



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

CESAC-RDE

15 AUG 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-2006-00773 (MFR 1 of 3)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	Size (Acres/Linear Feet)	Waters of the US (WOTUS)	Section 404/Section 10
Non-Jurisdictional Wetland KK	2.45 acres	No	N/A
Non-Jurisdictional Wetland LL	3.04 acres	No	N/A
Non-Jurisdictional Wetland MM	3.96 acres	No	N/A
Non-Jurisdictional Wetland NN	6.42 acres	No	N/A
Non-Jurisdictional Wetland OO	4.25 acres	No	N/A
Non-Jurisdictional Wetland PP	0.36-acre	No	N/A
Non-Jurisdictional Wetland CC	0.54-acre	No	N/A
Non-Jurisdictional Wetland DD	0.21-acre	No	N/A
Non-Jurisdictional Wetland EE	1.89 acres	No	N/A
Non-Jurisdictional Wetland FF	0.33-acre	No	N/A
Non-Jurisdictional Wetland GG	0.73-acre	No	N/A
Non-Jurisdictional Wetland WW	0.03-acre	No	N/A
Non-Jurisdictional Linear Feature A	2673 LF/0.10-acre	No	N/A
Non-Jurisdictional Linear Feature B	1476 LF/0.07-acre	No	N/A
Non-Jurisdictional Linear Feature C	4,394 LF/0.40-acre	No	N/A

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Non-Jurisdictional Linear Feature E	1,021 LF/0.05-acre	No	N/A
Non-Jurisdictional Linear Feature F	859 LF/0.04-acre	No	N/A
Non-Jurisdictional Linear Feature G	1,296 LF/0.05-acre	No	N/A
Non-Jurisdictional Linear Feature H	490 LF/0.02-acre	No	N/A
Non-Jurisdictional Linear Feature I	1,882 LF/0.29-acre	No	N/A
Non-Jurisdictional OWA	0.63-acre	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. __, 143 S. Ct. 1322 (2023)
- e. [2008 Rapanos guidance](#)
- f. GL 05-05. Subject: Ordinary High Water Mark (OHWM) Identification

3. REVIEW AREA.

- a. Project Area Size: 720.80 acres
- b. Center Coordinates of Review Area: 32.6633, -80.1160
- c. City: Johns Island
- d. County: Charleston
- e. State: South Carolina

The overall review area consists of a 720.80 acres site that has predominately been utilized for agriculture and silviculture. The review area contains signatures of interdunal swale complexes. The aquatic resources within the review area are associated with Bohicket Creek, Abbapoola Creek, or Hut Creek. The aquatic resources described in

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this MFR (1 of 3) are associated with Bohicket Creek. Two previous Approved Jurisdictional Determinations (AJD) were issued for the project area. The first AJD (SAC-2007-00773), dated June 19, 2006. The second AJD, dated March 7, 2025.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Bohicket Creek: Section 10 waterbody. Navigable limits of Bohicket Creek are documented in the Corps' Navigability Study of 1977, Cooper River Basin Report No. 3.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Name	Flow Path
Non-Jurisdictional Wetland KK Non-Jurisdictional Wetland LL	These wetlands (KK and LL) flow approximately 900 linear feet through Non-Jurisdictional Linear Feature F and into Jurisdictional Wetland H. There is a confined conveyance that continues for 800 linear feet through Wetland F that maintains a physical connection. The flow then continues for 1,476 linear feet through Non-Jurisdictional Linear Feature B and then 1,882 linear feet through into Non-Jurisdictional Linear Feature I, which flows underneath Bohicket road via an approximately 60' long culvert via into Bohicket Creek, a tidally influenced TNW.
Non-Jurisdictional Wetland MM Non-Jurisdictional Wetland NN Non-Jurisdictional Wetland OO	These wetlands (MM, NN, OO) are connected via culvert to Non-Jurisdictional Linear Feature A, which flows approximately 1500 linear feet (approximately 300 linear feet RPW and 1200 feet non-RPW; described in Section 10). An additional culvert maintains flow for approximately 60' long underneath Bohicket road, and immediately discharges into Bohicket Creek, a tidally influenced TNW.

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.

