



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

CESAC-RD

May 9, 2024

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-2017-00727 1 of 1²

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
AIWW	2900 L.F.	JD	404 / Section 10
TNW 1	0.002	JD	404 / Section 10
TNW 2	0.07	JD	404 / Section 10
TNW 3	0.80 AC	JD	404 / Section 10

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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area includes approximately 95 acres that border the Atlantic Intracoastal Waterway in Horry County. The area was previously deterred to be comprised primarily of uplands with a single non-jurisdictional upland excavated ditch bisected the parcel.

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- a. Project Area Size: 95.52 acres
 - b. Center Coordinates of the review area: Latitude: 33.8692 °, Longitude -78.6291 °
 - c. Nearest City: Little River
 - d. County: Horry
 - e. State: South Carolina
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Atlantic Intracoastal Waterway (AIWW) is a Federal Channel and tidally influenced
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The resources onsite about the AIWW, a TNW.
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

Name of Aquatic Resource	Acres (AC.)/Linear Feet (L.F.)	Waters of the U.S. (JD or Non-JD)	Section 404/Section 10
AIWW	2900 L.F.	JD	404 / Section 10
TNW 1	0.002	JD	404 / Section 10
TNW 2	0.07	JD	404 / Section 10

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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TNW 3	0.80 AC	JD	404 / Section 10
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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):

Name of Aquatic Resource	Acres (AC.)/Linear Feet (L.F.)	Waters of the U.S. (JD or Non-JD)	Section 404/Section 10
AIWW	2900 L.F.	JD	404 / Section 10
TNW 1	0.002	JD	404 / Section 10
TNW 2	0.07	JD	404 / Section 10
TNW 3	0.80 AC	JD	404 / Section 10

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

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. 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.

Located within the review area is a single upland excavated ditch that bisects the parcels. This feature is excavated in upland, drains upland only, and does not carry relatively permanent flow based on the information provided by the agent who performed the wetland delineation. Based on this information, the non-jurisdictional ditch would be considered a non-aquatic resource.

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

⁸ 51 FR 41217, November 13, 1986.

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resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. [N/A or enter rationale/discussion here.]

- 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. Review Performed for Site Evaluation: Office (Desk) Determination. Date: AJD submittal dated February 28, 2023, submitted by Hynes Land & Environmental Services. Field Determination. Date: February 22, 2023 (Data forms date)
 - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Approved Jurisdictional Determination Request package including wetland determination data sheets, associated data maps, and plats included with original submittal, revised May 9, 2024, per USACE corrections.
 - c. Aerial Imagery: ESRI base layer imagery, Aerial maps included with original submittal.
 - d. Photographs: Site visit photos included with original AJD submittal dated February 28, 2023.
 - e. LIDAR: Horry County, South Carolina Hillshade from SCDNR dated November 15, 2021.
 - f. National Wetland Inventory Map: “NWI” USFWS Horry NWI included with original AJD submittal dated February 28, 2023.
 - g. Natural Resource Conservation Survey: Horry County Soil Survey data source included with original AJD submittal dated February 28, 2023.
 - h. U.S. Geological Survey Map: “Topographic Exhibit” Source: USGS 7.5-Minute Ocean Forest Quad, included with original AJD submittal dated March 28, 2023.
 - i. Previous AJD issued on November 22, 2016.]

