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-2024-01013, (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.

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 (A.C.)/Linear Feet (L.F.)	Waters of the U.S. (WOUS)	Section 404/ Section 10
Jurisdictional Wetland A	0.83 A.C.	Yes	Section 404
Jurisdictional Wetland B	10.498 A.C.	Yes	Section 404
Jurisdictional Wetland C	0.037 A.C.	Yes	Section 404
Jurisdictional Wetland D	0.176 A.C.	Yes	Section 404
Jurisdictional Wetland E	0.219 A.C.	Yes	Section 404
Jurisdictional Wetland F	0.667 A.C.	Yes	Section 404
Jurisdictional Wetland G	0.526 A.C.	Yes	Section 404
Jurisdictional Wetland H	0.443 A.C.	Yes	Section 404
Jurisdictional Tributary A	375.24 L.F.	Yes	Section 404
Jurisdictional Tributary B	960.92 L.F.	Yes	Section 404
Jurisdictional Tributary C	1010.55 L.F.	Yes	Section 404
Non-Jurisdictional Feature A	1686.15 L.F.	No	N/A
Non-Jurisdictional Feature B	935.9 L.F.	No	N/A
Non-Jurisdictional Feature C	157.91 L.F.	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)

3. REVIEW AREA.

        a. Project Area Size: 96.54 acres
        b. Center Coordinates of the review area: Latitude: 32.7614° Longitude: -80.2305°
        c. Nearest City: Ravenel
        d. County: Charleston
        e. State: South Carolina

The project review area consists of one parcel totaling approximately 45.09 acres. According to the Charleston County Online Geographic Information System (GIS) Database website, the Tax Map Sequence Numbers (TMS#) is 188-00-00-116. The site currently consists of wooded land and dirt access roads. Surrounding areas consist primarily of single-family residences, wooded land, and the Ravenel Community Hall to the north.

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 Stono River.

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

        a. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

b. Jurisdictional Wetland B flows south into Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

c. Jurisdictional Wetland C flows west connecting with Jurisdictional Wetland B via a discrete linear feature. Jurisdictional Wetland B flows south and connects with Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

d. Jurisdictional Wetland D flows west connecting with Jurisdictional Wetland E via a discrete linear feature. Jurisdictional Wetland E flows west connecting with Jurisdictional Wetland B via a discrete linear feature. Jurisdictional Wetland B flows south and connects with Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW. Jurisdictional Wetland D also flows south offsite before connecting onsite with Jurisdictional Wetland F via discrete linear feature. Jurisdictional Wetland F flows south into Jurisdictional Tributary B, which connects to Jurisdictional Wetland G. Jurisdictional Wetland G flows under a road via culvert directly into Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

e. Jurisdictional Wetland E flows west connecting with Jurisdictional Wetland B via a discrete linear feature. Jurisdictional Wetland B flows south and connects with Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW. Jurisdictional Wetland E also flows east connecting with Jurisdictional Wetland D via discrete linear feature. Jurisdictional Wetland D flows south offsite before connecting onsite with Jurisdictional Wetland F via discrete

linear feature. Jurisdictional Wetland F flows south into Jurisdictional Tributary B, which connects to Jurisdictional Wetland G. Jurisdictional Wetland G flows under a road via culvert directly into Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW

f. Jurisdictional Wetland F flows south into Jurisdictional Tributary B, which connects to Jurisdictional Wetland G. Jurisdictional Wetland G flows under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

g. Jurisdictional Wetland G flows under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

h. Jurisdictional Wetland H flows east connecting to Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

i. Jurisdictional Tributary A flows south into directly into Jurisdictional Wetland E. Jurisdictional Wetland E flows west connecting with Jurisdictional Wetland B via a discrete linear feature. Jurisdictional Wetland B flows south and connects with Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

j. Jurisdictional Tributary B flows south into Jurisdictional Wetland G. Jurisdictional Wetland G flows under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

k. Jurisdictional Tributary C flows south into Jurisdictional Wetland A. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

l. Non-Jurisdictional Feature A flows intermittently southeast into Jurisdictional Wetland B. Jurisdictional Wetland B flows south into Jurisdictional Wetland A via a discrete linear feature. Jurisdictional Wetland A flows south under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

m. Non-Jurisdictional Feature B flows east through multiple discrete linear features before connecting with Jurisdictional Wetland A. Jurisdictional Wetland A flows south directly into and abuts an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

n. Non-Jurisdictional Feature C flows southeast connecting to Jurisdictional Tributary B. Jurisdictional Tributary B flows south into Jurisdictional Wetland G. Jurisdictional Wetland G flows under a road via culvert directly into an RPW/requisite water known as Mellichamp Creek. Mellichamp Creek flows east and then north into another RPW known as Wallace Creek. Wallace Creek discharges directly into the Stono River, a TNW.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.

[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.

