



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
69 HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA, 29403

CESAC-RDS

11 April 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SAC-2020-00218, (MFR 1 of 1)²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

¹ While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource	Acres (AC.)/Linear Feet (L.F.)	Waters of the U.S. (WOUS)	Section 404/Section 10
Non-Jurisdictional Freshwater Wetland	0.14 AC	No	N/A

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size: 34.24 acres
- b. Center Coordinates of the review area: Latitude: 32.8400° Longitude: -79.9550°
- c. Nearest City: Charleston
- d. County: Charleston
- e. State: South Carolina

The project review area consists of the existing CSX railroad yard totaling approximately 34.24 acres. The site does not have a Charleston County Tax Map Sequence Number. The site currently consists of wooded land and the railroad yard. Surrounding areas

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consist primarily of single-family residences, wooded land, other CSX facilities, and Spruill Avenue to the West.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Cooper River.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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.

⁶ 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.

⁷ 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.

⁸ 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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- b. Interstate Waters (a)(2): N/A.
- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5): N/A.
- f. The territorial seas (a)(6): N/A.
- g. Adjacent wetlands (a)(7): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁹ 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

⁹ 51 FR 41217, November 13, 1986.

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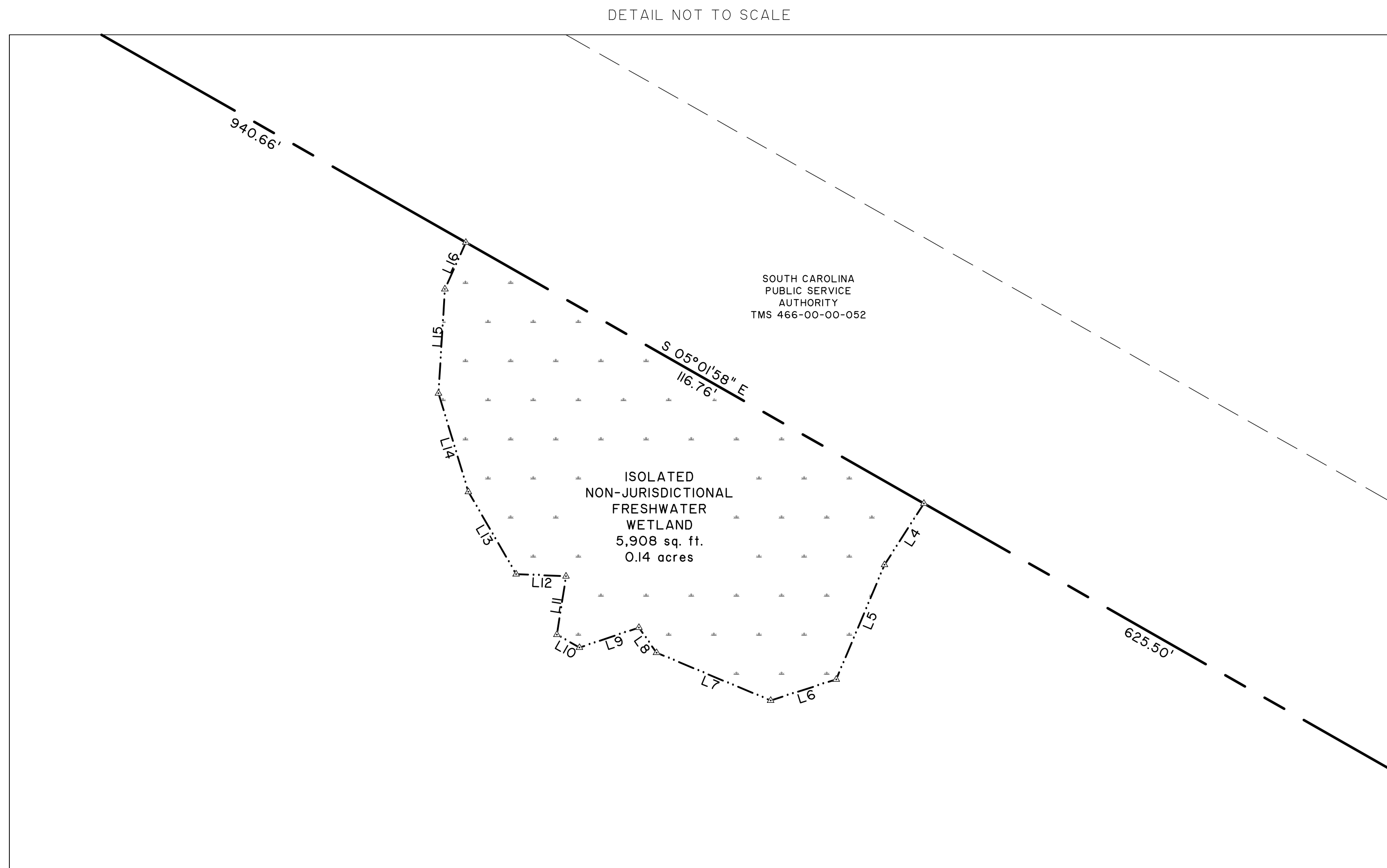
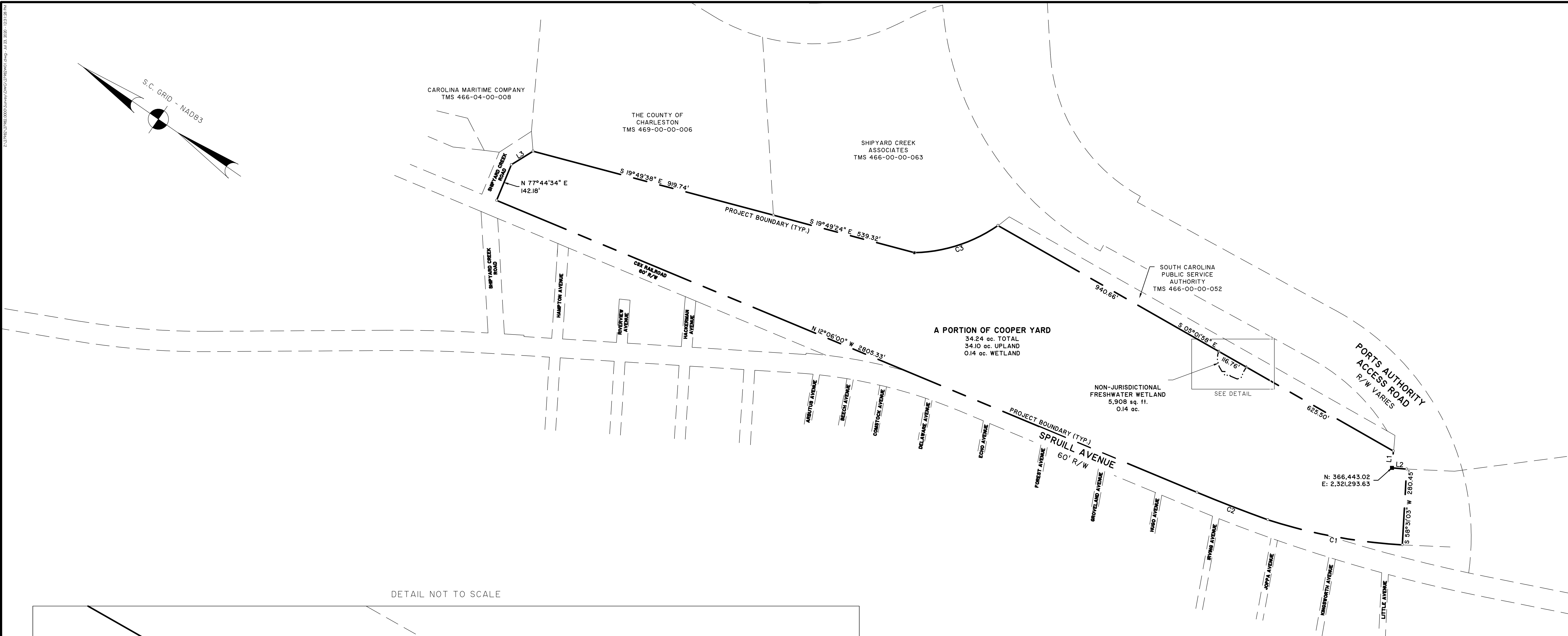
2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A.

