



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

CESAC-RDS

24 June 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SAC-2024-00203 (MFR 1 of 1)²

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

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

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

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

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

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

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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.)	Water of the U.S. (WOTUS)	Section 404/Section 10
Non-Jurisdictional Feature 1	1,545 L.F.	No	None
Non-Jurisdictional Feature 2	119 L.F.	No	None
Non-Jurisdictional Feature 3	187 L.F.	No	None

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))

3. REVIEW AREA.

- a. Project Area Size: 25.71 acres
- b. Center Coordinates of the review area: Latitude: 32.8874 °N, Longitude: - 80.0358 °W

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- c. Nearest City: North Charleston
- d. County: Charleston
- e. State: South Carolina

The review area is located within the Charleston International Airport. The area consists of concrete Airplane taxiways, aprons, and a stormwater pollution drainage system that is a part of Charleston International Airport's Stormwater Pollution Prevention Plan and associated SCDES NPDES General Permit for Stormwater Discharge Associated with Industrial Activity No. SCR001324 and SCR000000.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is The Ashley River, which is documented in the Corps Navigability Study of 1977, Edisto River Area, Report No.03.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Non-Jurisdictional Feature 1: Is associated with Charleston International Airport Stormwater pollution treatment drainage system where it travels approximately 1.5 miles before discharging into a waste treatment pond. Once through the outfalls of the waste treatment pond, the water flows approximately 0.35 miles into the Ashley River, a TNW.

Non-Jurisdictional Feature 2: Is associated with Charleston International Airport Stormwater pollution treatment drainage system where this linear feature carries flow for approximately 119 linear feet, then discharges into non-jurisdictional feature 1 where it travels approximately 1.5 miles before discharging into a waste treatment pond. Once through the outfalls of the waste treatment pond, the water flows approximately 0.35 miles into the Ashley River, a TNW.

Non-Jurisdictional Feature 3: Is associated with Charleston International Airport Stormwater pollution treatment drainage system where this linear feature carries flow for approximately 187 linear feet, then discharges into non-jurisdictional feature 1 where it travels approximately 1.5 miles before discharging into a waste treatment

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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pond. Once through the outfalls of the waste treatment pond, the water flows approximately 0.35 miles into the Ashely River, a 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 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.

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.

- 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.
- 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.

Non-Jurisdictional Features 1, 2, and 3: These linear conveyance features are a part of the approved waste treatment system covered under the Charleston International Airport’s Stormwater Pollution Prevention Plan and associated South Carolina Department of Environmental Services NPDES General Permit for Stormwater Discharge Associated with Industrial Activity No. SCR001324 and SCR000000. They were constructed from uplands for the stormwater pollution discharges associated with the Airport’s industrial activity. The waste runoff is collected into the stormwater pollution conveyance system and is carried southwest outside of the review area into an approved waste treatment system pond.

Based off the data and history mentioned above, it was determined that these features were designed as, and part of, the waste treatment system at the Charleston International Airport and meet the requirements of the Clean Water Act. Therefore, these features fall under the Regulatory Exclusions “Waste Treatment Exclusion”.

⁹ 51 FR 41217, November 13, 1986.

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- 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). N/A.
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 (Desk) Determination. Date: June 18, 2025. Field Determination. Date: N/A.
 - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including, associated data maps and the aquatic resource map titled “CHS WEST RON PARKING APRON CHARLESTON COUNTY, SOUTH CAROLINA” dated October 17, 2024, prepared by Mead & Hunt, Inc.
 - c. Aerial Imagery Map: “PSA COORDINATES MAP” source: USGS National AGRIC. Imagery Program (NAIP) for Charleston, SC (2021); prepared by Mead & Hunt, Inc dated October 17, 2024.
 - d. National Wetland Inventory Map: “National Wetlands Inventory (NWI)” source: USFWS Continental U.S. (CONUS) Wetland data [Statewide, South Carolina (2015)] prepared by Mead & Hunt, Inc dated October 8, 2024.

