

**ORDER: ACCEPT THE USACE APPROVED JURISDICTIONAL DETERMINATION  
PERMIT/RIGHT OF ENTRY FOR THE PROPOSED STORM SHELTERS AT  
HURRICANE POINT**

Motion was made by John Morgan, duly seconded by Greg Bynum, to accept the USACE approved Jurisdictional Determination Permit/Right of entry for the proposed storm shelters at hurricane Point.

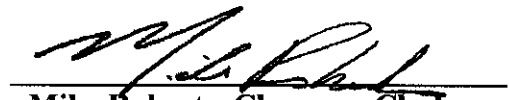
The vote on the motion was as follows:

Supervisor Brent Larson, voted yes  
Supervisor John Morgan, voted yes  
Supervisor Tim Gordon, voted yes  
Supervisor Scott Allen, voted yes  
Supervisor Greg Bynum, voted yes

After the vote, President Larson, declared the motion carried, this the 5<sup>th</sup> day of February, 2024.



**Brent Larson, President  
Board of Supervisors**



**Mike Roberts, Chancery Clerk**



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT**  
**4155 CLAY STREET**  
**VICKSBURG, MISSISSIPPI 39183-3435**

January 26, 2024

**SUBJECT: Department of the Army Regulatory Requirements for the Proposed Hurricane Point Storm Shelters, Lafayette County, Mississippi, MVK-2023-817**

Mr. Steve Quarles  
Emergency Management Director  
72 F.D. "Buddy" East Parkway, Suite 102  
Oxford, Mississippi 38655

Dear Mr. Quarles:

I refer to the information submitted in regards to Department of the Army permit requirements for the proposed Hurricane Point Storm Shelters located in Section 12 T7S-R4W in Lafayette County, Mississippi (enclosure 1).

Based upon the information provided, we have determined that a Department of the Army Section 10/404 permit will not be required for the proposed work, since there are no jurisdictional wetlands or other waters of the United States located at the site. For your information, I have enclosed a copy of the basis of our determination (enclosure 2) and appeals form (enclosure 3).

This jurisdictional determination is applicable for a period not to exceed five years from the date of this letter unless superseded by law or regulation. If the proposed work is not completed by this time, or if project location and plans change, you should contact this office for a reevaluation of permit requirements and refer to Identification No. MVK-2023-817, when submitting the information.

This determination of Department of the Army regulatory requirements does not convey any property rights, either in real estate or material or any exclusive privileges and does not authorize any injury to property or invasion of rights or local laws or regulations or obviate the requirement to obtain state or local assent required by law for the activity discussed herein.

The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for the decision, and the final decision.

If we may be of any further assistance in this matter, please contact Ms. Emily Sullivan of this office, telephone (601) 631-7528, or e-mail address: [Emily.P.Sullivan@usace.army.mil](mailto:Emily.P.Sullivan@usace.army.mil).

Sincerely,

Bryan  
Williamson

Digitally signed by Bryan  
Williamson  
Date: 2024.01.30  
10:39:03 -06'00'

Bryan Williamson  
Chief, Mississippi Branch  
Regulatory Division

Enclosures

County Rd 139



County Rd 108

P-318

P-318

County Rd 103

## Legend

 Hurricane Point Shelter (Acres 0.22)       Tract Boundary

DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS, VICKSBURG  
4165 CLAY STREET  
VICKSBURG MS 39183-3438

REAL ESTATE DIVISION  
ACQUISITIONS BRANCH

File Name:	DACW38-2-24-8_Hurricane Point Storm Shelter Proposal
Plot Scale:	1:2,832
Sheet Size:	8.5 x 11
Date:	06 November 2023
File Number:	DACW38-2-24-8

FLOOD CONTROL, MISSISSIPPI RIVER & TRIBUTARIES  
YAZOO BASIN HEADWATER IMPROVEMENTS  
LITTLE TALLAHACHE RIVER, MISSISSIPPI  
SARDIS LAKE

HURRICANE LANDING PUBLIC USE AREA STORM SHELTER PROPOSAL, DACW38-33-24  
PART OF TRACTS NOS. P-318 & P-319  
SECTION 12, TOWNSHIP 09 SOUTH - RANGE 54 WEST

LAYFETTE COUNTY, MISSISSIPPI



**US Army Corps  
of Engineers.**  
Vicksburg District

**From:** Wooten, Joshua D.CIV.MVK  
**To:** Regulatory.MVK  
**Subject:** RE Request  
**Date:** Wednesday, November 29, 2023 2:42:09 PM  
**Attachments:** [Non-DoD Source] Potential Lease easement on Corp Land for Storm Shelters.pdf  
Coontown Storm Shelter Proposal Area Exhibit A.kmz  
DACW38-32-2-24-8 Coontown Storm Shelter Proposal.pdf  
DACW38-32-2-24-8 Hurrican Point Storm Shelter Proposal.pdf  
Hurricane Point Proposed Storm Shelter Site .kmz

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Please see the attached documents for a request RE has received. Lafayette Co. Emergency Management Services would like structure two storm shelters on Corps Lands at the Sardis Lake area.