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): The review area contains three (3) jurisdictional tributaries for a total of 2,346.71 linear feet. Jurisdictional Tributary A connects to Jurisdictional Wetland E, which continues into Jurisdictional Wetland B and Jurisdictional Wetland A which abuts Mellichamp Creek, an RPW which flows year-round. Jurisdictional Tributary B connects to Jurisdictional Wetland G, which is part of a larger wetland complex that continues offsite to the south and abuts the OWHM of Mellichamp Creek, an RPW which flows year-round. Jurisdictional Tributary C flows through Jurisdictional Wetland A and the southern portion of Jurisdictional Wetland B. Based on an on-site inspection conducted March 19, 2025, each tributary exhibited flow regime, a defined bed and bank, an OHWM, and evidence of at least seasonal flow.

    f. The territorial seas (a)(6): N/A.

    g. Adjacent wetlands (a)(7): The review area contains eight (8) jurisdictional wetland areas for a total of 13.396 acres.

        Jurisdictional Wetland A is bisected by Jurisdictional Tributary C as it flows south abutting with the OHWM of Mellichamp Branch, an RPW which flows year-round (requisite water).

Jurisdictional Wetland B is partially bisected by Jurisdictional Tributary C as it flows south into Jurisdictional Wetland A, which abuts with Mellichamp Branch, an RPW / requisite water.

Jurisdictional Wetland C has demonstrated a hydrological connection between Wetland C and Wetland A demonstrate a hydrological connection. Specifically, hydrology, soils, and vegetation community were similar on either side of the road / culvert that bisects these features. Both areas exhibit characteristics of a unified wetland system, indicating these wetlands are functioning essentially a singular wetland.

Jurisdictional Wetlands D and E have demonstrated a hydrological connection though hydrology, soils, and vegetation communities and were similar on either side of the road / culvert that bisects these features. Both areas exhibit characteristics of a unified wetland system, indicating these wetlands identified on the depiction are essentially a singular wetland. Additionally, these features are bisected by the OWHM of Tributary A, an RPW / requisite water.

Jurisdictional Wetland F and Jurisdictional Wetland G both abut the OWHM of Jurisdictional Tributary B, an RPW / requisite water.

Jurisdictional Wetland H has a similar topography to Jurisdictional Wetland A and is separated from Jurisdictional Wetland A only by a previously constructed haul road, with a culvert providing a hydrologic connection between the two wetlands. Jurisdictional Wetlands H and A will therefore be assessed as one contiguous wetland under the CWA. Specifically, hydrology, soils, and vegetation community were similar on either side of the road / culvert that bisects these features. Both areas exhibit characteristics of a unified wetland system, indicating these wetlands identified on the are essentially a singular wetland. Jurisdictional Wetland H abuts the OWHM of Jurisdictional Tributary C, an RPW / requisite water.

All wetland areas discussed in this section exhibited wetland indicators of hydrophytic vegetation, wetland hydrology, and hydric soils. Review of the submitted data sheets and additional information included in this review reveal these features contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0).

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.

    a. Non-Jurisdictional Feature A: The review area contains an upland excavated ditch with an approximate length of +/- 1,686 linear feet. Based on desktop resources and an on-site review, the resource was determined to be excavated wholly in uplands, lacked evidence of an OHWM, drains uplands only, and does not carry a relatively permanent flow.

    b. Non-Jurisdictional Feature B: The review area contains an upland excavated ditch with an approximate length of +/- 936 linear feet. Based on desktop resources and an on-site review, the resource was determined to be excavated wholly in uplands, lacked evidence of an OHWM, drains uplands only, and does not carry a relatively permanent flow.

    c. Non-Jurisdictional Feature C: The review area contains an upland excavated ditch with an approximate length of +/- 158 linear feet. Based on desktop resources and an on-site review, the resource was determined to be excavated wholly in uplands, lacked evidence of an OHWM, drains uplands only, and does not carry a relatively permanent flow.

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.

[8] 51 FR 41217, November 13, 1986.

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: April 10, 2025.

b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including wetland determination forms, associated data maps, and aquatic resource map titled "WETLANDS IMPACT TUMBLESTON TRACT DEVELOPEMENT" dated May 9, 2025, and revised June 19, 2025, prepared by LJA Engineering.

c. Photographic Log: Provided by Red Bay Environmental with the wetland delineation dated December 14, 2023. Additional photos provided by Corps from site visit dated March 19, 2025.

d. Aerial Imagery Map: "Aerial Photograph Exhibit W/ Data Points Tumbleston Tract Ravenel, Charleston County, SC" provided by Red Bay Environmental dated August 7, 2024.

e. National Wetland Inventory Map: "National Wetland Inventory Map Exhibit Tumbleston Tract Ravenel, Charleston County, SC" provided by Red Bay Environmental dated January 30, 2024.

f. Natural Resource Conservation Survey: "Soil Map Exhibit Tumbleston Tract Ravenel, Charleston County, SC" provided by Red Bay Environmental dated January 30, 2024.

g. U.S. Geological Survey Map: “USGS Quadrangle Map Exhibit Tumbleston Tract Ravenel, Charleston County, SC” provided by Red Bay Environmental dated January 30, 2024.

h. USGS 3D Elevation Program (3DEP) Map Service – Hillshade and LiDAR prepared by the Corps’ dated March 19, 2025.

i. FEMA Flood Hazard Map prepared by the Corps’ dated March 19, 2025.

