



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA 29526

CESAC-RDE

May 5, 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-2023-00778, (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.)	Waters of the U.S. (JD or Non-JD)	Section 404/Section 10
NJF-Pond	0.3 Ac.	Non-JD	N/A
NJW 89	0.49 Ac.	Non-JD	N/A
NJW 88	0.2 Ac.	Non-JD	N/A
NJW 87	0.32 Ac.	Non-JD	N/A
NJW 86	0.25 ac.	Non-JD	N/A
NJW 84	0.73 Ac.	Non-JD	N/A
NJW 83	0.81 Ac.	Non-JD	N/A
NJW 82	0.56 Ac.	Non-JD	N/A
NJW 81	0.43 Ac.	Non-JD	N/A
NJW 80	3.81 Ac.	Non-JD	N/A
NJW 79	1.31 Ac.	Non-JD	N/A
NJW 78	3.73 Ac.	Non-JD	N/A
NJW 77	6.17 Ac.	Non-JD	N/A

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NJW 76	15.50 Ac.	Non-JD	N/A
NJW 75	0.93 Ac.	Non-JD	N/A
NJW 74	0.05 Ac.	Non-JD	N/A
NJW 73	0.37 Ac.	Non-JD	N/A
NJW 72	1.50 Ac.	Non-JD	N/A
NJW 71	1.19 Ac.	Non-JD	N/A
NJW 70	0.34 Ac.	Non-JD	N/A
NJW 69	0.20 Ac.	Non-JD	N/A
NJW 67	0.48 Ac.	Non-JD	N/A
NJW 68	0.04 Ac.	Non-JD	N/A
NJW 66	1.48 Ac.	Non-JD	N/A
NJW 65	1.05 Ac.	Non-JD	N/A
NJW 64	0.29 Ac.	Non-JD	N/A
NJW 63	0.56 Ac.	Non-JD	N/A
NJW 62	2.59 Ac.	Non-JD	N/A
NJW 61	0.72 Ac.	Non-JD	N/A
NJW 60	0.76 Ac.	Non-JD	N/A

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NJW 59	3.78 Ac.	Non-JD	N/A
NJW 58	0.24 Ac.	Non-JD	N/A
NJW 57	0.15 Ac.	Non-JD	N/A
NJW 56	0.19 Ac.	Non-JD	N/A
NJW 55	0.35 Ac.	Non-JD	N/A
NJW 52	0.13 Ac.	Non-JD	N/A
NJW 51	0.73 Ac.	Non-JD	N/A
NJW 50	0.27 Ac.	Non-JD	N/A
NJW 49	1.53 Ac.	Non-JD	N/A
NJW 48	0.35 Ac.	Non-JD	N/A
NJW 47	0.39 Ac.	Non-JD	N/A
NJW 46	0.26 Ac.	Non-JD	N/A
NJW 45	0.19 Ac.	Non-JD	N/A
NJW 44	0.32 Ac.	Non-JD	N/A
NJW 43	0.31 Ac.	Non-JD	N/A
NJW 42	0.36 Ac.	Non-JD	N/A
NJW 41	0.10 Ac.	Non-JD	N/A
NJW 40	0.05 Ac.	Non-JD	N/A

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NJW 39	0.64 Ac.	Non-JD	N/A
NJW 38	2.31 Ac.	Non-JD	N/A
NJW 37	3.45 Ac.	Non-JD	N/A
NJW 36	0.25 Ac.	Non-JD	N/A
NJW 35	0.16 Ac.	Non-JD	N/A
NJW 33	0.96 Ac	Non-JD	N/A
NJW 32	0.50 Ac.	Non-JD	N/A
NJW 31	0.47 Ac.	Non-JD	N/A
NJW 30	1.95 Ac.	Non-JD	N/A
NJW 29	0.27 Ac.	Non-JD	N/A
NJW 28	1.25 Ac.	Non-JD	N/A
NJW 27	0.91 Ac	Non-JD	N/A
NJW 26	1.07 ac.	Non-JD	N/A
NJW 25	0.08 Ac.	Non-JD	N/A
NJW 24	0.47 Ac.	Non-JD	N/A
NJW 23	0.43 Ac.	Non-JD	N/A
NJW 22	1.30 Ac.	Non-JD	N/A
NJW 21	0.89 Ac.	Non-JD	N/A

