



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

CESAC-RDE

[3 JUN 2024]

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-2024-01291 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 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.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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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 (WOUS)	Section 404/ Section 10
NJW 1	5.19	No	N/A
NJW 2	0.34	No	N/A
NJW 3	2.80	No	N/A
NJW 4	0.42	No	N/A
NJW 5	1.84	No	N/A
NJW 6	0.16	No	N/A
NJW 7	0.82	No	N/A
NJW 8	0.56	No	N/A
NJW 9	0.09	No	N/A
NJW 10	0.50	No	N/A
NJW 11	0.75	No	N/A
NJW 12	0.75	No	N/A
NJW 13	0.11	No	N/A

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NJW 14	0.88	No	N/A
NJW 15	0.64	No	N/A
NJW16	0.15	No	N/A
NJW17	0.33	No	N/A
NJW18	0.62	No	N/A
NJW19	0.06	No	N/A
NJW20	0.05	No	N/A
NJW21	0.24	No	N/A
NJW22	0.09	No	N/A
NJW23	0.31	No	N/A
NJW24	0.16	No	N/A
NJW25	0.03	No	N/A
NJW26	0.10	No	N/A
NJW27	0.82	No	N/A
NJW28	0.73	No	N/A
JW1	0.46	Yes	Section 404

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		Yes	Section 404
JT1 (tributary)	1136		

Summary:

Non-Jurisdictional Wetland: 18.85 acres

Jurisdictional Wetlands: 0.46 acres

Jurisdictional Tributary: 1174 linear feet

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)

3. REVIEW AREA.

- a. Project Area Size: 728 acres
- b. Center Coordinates of the review area: Latitude: 33.6450°, Longitude - 79.9442°
- c. Nearest City: Kingstree
- d. County: Williamsburg
- e. State: South Carolina

Timberlands dominate the approximately 728-acre project area in various stages of growth / management. Portions of the site are unforested but would likely be forested in plantation pines at some point in its lifecycle. The review area is a subset of a much larger parcel that had a delineation concurrence issued on March 10, 2023 (SAC-2023-00222) and a portion of the project boundary was covered under an Approved Jurisdictional determination issued on June 10, 2024 (SAC-2023-00619). The area is dominated by forestry and agricultural activities with sparsely interspersed residential dwellings.

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: JW1 directly abuts the onsite tributary JT1. The tributary continues offsite to the south, discharging into Mill Branch, Bennett Swamp, Dickey Swamp, Laws Branch, which eventually discharges into the Black River (TNW).
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
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

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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.

- e. Tributaries (a)(5): Within the review are one jurisdictional tributary:

JT1 that totals approximately 1174 linear feet.

This feature has a clearly defined, man altered signatures with indications of perennial flow. An open channel with clearly defined bed and banks is visible on available aerial and LiDAR imagery. The tributary continues south, discharging into Mill Branch, Bennett Swamp, Dickey Swamp, Laws Branch, which eventually discharges into the Black River (TNW).

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

- g. Adjacent wetlands (a)(7):

JW1 – 0.46 ac in size and directly abuts the onsite tributary JT1. JT1 flows into the Black River

## 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.
- 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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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 Wetlands (NJW 1- 28) The project area contains 28 non-jurisdictional wetlands totaling 28.75 acres. These wetlands were assessed and determined to be non-jurisdictional with no continuous surface connection to any jurisdictional waters. Wetlands 1-28 are typical of Coastal Plain Wetlands that are depressional in geomorphic position relative to the surrounding areas. These depressional wetlands exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Corps’ Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. All water located within or draining toward these wetlands have no connection to any Waters of the US (WOUS). Additionally, the wetlands were found to be surrounded by forested uplands which further disrupts possible connections to any WOUS.

- 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 29, 2024.
  - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Wetland delineation submittal for the Kingstree West provided by the Kimley-Horn in the submittal dated November 12, 2024.

