



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

CESAC-RDS

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),<sup>1</sup> SAC-2024-01118 (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 U.S. (WOTUS)	Section 404/Section 10
W2	0.39 AC.	No	N/A
W3	10.32 AC.	No	N/A
W6	0.93 AC.	No	N/A
W7	0.92 AC.	No	N/A
Ditch 1	2,038 L.F.	No	N/A
Ditch 2	2,042 L.F.	No	N/A
Ditch 3	279 L.F.	No	N/A
P1	1.66 AC.	No	N/A
P2	0.67 AC.	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. 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)
- f. [2008 Rapanos guidance](#)

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3. REVIEW AREA.

- a. Project Area Size: 160 acres
- b. Center Coordinates of the review area: Latitude: 33.1857 ° Longitude: -79.9323 °
- c. Nearest City: Moncks Corner
- d. County: Berkeley
- e. State: South Carolina

The Sportsman Retreat site is located at 734 Sportsman Retreat Lane, Moncks Corner, Berkeley County, South Carolina (33.18571, -79.932335). The Project Study Area (PSA) consists of portions of two parcels totaling approximately 160 acres. According to the Berkeley County Online GIS Database website, the Tax Map Sequence Numbers (TMS#s) are: 1440001015 & 1440001063. The site currently consists of wooded land, access roads, fields, a single-family residence, a garage, and shed. Surrounding properties consist of wooded land, fields, and single-family residences.

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 Cooper River, which is classified as "Navigable waters of the U.S." documented in the Corps Navigability Study of 1977, Cooper River Area Report No. 0.4<sup>6</sup>

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

W2: This non-tidal palustrine forested wetland does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

W3: This non-tidal palustrine forested wetland does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

W6: This non-tidal palustrine forested wetland does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

W7: This non-tidal palustrine forested wetland does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

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<sup>6</sup> 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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Ditch 1: This ephemeral linear feature carries flows for approximately 2,038 linear feet into a downstream culvert and discharges into a separate offsite unnamed tributary. The unnamed tributary carries flow for approximately 1.54 miles where it discharges into the Cooper River, a TNW.

Ditch 2: This ephemeral linear feature carries flow for approximately 2,042 linear feet before discharging into Ditch 1. Ditch 1 then travels 2,038 linear feet before the flow is carried through a culvert and discharges into a separate offsite unnamed tributary. The unnamed tributary carries flow for approximately 1.54 miles where it discharges into the Cooper River, a TNW.

Ditch 3: This ephemeral linear feature carries flow for approximately 279 linear feet before it discharges into Ditch 1. From the confluence of Ditch 3 and Ditch 1, Ditch 1 travels for approximately 220 linear feet before the flow is carried through a culvert and discharges into a separate offsite unnamed tributary. The unnamed tributary carries flow for approximately 1.54 miles where it discharges into the Cooper River, a TNW.

P1: This deep-water aquatic habitat (pond) contains a culvert located on the southwest corner of the berm where overflow discharges into W3. W3 does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

P2: This deep-water aquatic habitat (pond) contains a culvert located on the southeast corner of the berm where overflow discharges into W3. W3 does not contain a continuous surface connection to a TNW, interstate water, or other territorial sea.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</sup> N/A.

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<sup>7</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>8</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>9</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.

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<sup>9</sup> 51 FR 41217, November 13, 1986.

Ditch 2: This linear feature is approximately 2,042 linear feet. The feature contains a bed and bank, but lacks stream indicators such as geomorphic indicators, sediment indicators, and ancillary indicators that form a well-defined OHWM. This NRCS Soils data shows the feature was excavated out of Duplin fine sandy loam and Lenoir fine sandy loam. Both soil series are not rated as hydric soils. This feature is not identified on any topographic map. A site visit was conducted by the Corps on April 10, 2025. During the site visit, no water was observed within the ditch and the bed of the stream were full of dry leaf litter. This data supports that this feature identifies as a “generally not jurisdictional” feature under the 2008 Rapanos Guidance, for it was determined to be dug in uplands, drains only uplands, 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.
- 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*.

P1: This deep-water aquatic resource is approximately 1.66 acres in size and does not have a nexus to interstate or foreign commerce. The pond contains one outlet that drains into W3. W3 was determined to be non-jurisdictional (see section 8(f) below), therefore, P1 is not a jurisdictional impoundment. P1 is not located near, nor used, or has the potential to degrade or cause destruction to interstate or foreign commerce. Due to these listed reasons, it has been determined to be an “isolated water” in accordance with *SWANCC*.