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NJW 20	1.62 Ac.	Non-JD	N/A
NJW 19	0.27 Ac.	Non-JD	N/A
NJW 18	0.31 Ac.	Non-JD	N/A
NJW 17	0.13 Ac.	Non-JD	N/A
NJW 16	0.44 Ac.	Non-JD	N/A
NJW 15	0.40 Ac.	Non-JD	N/A
NJW 14	2.17 Ac.	Non-JD	N/A
NJW 13	0.30 Ac.	Non-JD	N/A
NJW 12	1.23 Ac.	Non-JD	N/A
NJW 11	1.19 Ac.	Non-JD	N/A
NJW 10	0.30 Ac.	Non-JD	N/A
NJW 9	0.39 Ac.	Non-JD	N/A
NJW 8	0.32 Ac.	Non-JD	N/A
NJW 7	1.91 Ac.	Non-JD	N/A
NJW 6	0.75 Ac.	Non-JD	N/A
NJW 5	0.19 Ac.	Non-JD	N/A
NJW 4	0.50 Ac.	Non-JD	N/A
NJW 3	1.52Ac.	Non-JD	N/A

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NJW 2	0.61 Ac.	Non-JD	N/A
NJW 1	1.03 Ac.	Non-JD	N/A
JW 1	1.27 Ac.	JD	Section 404
JW 2	5.57 Ac.	JD	Section 404
JW 3	857.78 Ac.	JD	Section 404
JW 4	1.77 ac.	JD	Section 404
JW 5	62.27 Ac.	JD	Section 404
JT 3	834 L.F.	JD	Section 404
JT 2	6,925 L.F..	JD	Section 404
JT 1	21,370 L.F.	JD	Section 404

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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- 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. EPA Memorandum dated March 12, 2025, titled "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

3. REVIEW AREA.

- a. Project Area Size: 4,708.13-acres
- b. Coordinates of the review area: 33.8447°N, -80.4288°W
- c. Nearest City: Kingstree
- d. County: Williamsburg and Georgetown
- e. State: South Carolina

The review area is 4,708.13-acre timber site that has been actively managed for timber production. Onsite are existing forestry roads that were established prior to 1972, onsite drainage ditches located within the forested lands as well as adjacent to interior roads. The review area is located within Williamsburg and Georgetown County. The majority of the site is located in Williamsburg County with portions extending in Georgetown County south of County Line road. A Delineation Concurrence (DC) was previously issued for the site on November 8, 2024, where a site visit was performed.

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

- a. Nearest downstream TNW, Territorial Sea, or interstate water: Black Mingo Creek and McGinney Creek are the nearest downstream TNWs which the onsite aquatic resources are connected.

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

- a. Wetland (JW 3) totaling 857.78 Acres: Wetland identified as JW 3 is directly abutting, contiguous to onsite tributaries (JT 1 through JT 3) that flow directly to offsite an TNW (McGinney Creek). Tributaries JT 1 – JT 3 flow through JW 3.

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- b. Wetland (JW 5) totaling 62.27 is located on the northern boundary of the review area and is contiguous to an offsite tributary (Burnette Swamp) which flows directly to Black Mingo Creek (TNW).
 - c. Wetland (JW 1) totaling 1.27 acres is located on the northeast property corner and is contiguous to an offsite impoundment of Smith Swamp that flows directly to McGinney Creek (TNW).
 - d. Wetland (JW 2) totaling 5.57 acres is located on the eastern property boundary and is contiguous to an offsite tributary that flows directly to McGinney Creek (TNW).
 - e. Wetland (JW 4) totaling 1.77 acres is located on the southeastern property boundary and is contiguous to an offsite tributary that flows directly to McGinney Creek (TNW).
 - f. Tributaries (JT 1 through JT 3) totaling 29,129 Linear feet: Tributaries JT 1 through JT 3 flow directly to an offsite TNW (McGinney Creek).
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

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.

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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):
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5):
 - a. Tributary "JT 1" (Smiths Swamp) (21,370 L.F.) consists of a natural streambed exhibiting a clearly defined bed and bank with a channel free of aquatic vegetation and debris indicating this feature is a relatively permanent water which flows year-round. This feature flows east directly through JW 3 and continues offsite and discharges into McGinney Creek (a TNW).
 - b. Tributary "JT 2" (6,925 L.F.) consists of a natural streambed exhibiting a clearly defined bed and bank with a channel free of aquatic vegetation and debris indicating this feature is a relatively permanent water which flows year-round. This feature flows directly through JW 3 and directly outfalls into JT 1 (Smith Swamp) which flows east and discharges into McGinney Creek (a TNW).
 - c. Tributary "JT 3" (834 L.F.) consists of a natural streambed exhibiting a clearly defined bed and bank with a channel free of aquatic vegetation and debris indicating this feature is a relatively permanent water which flows year-round. This feature flows directly through JW 3 and directly outfalls into JT 1 (Smith Swamp) which flows east and discharges into McGinney Creek (a TNW).
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