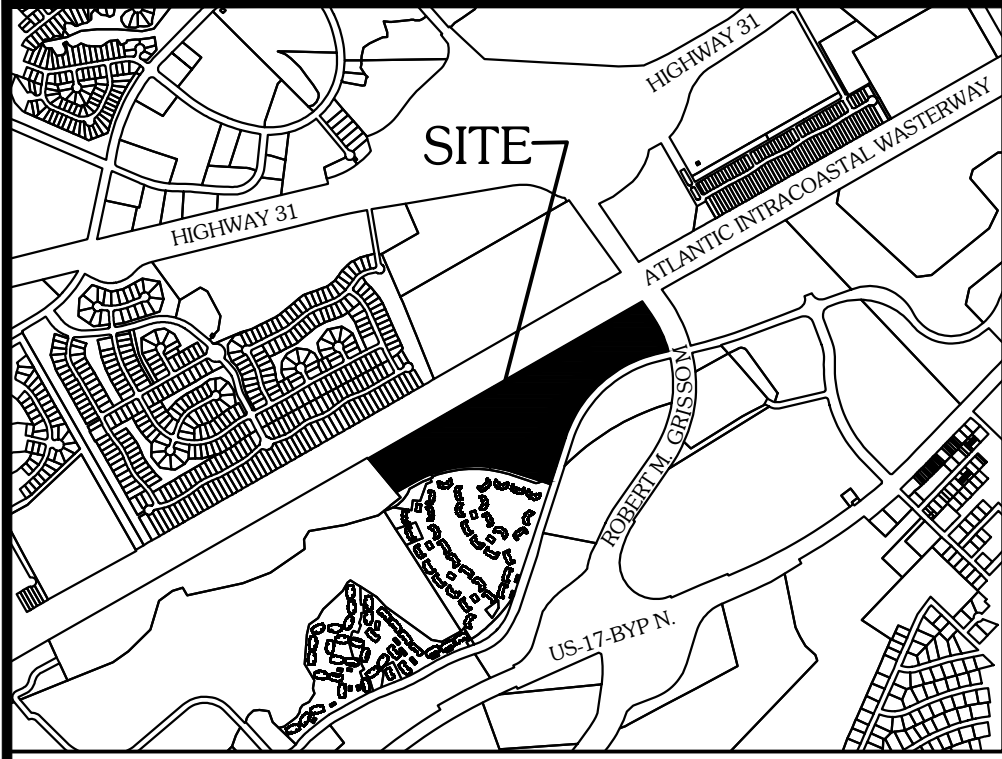
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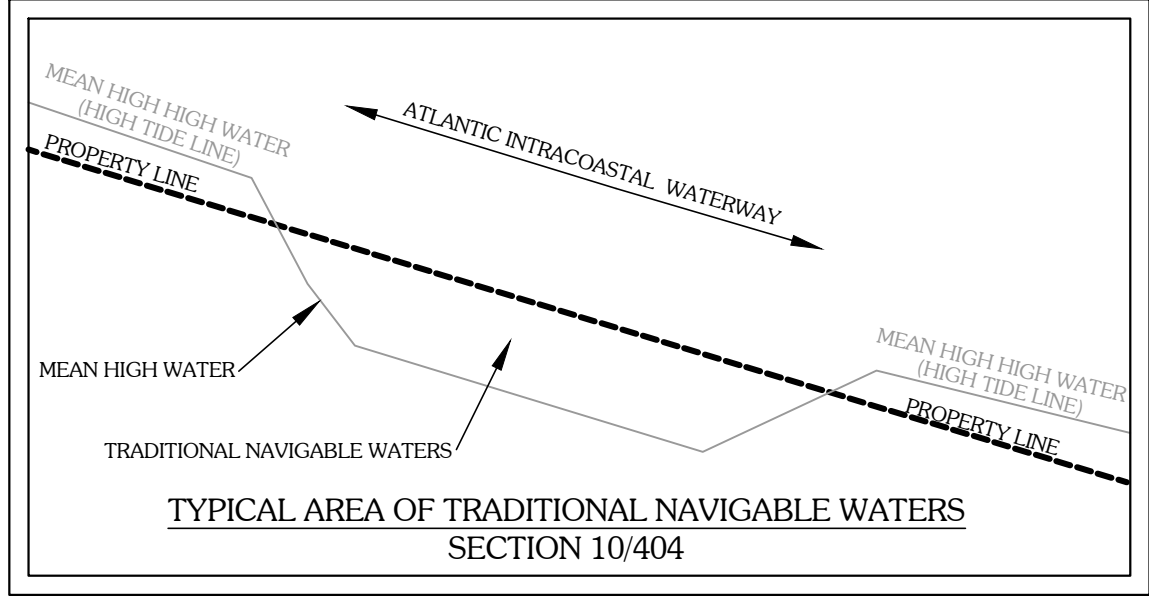
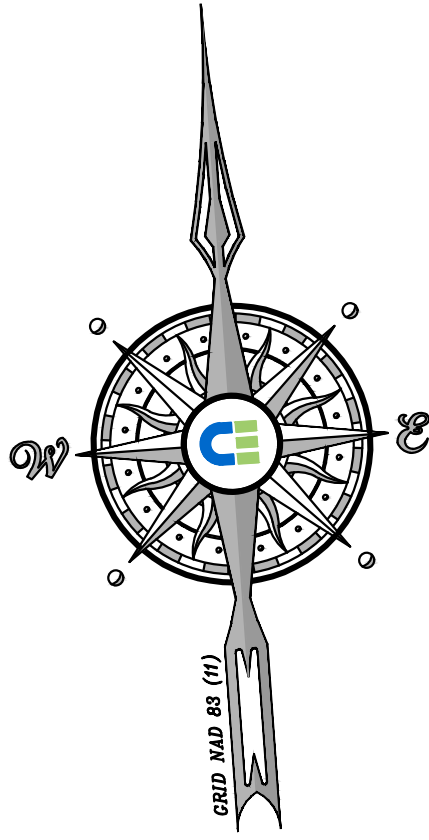
10. OTHER SUPPORTING INFORMATION. N/A

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.