The locations are the Coon Town and Hurricane Landing communities. Would this request require any approvals related to Section 10/404?

Thanks,

Dylan Wooten  
Realty Specialist  
Management & Disposal Branch  
Vicksburg District, Real Estate Division  
601-631-5975



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT  
4155 CLAY STREET  
VICKSBURG, MISSISSIPPI 39183

CEMVK-RD

23 January 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322  
(2023), (MVK-2023-817)

**BACKGROUND.** An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>1</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>2</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>3</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in

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<sup>1</sup> 33 CFR 331.2.

<sup>2</sup> Regulatory Guidance Letter 05-02.

<sup>3</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2023-817

the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

- i. MVK-2023-817 Upland (0.2 acre)

## 2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

- 3. REVIEW AREA. Review area consists of 0.2 acre located in Lafayette County, Mississippi. (GPS location: 34.495514, -89.575972) An environmental review of aquatic resources was requested on November 29, 2023, but in light of the recent SCOTUS decision an Approved Jurisdictional Determination can be made for these areas.
- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest TNW is Sardis Lake.<sup>4</sup>
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

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<sup>4</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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6. **SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>:** Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A
7. **SECTION 404 JURISDICTIONAL WATERS:** Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. TNWs (a)(1): N/A
  - b. Interstate Waters (a)(2): N/A
  - c. Other Waters (a)(3): N/A
  - d. Impoundments (a)(4): N/A
  - e. Tributaries (a)(5): N/A
  - f. The territorial seas (a)(6): N/A
  - g. Adjacent wetlands (a)(7): N/A

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.



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## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>7</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A

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

CEMVK-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVK-2023-817

9. **DATA SOURCES.** List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

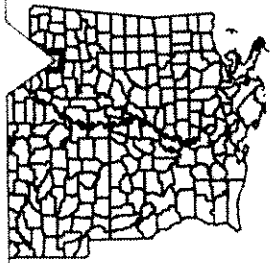
- a. Office determination based on project manager's delineation
- b. GIS
- c. Aerial Photos
- d. National Hydrography Dataset
- e. National Wetland Inventory
- f. LIDAR
- g. Google Earth Pro

10. **OTHER SUPPORTING INFORMATION.** Lafayette Co. Emergency Management Services would like structure two storm shelters on Corps Lands at the Sardis Lake area approximately 0.35 miles from Sardis Lake. The proposed project boundary does not include any aquatic resources on site.

11. **NOTE:** The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

County Road

Lafayette County, MS



23 JANUARY 2024  
MVK-2023-817

Lafayette County Emergency  
Management Services,  
Hurricane Point Proposed Storm  
Shelter,  
Lafayette County, Mississippi

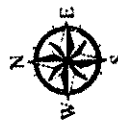
Approved  
Jurisdictional Determination  
Emily Sullivan

Project Location



US Army Corps  
of Engineers

REGULATORY DIVISION  
MISSISSIPPI BRANCH




0 25 50



Feet

Legend

 Project Boundary-Non-Jurisdictional Upland(0.2 acre)

## **NAP/RFA Explanatory Comments**

The enclosed letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 C.F.R. part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division office at the following address:

Division Engineer  
Attn: Appeals Review Officer  
Mississippi Valley Division  
Post Office Box 80  
Vicksburg, MS 39181-0080  
(601) 634-5820

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address by **March 26, 2024**.

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in the enclosed letter.

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

<b>Applicant: Steve Quarles</b>		<b>File No.:</b> MVK-2023-817	<b>Date: 26 Jan 2024</b>
<b>Attached is:</b>			<b>See Section below</b>
	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://usace.army.mil/inet/functions/cw/cecwo/reg> 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. This form must be received by the division engineer 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:**

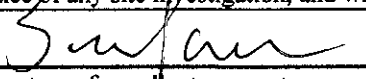
If you have questions regarding this decision and/or the appeal process you may contact:

Attn: Emily Sullivan  
Environmental Specialist  
U.S. Army Corps of Engineers  
Regulatory Division, Mississippi Branch  
4155 Clay Street  
Vicksburg, MS 39183-3435  
Office: (601) 631-7528  
Email: Emily.P.Sullivan@usace.army.mil

If you only have questions regarding the appeal process you may also contact the Division Engineer through:

Administrative Appeals Review Officer  
Mississippi Valley Division  
P.O. Box 80 (1400 Walnut Street)  
Vicksburg, MS 39181-0080  
601-634-5820 FAX: 601-634-5816

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:

2/5/24

Telephone number:

662-801-6431