- 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).
 - a. A single Non-Jurisdictional Freshwater Wetland (0.14 acre) is located in the eastern portion of the review area met the three parameters required to meet the definition of a wetland federally defined by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplement but does not meet the continuous surface connection requirement to a requisite water body. The only connection to a requisite water is via a non-relatively permanent conveyance feature.
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. Review Performed for Site Evaluation: Office (Desk) Determination. Date: March 28, 2025.
 - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including wetland determination forms, associated data maps, and aquatic resource map titled “Wetland Survey of a 32.24 Ac. Portion of Cooper Yard” dated July 2, 2020, prepared by Thomas and Hutton.
 - c. Photographic Log: Provided by Red Bay Environmental with the wetland delineation dated June 24, 2020.
 - d. Aerial Imagery Map: “Tax Map Aerial Exhibit, Approximately 34.24-Acre Cooper Yard Tract, SAC-2020-00218, Charleston, Charleston County, SC” provided by Red Bay Environmental with the wetland delineation dated June 24, 2020.

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- e. National Wetland Inventory Map: “U.S. Fish and Wildlife Service National Wetland Inventory, Cooper Yard Tract - SAC-2020-00218” provided by Red Bay Environmental with the wetland delineation dated June 24, 2020.
 - f. Natural Resource Conservation Survey: “Soil Survey, Approximately 34.24-Acre Cooper Yard Tract, SAC-2020-00218, Charleston, Charleston County, SC” provided by Red Bay Environmental with the wetland delineation dated June 24, 2020.
 - g. U.S. Geological Survey Map: “Location Map, Approximately 34.24-Acre Cooper Yard Tract, SAC-2020-00218, Charleston, Charleston County, SC” provided by Red Bay Environmental with the wetland delineation dated June 24, 2020.
 - h. USGS 3D Elevation Program (3DEP) Map Service – Hillshade and LiDAR prepared by the Corps’ dated March 27, 2025.
10. OTHER SUPPORTING INFORMATION. HQ/EPA memo dated 12 March 2025.
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.

