



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

CESAC-RDE

June 16, 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-1999-40715 (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
Jurisdictional Tributary	±1,009 L.F.	JD	Section 404
Non-Jurisdictional Feature (Pond)	±0.1 AC.	Non-JD	N/A
Non-Jurisdictional Feature (Ditch)	±1,172 L.F.	Non-JD	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. 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

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CONNECTION" UNDER THE DEFINITION OF "WATERS OF THE UNITED STATES" UNDER THE CLEAN WATER ACT

3. REVIEW AREA.

- a. Project Area Size: 28.73 Acres
- b. Center Coordinates of Review Area: 33.6734°N, -78.9692°W
- c. Nearest City: Myrtle Beach
- d. County: Horry
- e. State: South Carolina

At present the 28.73-acre area of review is a maintained open field with early successional vegetation, largely devoid of trees and woody plants. This property has been verified three times prior to the current submittal in letters dated August 24, 1999, November 17, 2004, and December 21, 2009, under same SAC number (SAC-1999-40715). None of the prior determinations identified wetlands onsite, however a large, excavated drainage feature located on the northeastern property line has been continually identified as a relatively permanent water. This feature, identified as Raccoon Run, is a state-maintained floodway which drains historic wetlands of south Socastee and southern Myrtle Beach. Raccoon Run is a channelized tributary that drains directly into the Atlantic Intracoastal Waterway. Along the northwestern property line, an upland excavated ditch connects to Raccoon Run, however the stream bed of Raccoon Run is significantly deeper than this upland ditch, severing any relative permanent connection between the features. An upland excavated ornamental pond is present in the southeastern corner of the property where U.S. Highway 17 intersects Azalea Lakes Boulevard.

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: The Atlantic Intracoastal Waterway is the nearest downstream TNW.

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

- a. Jurisdictional Tributary of approximately 1,009 linear feet was determined to flow northwest into a channelized tributary of the AIWW.

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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 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):
 - a. Jurisdictional tributary (Raccoon Run) of approximately 1,009 linear feet enters the site from a box culvert beneath U.S. Highway 17 and parallels the northeastern property line until it exits the area of review. The jurisdictional tributary continues in its channelized form until joining the Atlantic Intracoastal Waterway approximately 1.9 miles northwest.

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.

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”).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.
 - a. Non-Jurisdictional Feature (Pond) of approximately 0.1 acres constructed for the purpose of obtaining fill material from an upland source was found to be filled with water. As stated in the Preamble to the November 13, 1986, Regulations found on page 41,217 (Federal Register vol. 51 No. 219) “waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and resulting body of water meets the definition of waters of the United States” are generally not considered waters of the U.S.
- 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 (Ditch) of approximately 1,172 linear feet dug wholly in uplands, only draining uplands, and not carrying relatively permanent flow conveys stormwater from the northwestern uplands of the site to the onsite tributary but does not maintain a connection due to having a significantly higher elevation than the tributary.
- 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**.

⁸ 51 FR 41217, November 13, 1986.

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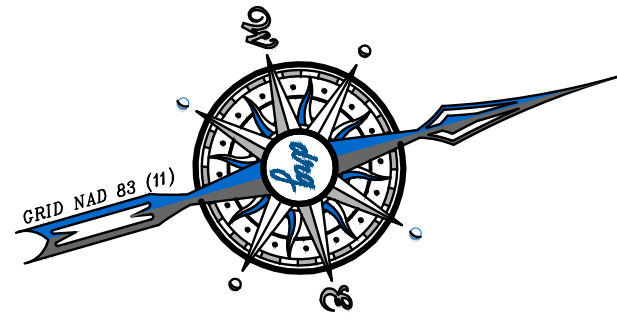
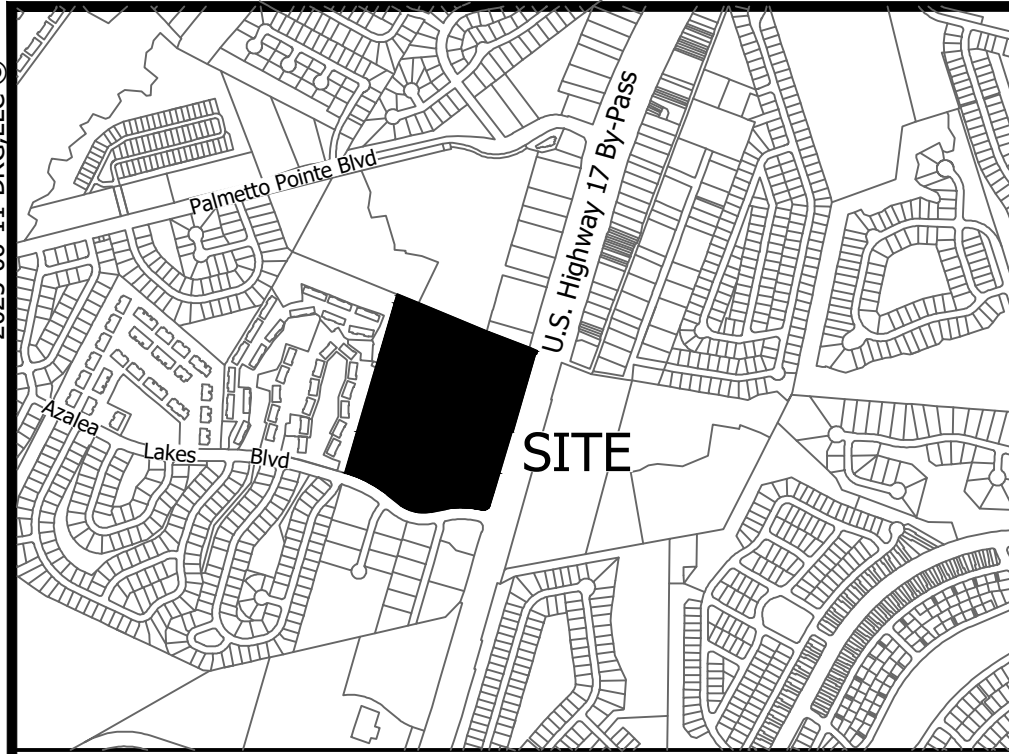
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- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe 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). **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. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by Hynes Land & Environmental Services in the submittal dated August 6, 2024.
 - b. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)
 - c. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)
 - d. Lidar: Office for Coastal Management, 2024: 2014 Lidar DEM; Horry County SC, <https://www.fisheries.noaa.gov/inport/item/57194>.
 - e. USDA NRCS Soil Survey: Wahee fine sandy loam and Meggett loam. SSURGO database. The site mapped majority Wahee fine sandy loam, a non-hydric soil.
 - f. National Wetland Inventory (NWI): NWI
<https://fwspublicservices.wim.usgs.gov/wetlandsmapping/rest/services/Wetlands/MapServer/0>