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Non-Jurisdictional Wetland PP	This wetland (S) flows 600 linear feet via Non-Jurisdictional Linear Feature G, into a 60' long culvert under neath Bohicket Road, which then continues 1000 linear feet to Bohicket Creek, a tidally influenced TNW.
Non-Jurisdictional Wetland AA Non-Jurisdictional Wetland BB Non-Jurisdictional Wetland CC Non-Jurisdictional Wetland DD Non-Jurisdictional Wetland EE Non-Jurisdictional Wetland FF Non-Jurisdictional Wetland GG Non-Jurisdictional Wetland WW Non-Jurisdictional OWA	N/A. These aquatic resources (Wetlands AA through GG and KK; OWA) are surrounded by uplands and do not have a flow path to a TNW, interstate water, or the territorial seas.
Non-Jurisdictional Linear Feature A Non-Jurisdictional Linear Feature B Non-Jurisdictional Linear Feature E Non-Jurisdictional Linear Feature F Non-Jurisdictional Linear Feature G Non-Jurisdictional Linear Feature H Non-Jurisdictional Linear Feature I	These linear features (Labeled A through I) flow through the review area. Once reaching Bohicket Road, the features flow through a 60' long culvert under Bohickett Road. The features continue to flow into Bohickett Creek, a tidally influenced TNW.

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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]
 - 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

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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- 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.

Name	Rationale
Non-Jurisdictional OWA	<p>This aquatic resource is an upland-cut pond, created from uplands. Historic photographs indicate the pond was cut out of a farm field, and no wetland symbology is present or near the feature on USGS topographic maps or NWI. Guidance on Preamble waters (51 FR 41217) state, “Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing” are generally not jurisdictional. Therefore, this feature is non-jurisdictional.</p> <p>Reference page 16 of 59: https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf</p>

- 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.

Name	Rationale
Non-Jurisdictional Linear Feature C	<p>These features are cut out of uplands, drain uplands, and do not contain relatively permanent flow. Page 12 of the 2008 <i>Rapanos</i> guidance states, “In addition, ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of</p>
Non-Jurisdictional Linear Feature H	

⁹ 51 FR 41217, November 13, 1986.

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	the United States”. Therefore, these features are non-jurisdictional.
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- 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*.

Name	Rationale
Non-Jurisdictional Linear Feature A	The feature was assessed via a site visit on November 1, 2023. The majority (approximately 1200 linear feet) of the feature was determined to lack relatively permanent flow, due to a weak OHWM and presence of vegetative growth within the channel. The most downstream portion of the reach (approximately 300 linear feet) did appear to have relatively permanent flow, based off of strong OHWM, including undercut banks, changes in sediment characteristics, pools, and a lack of vegetation and leaves. Additionally, photographs provided by the agent from May 8, 2024, that depict flowing water within the lower portion of the reach. However, since the majority of the reach does not have relatively permanent flow, and the downstream portion of the reach is not representative of the majority of the feature, the feature does not meet the definition of an (a)(5) water, and is therefore, non-jurisdictional.
Non-Jurisdictional	The feature was assessed via a site visit on November 1, 2023. During the site visit, hydrophytic vegetation (predominately <i>Sagittaria lancifolia</i> and <i>Typha latifolia</i>) was observed growing within the conveyance. This

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Linear Feature B	feature exhibited an OHWM, via evidence of undercut banks, and a sediment deposition line was observed approximately 6" above the ground level on the base of the vegetation. However, due to the dominance of emergent vegetative growth, it appears that the feature does not exhibit relatively permanent flow, and the feature only flows in direct response to precipitation. Since the reach does not have relatively permanent flow, the feature does not meet the definition of an (a)(5) water, and therefore, is non-jurisdictional.
Non-Jurisdictional Linear Feature F	Non-Jurisdictional Linear Feature F is a non-RPW linear drainage feature that connects to Non-Jurisdictional Wetland LL and only flows in response to precipitation events and lacks indicators of at least seasonal flow. This feature was assessed via a site visit on November 1, 2023. Weak indicators of flow were present, including a visible bed and undercut banks. The bed of the feature contained leaf litter and contained sparse woody vegetative growth. No flowing or standing water was present at the time of assessment. Based on these observations, the feature was determined to lack at least seasonal flow. Since the reach does not have relatively permanent flow, the feature does not meet the definition of an (a)(5) water, and therefore, is non-jurisdictional.
Non-Jurisdictional Linear Feature G	This ditch predominately receives hydrology from upland overland sheet flow, but also facilitates drainage of Jurisdictional Wetland S. This feature contained evidence of an OHWM, indicated by undercut banks and water stain lines above the soil surface. However, the reach does not have relatively permanent flow. Specifically, the bed of the feature contained accumulated leaf litter and debris, and no evidence of at least seasonal flow was observed. Since the reach does not have relatively permanent flow, the feature does not meet the definition of an (a)(5) water, and therefore, is non-jurisdictional.
Non-Jurisdictional Linear Feature I	Non-Jurisdictional Linear Feature I is a non-RPW linear drainage feature that only flows in response to precipitation events and lacks indicators of at least seasonal flow. This feature was assessed via a site visit on November 1, 2023. During the site visit, weak indicators of flow were observed, including presence of a bed and undercut banks. The bed of the contained leaf litter and debris. No standing or flowing water was observed. Since the reach does not have relatively permanent flow, the feature does not meet the definition of an (a)(5) water, and therefore, is non-jurisdictional.

