DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA 29526

CESAC-RDE April 10, 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-2024-00284 (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.

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. (JD or Non-JD)**	**Section 404/Section 10**
Wetland A	75.78 Ac.	JD	Section 404
Wetland B	9.22 Ac.	Non-JD	N/A
Wetland C	10.91 Ac.	Non-JD	N/A
Wetland D	1.77 Ac.	Non-JD	N/A
Wetland E	30.94 Ac.	JD	Section 404
Wetland F	8.11 Ac.	Non-JD	N/A
Wetland G	5.95 Ac.	Non-JD	N/A
Impoundment 1	3.14 AC.	JD	Section 404
Non-Jurisdictional Feature (Ditch)	~2,700 L.F.	Non-JD	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)

e. 1980s Preamble Language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))

f. EPA Memorandum dated March 12, 2025, titled "MEMORANDUM TO THE FIELD BETWEEN THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONCERNING THE PROPER IMPLEMENTATION OF "CONTINUOUS SURFACE CONNECTION" UNDER THE DEFINITION OF "WATERS OF THE UNITED STATES" UNDER THE CLEAN WATER ACT

3. REVIEW AREA.
    a. Project Area Size: 807.24-Acres
    b. Center Coordinates of Review Area: 34.4233°N, -78.8740°W
    c. Nearest City: Darlington
    d. County: Darlington
    e. State: South Carolina

The review area is majority actively managed agricultural lands. Small tracts of hardwood and pine silviculture are scattered throughout the site. Within the review area there are approximately 18 Carolina Bay features ranging in size from 6 to 35 acres. The majority of these features have been cleared during the early to mid-20th century and have been extensively ditched and drained. The eastern portion of the site contains Wetlands A abutting an unnamed tributary of Black Creek. From these wetlands the approximately 3.14-acre impoundment, 'Impoundment 1', was constructed. The eastern portion of the site contains 'Wetland E', abutting a separate unnamed tributary of Black Creek. Both of these unnamed tributaries flow into an offsite impoundment, Jeffords Millpond, which outfalls into Horse Creek which flows to Black Creek approximately 1.79 miles south of the review area. 'Wetland C' is connected to 'Wetland A' via an upland excavated ditch, non-jurisdictional ditch, extending along the northwestern property boundary. This ditch does not serve as a continuous surface connection to the offsite tributary per guidance from the EPA in a memorandum dated March 12, 2025. The remaining wetlands onsite, Wetlands 'B', 'D', 'G', and 'F', were determined to be isolated, surrounded by uplands, and therefore not adjacent to any other waters of the U.S.

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

    a. Nearest downstream TNW, Territorial Sea, or interstate water: The Great Pee Dee River is the nearest downstream TNW.

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

    a. Jurisdictional Wetland A – 75.78 acre: The onsite wetland was determined to flow down gradient to the south into an unnamed tributary continuing into Jeffords Millpond. Jeffords Millpond outfalls into Horse Creek that flows into Black Creek. Black Creek flows for 22 miles southeast and east to join the Great Pee Dee River (a TNW) 1.26 miles south of the Interstate 95 bridge crossing in Florence County.

    b. Jurisdictional Wetland E – 30.94 acre: The onsite wetland was determined to flow down gradient to the southeast into an unnamed tributary continuing into Jeffords Millpond. Jeffords Millpond outfalls into Horse Creek that flows into Black Creek. Black Creek flows for 22 miles southeast and east to join the Great Pee Dee River (a TNW)1.26 miles south of the Interstate 95 bridge crossing in Florence County.

    c. Impoundment 1 – 3.14 acre: The impoundment was determined to have excavated from within wetland A. Wetland A has been determined to be contiguous, directly abutting an unnamed tributary that flows into Jeffords Millpond. Jeffords Millpond outfalls into Horse Creek that flows into Black Creek. Black Creek flows for 22 miles southeast and east to join the Great Pee Dee River (a TNW) 1.26 miles south of the Interstate 95 bridge crossing in Florence County.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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