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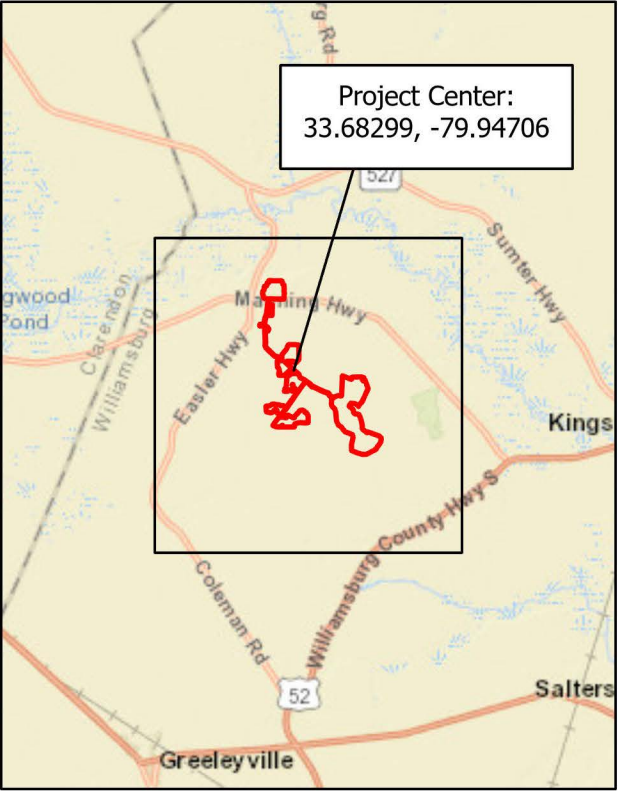
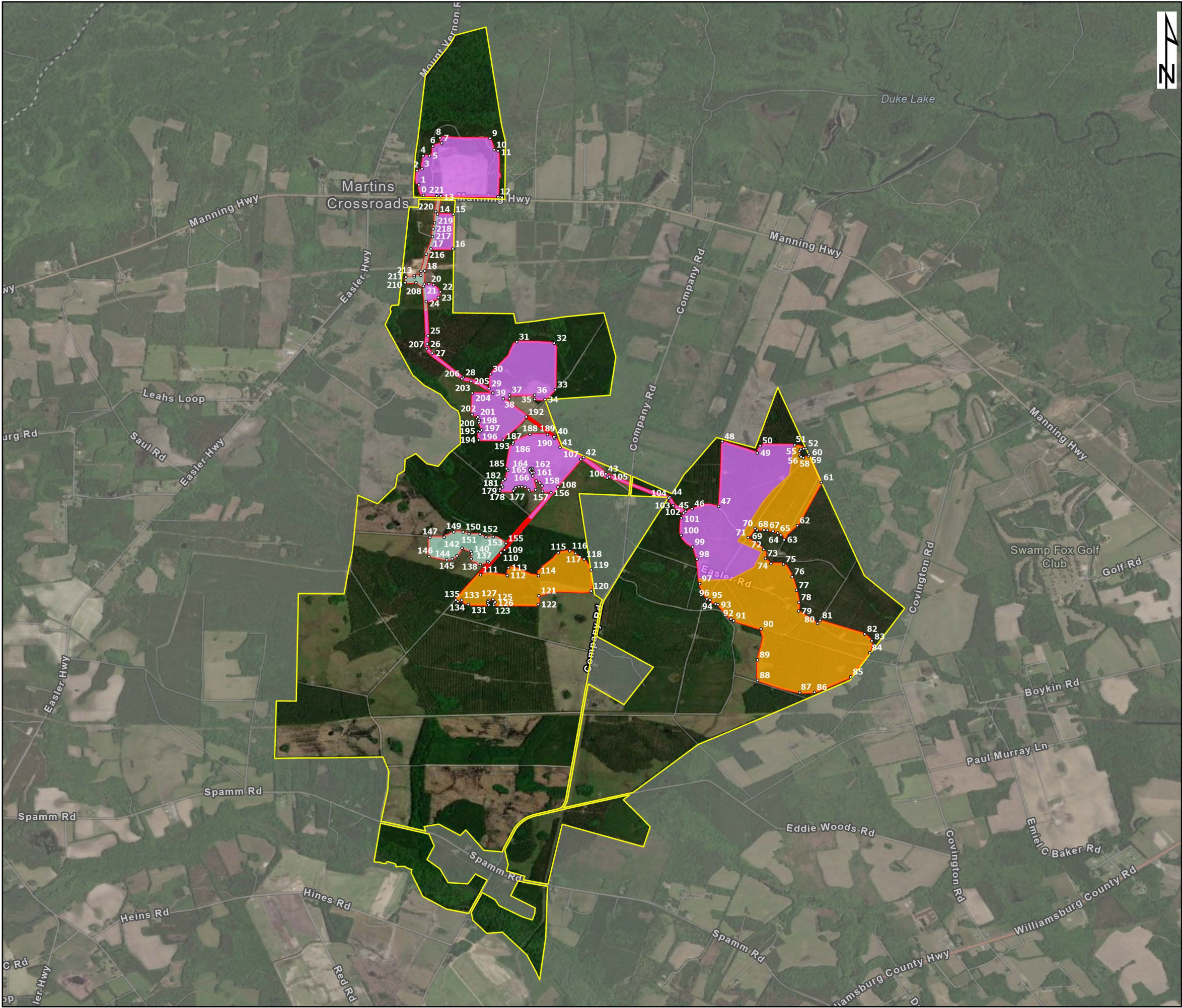
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- c. Aerial Imagery: ESRI base layer imagery, 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC\_2020\_NIR (Map Service),
- d. LIDAR: 3DEP Digital Elevation Model (DEM)  
<https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer>
- e. USDA NRCS Soil Survey: Williamsburg County Soil Survey / USDA-NCSS SSURGO and STATSGO digital soil survey.
- f. USGS topographic maps: 7.5 Minute – Workman Quad: Quad depicts mixed forested, agricultural, and interspersed residential areas.
- g. National Wetland Inventory (NWI): Williamsburg County NWI data.  
<https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0>