- 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).

Name	Rationale
Non-Jurisdictional Wetland LL Non-Jurisdictional Wetland KK	These non-jurisdictional wetlands (LL and KK) maintain a hydrologic connection via 15' long culvert; therefore, these wetlands are being assessed as one. The wetland areas 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. The limits of the wetlands are depicted on the map titled "Orange Hill / Charleston County, South Carolina". The wetland is connected to Bohicket Creek via a discrete feature, which does not constitute a continuous surface connection. Therefore, since the wetland does not directly abut or physically touch an (a)(1)-(6) water, the wetland does not meet the definition of an (a)(7) water and is non-jurisdictional.
Non-Jurisdictional Wetland MM Non-Jurisdictional Wetland NN Non-Jurisdictional Wetland OO	Non-Jurisdictional Wetlands MM, NN, OO, are connected via a series of culverts and are mapped as the same soil series (Dawhoo and Rutlege loamy fine sand, 100% hydric rating). Therefore, these wetlands are being assessed as one. The wetland areas 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. The limits of the wetlands are depicted on the map titled "Orange Hill / Charleston County, South Carolina". The wetlands are depicted as lower in elevation on LiDAR than the surrounding uplands. The wetland is connected to Bohicket Creek via a discrete feature, which does not constitute a continuous surface connection. Therefore, since the wetland does not directly abut or physically touch an (a)(1)-(6) water, the wetland does not meet the definition of an (a)(7) water and is non-jurisdictional.
Non-Jurisdictional Wetland PP	The wetland depressional areas exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which

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	satisfied the criteria set forth in the 1987 Corps' Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. The limits of the wetlands are depicted on the map titled "Orange Hill / Charleston County, South Carolina". The wetlands are depicted as lower in elevation on LiDAR than the surrounding uplands. The wetland is connected to Bohicket Creek via a discrete feature, which does not constitute a continuous surface connection. Therefore, since the wetland does not directly abut or physically touch an (a)(1)-(6) water, the wetland is non-jurisdictional.
Non-Jurisdictional Wetland AA Non-Jurisdictional Wetland BB Non-Jurisdictional Wetland CC Non-Jurisdictional Wetland DD Non-Jurisdictional Wetland EE Non-Jurisdictional Wetland FF Non-Jurisdictional Wetland GG Non-Jurisdictional Wetland WW	These freshwater non-tidal wetlands (AA through GG, and KK) 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. Additionally, a site visit confirmed these wetlands are depressional and surrounded by uplands that sever any connection to a requisite water. USGS topographic maps do not indicate flow lines near the features, and no discrete connections were identified a review of LiDAR or imagery. It was determined that these wetlands do not have a continuous surface connection to a requisite water, do not meet the definition of an (a)(7) water, and are non-jurisdictional.

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

- a. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Aquatic resource map titled "Orange Hill/ Charleston County" dated October 10, 2024, revised July 15, 2025, and prepared by Newkirk Environmental, Inc.
- b. Field Evaluation conducted November 1, 2023, and May 8, 2024, including site photographs obtained by the Corps.
- c. LiDAR: 3DEP Digital Elevation Model (DEM). "LiDAR and Hillshade / Orange Hill Plantation", prepared by the Corps, dated December 28, 2023.

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- d. Soil Survey: USDA-NCSS SSURGO and STATSGO Digital Soil Survey. "Soils Map", prepared by the agent, dated October 27, 2022.
- e. USGS Topographic maps: 7.5 minute – Legareville Quad, "USGS Quad Map", prepared by the agent, dated October 27, 2022. Additional historic topographic maps, "EDR Historic Topo Map Report", prepared by the agent, dated October 7, 2024.
- f. USFWS NWI Map Service: "NWI Map", prepared by the agent, dated October 27, 2022.
- g. Antecedent Precipitation Tool: Outputs for November 1, 2023, and May 8, 2024. Prepared by the Corps.
- h. Satellite Imagery: World View 3 Imagery, taken on June 7, 2024. "Satellite Imagery", prepared by the Corps, dated October 25, 2024.

10. OTHER SUPPORTING INFORMATION.

- a. Two (2) previous Approved Jurisdictional Determinations documented under SAC-2006-00773, dated June 19, 2006, and March 7, 2025.
- b. Memorandum on NOW-2003-60436
- c. "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", dated March 12, 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.