- a. Wetland "JW 1" (1.27 AC) is located on the northeast property corner and is contiguous to an offsite impoundment of Smith Swamp, an (a)(4) water, that outfalls into an (a)(5) tributary that flows directly to McGinney Creek (TNW).
- b. Wetland "JW 2" (5.57 AC) is located on the eastern property boundary and is contiguous to an offsite tributary, an (a)(5) water, that flows directly to McGinney Creek (TNW).
- c. Wetland "JW 3" (857.78 AC.) was determined to have a continuous surface connection to onsite tributaries JT 1 through JT 3, all (a)(5) waters, that outfall into McGinney Creek, a TNW.
- d. Wetland "JW 4" (1.77 AC) is located on the southeastern property boundary and is contiguous to an offsite tributary, an (a)(5) water, that flows directly to McGinney Creek (TNW).
- e. Wetland "JW 5" (62.27 AC) is located on the northern boundary of the review area and is contiguous to an offsite tributary (Burnette Swamp), an (a)(5) waters, which flows directly to Black Mingo Creek (TNW).

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.

The review area contains one upland excavated pond depicted as non-jurisdictional feature Pond on the associated wetland sketch. This pond is a Preamble waters (51 FR 41217) Reference page 16 of 59:
https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf

Preamble waters (51 FR 41217), in part, are: Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons are Preamble waters (51 FR 41217).

⁸ 51 FR 41217, November 13, 1986.

- 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

The site contains numerous non-jurisdictional ditches that are located adjacent to onsite forestry roads and throughout the timberlands that were established prior to 1972 for minor forestry drainage. These non-jurisdictional ditches depicted on a supplement map were determined to have been dug wholly in uplands, only draining uplands, and not carrying relatively permanent flow, conveying stormwater and runoff only in response to precipitation events.

- 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*. 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).
 - a. Wetlands “NJW 1 through NJW 89” totaling (87.78 Ac.) as depicted on the referenced map were determined not to have a continuous surface connection to any waters of the US. The depressional wetlands exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which

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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 discernible or traceable outfall or a continuous surface connection to any Waters of the US (WOUS). Upland excavated ditches are in proximity to most of these wetlands; however, those ditches do not carry a relative permanent flow water. These ditches exhibited (by review of site photos provided by the Brigman Company) standing water with no indicators of flow. A ditch cannot render an otherwise isolated wetland an adjacent wetland unless the ditch itself is a tributary, which in this case it is not. Therefore, Wetlands NJW 1 through NJW 89 were determined to be non-jurisdictional by being surrounded by uplands and lacking a direct surface connection to any (a)(1)-(6) waters.

