



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

CESAC-RDS

29 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),<sup>1</sup> SAC-2022-00499, (MFR 1 of 1)<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup> For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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

1. SUMMARY OF CONCLUSIONS.

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

Name of Aquatic Resource	Acres (AC.) /Linear Feet (L.F)	Waters of the US (JD or Non-JD)	Section 404/Section 10
Non-Jurisdictional Wetland 1	0.824 AC	Non-JD	N/A
Non-Jurisdictional Wetland 2	0.907 AC	Non-JD	N/A
Non-Jurisdictional Wetland 3	0.197 AC	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. \_\_, 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))

3. REVIEW AREA.

- a. Review Area size: 30.681 acres
- b. Center Coordinates of Project Latitude: 33.0352° N, Longitude: -80.0310° W
- c. Nearest City: Goose Creek

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- d. County: Berkeley
- e. State: South Carolina

The review area is identified as TMS#s 235-01-01-053, 235-05-11-002, 235-05-11-00, 235-05-11-001, 235-05-11-004, 235-06-01-124, and part of 235-05-11-003 and located directly to the northeast of the intersection of Montague Plantation Road and Sawgrass Avenue, Goose Creek, Berkeley County, South Carolina and contains undeveloped forested land, a neighborhood roadway, and three freshwater wetlands. These parcels were previously delineated as part of a previously issued Approved Jurisdictional Determination, by letter dated April 6, 2017 (SAC-2015-00227), where 1.82 acres of federally defined freshwater wetlands and/or other waters were determined to be non-Jurisdictional. This AJD has since expired.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.
  - a. Black River, which is a TNW. Navigability limits of the Black River Area are documented in the Corps' Navigability Study of 1977, Coastal Supplement, Report No. 06.
  - b. Determination based on: A review of desktop data resources listed in Section 9 of this memorandum.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A.
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</sup> N/A

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<sup>6</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>7</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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").<sup>8</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A.
- b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.

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<sup>8</sup> 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*. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Non-Jurisdictional Wetland 1: Non-Jurisdictional Wetland 1 is 0.824-acre in size and does not abut or have a discernable CSC/connection to a TNW or tributary with relatively permanent flow. Non-Jurisdictional Wetland 1 is an isolated forested wetland system located within a depressional land feature that does not contain a continuous surface connection or flowpath which provides evidence of surface flow to a jurisdictional water of the U.S. Data collected in the field indicates this feature is completely encompassed by uplands.

Non-Jurisdictional Wetland 2: Non-Jurisdictional Wetland 2 is 0.907-acre in size and does not abut or have a discernable CSC/connection to a TNW or tributary with relatively permanent flow. Non-Jurisdictional Wetland 2 is an isolated forested wetland system located within a depressional land feature that does not contain a continuous surface connection or flowpath which provides evidence of surface flow to a jurisdictional water of the U.S. Data collected in the field indicates this feature is completely encompassed by uplands.

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Non-Jurisdictional Wetland 3: Non-Jurisdictional Wetland 3 is 0.197-acre in size and does not abut or have a discernable CSC/connection to a TNW or tributary with relatively permanent flow. Non-Jurisdictional Wetland 3 is an isolated forested wetland system located within a depressional land feature that does not contain a continuous surface connection or flowpath which provides evidence of surface flow to a jurisdictional water of the U.S. Data collected in the field indicates this feature is completely encompassed by uplands.

