



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

CESAC-RD

June 12, 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),¹SAC-2023-00774 MFR 1 of 1²

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

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

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

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

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

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

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

1. SUMMARY OF CONCLUSIONS.

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

Name of Aquatic Resource	Acres (AC.) /Linear Feet (L.F)	Waters of the US (JD or Non-JD)	Section 404/Section 10
Jurisdictional Wetland 1	1.65 acres	JD	404
Jurisdictional Tributary 1	3464 linear feet	JD	404
Non-JD wetland 1	0.66	Non-JD	N/A
Non-JD wetland 2	1.78	Non-JD	N/A
Non-JD wetland 3	0.15	Non-JD	N/A
Non-JD wetland 4	1.02	Non-JD	N/A
Non-JD wetland 5	0.06	Non-JD	N/A
Non-JD wetland 6	0.29	Non-JD	N/A
Non-JD wetland 7	0.19	Non-JD	N/A
Non-JD Feature 1	1580 linear feet	Non-JD	N/A
Non-JD Feature 2	280 linear feet	Non-JD	N/A
Non-JD Feature 3	406 linear feet	Non-JD	N/A
Non-JD Feature 4	344 linear feet	Non-JD	N/A
Non-JD Feature 5	197 linear feet	Non-JD	N/A

2. REFERENCES.

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

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3. REVIEW AREA.

Project size: 94.93 acres

Coordinates: 33.1749°, -80.0190°

Moncks Corner, Berkeley County, South Carolina

The review area is currently forested with mixture of wetlands, tributaries, ditches, and upland area. The surrounding area is mixed commercial and residential.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Cooper River, a tidal waterbody.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Onsite wetlands and tributary continue offsite to the south, turning east after flowing under CSX railroad and Old Highway 52, eventually discharging directly into the Cooper River.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant

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

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

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): Jurisdictional Tributary 1 is a 3464 linear foot perennial tributary that bisects the interior of the site and bisects Jurisdictional Wetland 1. This feature demonstrates relatively permanent flow with a clearly defined OHWM as observed with data supplied by the agent as well as naturally form sinuosity as observed in aerial imagery. This feature would be considered a “requisite water”.
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Jurisdictional Wetland 1 was determined to meet the three parameters of the 1987 Corps of Engineers Wetland Delineation Manual. This feature is bisected by a “requisite water”, Jurisdictional Tributary 1, that eventually discharges into the Cooper River, a named TNW. The bisection of this tributary satisfies the physical abutment of a wetland to a requisite water as outlined in the current Sackett decision implementation guidance.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁸ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

⁸ 51 FR 41217, November 13, 1986.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*.
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Non-jurisdictional Wetland 1- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.66 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. All water contained within this wetland is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface or subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-jurisdictional Wetland 2- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 1.78 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. All water contained within this wetland is retained within the wetland boundary and percolates to an unknown

depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface of subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-jurisdictional Wetland 3- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.15 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. All water contained this wetland wetlands is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface of subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-jurisdictional Wetland 4- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.66 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. Non-jurisdictional feature 1 flows into this wetland and all water contained within this wetland is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface of subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-jurisdictional Wetland 5- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.06 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. Non-jurisdictional features 3, 4, and 5 flow into this wetland and all water contained within these wetlands is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface of subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

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Non-jurisdictional Wetland 6- Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.29 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. All water contained within this wetland is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface or subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-jurisdictional Wetland 7 - Although in itself it meets the criteria set forth in the 1987 Wetland Delineation Manual and the 2009 Coastal Plain Supplement, this wetland (approximately 0.66 acres) was found to be non-adjacent due to its hydrologic separation from other Waters of the US. All water contained within this wetland is retained within the wetland boundary and percolates to an unknown depth. Because of the lack of a discernable outfall, and topographic elevation differences that inhibited any surface or subsurface hydrologic connection, this wetland is isolated and not connected to any other Waters of the US. No surface or subsurface connection could be found after a review of aerial photography, soil survey data, NWI data, or USGS Topographic Maps.

Non-JD Features 1-5 are each linear features that do not contain flow requirements of a relatively permanent water. These features are man-made ditches, conveying stormwater primarily, but do connect to onsite wetlands that are non-jurisdictional. They are documented here because, although not jurisdictional, they would not meet the 3 requirements of an upland ditch.