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

CESAC-RDE

15 AUG 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-2006-00773 (MFR 2 of 3)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

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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	Size (acres/ linear feet)	Waters of the US (WOUS)	Section 404/ Section 10
Non-Jurisdictional Wetland HH	0.78-acre	No	N/A
Non-Jurisdictional Wetland QQ	4.07 acres	No	N/A
Non-Jurisdictional Wetland RR	2.74 acres	No	N/A
Non-Jurisdictional Wetland SS	2.01 acres	No	N/A
Non-Jurisdictional Wetland TT	1.80 acres	No	N/A
Non-Jurisdictional Linear Feature D	6,329 LF/0.87-acre	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)
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- e. GL 05-05. Subject: Ordinary High Water Mark (OHWM) Identification

3. REVIEW AREA.

- a. Project Area Size: 720.80 acres
- b. Center Coordinates of Review Area: 32.6633, -80.1160
- c. City: Johns Island
- d. County: Charleston
- e. State: South Carolina

The overall review area consists of a 720.80 acres site that has predominately been utilized for agriculture and silviculture. The review area contains signatures of interdunal swale complexes. The aquatic resources within the review area are associated with Bohicket Creek, Abbapoola Creek, or Hut Creek. The aquatic resources described in this MFR (2 of 3) are associated with Abbapoola Creek. Two previous Approved Jurisdictional Determinations (AJD) were issued for the project area. The first AJD (SAC-2007-00773), dated June 19, 2006. The second AJD, dated March 7, 2025.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Abbapoola Creek: Section 10 waterbody. Navigable limits of Abbapoola Creek are documented in the Corps' Navigability Study of 1977, Cooper River Basin Report No. 3. ⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Name	Flow Path
Non-Jurisdictional Wetland QQ Non-Jurisdictional Wetland RR	Based on LiDAR, NRCS soil survey mapping, and observations of standing water off-site directly abutting the on-site wetlands on May 8, 2024, Wetland QQ and RR continue offsite to the east. Offsite, the wetlands abut a linear conveyance that facilitates flow for

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.

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	approximately 1500 linear feet. The conveyance then flows into a 35' culvert underneath River Road. The culvert discharges directly into Abbapoola Creek. Abbapoola Creek continues downstream for approximately 2.0 miles until becoming a tidally influenced TNW.
Non-Jurisdictional Wetland SS Non-Jurisdictional Wetland TT	Based on LiDAR, NRCS soil survey mapping, and observations of standing water off-site directly abutting the on-site wetlands on May 8, 2024, these wetlands (SS and TT) continue off-site to the east where they abut a 300 linear foot conveyance, which connects via culvert to a second, 500 linear foot conveyance. The conveyance flows south into a 35' culvert beneath River Road. The culvert discharges directly into Abbapoola Creek. Abbapoola Creek continues downstream for approximately 2.0 miles until becoming a tidally influenced TNW.
Non-Jurisdictional Wetland HH	N/A. These wetlands are surrounded by uplands and do not have a flow path to a TNW, interstate water, or the territorial seas. Furthermore, a man-made berm, created from sidecast material from historic ditch excavation, severs the connection to Non-Jurisdictional Linear Feature D.
Non-Jurisdictional Linear Feature D	This linear feature flows south into a culvert under River Road and continues into Abbapoola Creek. Abbapoola Creek continues downstream for approximately 2.0 miles until becoming a tidally influenced TNW.

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

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.

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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
- 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]

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.

⁹ 51 FR 41217, November 13, 1986.

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- 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*.

Non-Jurisdictional Linear Feature D	Non-Jurisdictional Linear Feature D is a non-RPW linear drainage feature that only flows in response to precipitation events and lacks indicators of at least seasonal flow. The most downstream portion of the reach was assessed via site visit on May 8, 2024, and only weak indicators of flow were observed. Flow indicators included a bed and bank (portions undercut), and wracked debris. Water was present in the reach; however, the APT indicated that conditions were “wetter than normal”. No aquatic fauna was observed in the water, and water was pooled in some locations. Based on these observations, it was determined that the feature does not meet the definition of an (a)(5) water and is non-jurisdictional.
Non-Jurisdictional Linear Feature E	Non-Jurisdictional Linear Feature E is a non-RPW linear drainage feature that only flows in response to precipitation events and lacks indicators of at least seasonal flow. The

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	feature was assessed via a site visit on November 1, 2023. Weak indicators of flow were present, including a visible bed and bank. The feature was dominated by herbaceous vegetation, which indicates that the feature does not facilitate at least seasonal flow. Since the reach does not have relatively permanent flow, the feature does not meet the definition of an (a)(5) water, and therefore, is non-jurisdictional.
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- 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).

