



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

CESAC-RDS

8 April 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-2024-00089 (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 US (WOTUS)	Section 404/ Section 10
Non-Jurisdictional Wetland A	0.15 AC	No	N/A
Non-Jurisdictional Wetland B	3.57 AC	No	N/A
Non-Jurisdictional Pond C	0.59 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. [2008 Rapanos guidance](#)
- f. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988))

3. REVIEW AREA.

- a. Project Area Size: 45.59 acres

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- b. Center Coordinates of the review area: Latitude: 32.7911 °N, Longitude: - 79.9033 °W
- c. Nearest City: Charleston
- d. County: Charleston
- e. State: South Carolina

The approximate 45.59 acres review area is located on Patriots Point, a well-known landmark on the east bank of the Cooper River in the Town of Mount Pleasant, South Carolina. Current land use of the surrounding review area consists of roads, parking lots, museums, commercial buildings, and undeveloped wetland and non-wetland forested land. Within the review area consist of undeveloped wetland and non-wetland forested land.

- 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 documented in the Corps Navigability Study of 1977, Cooper River Area, Report No.04⁶
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Non-Jurisdictional Wetland A: Is an concave depressional wetland, surrounded by uplands, that does not contain a flow path to the Cooper River.

Non-Jurisdictional Wetland B: Directly drains into a culvert located on the east side of the review area where the flow is carried under the bisecting road for approximately 115 feet, and directly discharges into the underground drainage network of Patriots Point. From this point, the combined flow of wetland B and surrounding runoff is carried approximately 2,000 feet downstream directly discharging into The Cooper River.

Non-Jurisdictional Pond C: Is a stormwater pond that contains an outfall structure along the west side of the berm where the discharge flows through an above/underground drainage system for approximately 1,800 feet before discharging directly into the Cooper River.

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A.
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A.
 - b. Interstate Waters (a)(2): N/A.
 - c. Other Waters (a)(3): N/A.
 - d. Impoundments (a)(4): N/A.
 - e. Tributaries (a)(5): N/A.
 - f. The territorial seas (a)(6): N/A.
 - g. Adjacent wetlands (a)(7): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

Non-Jurisdictional Pond C: This feature is approximately 0.59-acre in size, and was constructed out of dryland to collect and retain water. This feature is used exclusively for such purposes as a settling basin for runoff inputs from the surrounding area and impervious surfaces.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. 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. NA.
- 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

⁹ 51 FR 41217, November 13, 1986.

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non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Non-Jurisdictional Wetland A: Is an approximately 0.15-acre isolated depressional feature within the review area, that contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0). This non-tidal wetland does not directly abut or physically connect to a traditional navigable water, or a relatively permanent body of water connected to a traditional navigable water.

Non-Jurisdictional Wetland B: Is an approximately 3.57 acres non-tidal wetland within the review area, that contains all three parameters that define a wetland as outlined in the 1987 Corps of Engineers Wetland delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0). This non-tidal wetland does not directly abut or physically connect to a traditional navigable water, or a relatively permanent body of water connected to a traditional navigable water.

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: Site Visit: January 29, 2025, Office (Desk) Determination. Date: March 21, 2025,
 - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including associated data maps, and aquatic resource map titled "Water Features Map" dated March 7, 2025, prepared by Newkirk Environmental Inc, and revised by the Corps March 21, 2025.
 - c. National Wetland Inventory Map: "NWI Map" prepared by Newkirk Environmental Inc. dated October 2023.
 - d. Natural Resource Conservation Survey: "Soils Map" prepared by Newkirk Environmental Inc. dated October 2023.
 - e. U.S. Geological Survey Map: "USGS Quad Map" prepared by Newkirk Environmental Inc. dated October 2023.