Non-JD Feature 1	1580 linear feet	Non-JD	N/A
Non-JD Feature 2	280 linear feet	Non-JD	N/A
Non-JD Feature 3	406 linear feet	Non-JD	N/A
Non-JD Feature 4	344 linear feet	Non-JD	N/A
Non-JD Feature 5	197 linear feet	Non-JD	N/A

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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. Review performed for Site Evaluation: Office (desktop) Determination.
Date: June 12, 2025
 - b. Map submitted by or on behalf of, the applicant/consultant:
Map titled "WEATHERS TRACT AERIAL WITH FEATURES AND BOUNDARY COORDINATES" dated June 4, 2025.
 - c. Wetland Delineation Data Sheets: Prepared and submitted by or on behalf of the applicant/consultant. This office concurs with the data sheets/delineation report.
 - d. Site Photographs: Photos provided by Passarella and Associates Inc, submitted as part of the JD request dated October 23, 2024.
 - e. Previous AJD: N/A
 - f. USGS Topographic map: 7.5 Minute – Moncks Corner: Quad depicts the review area void of forested uplands with a solid blue line for tributary onsite..
 - g. USFWS National Wetland Inventory (NWI) Map Service: NWI depicts the review area as upland with three freshwater wetlands. <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=1eb5aab71973402fbdb879cbb7bd3595>
 - h. National Hydrographic Dataset (NHD): NHD does not depict any linear features within the review area.
<https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer>
 - i. USDA NRCS Soil Survey: USDA-NCSS SSURGO and STATSGO digital soil survey
This layer displays soil map units derived from the SSURGO database.
<https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=045a6ccb74954698892c0cc5106beee5>
 - j. USGS 3D Elevation Program (3DEP) Map Service: <https://arcportal-ucop-corps.usace.army.mil/s0portal/home/item.html?id=8ba4619c2e60467a909a1bc31e3a06cc>

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- k. Aerial Imagery: ESRI Base layer imagery, 2020 SCDNR IR Aerial_2020_NIR (Map Service)
https://tiles.arcgis.com/tiles/RvqSyw3dIl7dTKo5/arcgis/rest/services/SC_2020_NIR/MapServer

10. OTHER SUPPORTING INFORMATION.

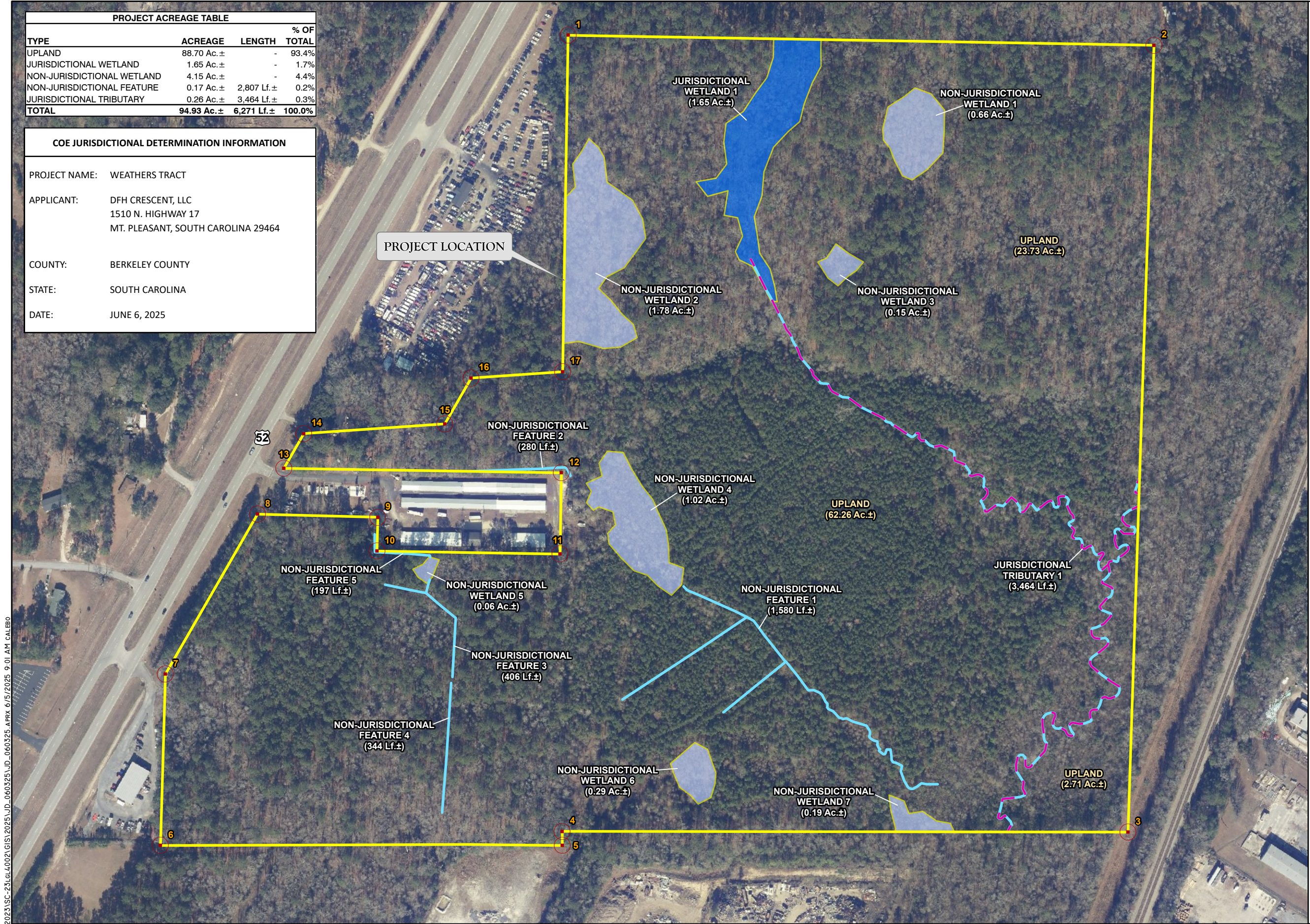
- a. EPA / HQ joint memo, MEMORANDUM TO THE FIELD BETWEEN THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONCERNING THE PROPER IMPLEMENTATION OF “CONTINUOUS SURFACE CONNECTION” UNDER THE DEFINITION OF “WATERS OF THE UNITED STATES” UNDER THE 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.