Name	Rationale
Non-Jurisdictional Wetland HH	This freshwater non-tidal 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. This wetland depressional and are surrounded by uplands that sever any connection to a requisite water. USGS topographic maps do not indicate flow lines near the features, and no discrete connections were identified via site visits or review of desktop information. Therefore, it was determined that the wetland does not directly abut an (a)(1)-(6) water and does not meet the definition of an (a)(7) water.
Non-Jurisdictional Wetland SS Non-Jurisdictional Wetland TT	These wetlands (SS and TT) are severed by an approximately 15' wide dirt road constructed of permeable sandy material. According to a review of historic imagery, the roadway was constructed in the 1980s as a farm road. The roadway currently sits less than 0.5 feet above the elevation of the adjacent wetlands, which could allow water to flow over or through the road in times of high water. Due to the permeability of the structure, evidence of surface water presence immediately on each side of the structure, and similar soils/vegetative community in the wetlands,

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	<p>there is evidence of a shallow subsurface connection. Therefore, these wetlands are being assessed as one. The wetland areas 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. The wetlands are depicted as lower in elevation on LiDAR than the surrounding uplands. The limits of the wetlands are depicted on the map titled "Orange Hill / Charleston County, South Carolina". Based on observations of standing water on May 8, 2024, that indicated the wetland continued off-site to the east, in addition to, LiDAR, and NRCS soils map data, it was determined that the wetlands abut a linear conveyance. However, based on available imagery, the conveyance contains an abundance of herbaceous vegetation, and appears to only flow in direct response to precipitation. Therefore, it was determined that the wetland does not directly abut an (a)(1)-(6) water and does not meet the definition of an (a)(7) water.</p>
<p>Non-Jurisdictional Wetland QQ</p> <p>Non-Jurisdictional Wetland RR</p>	<p>These wetlands (QQ and RR) are severed by a 15' wide dirt road constructed of permeable sandy material. According to a review of historic imagery, the roadway was constructed in the 1980s as a farm road, which is exempt under Section 404(f) of the CWA until a change in use occurs. The roadway currently sits less than 0.5 feet above the elevation of the adjacent wetlands, which could allow water to flow over or through the road in times of high water. Due to the permeability of the structure, evidence of surface water presence immediately on each side of the structure, and similar soils/vegetative community in the wetlands, there is evidence of a shallow subsurface connection. Therefore, these wetlands are being assessed as one. The wetland areas 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. The wetlands are depicted as lower in elevation on LiDAR than the surrounding uplands. The limits of the wetlands are depicted on the map titled "Orange Hill / Charleston County, South Carolina". Based on observations of standing water on May 8, 2024, that indicated the wetland continued off-site</p>

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	to the east, in addition to, LiDAR, and NRCS soils map data, it was determined that the wetlands abut a linear conveyance. However, based on available imagery, the conveyance contains an abundance of herbaceous vegetation, and appears to only flow in direct response to precipitation. Therefore, it was determined that the wetland does not directly abut an (a)(1)-(6) water and does not meet the definition of an (a)(7) water.
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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. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Aquatic resource map titled “Orange Hill/ Charleston County” dated October 10, 2024, revised July 15, 2025, and prepared by Newkirk Environmental, Inc.
 - b. Field visits conducted by the Corps on October 25, 2023, and May 8, 2024, and associated photo log prepared by the Corps.
 - c. USFWS NWI Map Service: “NWI Map”, prepared by the agent, dated October 27, 2022.
 - d. LiDAR: 3DEP Digital Elevation Model (DEM). “LiDAR and Hillshade / Orange Hill Plantation”, prepared by the Corps, dated December 28, 2023.
 - e. USGS Topographic maps: 7.5 minute – Legareville Quad, “USGS Quad Map”, prepared by the agent, dated October 27, 2022. Additional historic topographic maps, “EDR Historic Topo Map Report”, prepared by the agent, dated October 7, 2024.
 - f. Soil Survey: USDA-NCSS SSURGO and STATSGO Digital Soil Survey. “Soils Map”, prepared by the agent, dated October 27, 2022.
 - g. Antecedent Precipitation Tool: Outputs for November 1, 2023, and May 8, 2024. Prepared by the Corps.
 - h. Satellite Imagery: World View 3 Imagery, taken on June 7, 2024. “Satellite Imagery / Orange Hill Plantation”, prepared by the Corps, dated October 25,

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2024. Connect Explorer Imagery, taken on February 13, 2023. "Connect Explorer Imagery", prepared by the Corps, dated October 25, 2024.