P2: This deep-water aquatic resource is approximately 0.67 acres in size and does not have a nexus to interstate or foreign commerce. The pond contains one outlet that drains into W3. W3 was determined to be non-jurisdictional (see section 8(f) below), therefore, P2 is not a jurisdictional impoundment. P2 is not

located near, nor used, or has the potential to degrade or cause destruction to interstate or foreign commerce. Due to these listed reasons, it has been 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).

W2: This non-tidal palustrine forested wetland is approximately 0.39 acres in size. This wetland is situated in a depression on the landform. This feature is surrounded by non-wetland uplands and contains a culvert towards the southwest portion of the wetland. This wetland does not physical abut nor contain an apparent chemical connection, or any apparent biological connection to a water of the United States. Since this wetland does not have a continuous surface connection to a jurisdictional water, it was determined to not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett*.

W3: This non-tidal palustrine forested wetland is approximately 10.32 acres in size. Review of the submitted data sheets and additional information included in this review, reveal this feature 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). During a site visit conducted by the Corps on April 10, 2025, verified that this feature sits in a lower elevation and is surrounded by higher non-wetland uplands. Ditch 3, a non-jurisdictional feature (see section 8(f) below), drains W3 into Ditch 1. Neither of these ditches are considered a WOTUS. Therefore, this wetland does not contain a continuous surface connection to any jurisdictional water. Considering the facts listed above and recent Supreme Court's decision in *Sackett*, this feature has been determined to be non-jurisdictional.

W6: This non-tidal palustrine forested wetland is approximately 0.93 acres in size. This wetland is situated in a depression on the landform. This feature is surrounded by non-wetland uplands. This wetland does not physical abut nor contain an apparent chemical connection, or any apparent biological connection to a water of the United States. Since this wetland does not have a continuous surface connection to a jurisdictional water, it was determined to not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett*.

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W7: This non-tidal palustrine forested wetland is approximately 0.92 acres in size. This wetland is situated in a depression on the landform. This feature is surrounded by non-wetland uplands. This wetland does not physical abut nor contain an apparent chemical connection, or any apparent biological connection to a water of the United States. Since this wetland does not have a continuous surface connection to a jurisdictional water, it was determined to not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett*.

Ditch 1: This linear feature is approximately 2,038 linear feet. The feature contains a constructed bed and banks and has existed long enough to have formed an OHWM supported by geomorphic and ancillary indicators. This feature is not identified on any topographic map. A site visit was conducted by the Corps on April 10, 2025. During the site visit, no water was observed within the ditch and the bed was overgrown with vegetation. This man-made linear feature runs along the length of an agricultural feature to facilitate run off during precipitation events. This data supports that this feature does not carry a relatively permanent flow. Since this linear feature is a tributary that is a non-relatively permanent waters, it was determined to not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett*.

Ditch 3: This linear feature is approximately 279 linear feet. The feature contains a constructed bed and banks and has existed long enough to have formed an OHWM supported by geomorphic and ancillary indicators. This feature is not identified on any topographic map. A site visit was conducted by the Corps on April 10, 2025. During the site visit, no water was observed within the ditch and the bed was overgrown with vegetation. This man-made linear feature appears to have been constructed as a drainage ditch adjacent to W3. This data supports that this feature does not carry a relatively permanent flow. Since this linear feature is a tributary that is a non-relatively permanent waters, it was determined to not meet one of the categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett*.

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 28, 2025. Field Determination. Date: April 10, 2025.



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- 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 "POTENTIAL WATERS OF THE U.S. MAP" dated April 21, 2025, prepared by ECS Southeast, LLC.
- c. Photographic Log: "Photographic Log" Provided by ECS Southeast, LLC. dated August 26, 2024.
- d. Aerial Imagery Map: "Property Corners Map" Provided by ECS Southeast, LLC. dated April 21, 2025.
- e. National Wetland Inventory Map: "USFWS NWI Map" provided by ECS Southeast, LLC. dated November 17, 2023.
- f. Natural Resource Conservation Survey: "USDA-NRCS Soil Survey of Berkeley County Sheet 56 Dated 1980" prepared by ECS Southeast, LLC. dated November 17, 2023.
- g. U.S. Geological Survey Map: "USGS Topographic Map Cordesville, SC Quadrangle Dated 1980" provided by ECS Southeast, LLC. dated December 18, 2023.
- h. USGS 3D Elevation Program (3DEP) Map Service – "SAC-2024-01118 Hillshade\_LiDAR" prepared by the Corps' dated March 27, 2025.
- i. FEMA Flood Hazard Map: "FEMA Flood Hazard Map" Provided by ECS Southeast, LLC. dated November 17, 2023.