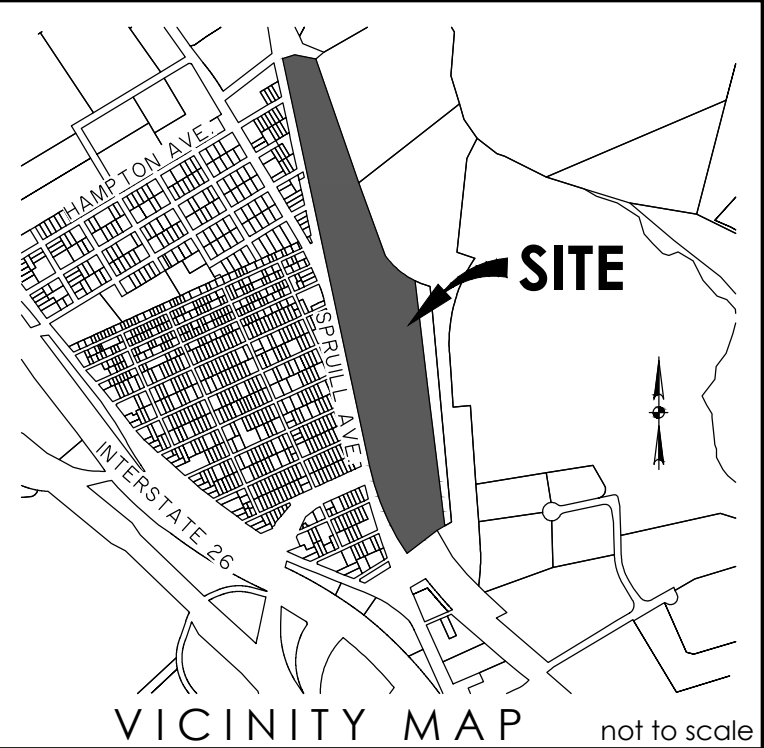


NOTES

1. ACCORDING TO F.I.R.M. MAP NO. 45019C, PLAN 0504Q, REVISED NOVEMBER 17, 2004, THE PROPERTY SHOWN ON THIS PLAN IS LOCATED IN FLOOD HAZARD ZONE AE(1) & ZONE X (SHADED).
2. COORDINATES AND DIRECTIONS SHOWN ON THIS SURVEY ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM (NAD83). DISTANCES SHOWN ARE GROUND DISTANCES, NOT GRID DISTANCES.
3. A TITLE SEARCH WAS NOT PERFORMED BY THOMAS & HUTTON ENGINEERING CO. AT THE TIME OF THIS SURVEY.
4. THIS PLAN IS A WETLAND SURVEY AND NOT A BOUNDARY SURVEY OF THE PROPERTY.

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 60°08'12" W	62.56'
L2	S 29°51'14" E	54.40'
L3	S 66°28'05" E	94.50'
L4	S 87°58'05" W	16.14'
L5	S 78°08'49" W	27.54'
L6	N 52°35'56" W	15.26'
L7	N 11°58'23" W	27.40'
L8	N 20°08'07" E	6.79'
L9	N 53°16'02" W	13.68'
L10	N 04°56'25" W	5.77'
L11	N 64°09'49" E	13.10'
L12	N 32°17'58" W	11.06'
L13	N 25°09'01" E	21.08'
L14	N 38°24'56" E	22.79'
L15	N 58°47'57" E	23.15'
L16	N 79°28'10" E	11.32'

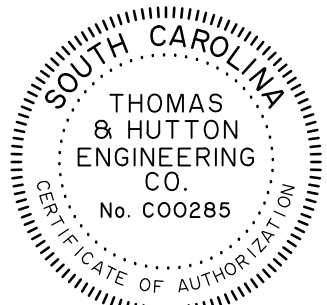
CURVE TABLE					
CURVE	RADIUS	LENGTH	CH BEARING	CH LENGTH	DELTA
C1	1999.93'	507.24'	N 24°09'25" W	505.88'	14°31'55"
C2	5707.08'	281.02'	N 13°30'39" E	281.00'	2°49'17"
C3	562.81'	329.62'	S 52°43'31" E	324.93'	33°33'22"



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LEGEND

- BENCHMARK**
- MEANDER POINT (NO MONUMENT)
 - CONCRETE MONUMENT FOUND
 - CONCRETE MONUMENT SET
 - IRON PIPE FOUND (SIZE & TYPE)
 - IRON PIPE SET (SIZE & TYPE)
 - IRON REBAR FOUND (SIZE & TYPE)
 - IRON REBAR SET (SIZE & TYPE)



I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

F. ELLIOTTE QUINN III
SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR
LICENSE NO. 10292

WETLAND SURVEY OF A 34.24 AC. PORTION OF **COOPER YARD**

CITY OF CHARLESTON
CHARLESTON COUNTY, SOUTH CAROLINA

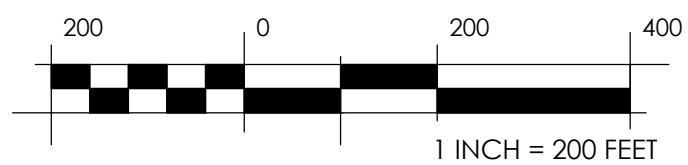
prepared for
CSX TRANSPORTATION

No.	Revision	By	Date



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plat	drawn	reviewed	field	crew
07/02/2020	abq	fea	xx/xx/xx	xx

job 27982

SHEET 1 OF 1