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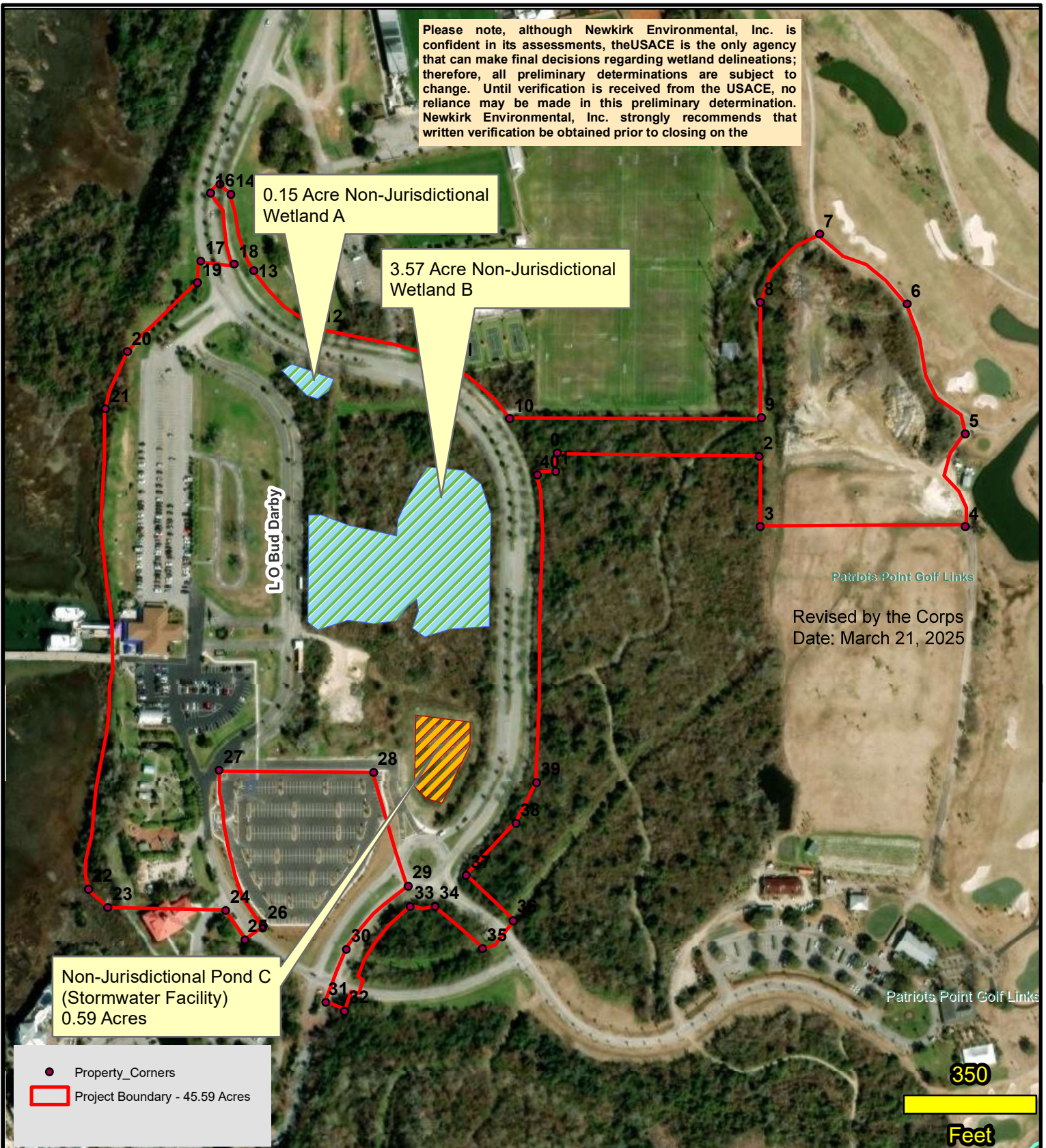
- f. USGS 3D Elevation Program (3DEP) Map Service: "USGA Map Service LiDAR Contour Approx. Boundary" prepared by the Corps. dated January 31, 2025.
- g. Aerial Imagery: "SAC-2024-00089 Aerial Review" prepared by the Corps dated September 10, 2024.

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

Please note, although Newkirk Environmental, Inc. is confident in its assessments, the USACE is the only agency that can make final decisions regarding wetland delineations; therefore, all preliminary determinations are subject to change. Until verification is received from the USACE, no reliance may be made in this preliminary determination. Newkirk Environmental, Inc. strongly recommends that written verification be obtained prior to closing on the



Water Features Map

Project #: 01-5500a Date: March 7, 2025

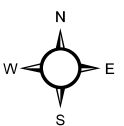
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Newkirk
ENVIRONMENTAL INC.

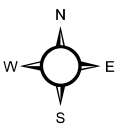
Patriots Point Development
Charleston County, South Carolina



FID	Shape *	Id	Lat	Long
0	Point	0	32.791820183	-79.9021002374792
1	Point	0	32.791686912	-79.9021112018828
2	Point	0	32.791781053	-79.9003638417367
3	Point	0	32.791271087	-79.9003609779585
4	Point	0	32.791255215	-79.8985964358033
5	Point	0	32.791929829	-79.8985879235769
6	Point	0	32.792875664	-79.8990775565039
7	Point	0	32.793392314	-79.8998233960464
8	Point	0	32.792902712	-79.900340423001
9	Point	0	32.792063283	-79.9003417098915
10	Point	0	32.792074868	-79.9025057149345
11	Point	0	32.792487272	-79.9030020948853
12	Point	0	32.792740683	-79.9041413673875
13	Point	0	32.793169268	-79.9046932856065
14	Point	0	32.793727963	-79.9048813307814
15	Point	0	32.793799393	-79.9049733184208
16	Point	0	32.793737386	-79.9050576916799
17	Point	0	32.793243940	-79.9051474764147
18	Point	0	32.793217830	-79.9048598659933
19	Point	0	32.793087302	-79.9051773060447
20	Point	0	32.792590664	-79.9057872716165
21	Point	0	32.792176574	-79.9059782266336
22	Point	0	32.788687166	-79.9061705643776
23	Point	0	32.788552318	-79.9060050733163
24	Point	0	32.788519729	-79.9049931094067
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27	Point	0	32.789539993	-79.9050360384808
28	Point	0	32.789512412	-79.9037082110045
29	Point	0	32.788686092	-79.9034213778187
30	Point	0	32.788228019	-79.90395653623
31	Point	0	32.787845227	-79.9041378097795
32	Point	0	32.787781058	-79.9039807237277
33	Point	0	32.788536883	-79.9034046765606
34	Point	0	32.788534969	-79.9031910806785
35	Point	0	32.788225375	-79.9027863078572
36	Point	0	32.788426996	-79.9025237148543
37	Point	0	32.788760040	-79.9029189051187
38	Point	0	32.789132737	-79.9024869782367
39	Point	0	32.789429240	-79.9023067798501
40	Point	0	32.791664796	-79.9022693787293

350

Feet



Water Features Map

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