DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1519 TAYLOR STREET
COLUMBIA, SC 29201

CESAC-RD 23 MAY 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-2013-01352

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.[2] 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.[3] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

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

1. SUMMARY OF CONCLUSIONS.

[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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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.

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)	Waters of the US	Section 404/ Section 10
Non-Jurisdictional Wetland 1	0.6ac	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)

e. EPA / HQ joint memo, 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 CLEAR WATER ACT, dated March 12, 2025.

3. REVIEW AREA.

a. Review area size: 1.1acres
b. Center Coordinates of Project Latitude: 33.0458 Longitude: -80.3327
c. Nearest City: Ridgeville
d. County: Dorchester
e. State: South Carolina

The review area is represented on the attached map titled "WETLANDS EXHIBIT" dated May 20, 2025. Site is currently undeveloped forest land with freshwater

wetland. This site was also part of a larger site that had a Delineation Concurrence letter issued under SAC-2013-01352 and dated December 11, 2024.

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

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

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6] 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

[5] 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.

[6] 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.

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").[7] Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "*SWANCC*," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with *SWANCC*. N/A

[7] 51 FR 41217, November 13, 1986.

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).

Non-Jurisdictional Wetland 1, 0.6 acres, 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 had no discernible or traceable outfall or connection to any Waters of the US (WOUS). No surface or subsurface connection was evident or could be found after review of aerial photography, soil survey, and USGS topographic survey maps. All water is retained within the closed wetland boundary and percolates to an unknown depth. Because of the lack of discernable outfall, topography grades, and lack of evidence of chemical or biological connection, the wetland was determined to be non-jurisdictional. Based on the information above, this wetland feature does not abut a requisite water and does not meet the definition of "waters of the United States"

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 (Desktop)

b. AJD submittal on behalf of the requestor: Wetland Determination package with delineation sheets, associated maps, and photographs provided by Sabine and Waters, Inc on May 22, 2025.

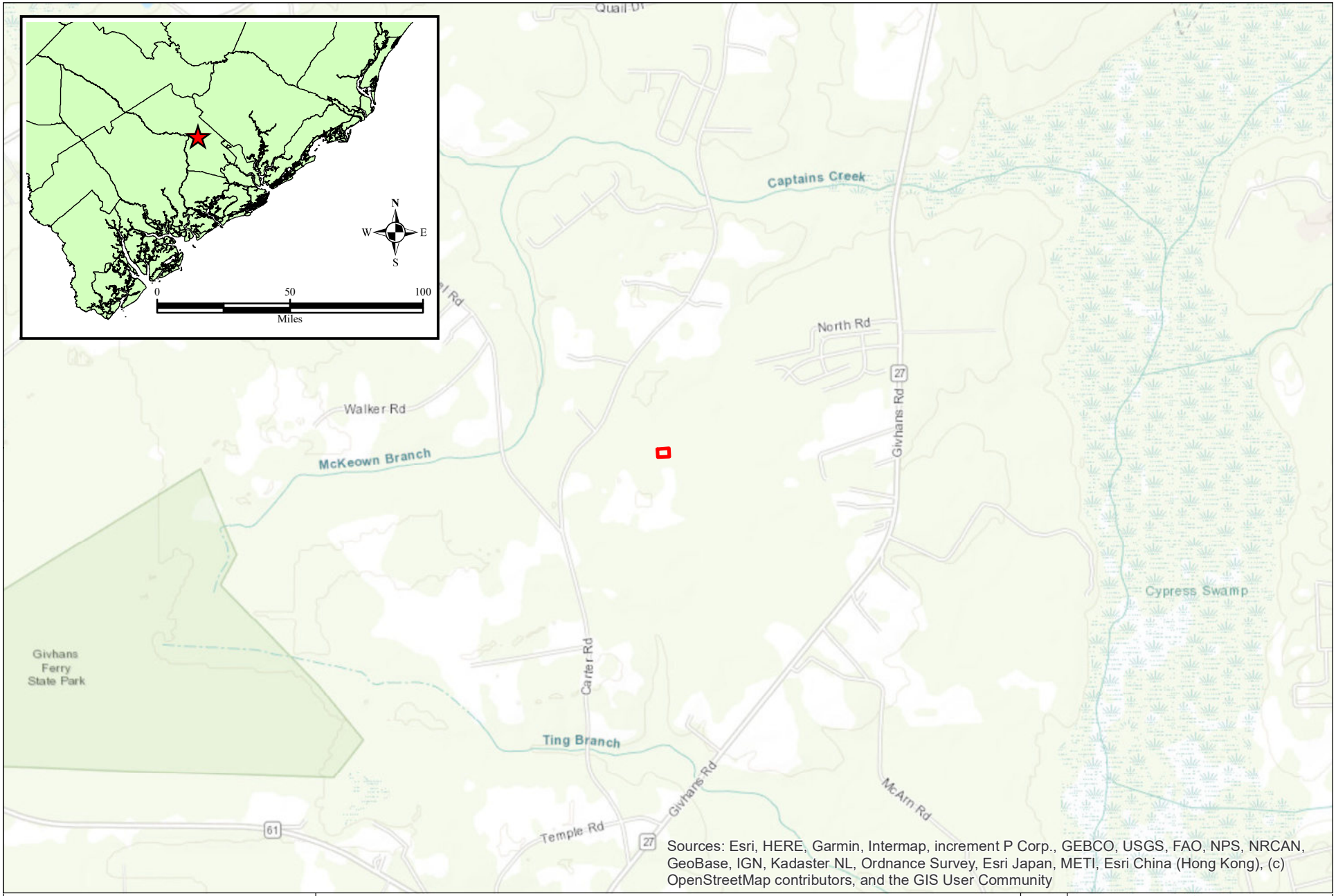
c. LIDAR: 3DEP Digital Elevation Model (DEM) https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer

d. Delineation Concurrence issued December 11, 2024 for SAC-2013-01352

10. OTHER SUPPORTING INFORMATION.

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.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