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).  
Date: April 4, 2025
  - b. Plat submitted by or on behalf of, the applicant/consultant: "WETLAND EXHIBIT, TMS No. 235-01-01-053, 235-06-03-124, 235-05-11-001, 235-05-11-002, 235-05-11-003 & 235-05-11-004 / 30.681 ACRES, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA", plat dated May 22, 2025.
  - c. Wetland Delineation Data Sheets: Prepared and submitted by or on behalf of the applicant/consultant, dated March 24, 2022. This office concurs with the data sheets/delineation report.
  - d. USGS Topographic map: 7.5 Minute – Mount Holly : Quad depicts the review area as undeveloped forested land. No symbols that typically represent potential waters of the US are depicted on the USGS topographic maps.
  - e. USFWS National Wetland Inventory (NWI) Map Service: NWI depicts the review area as upland with one freshwater forested/shrub wetland. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=1eb5aab71973402fbdb879cbb7bd3595>
  - f. National Hydrographic Dataset (NHD): NHD does not depict any linear features within the review area.  
<https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer>
  - g. USDA NRCS Soil Survey: Soil survey depicts the following soil types: Duplin fine sandy loam (0 to 2 percent slopes), and Lenoir fine sandy loam. This layer displays soil map units derived from the SSURGO database. <https://arcportal-ucop>

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corps.usace.army.mil/s0portal/home/item.html?id=045a6ccb74954698892c0cc5106beee5

- h. USGS 3D Elevation Program (3DEP) Map Service: <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=8ba4619c2e60467a909a1bc31e3a06cc>
- i. Aerial Imagery: 2020 SCDNR IR Aerial\_2020\_NIR (Map Service)  
[https://tiles.arcgis.com/tiles/RvqSyw3diI7dTKo5/arcgis/rest/services/SC\\_2020\\_NIR/MapServer](https://tiles.arcgis.com/tiles/RvqSyw3diI7dTKo5/arcgis/rest/services/SC_2020_NIR/MapServer)

10. OTHER SUPPORTING INFORMATION.

- a. 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.

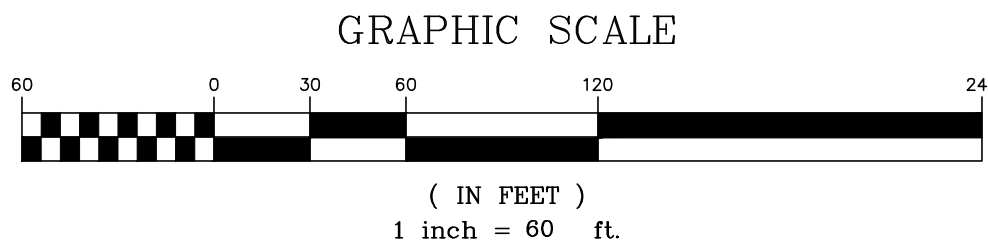
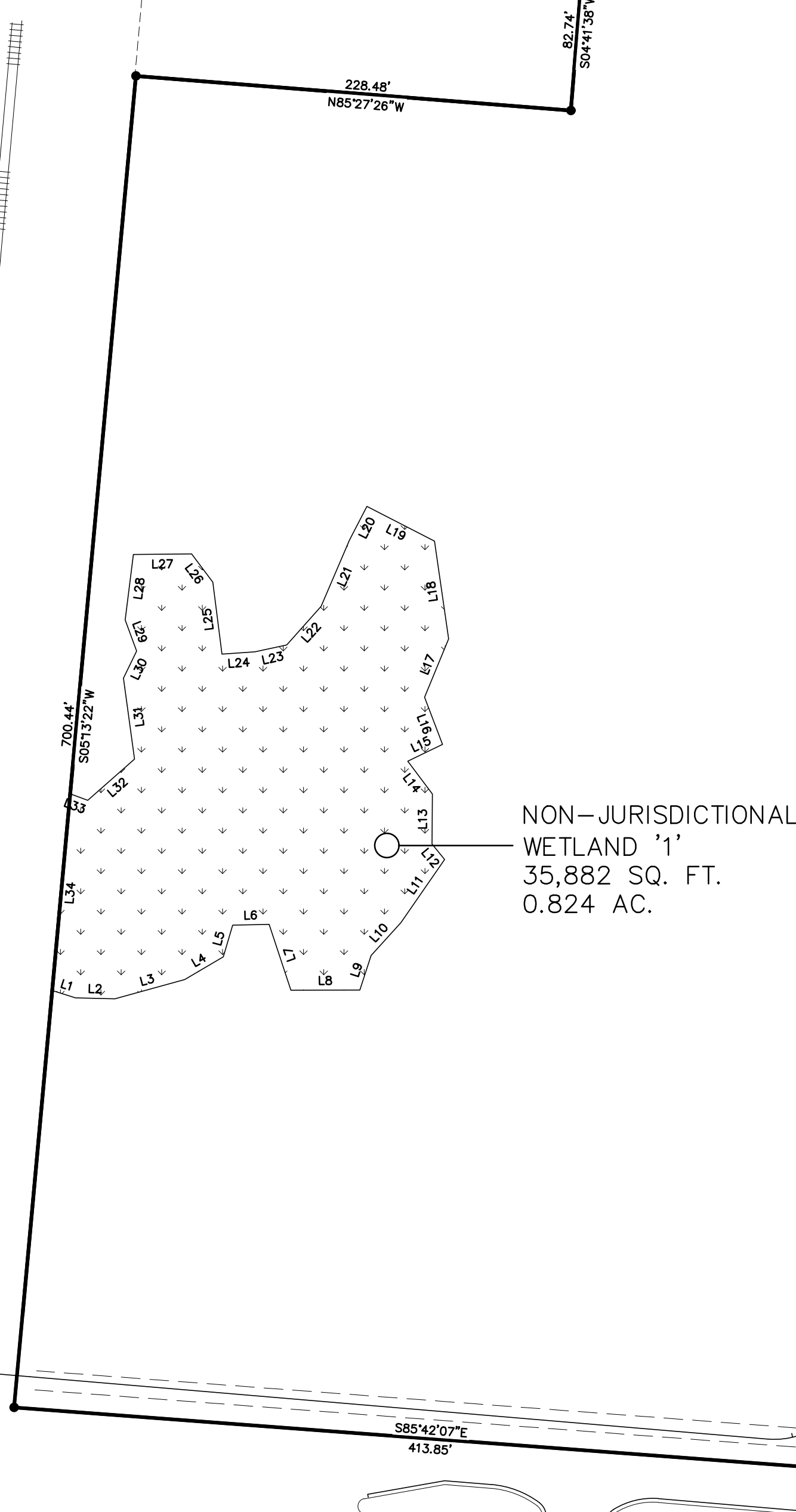
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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

