



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

CESAC-RD

16 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-2023-00918, 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

---

<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.

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2023-00918

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. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). Review of the submitted data sheets, which this office agrees with, indicate the review area lacks 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). Furthermore, a review of LiDAR, Hillshade, and aerial photo and topographic maps revealed the site is located at higher elevations compared to properties to the south and west.

## 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)

## 3. REVIEW AREA.

- a. Project Area Size: 11.04 acres
  - b. Center Coordinates of the review area: Latitude: 32.9394°, Longitude - 79.7084°
  - c. Nearest City: Awendaw
  - d. County: Charleston
  - e. State: South Carolina
- ## 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2023-00918

CONNECTED. N/A. The review area was determined to be void of any aquatic resources.<sup>6</sup>

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

---

<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.

<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.

- 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. 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. 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.

---

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

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2023-00918

- 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. Date of Office (desktop review): May 13, 2025
  - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: "Kuznik Tract Upland Depiction SAC-2023-00918" provided by Newkirk Environmental, dated April 7, 2023, and revised by Corps dated May 13, 2025.
  - c. Aerial Imagery: "Kuznik Tract - Charleston County, South Carolina Data Point and Photo Location Map" provided by Newkirk Environmental, dated March 2023, SCDNR 2020 infrared imagery, ESRI Base Layer Imagery
  - d. USDA NRCS Soil Survey: "Kuznik Tract - Charleston County, South Carolina Soils Map" provided by Newkirk Environmental, dated March 2023.
  - e. USGS topographic maps: "Kuznik Tract - Charleston County, South Carolina USGS Quad Map" provided by Newkirk Environmental, dated March 2023.
  - f. National Wetlands Inventory (NWI) Map: "Kuznik Tract - Charleston County, South Carolina NWI Map" provided by Newkirk Environmental, dated March 2023.
  - g. On-site photographs: "Kuznik Tract - Charleston County, South Carolina Photos" provided by Newkirk Environmental, dated March 2023.
  - h. LiDAR: USGS 3D Elevation Program (3DEP) Map Service prepared by Corps, dated May 6, 2025.
10. OTHER SUPPORTING INFORMATION. HQ/EPA memo dated 12 March 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

CESAC-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAC-2023-00918

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. THE SURVEYED PROPERTIES DELINEATED HEREON ARE LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA AS TMS #629-00-00-063 & 629-00-00-129.
2. THE SURVEYED PROPERTIES ARE CURRENTLY IN THE NAME OF CJM INVESTMENTS, LLC. RECORDED IN DEED BOOK 1183, PAGE 672 AND DEED BOOK 1183, PAGE 674 IN THE ROD OFFICE OF CHARLESTON COUNTY, SOUTH CAROLINA.
3. BOUNDARY INFORMATION AS SHOWN HEREON IS BASED ON A FIELD SURVEY PERFORMED BY BOWMAN CONSULTING GROUP, LTD. ON MARCH 9, 2023. SURVEY REPRESENTS A SURVEY OF OCCUPATION USING EVIDENCE FOUND AND REFERENCES SHOWN.
4. UNDERGROUND UTILITY INFORMATION SHOWN IS BASED ON FIELD EVIDENCE AS IDENTIFIED BY SC 811 AND FIELD SURVEY BY BOWMAN CONSULTING GROUP ON MARCH 9, 2023. CONSIDERABLE EFFORT HAS BEEN MADE TO DETERMINE THE LOCATION OF UNDERGROUND UTILITIES. SOME LOCATIONS ARE ACTUAL FIELD MEASUREMENTS AND SOME ARE TAKEN FROM UTILITY RECORDS. THIS PLAN DOES NOT WARRANT THAT UTILITIES ARE SHOWN ACCURATELY NOR THAT ALL UTILITIES ARE SHOWN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT LOCATION OF ALL UTILITIES PRIOR TO BEGINNING DIGGING OPERATIONS. CALL PALMETTO UTILITIES PROTECTION SERVICE AT 1-888-721-7677 A MINIMUM OF 3 WORKING DAYS BEFORE DIGGING. ANY UTILITIES DAMAGED OR DISTURBED DURING CONSTRUCTION SHALL BE RESTORED TO THEIR ORIGINAL CONDITION AT THE CONTRACTOR'S EXPENSE. ADDITIONALLY, THE CONTRACTOR SHALL CONFIRM THE CONNECTION POINTS OF NEW UTILITIES TO EXISTING UTILITIES PRIOR TO BEGINNING NEW CONSTRUCTION.
5. THE SURVEYED PROPERTY SHOWN HEREON APPEARS TO LIE WITHIN ZONE X AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP FOR CHARLESTON COUNTY, SOUTH CAROLINA, COMMUNITY PANEL NUMBERS 45019C0355K AND 45019C0355K EFFECTIVE DATES JANUARY 29, 2021.
6. THERE ARE NO VISIBLE ENCROACHMENTS ON ADJOINING PREMISES, STREETS OR EASEMENTS, BY VISIBLE BUILDINGS, STRUCTURES OR OTHER IMPROVEMENTS, NOR VISIBLE ENCROACHMENTS ON SAID PROPERTY BY VISIBLE STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON ADJOINING PREMISES EXCEPT AS SHOWN.
7. THE PROPERTY AS SHOWN HEREON IS SUBJECT TO ALL COVENANTS AND RESTRICTIONS OF RECORD AND THOSE RECORDED HEREWITH. BOWMAN CONSULTING GROUP, LTD. HAS NOT BEEN PROVIDED A TITLE REPORT AND THEREFORE THIS PLAT DOES NOT NECESSARILY INDICATE THE EXISTENCE OF ANY COVENANTS AND RESTRICTIONS ON THE PROPERTY.
8. THE ABSENCE OF U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS WAS DETERMINED BY NEWKIRK ENVIRONMENTAL INC. ON MARCH 10, 2023.
9. NORTH MERIDIAN INFORMATION AS SHOWN HEREON IS BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM, NAD 83 INTERNATIONAL FEET, DISTANCES SHOWN ARE HORIZONTAL "GROUND DISTANCES".