10. OTHER SUPPORTING INFORMATION.

- a. **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 CLEAN 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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

## Legend

-  Project Study Area
-  Non-JD Wetland Areas
-  Non-JD Ponds
-  Non-JD Ditches
-  Culvert



Client:



Project:

**SPORTSMAN RETREAT**

734 SPORTSMAN  
RETREAT LANE  
MONCK'S CORNER,  
BERKELEY COUNTY,  
SOUTH CAROLINA

Title:

**POTENTIAL WATERS  
OF THE U.S. MAP**

NOTES:  
1. POTENTIALLY JURISDICTIONAL WATERS OF THE U.S. WERE DELINEATED ON FEBRUARY 10, 14, & 16, 2022 AND NOVEMBER 20 & 21, 2023.  
2. FINDINGS DEPICTED ON THIS MAP HAVE PRELIMINARY CONFIRMATION BY THE USACE FOLLOWING A FIELD VISIT ON APRIL 10, 2025.  
3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

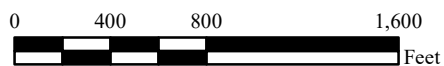
Drawn By:	Scale:
LPJ	1" = 800'

Approved By:	Date:
WBF	04/21/2025

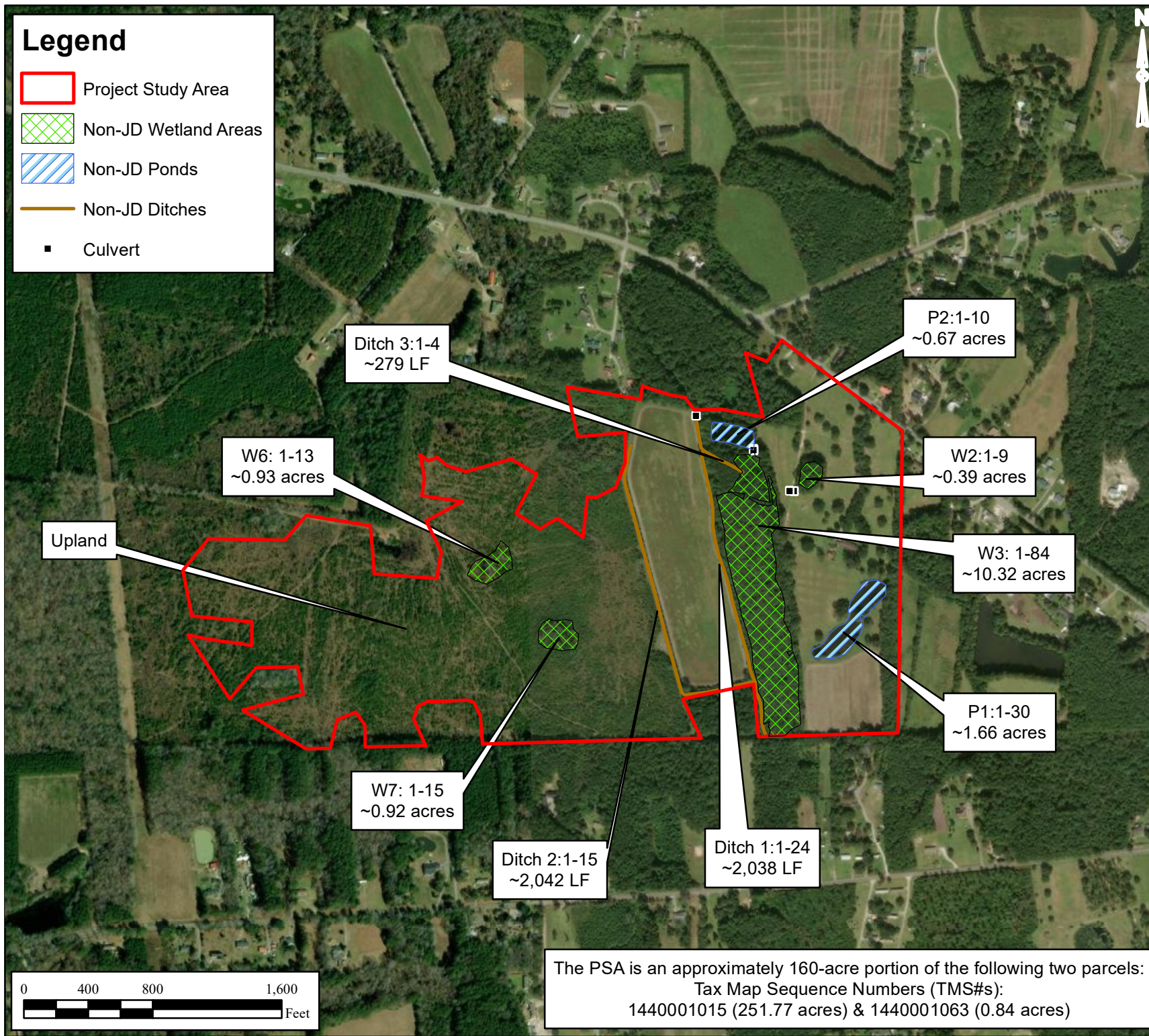
ECS Project No.

