinity map identifying location and review area for the JD.
- I currently own this property. I plan to purchase this property.
 I am an agent/consultant acting on behalf of the requestor.
 Other (please explain): _____
- Reason for request: (check as many as applicable)
 I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
 I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
 I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
 I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
 I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
 A Corps JD is required in order to obtain my local/state authorization.
 I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
 I believe that the site may be comprised entirely of dry land.
 Other: _____
- Type of determination being requested:
 I am requesting an approved JD.
 I am requesting a preliminary JD.
 I am requesting a "no permit required" letter as I believe my proposed activity is not regulated.
 I am unclear as to which JD I would like to request and require additional information to inform my decision.

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

*Signature: _____ Date: _____

- Typed or printed name: _____
Company name: _____
Address: _____

Daytime phone no.: _____
Email address: _____

***Authorities:** Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.

Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.

Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.

Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: _____.
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____.
- Data sheets prepared by the Corps: _____.
- Corps navigable waters' study: _____.
- U.S. Geological Survey Hydrologic Atlas: _____.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: _____.
- Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: _____.
- State/local wetland inventory map(s): _____.
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____. (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____.
or Other (Name & Date): _____.
- Previous determination(s). File no. and date of response letter: _____.
- Other information (please specify): _____.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.