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10. OTHER SUPPORTING INFORMATION. Previous determinations on this parcel in letters dated August 24, 1999, November 17, 2004, and December 21, 2009, all under same SAC number (SAC-1999-40715).
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.













NOTES:

1. Tax Parcel: PIN: 441-00-00-0015
TMS: 185-00-03-042
2. Owner of Record: Burroughs & Chapin Company, Inc.
8820 Marina Parkway
Myrtle Beach, SC 29572
3. This property appears to be located in Flood Zone "X", and "AE" According to FEMA flood zones per F.I.R.M. 45051C 071180712 K, dated Dec. 16th, 2021.
A portion of this property appears to be located in Horry County supplemental flood zone;
Reference to Ordinance filed in Deed Book 4442 at page 2393.
Any Flood zone lines shown hereon are based on provided data. This plat is not the basis for flood zone determination or flood zone related issues.
4. Declaration is made to original purchaser of the survey. It is not transferable to additional institutions or subsequent owners.
5. This survey is only valid if print of same has original signature and embossed seal of the surveyor.
6. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
7. Subsurface and environmental conditions were not examined or considered as a part of this survey. No statement is made concerning the existence of underground or overhead containers or facilities that may affect the use or development of this tract.
8. This property is subject to all easements or restrictions of record.
9. A portion of this property may be subject to corps of engineers jurisdiction.
10. All Bearings are based upon the South Carolina State Plane Coordinate System (NAD83)(2011). All distances shown are Horizontal not grid distances.

REFERENCES:

1. Compiled Plat prepared for Burroughs & Chapin Company, Inc.
by Associated Land Surveyors dated December 6th, 2009

LEGEND

-  Calculated Point (CP)
 Light Pole (LP)
 Curb Inlet
 Telephone Pedestal (T)
 Power Pole (PP)
 Cable Pedestal (CATV)
 Overhead Power
 Drainage Pipe
 Jurisdictional
 Non-Jurisdictional

NOTE:
ANY AND ALL IMPROVEMENTS SHOWN ON THIS MAP ARE
SHOWN FOR REFERENCE ONLY AND APPROXIMATE IN NATURE

THIS IS A COMPILED MAP NOT FOR RECORDATION,
CONVEYANCES OR SALES.