**49: 21752**

**FIGURE 7**



The PSA is an approximately 160-acre portion of the following two parcels:  
Tax Map Sequence Numbers (TMS#s):  
1440001015 (251.77 acres) & 1440001063 (0.84 acres)





**Legend**

Project Study Area

● Property Corners

	KCORN	
0	-79.9289	33.187
1	-79.928	33.187
2	-79.9319	33.1816
3	-79.9319	33.1816
4	-79.9334	33.1824
5	-79.933	33.1824
6	-79.9375	33.1817
7	-79.9375	33.1822
8	-79.9377	33.1824
9	-79.9378	33.1824
10	-79.9386	33.1824
11	-79.9388	33.1823
12	-79.9389	33.1821
13	-79.9386	33.1817
14	-79.9399	33.1817
15	-79.9399	33.182
16	-79.9401	33.1823
17	-79.9404	33.1821
18	-79.9406	33.1816
19	-79.9411	33.1816
20	-79.9423	33.1823
21	-79.9411	33.1826
22	-79.9412	33.183
23	-79.9421	33.183
24	-79.9426	33.1825
25	-79.9434	33.1836
26	-79.9421	33.1834
27	-79.9421	33.1838
28	-79.9434	33.1839
29	-79.9435	33.1847
30	-79.943	33.1852
31	-79.9415	33.1852
32	-79.941	33.1856
33	-79.9397	33.1854
34	-79.9397	33.1846
35	-79.9384	33.1845
36	-79.9383	33.185
37	-79.9386	33.1855
38	-79.9379	33.1858
39	-79.9387	33.1859
40	-79.9386	33.1862
41	-79.9386	33.1864
42	-79.9385	33.1865
43	-79.9385	33.1865
44	-79.9381	33.1864
45	-79.9377	33.1863
46	-79.9369	33.1865
47	-79.9363	33.1863
48	-79.9368	33.1856
49	-79.9368	33.1856
50	-79.9359	33.1855
51	-79.9354	33.1852
52	-79.9353	33.1859
53	-79.9351	33.1859
54	-79.9347	33.186
55	-79.9345	33.1865
56	-79.9345	33.1869
57	-79.9355	33.1869
58	-79.9357	33.1878
59	-79.9342	33.1875
60	-79.9342	33.1878
61	-79.9336	33.1876
62	-79.9333	33.1876
63	-79.9331	33.1873
64	-79.9326	33.1874
65	-79.9317	33.1872
66	-79.9321	33.1883
67	-79.9316	33.1882
68	-79.9313	33.1885



Client:



Project:

**SPORTSMAN RETREAT**

734 SPORTSMAN  
RETREAT LANE  
MONCK'S CORNER,  
BERKELEY COUNTY,  
SOUTH CAROLINA

Title:

## PROPERTY CORNERS MAP

### NOTES:

1. POTENTIALLY JURISDICTIONAL  
WATERS OF THE U.S. WERE  
DELINEATED ON FEBRUARY 10,  
14, & 16, 2022 AND NOVEMBER 20  
& 21, 2023.

2. FINDINGS DEPICTED ON THIS  
MAP HAVE PRELIMINARY  
CONFIRMATION BY THE USACE  
FOLLOWING A FIELD VISIT ON  
APRIL 10, 2025.

3. THIS MAP SHOULD BE USED  
FOR PRELIMINARY PLANNING  
PURPOSES.

Drawn By:

LPJ

Scale:

1" = 700'

Approved By:

WBF

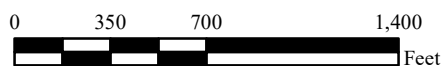
Date:

04/21/2025

ECS Project No.

**49: 21752**

**FIGURE 8**



The PSA is an approximately 160-acre portion of the following two parcels:  
Tax Map Sequence Numbers (TMS#s):  
1440001015 (251.77 acres) & 1440001063 (0.84 acres)