Line Table		
Line #	Length	Direction
L1	13.291	S72° 03' 46.47"E
L2	20.620	S88° 43' 40.59"E
L3	38.007	N74° 38' 04.31"E
L4	23.408	N59° 26' 21.46"E
L5	17.335	N16° 22' 20.80"E
L6	19.111	N88° 51' 58.07"E
L7	36.356	S18° 23' 59.80"E
L8	36.053	N89° 50' 53.30"E
L9	19.100	N18° 05' 05.17"E
L10	23.178	N42° 20' 39.95"E
L11	40.273	N34° 34' 38.10"E
L12	10.391	N39° 25' 17.17"W
L13	26.262	N00° 26' 31.40"E
L14	21.507	N36° 53' 24.74"W
L15	20.271	N64° 17' 50.96"E
L16	26.463	N20° 57' 33.89"W
L17	33.040	N22° 28' 10.09"E
L18	51.818	N08° 16' 34.85"W
L19	39.770	N62° 50' 09.57"W
L20	19.792	S27° 19' 29.07"W
L21	37.866	S23° 05' 57.79"W
L22	27.078	S41° 52' 22.16"W
L23	17.031	S77° 41' 21.68"W
L24	17.252	S86° 11' 19.42"W
L25	37.953	N07° 14' 15.70"W
L26	18.505	N36° 49' 51.31"W
L27	30.548	S89° 30' 08.38"W
L28	34.575	S07° 08' 59.47"W
L29	17.382	S20° 17' 34.79"E
L30	15.816	S25° 48' 26.34"W
L31	42.781	S07° 41' 56.58"E
L32	32.646	S48° 34' 56.86"W
L33	10.303	N69° 18' 17.69"W
L34	103.511	S05° 13' 24.15"W