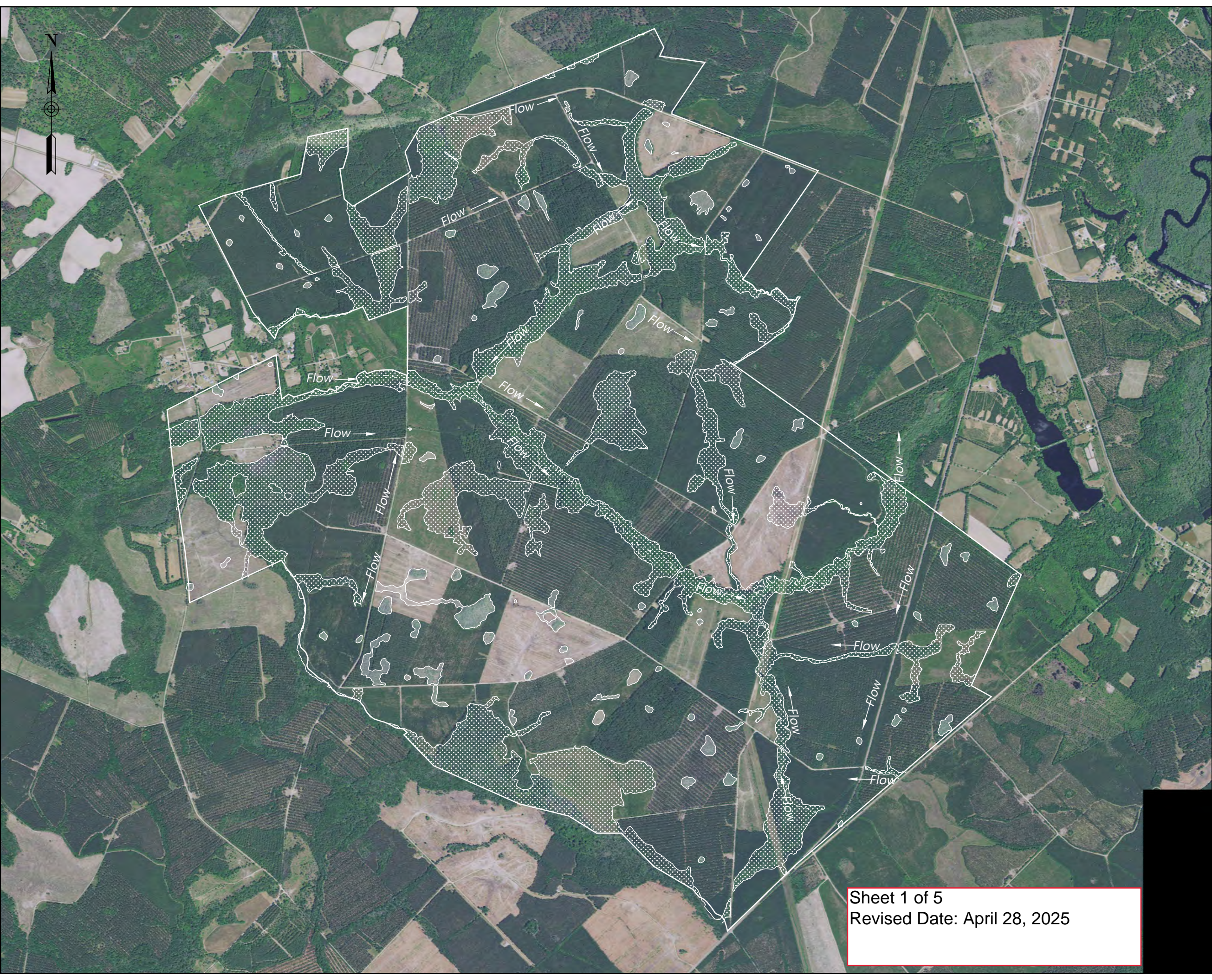
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Review Performed for Site Evaluation: Office (Desk) Determination.
Date: April 28, 2025.
 - b. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by the Brigman Company in the submittal dated January 28, 2025.
 - c. Aerial 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: SSURGO database.
 - f. National Wetland Inventory (NWI): NWI
<https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetlands/MapServer/0>
 - g. U.S. Geological Survey map(s): 7.5 Minute Index/ Rhems / 1:240000; USGS topographic survey information depicts

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10. OTHER SUPPORTING INFORMATION. SAC-2023-00778 Delineation Concurrence dated November 8, 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.



Wetland Delineation/Determination

Ingka Investments Forest Assets, LLC
Kingstree East Tract

Williamsburg County, South Carolina
Tax Map Number 45-446-003, & 45-430-002

Area Summary:	
Jurisdictional Wetland (JW x)	928.66
Non-Jurisdictional Wetland (NJW x)	87.78
Jurisdictional Tributary (JT x)	29,129 L.F.
Uplands	3688.75
Total	4708.13

- Notes**
1. Potential wetland/non-wetland areas depicted here on have not been verified by the US Army Corps of Engineers. Areas depicted as wetlands were identified using a combination of available remote sensing and onsite investigation. Prior to any land disturbing activities, or land transactions a final jurisdictional determination should be obtained from the US Army Corps of Engineers.
 2. Boundary information taken from Williamsburg County GIS/Tax Parcel information.
 3. Onsite inspection was conducted throughout the month of March-May 2023.

Legend

Line Legend

Boundary	
Adjacent Boundary	
Right of Way	
Jurisdictional Tributary	
Non-Jurisdictional Feature	
Dirt Road	
Bulkhead	