10. OTHER SUPPORTING INFORMATION.

- a. Two (2) previous Approved Jurisdictional Determinations documented under SAC-2006-00773, dated June 19, 2006, and March 7, 2025.
- b. "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", dated March 12, 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.



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

CESAC-RDE

15 AUG 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-2006-00773 (MFR 3 of 3)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	Size (acres/ linear feet)	Waters of the US (WOUS)	Section 404/ Section 10
Jurisdictional Wetland A	3.45 acres	Yes	Section 404
Jurisdictional Wetland C	2.95 acres	Yes	Section 404
Jurisdictional Wetland B	13.06 acres	Yes	Section 404
Jurisdictional Wetland D	12.02 acres	Yes	Section 404
Jurisdictional Wetland E	2.49 acres	Yes	Section 404
Jurisdictional Wetland F	5.21 acres	Yes	Section 404
Jurisdictional Wetland G	10.19 acres	Yes	Section 404
Jurisdictional Wetland H	56.68 acres	Yes	Section 404
Jurisdictional Wetland I	2.44 acres	Yes	Section 404
Jurisdictional Wetland J	13.93 acres	Yes	Section 404
Jurisdictional Wetland K	19.85 acres	Yes	Section 404
Jurisdictional Wetland L	0.94-acre	Yes	Section 404
Jurisdictional Wetland M	0.70-acre	Yes	Section 404
Non-Jurisdictional Wetland AA	0.03-acre	No	N/A

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Non-Jurisdictional Wetland BB	0.08-acre	No	N/A
Non-Jurisdictional Wetland JJ	1.31 acres	No	N/A
Non-Jurisdictional Wetland VV	1.64 acres	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. __, 143 S. Ct. 1322 (2023)
- e. GL 05-05. Subject: Ordinary High Water Mark (OHWM) Identification

3. REVIEW AREA.

- a. Project Area Size: 720.80 acres
- b. Center Coordinates of Review Area: 32.6633, -80.1160
- c. City: Johns Island
- d. County: Charleston
- e. State: South Carolina

The overall review area consists of a 720.80 acres site that has predominately been utilized for agriculture and silviculture. The review area contains signatures of interdunal swale complexes. The aquatic resources within the review area are associated with Bohicket Creek, Abbapoola Creek, and/or Hut Creek. The aquatic resources described in this MFR (3 of 3) are associated with Hut Creek. Two previous Approved Jurisdictional Determinations (AJD) were issued for the project area. The first AJD (SAC-2007-00773), dated June 19, 2006. The second AJD, dated March 7, 2025.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hut Creek: Section 10 waterbody. Navigable limits of Hut Creek are documented in the Corps' Navigability Study of 1977, Cooper River Basin Report No. 3.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Name	Flow Path
Jurisdictional Wetland A Jurisdictional Wetland B Jurisdictional Wetland C Jurisdictional Wetland D Jurisdictional Wetland E Jurisdictional wetland F Jurisdictional Wetland G Jurisdictional Wetland H Jurisdictional Wetland I Jurisdictional Wetland J Jurisdictional Wetland K Jurisdictional Wetland L Jurisdictional Wetland M	Based on LiDAR, USGS topographic maps, imagery, and NRCS soil survey mapping, this wetland system continues off-site to the east. The wetland system directly abuts Hut Creek, a tidally influenced TNW.
Non-Jurisdictional Wetland AA Non-Jurisdictional Wetland BB Non-Jurisdictional Wetland VV Non-Jurisdictional Wetland JJ	N/A. These wetlands do not contain a flow path to a TNW, interstate water, or the territorial seas.

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.

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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
 - 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):

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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Name	Rationale
Jurisdictional Wetland A	These wetlands (Jurisdictional Wetlands A, B, C, D, E, F, G, H, I, J, K, L, and M) are being assessed as one. These wetlands consist of interdunal swale complexes. These wetlands are mapped as one wetland on USGS topographic maps and the National Hydrographic Dataset (NHD) and are mapped similarly on NRCS soil surveys. Furthermore, hydrologic connection is maintained through the wetlands via a series of culverts, as depicted on the delineation map titled "Orange Hill / Charleston County, South Carolina", and dated October 24, 2024. A road also bisects a portion of the wetland system; however, this dirt road is permeable (i.e., sandy) and low profile, which would allow water to flow over or through the road in times of high water. Additionally, there are similar soils and vegetation on each side of the roadway. Considering the above, these wetlands are being evaluated as one. The wetland system 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. The limits of the wetlands were most recently identified in the AJD (SAC-2006-00773), dated March 7, 2025. USGS topographic maps, LiDAR, imagery, the NHD, and NRCS Soil surveys depict the wetland system continuing off-site to the east and directly abutting Hut Creek, a TNW. Therefore, since the wetlands physically touch a requisite water, the wetlands meet the definition of an (a)(7) water and are jurisdictional under Section 404 of the CWA.
Jurisdictional Wetland B	
Jurisdictional Wetland C	
Jurisdictional Wetland D	
Jurisdictional Wetland E	
Jurisdictional wetland F	
Jurisdictional Wetland G	
Jurisdictional Wetland H	
Jurisdictional Wetland I	
Jurisdictional Wetland J	
Jurisdictional Wetland K	
Jurisdictional Wetland L	
Jurisdictional Wetland M	

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 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).