10. OTHER SUPPORTING INFORMATION. A delineation concurrence was issued for a larger review area under SAC-2023-00222 dated March 10, 2023. An Approved Jurisdictional Determination was issued for a portion of the tract under SAC-2023-00619 dated June 10, 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.





- Parcel 45-046-003
- Study Area
- Areas to Be Covered Under Current AJD SAC-2024-01291
- Areas Covered Under DC SAC-2023-00222
- Areas Covered Under AJD SAC-2023-00619
- Corners

NOTES:

SAC-2024-01291  
Kingstree West  
Williamsburg County, SC  
Sheet 1 of 9



KINGSTREE WEST  
WILLIAMSBURG COUNTY, SC

JURISDICTIONAL DETERMINATION  
AREAS - CORNER LOCATIONS

Kimley»Horn

REVISED:

DATE:  
02/12/2025

FIGURE:  
2



Corner ID	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)
0	33.69993584	-79.95353457
1	33.7008132	-79.95393133
2	33.70199126	-79.9540699
3	33.70213946	-79.95366052
4	33.70321457	-79.95356988
5	33.70321008	-79.95304017
6	33.70400399	-79.95277399
7	33.7042686	-79.95204234
8	33.70469507	-79.95218613
9	33.7046534	-79.94804181
10	33.70370461	-79.94770101
11	33.70362099	-79.94738428
12	33.69983037	-79.94739462
13	33.69990317	-79.95211468
14	33.69837926	-79.95238449
15	33.69836821	-79.95108104
16	33.69550984	-79.95111519
17	33.69552517	-79.95292305
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20	33.69262897	-79.95309918
21	33.69255634	-79.95270843
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27	33.6868859	-79.95282448
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36	33.6834286	-79.94435361
37	33.68344638	-79.94643708
38	33.68312951	-79.94644094
39	33.68313383	-79.94694856
40	33.68000676	-79.9426379
41	33.67910483	-79.94225494
42	33.67828457	-79.94030852