Line Table		
Line #	Length	Direction
L35	23.754	N49° 05' 44.70"W
L36	28.457	N23° 29' 40.59"W
L37	14.102	N07° 04' 32.36"W
L38	34.234	N71° 42' 07.03"W
L39	19.593	N84° 27' 24.78"W
L40	35.163	N28° 37' 36.05"W
L41	21.078	N15° 55' 28.99"E
L42	16.996	N55° 42' 21.18"E
L43	17.864	N11° 14' 21.09"E
L44	23.228	N81° 51' 58.34"W
L45	17.452	N40° 21' 43.20"E
L46	19.344	N00° 02' 20.67"W
L47	56.592	N12° 09' 54.85"E
L48	18.509	N58° 20' 11.15"W
L49	41.125	N31° 18' 41.36"E
L50	59.209	N77° 38' 13.40"E
L51	10.699	N50° 07' 10.40"E
L52	21.386	N74° 43' 28.80"E
L53	21.028	S39° 37' 55.58"E
L54	17.036	S00° 27' 43.42"W
L55	20.584	S78° 56' 16.10"E
L56	20.627	S35° 26' 22.46"E
L57	20.253	N81° 58' 46.98"E
L58	19.384	S14° 09' 57.49"E
L59	39.701	S50° 42' 20.35"E
L60	21.725	S38° 02' 04.26"E
L61	18.366	S11° 42' 14.52"E
L62	38.927	N83° 31' 35.00"W
L63	36.753	S14° 40' 25.12"W
L64	16.889	S18° 15' 04.53"E
L65	11.338	S18° 10' 48.46"W
L66	40.061	S55° 20' 18.30"W
L67	18.130	S09° 27' 32.04"W
L68	8.269	S87° 17' 48.22"W
L69	21.811	S72° 04' 18.71"W
L70	26.636	S38° 35' 18.60"W
L71	13.520	S25° 37' 50.98"W
L72	38.890	S00° 17' 06.58"W

Line Table		
Line #	Length	Direction
L73	34.386	N36° 35' 44.55"E
L74	25.927	N26° 22' 51.65"W
L75	11.776	N39° 37' 11.39"W
L76	16.899	N25° 19' 39.88"E
L77	16.426	S59° 37' 05.72"E
L78	25.051	N36° 25' 06.45"E
L79	44.257	N03° 51' 38.13"E
L80	28.392	N11° 48' 02.88"E
L81	19.336	N06° 17' 17.00"E
L82	30.652	N32° 49' 42.56"W
L83	20.736	N28° 37' 32.06"E
L84	23.093	N09° 02' 47.27"W
L85	32.051	N27° 18' 58.61"E
L86	19.893	N85° 36' 17.66"E
L87	18.739	S02° 46' 55.00"W
L88	21.552	S31° 32' 59.01"W
L89	29.587	S04° 54' 23.12"E
L90	46.016	S12° 15' 03.43"W
L91	25.470	S17° 33' 22.46"E
L92	11.702	S01° 19' 01.84"W
L93	12.361	S03° 49' 43.90"W
L94	23.363	S04° 07' 49.56"E
L95	23.552	S10° 27' 31.36"E
L96	27.197	S20° 49' 57.57"W
L97	29.736	S41° 50' 26.40"E
L98	21.164	S28° 32' 46.51"E
L99	19.458	S67° 00' 38.61"W
L100	31.138	S87° 25' 00.99"W
L101	36.548	N79° 43' 36.07"W