[6] 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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[7] 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):

        a. 'Impoundment 1' as depicted on the attached map of approximately 3.14 acres was created by means of excavation within onsite wetlands (Wetland A). A review of desktop resources revealed that the onsite wetlands and the impoundment are mapped within the same hydric soil series (Johnston sandy loam) while LiDAR imagery depicts these features existing within the same concave-depressional landform.

    e. Tributaries (a)(5): N/A

    f. The territorial seas (a)(6): N/A

    g. Adjacent wetlands (a)(7):

[7] 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.

a. ‘Wetland A’ (75.78 AC) all portions were determined to have a continuous surface connection to an offsite unnamed tributary. Portions of this wetland west of ‘Impoundment 1’ have direct adjacency and continuous surface connection to ‘Impoundment 1’ in addition to other portions of ‘Wetland A’ south of ‘Impoundment 1’. The unnamed tributary, an (a)(5) water, directly outfalls into Jeffords Millpond an (a)(4) water. Jeffords Millpond directly outfalls into Horse Creek an (a)(5) water. Horse Creek flows to its confluence with Black Creek an (a)(5) water. Black Creek flows for 22 miles southeast and east and outfalls into the Great Pee Dee River, a TNW, 1.26 miles south of the Interstate 95 bridge crossing in Florence County.

b. ‘Wetland E’ (30.94 AC) was determined to have a continuous surface connection to an offsite unnamed tributary, an (a)(5) water, that directly outfalls into Jeffords Millpond, an (a)(4) water. Jeffords Millpond directly outfalls into Horse Creek an (a)(5) water. Horse Creek flows to its confluence with Black Creek an (a)(5) water. Black Creek flows for 22 miles southeast and east to outfall into the Great Pee Dee River, a TNW, 1.26 miles south of the Interstate 95 bridge crossing in Florence County.

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”).[8] 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

a. ‘Non-jurisdictional ditch’ as depicted on the referenced map totaling approximately 2,547 L.F. dug wholly in uplands, only draining uplands, and not carrying relatively permanent flow, is located along the northwestern property boundary draining the immediately adjacent agricultural fields.

[8] 51 FR 41217, November 13, 1986.

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*.

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. 'Wetland C' (10.91 AC) as depicted on the referenced map is a Carolina Bay feature partially included within the review area. A large upland excavated ditch (non-jurisdictional ditch) exits the feature on the southeastern side and connects to wetland A. Per the March 12, 2025, EPA Memorandum, Wetland C was determined not to have a continuous surface connection to any (a)(1) through (6) water. Wetland C is physically separated from an (a)(5) water by multiple physical, man-made barriers and uplands. Wetland C is surrounded by uplands and lacks a direct connection to any (a)(1)-(6) waters. The only potential connection between this wetland and an (a)(5) water would be through the above mentioned upland excavated drainage ditch. A ditch cannot render an otherwise isolated wetland an adjacent wetland unless the ditch itself is a tributary, which in this case it is not.

    b. 'Wetland B' (9.22 AC) as depicted on the referenced map is a Carolina Bay feature surrounded by uplands with the soil types of Norfolk loamy sand and Lucy sand which are classified as non-hydric, well drained soils.

The depressional wetland exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps' Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. All water located within or draining toward this wetland has no discernible or traceable outfall or connection to any Waters of the US (WOUS). Additionally, the topographic map depicts this wetland as forested wetlands surrounded by uplands. Aerials photographs depict this wetland as harvested timberland surrounded by harvested timberland, and review of LiDAR data revealed no linear drainage features within the delineated boundary of the wetland and the wetland being surrounded by higher elevations. Wetland B was determined not to be an adjacent wetland to any (a)(1)-(6) water by not having a continuous surface connection to the above-mentioned waters.

c. 'Wetland D' (1.77 acres) as depicted on the referenced map is a small Carolina Bay feature located within an actively managed agricultural field. Wetland D was determined to be surrounded by uplands with the soil type of Orangeburg loamy sand which is a well-drained, non-hydric soil. Wetland D was determined, not to be an adjacent wetland to any (a)(1)-(6) water by not having a continuous surface connection to the above-mentioned waters.