43	33.6769311	-79.93848065
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46	33.67404189	-79.93134324
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48	33.67959204	-79.92885972
49	33.67865134	-79.92595983
50	33.67925102	-79.9257247
51	33.67930994	-79.92287492
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58	33.67825044	-79.92215582
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80	33.66455657	-79.92097947
81	33.66480151	-79.92077244
82	33.66367847	-79.91708061
83	33.66311528	-79.91649678
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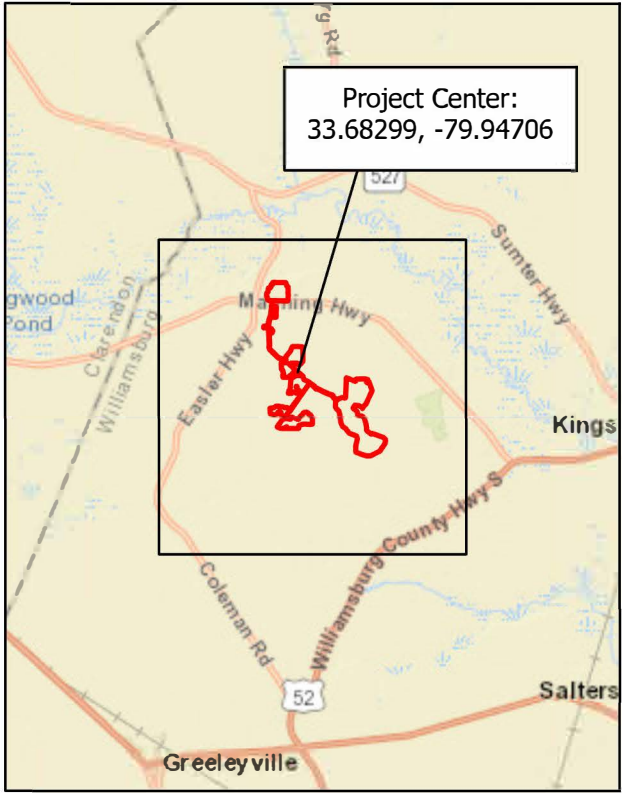
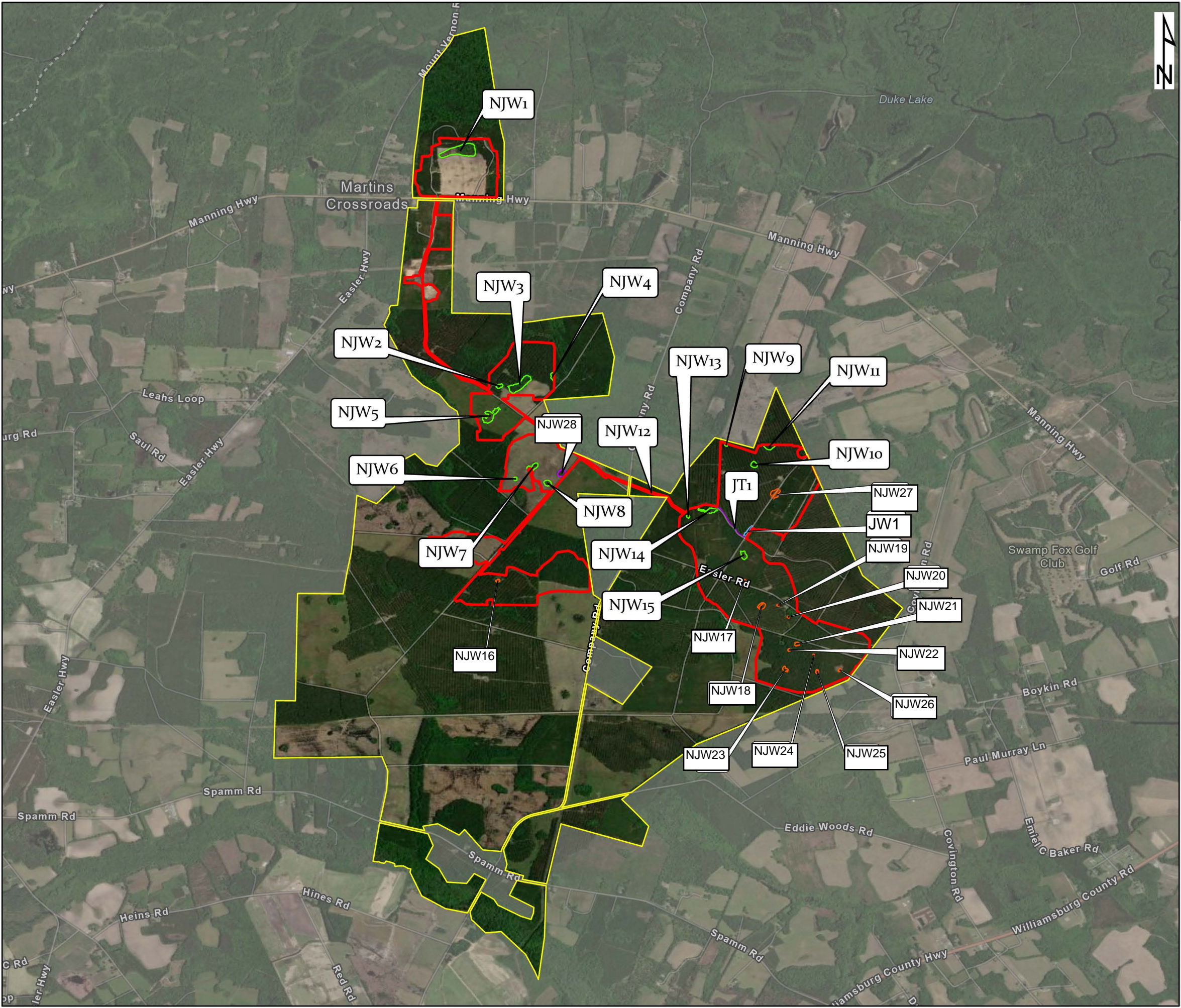
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210	33.69272171	-79.95505988
211	33.69318047	-79.95500045
212	33.6931971	-79.95430907
213	33.69331186	-79.95431296
214	33.6933295	-79.95376293
215	33.69366025	-79.95375245
216	33.69507939	-79.95331927
217	33.69652256	-79.95278921
218	33.69717075	-79.95273903