SITE INFORMATION			
TMS NO. 235-01-01-053			
TOTAL ACREAGE	17.434 ACRES		
UPLAND 'A' ACREAGE	15.736 ACRES		
NON-JURISDICTIONAL WETLAND '1' ACREAGE	0.824 ACRES		
PARTIAL WETLAND '2' ACREAGE	0.874 ACRES		
TMS NO. 235-05-11-002			
TOTAL ACREAGE	5.953 ACRES		
UPLAND 'B' ACREAGE	5.953 ACRES		
TMS NO. 235-05-11-003			
TOTAL ACREAGE	2.590 ACRES		
UPLAND 'C' ACREAGE	2.557 ACRES		
NON-JURISDICTIONAL WETLAND '2' ACREAGE	0.033 ACRES		
TMS NO. 235-05-11-001			
TOTAL ACREAGE	1.097 ACRES		
UPLAND 'D' ACREAGE	1.097 ACRE		
TMS NO. 235-05-11-004			
TOTAL ACREAGE	3.437 ACRES		
UPLAND 'E' ACREAGE	3.240 ACRES		
NON-JURISDICTIONAL WETLAND '3' ACREAGE	0.197 ACRES		
TMS NO. 235-06-01-124			
TOTAL ACREAGE	0.170 ACRES		
UPLAND 'F' ACREAGE	0.170 ACRES		
SITE BOUNDARY TOTALS			
TOTAL ACREAGE	30.681 ACRES		
TOTAL UPLAND ACREAGE	28.753 ACRES		
TOTAL NON-JURISDICTIONAL WETLANDS	1.928 ACRES		



NON-JURISDICTIONAL  
WETLAND '2'  
39,493 SQ. FT.  
0.907 AC.

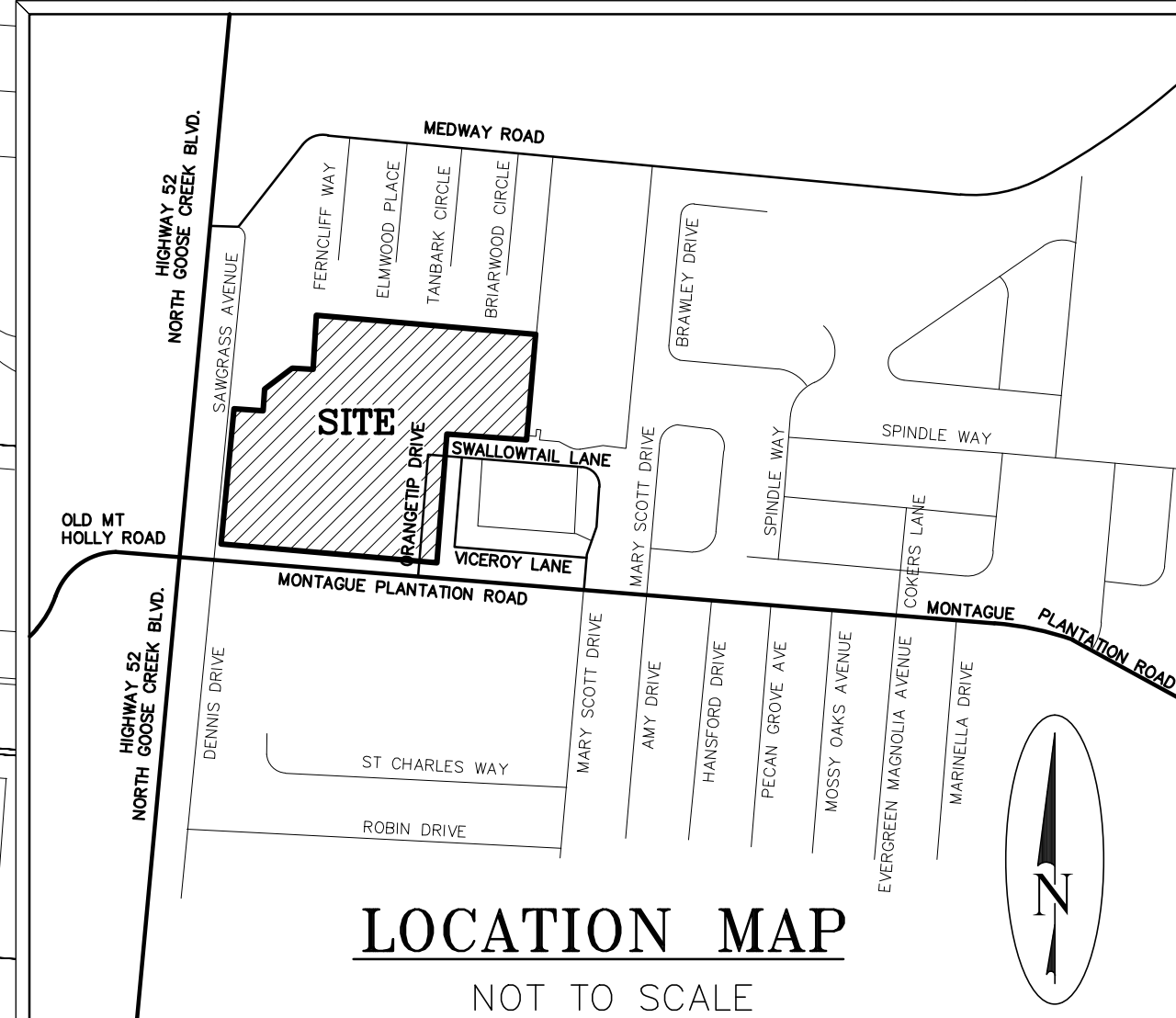
TMS NO. 235-01-01-053  
TOTAL ACREAGE 17.434 ACRES  
UPLAND 'A' ACREAGE 15.736 ACRES  
NON-JURISDICTIONAL WETLAND '1' ACREAGE 0.824 ACRES  
NON-JURISDICTIONAL PARTIAL WETLAND '2' ACREAGE 0.874 ACRES