REFERENCES

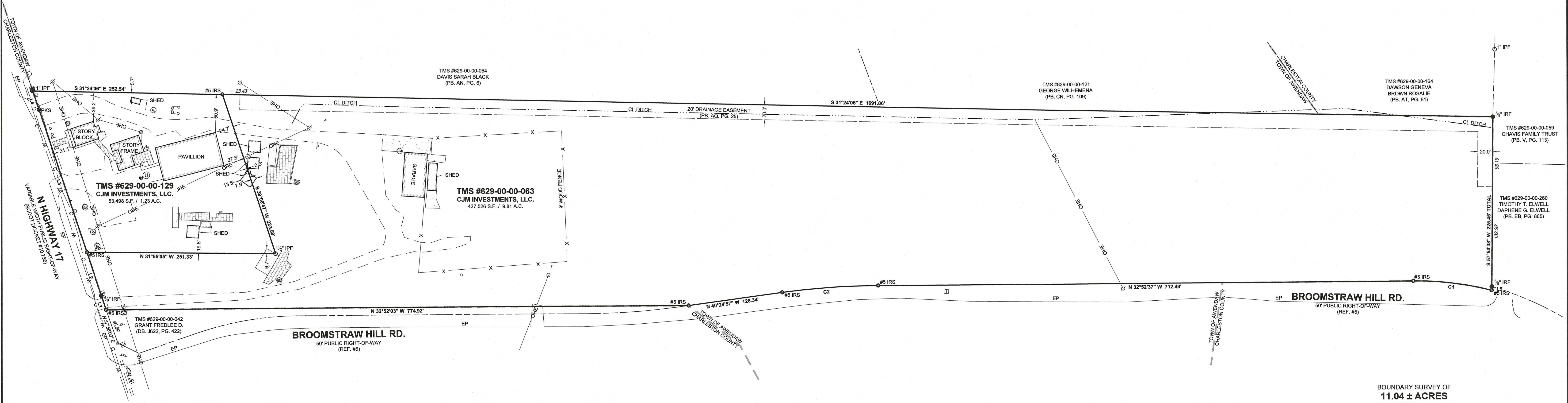
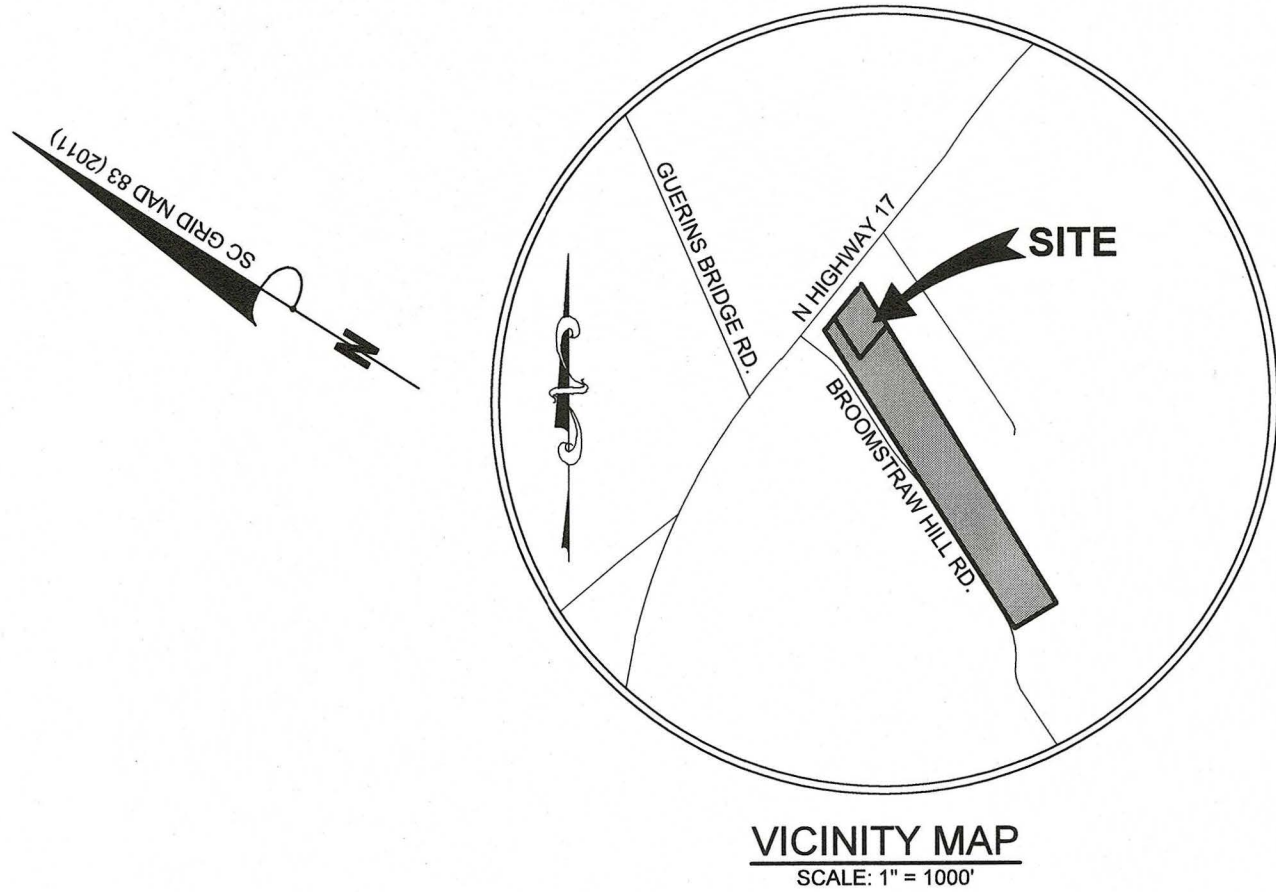
1. PLAT PREPARED BY HERBERT A. NIEMYER, JR.  
RECORDED MAY 22, 1980  
PLAT BOOK AQ, PAGE 25
2. PLAT PREPARED BY TRIDENT ENGINEERS, INC.  
RECORDED MAY 2, 1979  
PLAT BOOK AN, PAGE 6
3. PLAT PREPARED BY GEORGE A.Z. JOHNSON, JR., INC.  
RECORDED APRIL 8, 1997  
PLAT BOOK EB, PAGE 865
4. PLAT PREPARED BY GEORGE A.Z. JOHNSON, JR., INC.  
RECORDED AUGUST 15, 1997  
PLAT BOOK EB, PAGE 986
5. BROOMSTRAW HILL ROAD  
RIGHT-OF-WAY DATA PREPARED BY CORNERSTONE SURVEYING & ENGINEERING, INC.  
APPROVED MARCH 11, 2004 BY CHARLESTON COUNTY, CPW  
EXEMPT PLAT S.8.1.3.A.2