219	33.69766011	-79.95261622
220	33.69859588	-79.95254164
221	33.69991107	-79.95245746

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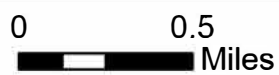




- Parcel 45-046-003
- Study Area
- Jurisdictional Wetlands
- Non-Jurisdictional Wetlands
- Previously Confirmed Jurisdictional Tributary
- Previously Confirmed Non-Jurisdictional Wetlands
- Previously Confirmed Jurisdictional Wetlands

**NOTES:**

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KINGTREE WEST  
WILLIAMSBURG COUNTY, SC

JURISDICTIONAL DETERMINATION  
AREAS - FEATURE LOCATIONS

Kimley»Horn

REVISED:

DATE:  
02/12/2025

FIGURE:  
1



Wetland ID	Classification	Location		Area	
		Latitude	Longitude	Linear Feet	Acres
NJW16	Non-Jurisdictional Wetland	33.66808	-79.94729	NA	0.15
NJW17	Non-Jurisdictional Wetland	33.66799	-79.92693	NA	0.33
NJW18	Non-Jurisdictional Wetland	33.66598	-79.92546	NA	0.62
NJW19	Non-Jurisdictional Wetland	33.66605	-79.92411	NA	0.06
NJW20	Non-Jurisdictional Wetland	33.66506	-79.92326	NA	0.05
NJW21	Non-Jurisdictional Wetland	33.66284	-79.92254	NA	0.24
NJW22	Non-Jurisdictional Wetland	33.66234	-79.92319	NA	0.09
NJW23	Non-Jurisdictional Wetland	33.66075	-79.92351	NA	0.31
NJW24	Non-Jurisdictional Wetland	33.66056	-79.92087	NA	0.16
NJW25	Non-Jurisdictional Wetland	33.66193	-79.92114	NA	0.03
NJW26	Non-Jurisdictional Wetland	33.66068	-79.91900	NA	0.10
NJW27	Non-Jurisdictional Wetland	33.67535	-79.92447	NA	0.82
JW1	Jurisdictional Wetland	33.67217	-79.92659	NA	0.46
Previously Confirmed Features					
NJW1	Non-Jurisdictional Wetland	33.703668	-79.950386	NA	5.19
NJW2	Non-Jurisdictional Wetland	33.684182	-79.947156	NA	0.34
NJW3	Non-Jurisdictional Wetland	33.684296	-79.945474	NA	2.80
NJW4	Non-Jurisdictional Wetland	33.684984	-79.942751	NA	0.42
NJW5	Non-Jurisdictional Wetland	33.681713	-79.947926	NA	1.84
NJW6	Non-Jurisdictional Wetland	33.676506	-79.945848	NA	0.16
NJW7	Non-Jurisdictional Wetland	33.677444	-79.944392	NA	0.82
NJW8	Non-Jurisdictional Wetland	33.676153	-79.943174	NA	0.56
NJW9	Non-Jurisdictional Wetland	33.679313	-79.928402	NA	0.09
NJW10	Non-Jurisdictional Wetland	33.677678	-79.926086	NA	0.50
NJW11	Non-Jurisdictional Wetland	33.679163	-79.924833	NA	0.75
NJW12	Non-Jurisdictional Wetland	33.675351	-79.934578	NA	0.06
NJW13	Non-Jurisdictional Wetland	33.673385	-79.931554	NA	0.11
NJW14	Non-Jurisdictional Wetland	33.673876	-79.929778	NA	0.88
NJW15	Non-Jurisdictional Wetland	33.670190	-79.926943	NA	0.64
NW28	Non-Jurisdictional Wetland	33.676982	-79.942008	NA	0.73
JT1	Jurisdictional Tributary	33.672834	-79.928085	1174	NA

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