EXTERNAL SOURCES: ESRI ONLINE TOPO BASEMAP, DORCHESTER COUNTY GIS PARCEL

Created By: Stephen Bennett
Date Created: May 20, 2025

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Sabine & Waters, Inc.
Environmental Land Management Consultants
P.O. Box 1072 Summerville, SC 29484
843.871.5383 (phone) 843.871.2050 (fax)
http://www.sabinc.net

REVISED: 5/20/2025

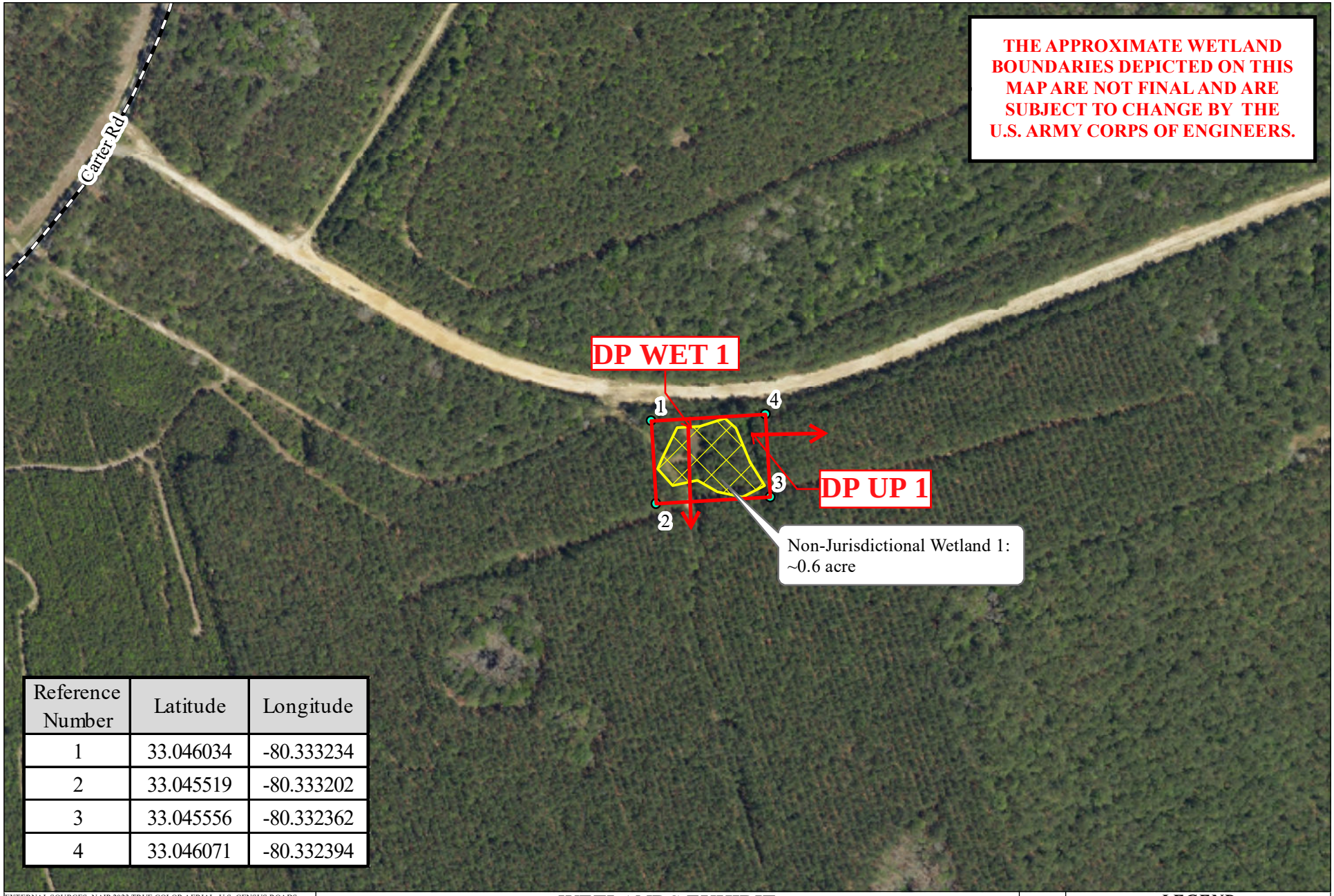
LOCATION MAP
PULTE - BRIDLEWOOD FARMS
DORCHESTER COUNTY, SC

0 3,000 6,000
Feet

LEGEND

PROJECT AREA: +/- 1.1 AC

Long: -80.332788
Lat: 33.045829



Reference Number	Latitude	Longitude
1	33.046034	-80.333234
2	33.045519	-80.333202
3	33.045556	-80.332362
4	33.046071	-80.332394

EXTERNAL SOURCES: NAIP 2023 TRUE COLOR AERIAL, U.S. CENSUS ROADS, DORCHESTER COUNTY GIS PARCEL

Created By: Stephen Bennett
Date Created: May 20, 2025

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WETLANDS EXHIBIT
PULTE - BRIDLEWOOD FARMS
DORCHESTER COUNTY, SC

0 300 600
Feet

LEGEND

- PROJECT AREA: +/- 1.1 AC
- NON-JURISDICTIONAL WETLAND: +/- 0.6 AC
- PROJECT AREA REFERENCE POINTS
- ROADS

Long: -80.332788
Lat: 33.045829