d. 'Wetland F' (8.11 acres) as depicted on the referenced map is the innermost portion of a previous Carolina Bay. The fringes of this wetland have been cleared and incorporated into the working agricultural fields to the northwest and northeast. The current 8.11 acres of wetlands are characterized as forested palustrine. This area is surrounded by uplands with soil type of Norfolk loamy sand which is classified as well drained, non-hydric soils. The depressional wetland exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps' Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. All waters located within or draining toward this wetland have no discernible or traceable outfall or connection to any WOUS. Additionally, the topographic map depicts this wetland as forested wetlands surrounded by uplands. Aerials photographs depict this wetland as harvested timberland surrounded by active cropland and harvested timberland, and review of LiDAR data revealed that no linear drainage features within the delineated boundary of the wetland and the wetland being surrounded by higher elevations. Wetland F was determined not to be an adjacent wetland to any (a)(1) through (6) water by not having a continuous surface connection to the above-mentioned waters.

e. ‘Wetland G’ (5.95 acres) as depicted on the referenced map of approximately 5.95 acres is a former Carolina Bay feature that has been recently logged. The depression of the Carolina Bay is intersected by fill associated with West Governor Williams Highway. Wetland G was determined to be surrounded by uplands with the soil type of Goldsboro sandy loam which is classified as a non-hydric soil. The depressional wetland exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps’ Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. All waters located within or draining toward this wetland have no discernible or traceable outfall or connection to any WOUS. Additionally, the topographic map depicts this wetland as forested wetlands surrounded by uplands. Aerials photographs depict this wetland as harvested timberland surrounded by active cropland and harvested timberland and a public road, and review of LiDAR data revealed that no linear drainage features within the delineated boundary of the wetland and the wetland being surrounded by higher elevations. Wetland G was determined not to be an adjacent wetland to any(a)(1) through (6) water by not having a continuous surface connection to the above-mentioned waters.

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. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by Headwater Environmental in the submittal dated February 21, 2024.

b. Review Performed for Site Evaluation: Office (Desk) Determination. Date: March 21, 2025.

c. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)

d. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)

e. Lidar: 3DEP Digital Elevation Model (DEM) https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer

f. Lidar: United States Geological Survey, 2024: 2022 Lidar DEM; Savannah Pee Dee, SC, https://www.fisheries.noaa.gov/inport/item/65959

g. USDA NRCS Soil Survey: Bonneau and, Cowarts-Vaucluse complex, Coxville sandy loam, Faceville loamy sand, Goldsboro sandy loam, Johnston sandy loam, Lucy sand, Noboco loamy sand, Norfolk loamy sand, Orangeburg loamy sand, Persanti loam, Rains sandy loam, Uchee sand, Wagram sand. SSURGO database. The site is majority well drained and non-hydric soils, while wetland areas and historic Carolina Bays maintain higher hydric class soils.

h. National Wetland Inventory (NWI): NWI https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0