Name	Rationale
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⁹ 51 FR 41217, November 13, 1986.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2006-00773 (MFR 3 of 3)

Non-Jurisdictional Wetland AA	These freshwater non-tidal wetlands (Wetlands AA and BB) 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. The wetlands are depressional and are surrounded by uplands that sever any connection to a requisite water. USGS topographic maps do not indicate flow lines near the features, and the wetlands were not observed directly abutting any (a)(1)-(6) waters during site visits or review of desktop information. It was determined that these wetlands do not have a continuous surface connection to a requisite water. Therefore, these wetlands do not meet the definition of an (a)(7) water and are non-jurisdictional.
Non-Jurisdictional Wetland BB	
Non-Jurisdictional Wetland II	Non-Jurisdictional Wetlands II and JJ are connected via a 15' culvert. Therefore, these wetlands are being assessed as one. The wetland areas 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. The wetlands are depicted as lower in elevation on LiDAR than the surrounding uplands. USGS topographic maps do not indicate flow lines near the features, and the wetlands were not observed directly abutting any (a)(1)-(6) waters during site visits or review of desktop information. It was determined that the wetland does not have a continuous surface connection to a requisite water. Therefore, these wetlands do not meet the definition of an (a)(7) water and are non-jurisdictional.
Non-Jurisdictional Wetland JJ	

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. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Aquatic resource map titled "Orange Hill/ Charleston County" dated October 10, 2024, revised July 15, 2025, and prepared by Newkirk Environmental, Inc.

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- b. Field visits conducted by the Corps on October 25, 2023, and May 8, 2024, and associated photo log prepared by the Corps.
- c. USFWS NWI Map Service: “NWI Map”, prepared by the agent, dated October 27, 2022.
- d. LiDAR: 3DEP Digital Elevation Model (DEM). “LiDAR and Hillshade / Orange Hill Plantation”, prepared by the Corps, dated December 28, 2023. Additional LiDAR map prepared by the agent, “Orange Hill / Charleston County, South Carolina”, dated October 10, 2024 (revised May 1, 2025) that depicts wetlands continuing off-site and abutting Hut Creek.
- e. USGS Topographic maps: 7.5 minute – Legareville Quad, “USGS Quad Map”, prepared by the agent, dated October 27, 2022; EDR Historic Topo Map Report”, prepared by the agent, dated October 7, 2024; “Orange Hill / Charleston County, South Carolina”, dated October 10, 2024 (revised May 1, 2025). The map dated October 10, 2025 (revised May 1, 2025) depicts wetlands continuing off-site to the east and directly abutting Hut Creek.
- f. Soil Survey: USDA-NCSS SSURGO and STATSGO Digital Soil Survey. “Soils Map”, prepared by the agent, dated October 27, 2022; “Hydric Rating by Map Unit – Charleston County Area, South Carolina / (SAC-2006-00773)”, prepared by the Corps, dated July 14, 2025. The map dated July 14, 2025, depicts hydric soils continuing off-site to the east and abutting Hut Creek.
- g. Antecedent Precipitation Tool: Outputs for November 1, 2023, and May 8, 2024. Prepared by the Corps.
- h. Satellite Imagery: World View 3 Imagery, taken on June 7, 2024. “Satellite Imagery / Orange Hill Plantation”, prepared by the Corps, dated October 25, 2024. Connect Explorer Imagery, taken on February 13, 2023. “Connect Explorer Imagery”, prepared by the Corps, dated October 25, 2024.
- i. Google Earth Imagery: Reference Photos A, B, and C. Provided by the agent. Dated May 1, 2025. Depict Hut Creek with tidal features including halophytic vegetation.
- j. National Hydrographic Dataset: NHD Map Service. “NHD / Flow Path Map”, prepared by the Corps, dated August 15, 2025.