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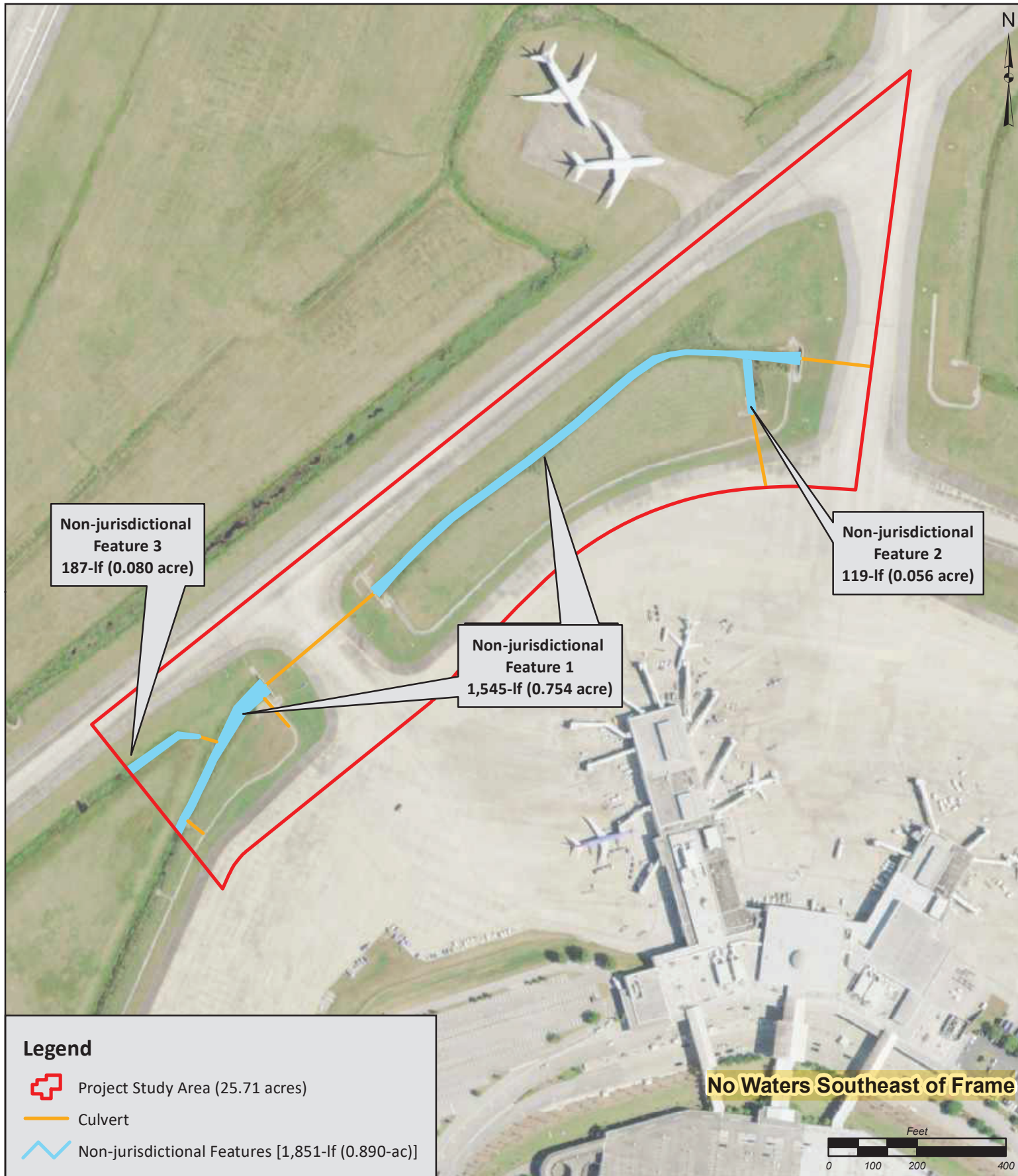
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- e. Natural Resource Conservation Survey: “NRCS SOIL MAP UNIT MAP” sources: NRCS Soil Survey Geographic (SSURGO) Database [Statewide (2015)]; prepared by Mead & Hunt, Inc dated October 8, 2024.
- f. U.S. Geological Survey Map: “USGS TOPOGRAPHY MAP” source: USGS 7.5 Minute Quad Map [Ladson, SC (2020)]; prepared by Mead & Hunt, Inc dated October 8, 2024.
- g. LiDAR Elevation Map: “Two-Foot Contour Map” source: SCDNR LiDAR Charleston County, SC; prepared by Mead & Hunt, Inc dated October 8, 2024.
- h. Stormwater Pollution Prevention Plan (SWPPP) Charleston International Airport (CHS) 5500 International Boulevard North Charleston, South Carolina 29418 S&ME Project No. 22260254 prepared by S&ME, Inc. dated September 23, 2022.

10. OTHER SUPPORTING INFORMATION.

- a. Approved Jurisdictional Determination Letter SAC-2024-00203 dated July 26, 2024

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.



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CHS WEST RON PARKING APRON
CHARLESTON COUNTY, SOUTH CAROLINA

M&H PROJ: R3047500-241860.01
CCAA WORK AUTHORIZATION NO. 15
USACE SAC: NOT YET ASSIGNED

SOURCE: USGS NATIONAL AGRIC.
IMAGERY PROGRAM (NAIP) FOR
CHARLESTON, SC (2021)