NON-JURISDICTIONAL  
WETLAND '3'  
8,596 SQ. FT.  
0.197 AC.

TMS NO. 235-05-11-004  
TOTAL ACREAGE 3.437 ACRES  
UPLAND 'E' ACREAGE 3.240 ACRES  
NON-JURISDICTIONAL WETLAND '3' ACREAGE 0.197 ACRES

TMS NO. 235-06-03-124  
TOTAL ACREAGE 0.170 ACRES  
UPLAND 'F' ACREAGE 0.170 ACRES

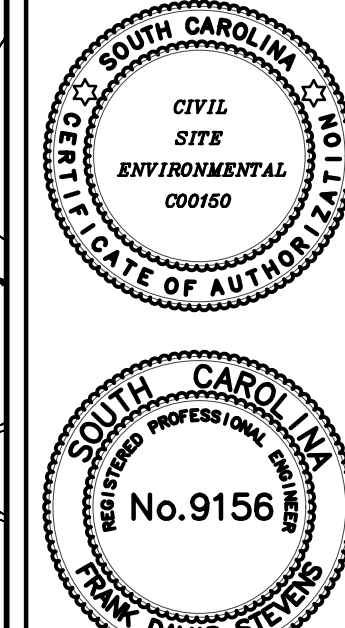
TMS NO. 235-05-11-001  
TOTAL ACREAGE 1.097 ACRES  
UPLAND 'D' ACREAGE 1.097 ACRES



REVISIONS:  
04/09/2025 UPDATED PLAT SPLITTING PARCEL BOUNDARY LINES  
04/21/2025 UPDATED WETLAND LABELS  
05/22/2025 ADDED LAT/LONG AND SITE ACREAGE TOTALS

PROJECT:  
TITLE: WETLAND EXHIBIT

DRAWN BY: RMB  
FILE: 1311  
SCALE: 1" = 60'  
DATE: MAY 2025



668 MARINA DRIVE  
SUITE B-1  
CHARLESTON, S.C. 29492  
PHONE: (843) 849-8945  
FAX: (843) 849-8974  
EMAIL: CSE@CIVILSITEENV.COM

CSE JOB NUMBER  
1311  
SHEET NUMBER  
EX