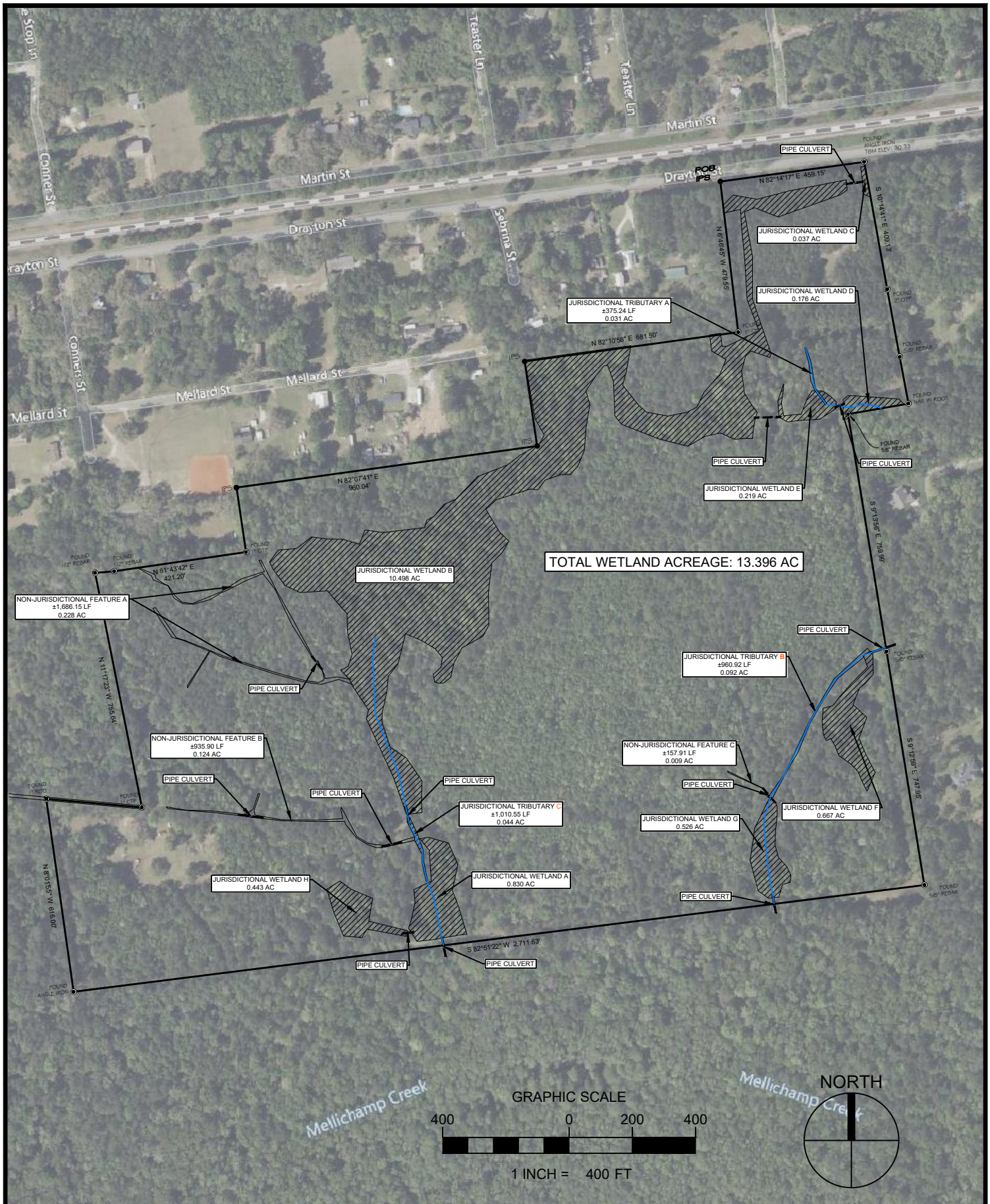
j. Additional photographic log provided by the Corps’ dated March 19, 2025.

10. OTHER SUPPORTING INFORMATION.

HQ/EPA memo dated June 24, 2025 - NWO-2003-60436

HQ/EPA memo dated 12 March 2025 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.



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WETLANDS IMPACT

TUMBLESTON TRACT DEVELOPEMENT

WETLAND EXHIBIT
6/19/2025

1 OF 1

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