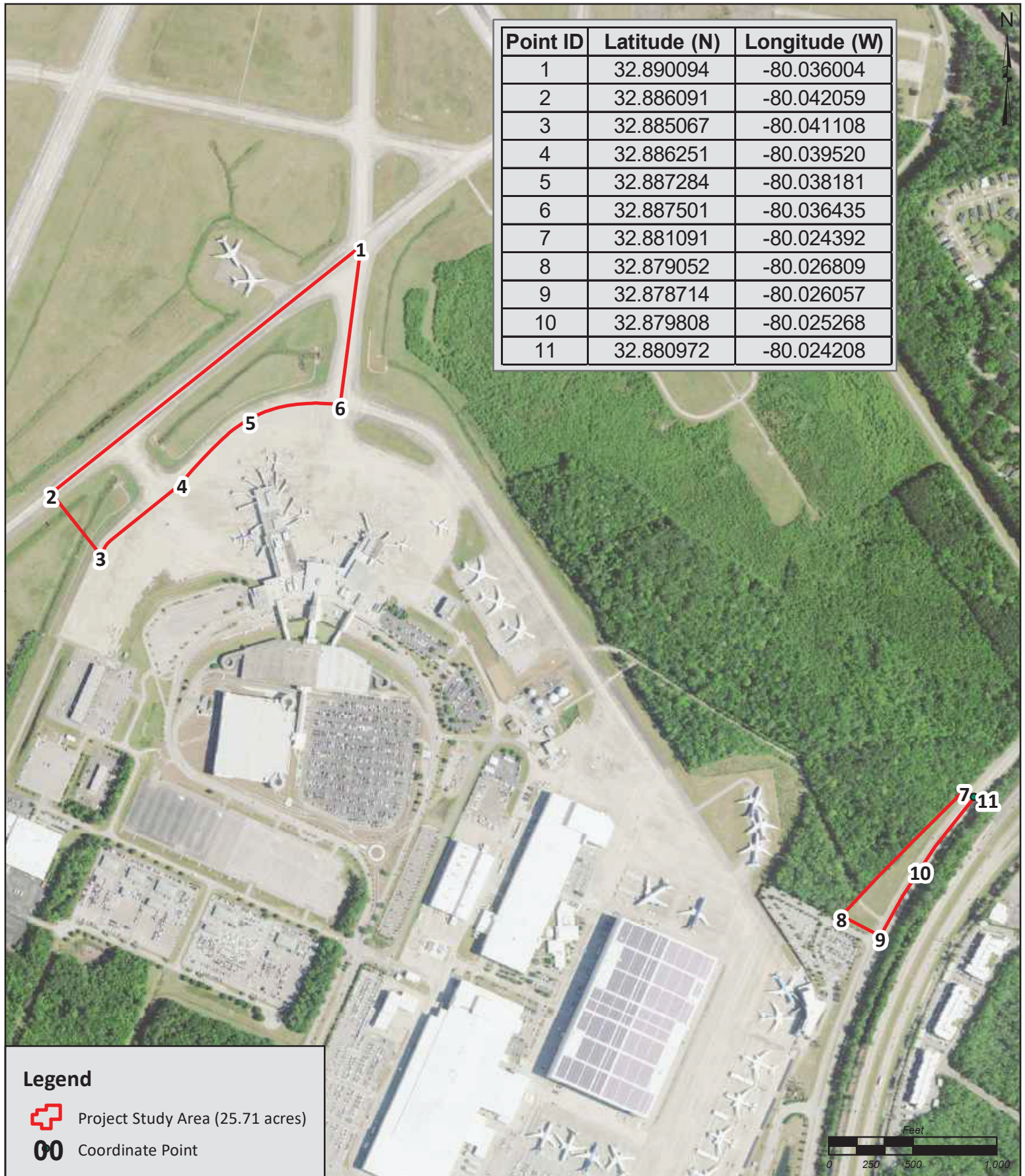


CHARLESTON COUNTY
AVIATION AUTHORITY

DELINEATED FEATURES MAP



DRAWN BY: VM
DATE: 10/17/2024

QAQC BY: SG
FIGURE 6



Point ID	Latitude (N)	Longitude (W)
1	32.890094	-80.036004
2	32.886091	-80.042059
3	32.885067	-80.041108
4	32.886251	-80.039520
5	32.887284	-80.038181
6	32.887501	-80.036435
7	32.881091	-80.024392
8	32.879052	-80.026809
9	32.878714	-80.026057
10	32.879808	-80.025268
11	32.880972	-80.024208

Legend

-  Project Study Area (25.71 acres)
-  Coordinate Point



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CHS WEST RON PARKING APRON
CHARLESTON COUNTY, SOUTH CAROLINA

M&H PROJ: R3047500-241860.01
CCAA WORK AUTHORIZATION NO. 15
USACE SAC: NOT YET ASSIGNED

SOURCE: USGS NATIONAL AGRIC.
IMAGERY PROGRAM (NAIP) FOR
CHARLESTON, SC (2021)



**CHARLESTON COUNTY
AVIATION AUTHORITY**

PSA COORDINATES MAP

DRAWN BY: VM
DATE: 10/17/2024

QAQC BY: SG
FIGURE 8