



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 19, 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-2024-01138 (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
Pond 1	0.2606 Ac.	Non-JD	N/A
Wetland 3	~0.24 Ac.	JD	Section 404
Pond 3	0.205 Ac.	Non-JD	N/A
Pond 4	0.064 Ac.	Non-JD	N/A
Pond 5	0.1585 Ac.	Non-JD	N/A
Wetland 2	0.2021 Ac.	Non-JD	N/A
Wetland 1	0.3628 Ac.	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)

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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: 13.3 Acres
- b. Center Coordinates of Review Area: -79.8028°W, 34.2580°N
- c. Nearest City: Darlington
- d. County: Darlington
- e. State: South Carolina

The area of review is a subsection of a larger tract known as Beaver Creek Golf Club. The area under the purview of the Corps for the purpose of this AJD is located in the center-southeast portion of the overall site and is approximately 13.3 acres in size. Precise coordinates for the extents covered by this AJD are located on the determination map entitled “*JURISDICTIONAL / DELINEATION AND / DETERMINATION MAP*”. At present the area is a derelict golf course comprised of small, wooded stands of pines separated by narrow strips of turfgrass and first successional herbaceous growth. A large depressional feature associated with floodplains of high Hill Creek extend into the area of review. From this depression 4 excavated features are present and listed as “Ponds 1, 3, 4, and 5” on the associated map. Additionally, two isolated wetlands are present within the review area. Reviews of historic aerial imagery and golf facility records indicate the course, including water features excavated from onsite wetlands were constructed before 1968. The ponds do not qualify as impounded waters and are assessed as non-jurisdictional features and determined to be “preamble waters”. “Wetland 1” does not maintain continuous surface connection nor adjacency to any other waters of the US, rendering it isolated. “Wetland 2” does not maintain a continuous surface connection to larger wetlands directly abutting High Hill Creek. A review of mapped soil series and elevation contours for the site indicates these features exist within the same hydric soil series and along the same elevation contour. The feature “Wetland 2” was initially submitted as a pond feature, however in accordance with the 1987 Corps of Engineers Wetland Delineation Manual which uses the Cowardian classification of wetlands this feature is more accurately described as a rooted vascular, aquatic bed, limnetic, lacustrine wetland, and was assessed as a non-jurisdictional wetland as it lacks connection any non-wetland waters

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of the US ((a)(1) – (a)(6) waters). The only jurisdictional wetland onsite, “Wetland 3” directly abuts an impoundment of waters of the US an (a)(4) water.

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 Great Pee Dee River is the nearest downstream TNW.

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

- a. Wetland 3 – ~0.24 Acres: The onsite wetland was determined to be directly abutting, adjacent to an offsite impoundment flowing into larger offsite wetland system which directly abuts High Hill Creek. High Hill Creek flows east approximately 3 miles to join Black Creek. Black Creek flows downgradient approximately 15 miles to join the Great Pee Dee River, a TNW, 1.26 miles south of the Interstate 95 bridge crossing.

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

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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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):
 - a. Wetland 3 – (~0.24 Ac.): This wetland exists within the same soil series and contour of the much larger wetland complex outside of the area of review for this AJD. Wetland 3 was determined to be directly abutting an offsite impoundment of waters of the US. By review of aerial, LiDAR, and historic imagery, a continuous surface connection to an offsite impoundment of waters of the US and larger wetland complex directly adjacent to and abutting High Hill Creek can be observed.

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. Ponds 1, 3, 4, and 5: 0.2606, 0.205, 0.064, and 0.1585 Ac. respectively were determined to be upland excavated ponds, constructed for ornamental purposes as part of previous land use as a recreational facility. As stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) "Artificial reflecting or

⁸ 51 FR 41217, November 13, 1986.

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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 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. **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*.
- 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. Wetland 1 – (0.3628 Ac.): This wetland feature is located directly above "Wetland 2" and below "Pond 1". An outfall from "Pond 1" directly supplies water to this feature from upgradient. The wetland meets the parameters of a wetland as outlined in the 1987 manual however it was found to be isolated due to its hydrologic separation from other non-wetland WOUS. No qualifying surface or subsurface connection was evident from a review of desktop resources or through information submitted by the agent. Due

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to the topography grades and lack of evidence of chemical or biological connection the wetland was determined to be isolated.

- b. Wetland 2 – (0.2021 Ac.): This wetland feature is located directly above “Wetland 3” and below “Wetland 1”. A small ditch/swale feature connects “Wetland 2” to “Wetland 3” with a small pipe channelizing flow. Per guidance received in the EPA Memorandum dated March 12, 2025, this does not qualify as a continuous surface connection. The wetland meets the parameters of a wetland as outlined in the 1987 manual however it was found to be isolated due to its hydrologic separation from other non-wetland 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. AJD Submittal, or on behalf of the requestor: Wetland Determination package including upland datasheets and associated maps provided by LJA Environmental Services, in the submittal dated September 27, 2024.
- b. A review of desktop resources conducted on May 13, 2025.
- c. Aerial Imagery: 2020 SCDNR IR Aerial & 2020 SCDNR Aerial SC_2020_NIR (Map Service)
- d. South Carolina Revenue and Fiscal Affairs Office: Statewide Aerial Imagery 2023 (Map Service)
- e. Lidar: 3DEP Digital Elevation Model (DEM)
<https://elevation.nationalmap.gov/arcgis/rest/services/3DEPElevation/ImageServer>
- f. Lidar: United States Geological Survey, 2024: 2022 Lidar DEM; Savannah Pee Dee, SC, <https://www.fisheries.noaa.gov/inport/item/65959>
- g. USDA NRCS Soil Survey: Autryville sad, Bonneau sand, Johnston sandy loam, Norfolk loamy sand, Uchee sand, Wagram sand, Wehadkee and Johnston soils, frequently flooded. SSURGO database. Hydric soils are distributed along lower relief contours with sands comprising higher contours.
- h. National Wetland Inventory (NWI): NWI
<https://fwspublicservices.wim.usgs.gov/wetlandsmapservice/rest/services/Wetland>