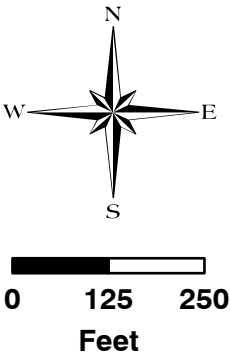
J:\SOUTH CAROLINA\2023\SC-23\G.L4002\GIS\2025\JD_060325\JD_060325.APRX 6/15/2025 9:01 AM CALERO

PROJECT ACREAGE TABLE			
TYPE	ACREAGE	LENGTH	% OF
UPLAND	88.70 Ac.±	-	93.4%
JURISDICTIONAL WETLAND	1.65 Ac.±	-	1.7%
NON-JURISDICTIONAL WETLAND	4.15 Ac.±	-	4.4%
NON-JURISDICTIONAL FEATURE	0.17 Ac.±	2,807 Lf.±	0.2%
JURISDICTIONAL TRIBUTARY	0.26 Ac.±	3,464 Lf.±	0.3%
TOTAL	94.93 Ac.±	6,271 Lf.±	100.0%

COE JURISDICTIONAL DETERMINATION INFORMATION	
PROJECT NAME:	WEATHERS TRACT
APPLICANT:	DFH CRESCENT, LLC 1510 N. HIGHWAY 17 MT. PLEASANT, SOUTH CAROLINA 29464
COUNTY:	BERKELEY COUNTY
STATE:	SOUTH CAROLINA
DATE:	JUNE 6, 2025



LEGEND	
	WEATHERS TRACT
	JURISDICTIONAL WETLAND
	NON-JURISDICTIONAL WETLAND
	JURISDICTIONAL TRIBUTARY
	NON-JURISDICTIONAL FEATURE



Map No.	Latitude	Longitude
1	33.17873839	-80.01891441
2	33.17862549	-80.01385090
3	33.17290674	-80.01414029
4	33.17295131	-80.01903117
5	33.17284813	-80.01903140
6	33.17287625	-80.02250495
7	33.17412193	-80.02244850
8	33.17527795	-80.02163882
9	33.17524763	-80.02059912
10	33.17500132	-80.02060913
11	33.17496677	-80.01902668
12	33.17555764	-80.01900889
13	33.17560987	-80.02140739
14	33.17586084	-80.02123252
15	33.17592138	-80.02001198
16	33.17625354	-80.01978094
17	33.17629279	-80.01898959

NOTES:

AERIAL PHOTOGRAPHS WERE ACQUIRED FROM THE SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE WITH FLIGHT DATES OF JANUARY THROUGH FEBRUARY 2023.

PROPERTY BOUNDARY AND WETLAND LINES PER PARKER LAND SURVEYING DRAWING No. 24-046 - WEATHERS TRACT- BOUNDARY TOPO WETLAND 12-16-24.DWG DATED DECEMBER 16, 2024.

REVISIONS	DATE	DRAWN BY T.S., C.O.	DATE 06/04/25	363 Wando Place Drive Suite 200 Mt. Pleasant, SC 29464 Phone (843) 971-8520 Fax (843) 971-8522		WEATHERS TRACT AERIAL WITH FEATURES AND BOUNDARY COORDINATES	DRAWING No. SC-23LGL4002
		DESIGNED BY T.B.	DATE 06/04/25				SHEET No.
		REVIEWED BY T.B.	DATE 06/04/25				FIGURE 7