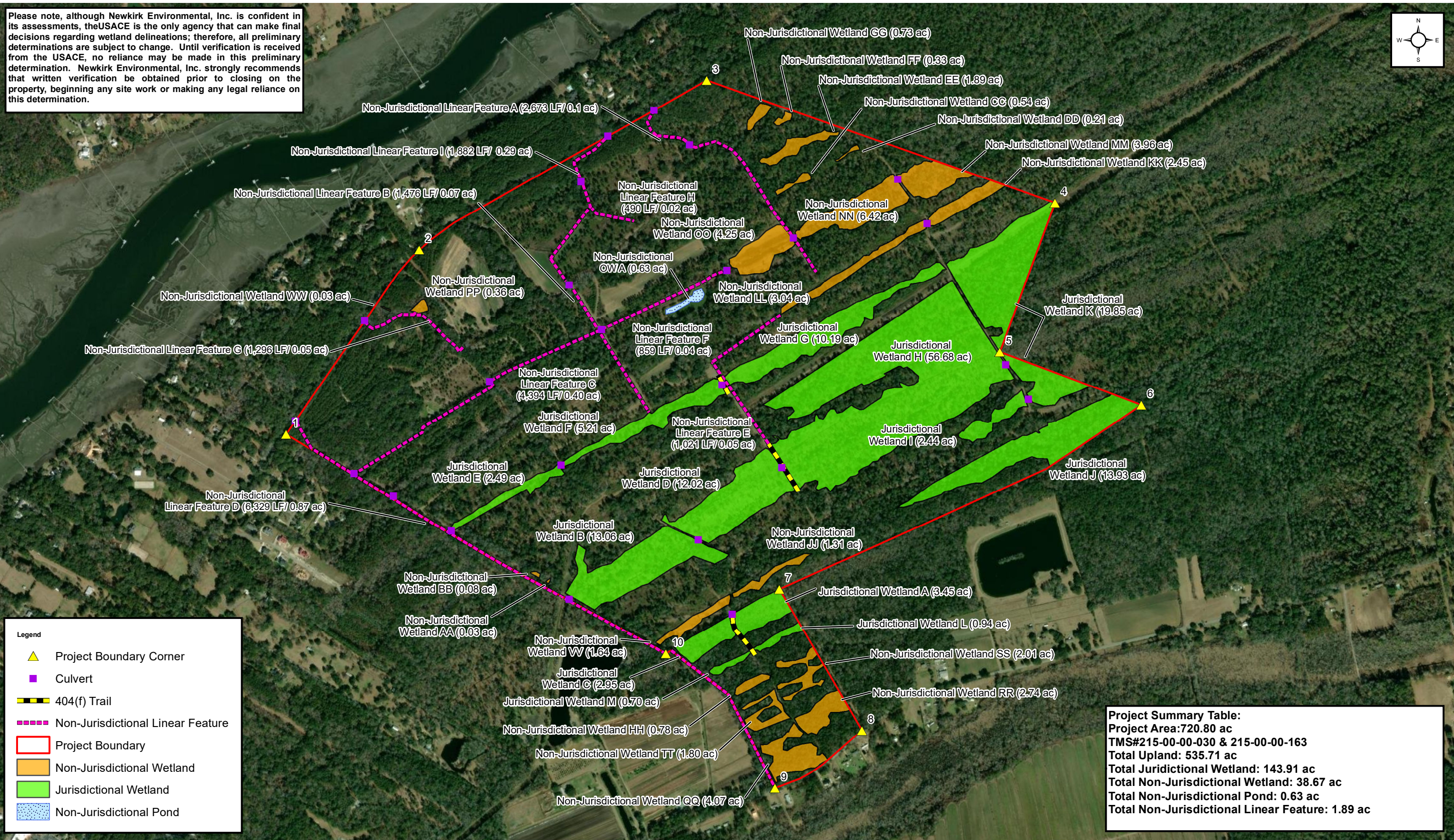
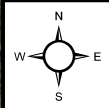
10. OTHER SUPPORTING INFORMATION.

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- a. Two (2) previous Approved Jurisdictional Determinations documented under SAC-2006-00773, dated June 19, 2006, and March 7, 2025.
 - b. "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", dated MAR 12 2025
 - c. Memorandum on NOW-2003-60436
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.

Please note, although Newkirk Environmental, Inc. is confident in its assessments, theUSACE is the only agency that can make final decisions regarding wetland delineations; therefore, all preliminary determinations are subject to change. Until verification is received from the USACE, no reliance may be made in this preliminary determination. Newkirk Environmental, Inc. strongly recommends that written verification be obtained prior to closing on the property, beginning any site work or making any legal reliance on this determination.



Orange Hill Charleston County, South Carolina

Project #: 01-5026a Date: October 10 2024 (Revised 7/15/2025)
Created by: CAB

Resource Map