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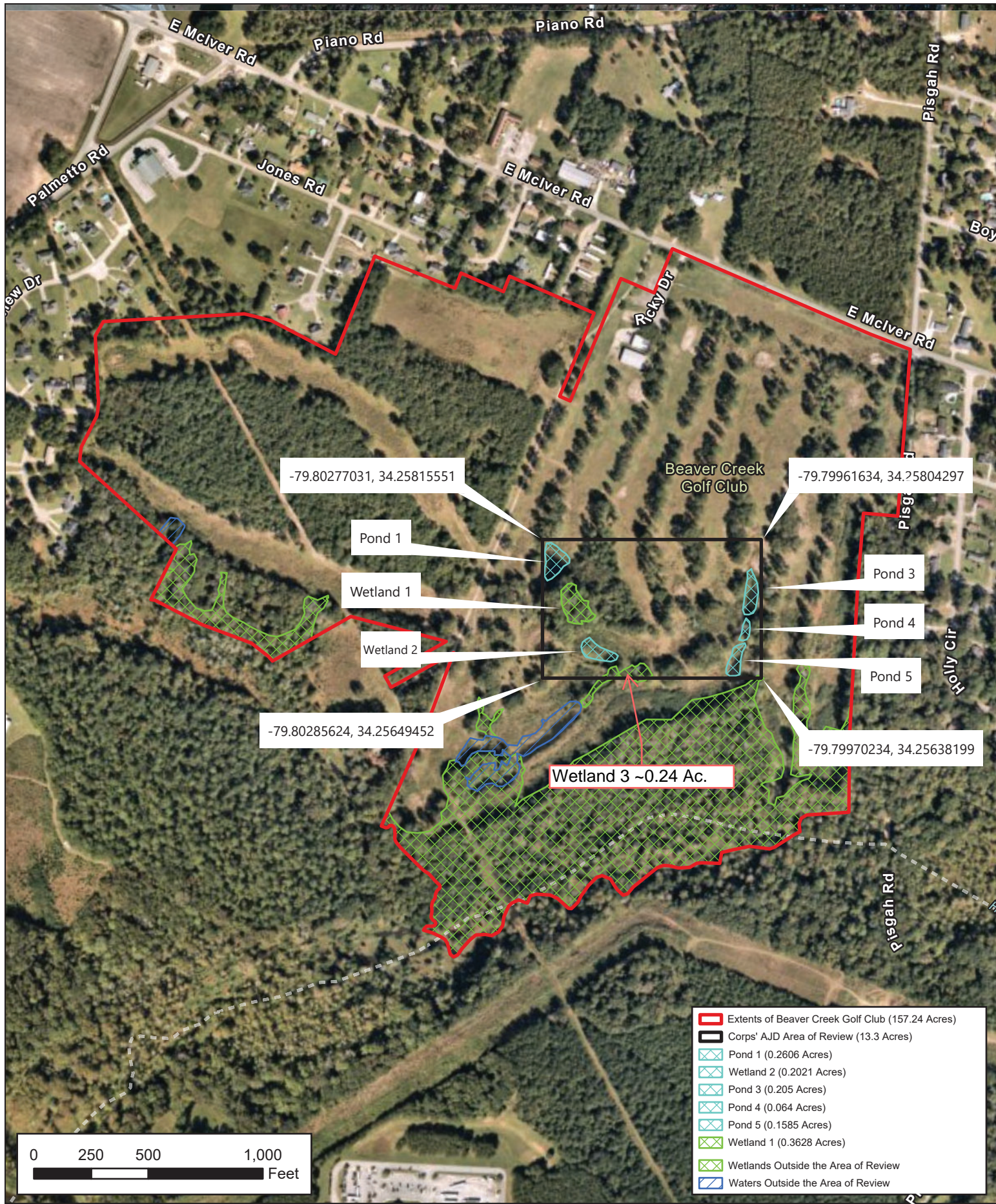
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- i. U.S. Geological Survey map(s): 7.5 Minute Index / Darlington East / 1:240000; USGS topographic survey information depicts the area within the project boundary as cleared/developed and forested.
- j. Cowardin, L. M., Carter, V., Golet, F. C., and LaRoe, E. T. (1979). "Classification of Wetlands and Deepwater Habitats of the United States," FWS/OBS-79/31, U.S. Fish and Wildlife Service, Office of Biological Services, Washington, DC
- k. Environmental Laboratory. (1987). "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1, U.S. Army Engineer Water-ways Experiment Station, Vicksburg, MS

10. OTHER SUPPORTING INFORMATION. **N/A.**

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.



Beaver Creek Golf Club
Jurisdictional Determination
SAC-2024-01138
Darlington County, South Carolina
Labeling Modified by D. Wrobel 2025.05.14

JURISDICTIONAL DELINEATION AND DETERMINATION MAP

LJA ENVIRONMENTAL
SERVICES

4525 South Lee Street, Buford, GA, 30518