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 38°36'43" E	19.93'
L2	N 39°08'31" E	61.11'
L3	N 39°00'42" E	200.00'
L4	N 39°00'56" E	26.24'
L5	S 60°06'16" W	4.97'

CURVE TABLE					
CURVE	RADIUS	LENGTH	BEARING	CHORD	DELTA
C1	402.89'	105.47'	N 25°37'46" W	105.17'	14°59'58"
C2	975.00'	128.25'	N 36°38'43" W	128.16'	7°32'12"

LEGEND

- EP ——— EDGE OF GRAVEL  
——— EDGE OF PAVEMENT  
——— PROPERTY LINE  
——— ADJOINER PROPERTY LINE (NOT SURVEYED)  
——— MUNICIPAL BOUNDARY  
X ——— FENCE LINE  
——— SWALE / DITCH LINE  
——— STORM SEWER  
W ——— UNDERGROUND WATER LINE  
C ——— UNDERGROUND COMMUNICATION SERVICE  
E ——— UNDERGROUND ELECTRIC SERVICE  
OHE ——— OVERHEAD ELECTRIC
- BUILDING  
CONCRETE  
DECK
- IRF IRON REBAR FOUND (SIZE NOTED)  
○IPF IRON PIPE FOUND (SIZE NOTED)  
○IRS #5 IRON REBAR SET  
●PKF PK NAIL FOUND  
■CMF CONCRETE MONUMENT FOUND  
△ CALCULATED POINT (NO MONUMENT SET)  
○ BOLLARD / POST  
□ MAIL BOX  
+ SIGN  
□ TELEPHONE PEDESTAL  
○ POWER / UTILITY POLE  
— GUY ANCHOR WIRE  
□ ELECTRIC BOX  
□ ELECTRIC METER  
□ ELECTRIC OUTLET  
● IRRIGATION CONTROL VALVE  
○ SPIGOT  
○ WELL  
□ MARKER WITNESS POST  
○ UTILITY MANHOLE



APPROVED PLAT

*Mark J. Burdick*

PLANNING DIRECTOR  
TOWN OF AWENDAW PLANNING COMMISSION

2301-358  
APP. #

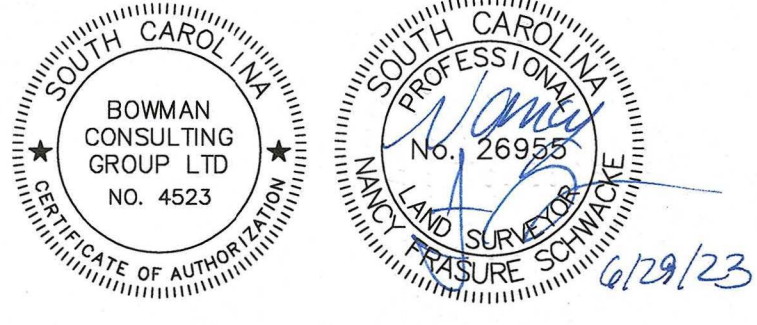
July 6, 2023  
DATE

RECEIVED 7/13  
PER CLERK  
ROD OFFICE  
CHARLESTON COUNTY

L23-0265

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 FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

NANCY FRASURE SCHWACKE  
SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR  
LICENSE NO. 26955



BOUNDARY SURVEY OF  
11.04 ± ACRES  
PROPERTIES OWNED BY  
CJM INVESTMENTS, LLC.  
TMS #629-00-00-063 & 629-00-00-129  
TOWN OF AWENDAW  
CHARLESTON COUNTY, CHARLESTON, SOUTH CAROLINA

SCALE: 1" = 60'		DATE: APRIL 7, 2023	
6/16/2023	OWNER UPDATE	<b>Bowman</b> Bowman Consulting Group, Ltd. 880 Island Park Drive, Suite 400 Charleston, SC 29402 Phone: (843) 501-0330 www.bowmanconsulting.com	
DWG: V1031274-0069 N Highway 17, Awendaw, SC 29424-01-001 (SUR) - Morgan Services, LLC Survey/Topo Boundary/031274-01-001 5069 N Highway 17		BY: SCM	CHK: NFS
BOG PROJECT NO: 031274-01-001		TASK: 001	SURVEY DATE: APRIL 7, 2023
		SHEET 1 OF 1	