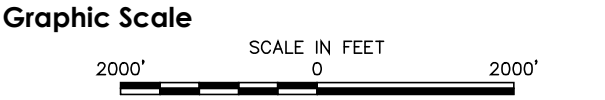
Hatch Legend

Jurisdictional Wetland	
Non-Jurisdictional Wetland	

Symbol Legend

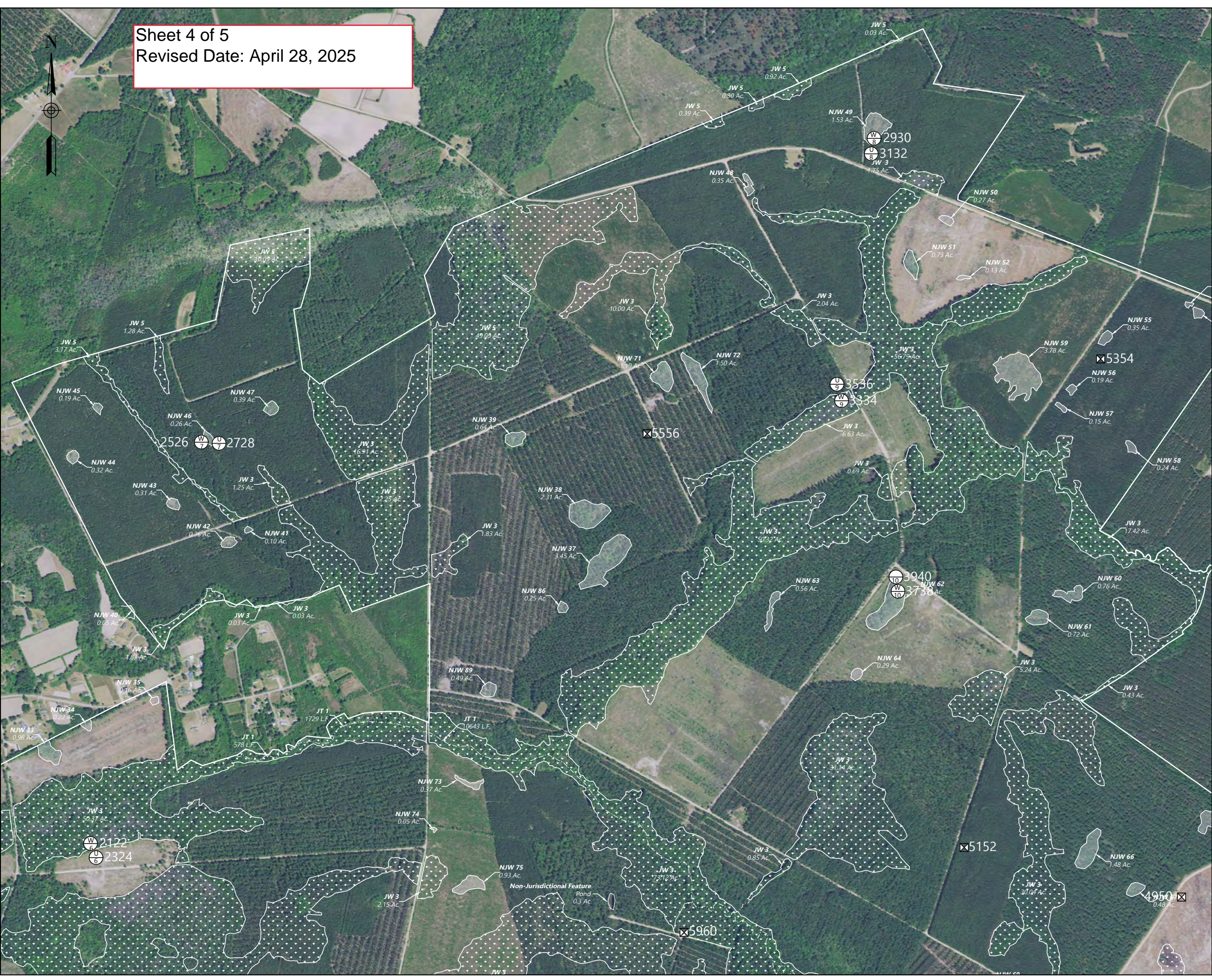
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Prepared For	Ingka Investments Forest Assets, LLC
Job #	02275-22316
Date	1-27-25



Sheet 1 of 5
Revised Date: April 28, 2025





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Ingka Investments Forest Assets, LLC
Kingstree East Tract

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Area Summary:

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1. Potential wetland/non-wetland areas depicted on have no

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Graphic Scale

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TBC
THE BRIGMAN CO.

P.O. Box 1532 - Conway, SC 29528 - p(843) 248-9388 f(843) 248-9596



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Ingka Investments Forest Assets, LLC

Kingstree East Tract

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Area Summary:

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Notes

1. Potential wetland/non-wetland areas depicted on have no
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0227522316
12725

Graphic Scale

1000'

SCALE IN FEET
0

1000'

TBC

THE BRIGMAN CO.

P.O. Box 1532 - Conway, SC 29528 - p(843) 248-9388 f(843) 248-9596