SPACE RESERVED FOR PLANNING APPROVAL ONLY

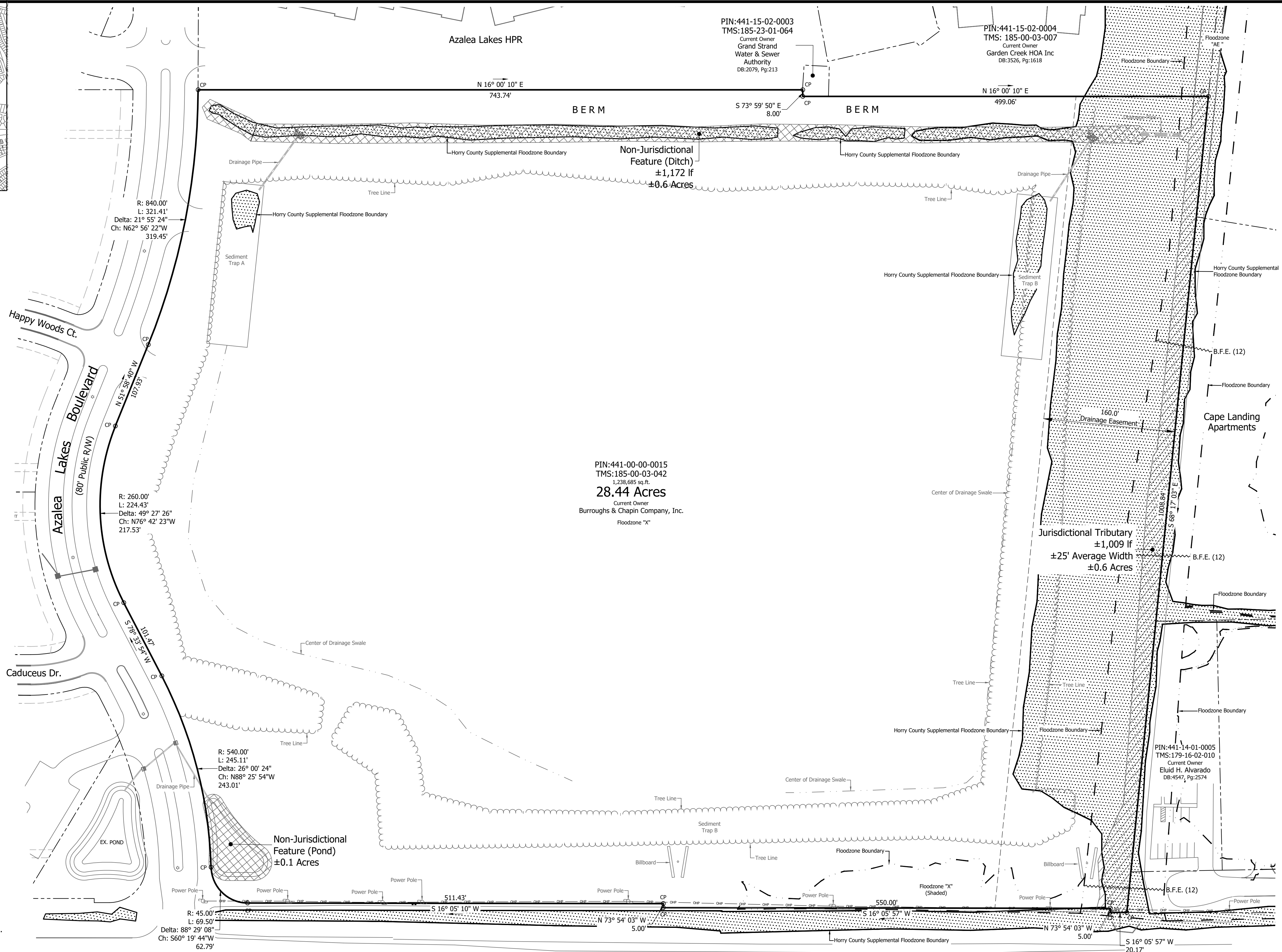
LEGEND

SPECIAL FLOOD HAZARD AREAS INUNDATED BY 100-YEAR FLOOD
 ZONE AE Base flood elevation determined.

OTHER FLOOD AREAS
ZONE X (SHADED) Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS
ZONE X Areas determined to be outside the 0.2% annual chance floodplain.

-  Floodplain Boundary
 Horry County Supplement Flood Hazard Areas
 BFE Base flood elevation determined.



U.S. HIGHWAY 17 BYPASS
(Public Right of Way Varies)

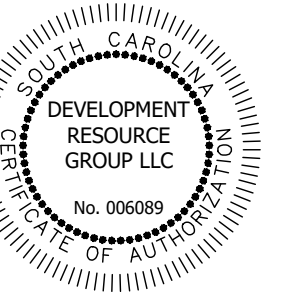
Corps Revised Labeling 2025.06.11

"I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements as specified therein.

Michael D. Oliver, P.L.S. No. 13520
as agent



DEVELOPMENT RESOURCE GROUP, LLC
4703 OLEANDER DRIVE
MYRTLE BEACH, SC 29577
843-839-3350 | DRGPLLC.COM



ike@drGPLLc.com

WEILAND MAP
28.44 ACRES

28.44 ACRES
00-0015 / TMS:18

PIN:441-00-00-0015 / TMS:185-00-03-042
TLE BEACH HOBRY COUNTY SOUTH CARO

PREPARED FOR:

& CHAPIN CO

BURROUGHS & CHAPIN COMPANY, INC.

[illegible]

JOB No.	24519 T11
DATE:	06/10/2025
FIELD DATA BY:	---
DRAFTED BY:	D.PINT
CHECKED BY:	M.D.O.
SCALE:	1"=60'