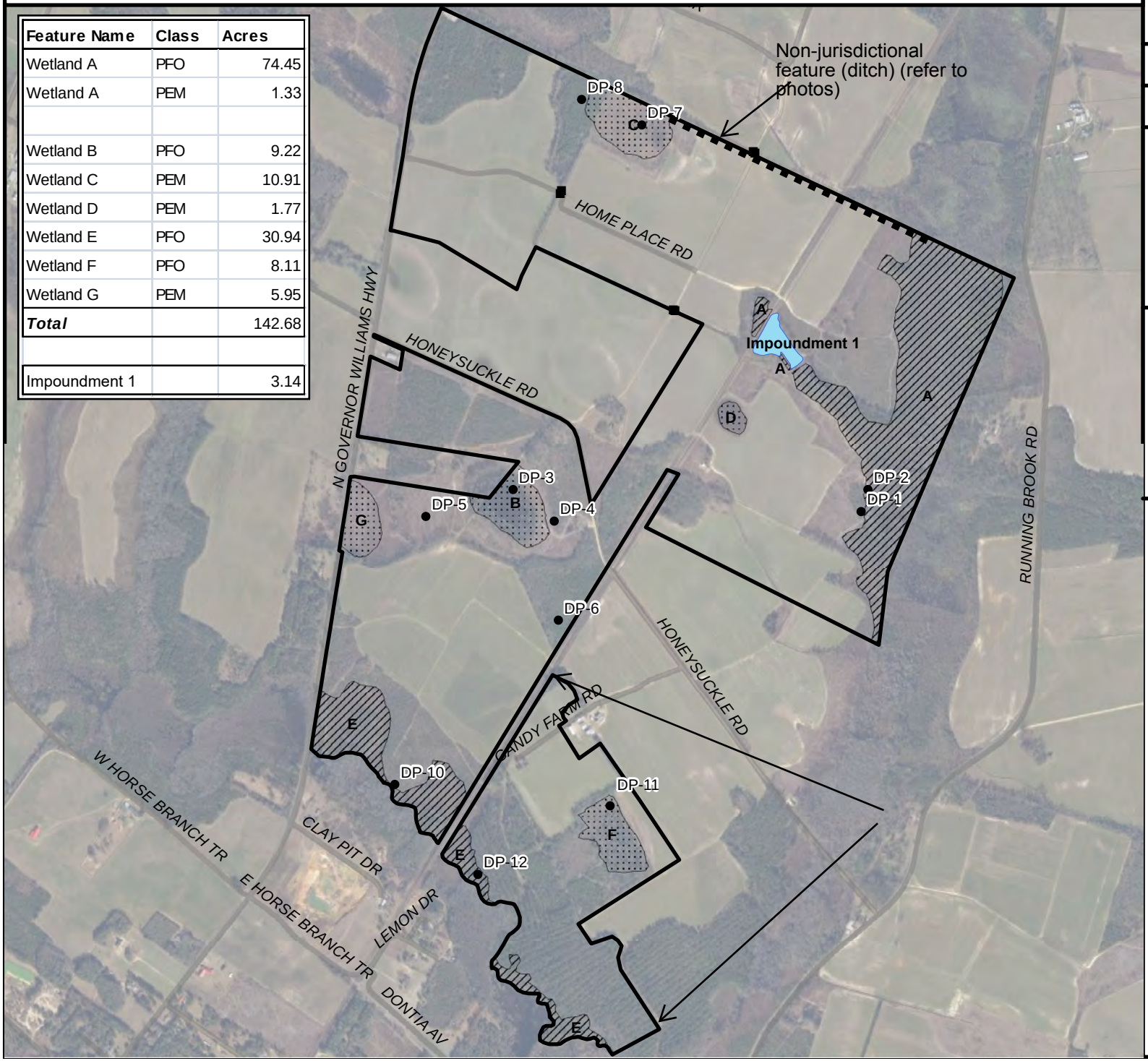
i. U.S. Geological Survey map(s): 7.5 Minute Index/ Mont Clare and Dovesville / 1:240000; USGS topographic survey information depicts the area within the project boundary as cleared, with forest and wetlands.

10. OTHER SUPPORTING INFORMATION. N/A

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

This is not a survey. The aquatic resources were mapped and located with Trimble GPS devices. This Wetland Delineation was completed by Headwater Environmental, Inc. on July 18-19 & October 17-18, 2023. Headwater recommends obtaining regulatory verification prior to development of the site.

Feature Name	Class	Acres
Wetland A	PFO	74.45
Wetland A	PEM	1.33
Wetland B	PFO	9.22
Wetland C	PEM	10.91
Wetland D	PEM	1.77
Wetland E	PFO	30.94
Wetland F	PFO	8.11
Wetland G	PEM	5.95
Total		142.68
Impoundment 1		3.14



Headwater ENVIRONMENTAL INC.

Date:	10/24/2023
Prepared By:	DFH

FIGURE 7
WETLAND DELINEATION MAP

Homeplace Solar, LLC
N Governor Willaims Highway
Darlington, Darlington County
South Carolina
Headwater Project # 202362

SOURCE

Site Reconnaissance
July 18-19 & October 17-18, 2023

SCDNR
Latest Imagery

1 inch = 1500 feet

LEGEND

- Study Area
- Jurisdictional Wetland
- Non-Jurisdictional Wetland
- Other Jurisdictional WOUS
- Data Point
- Culvert
- Darlington County Parcels
- Darlington County Centerlines

Feet
0 625 1,250 2,500