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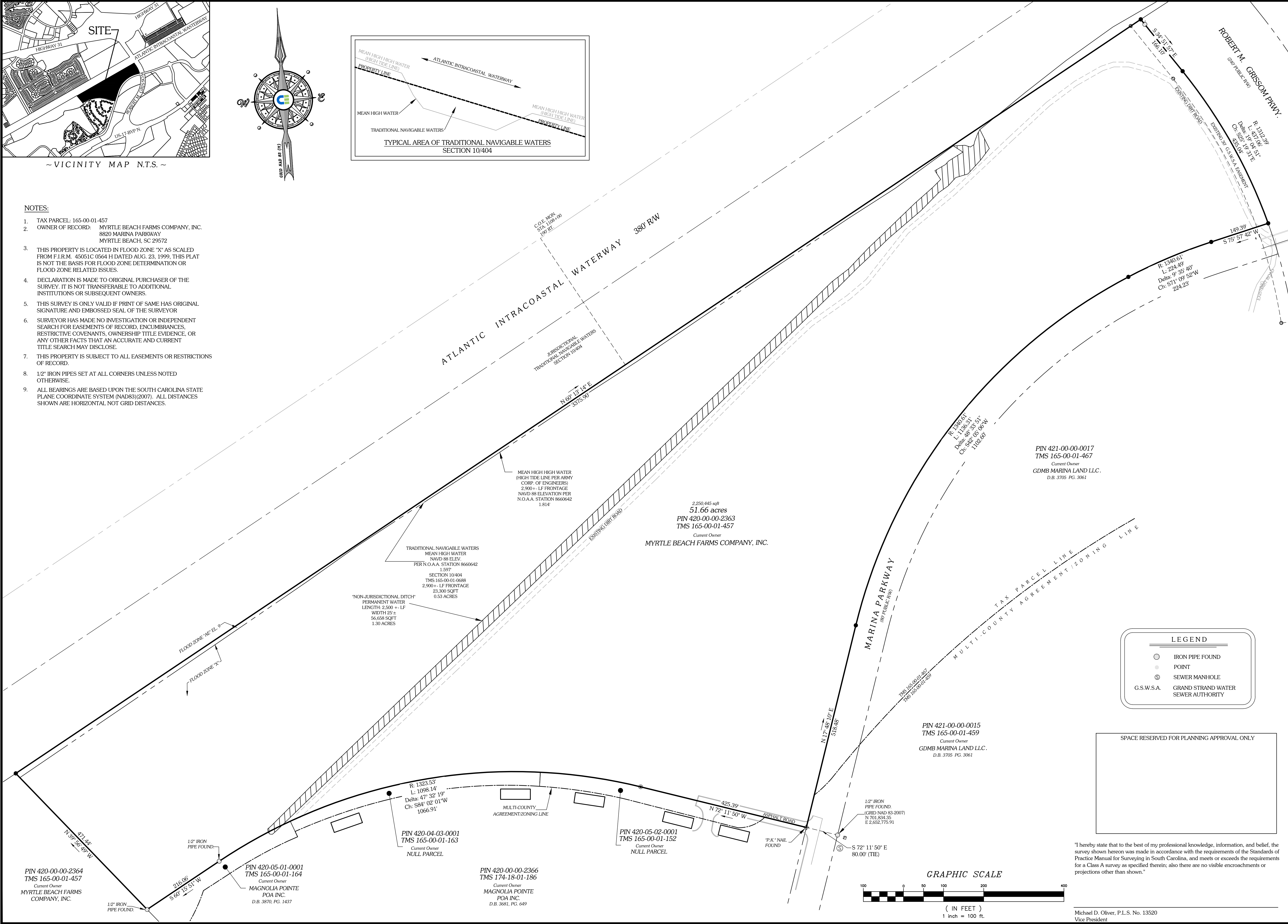


~VICINITY MAP N.T.S.~



NOTES:

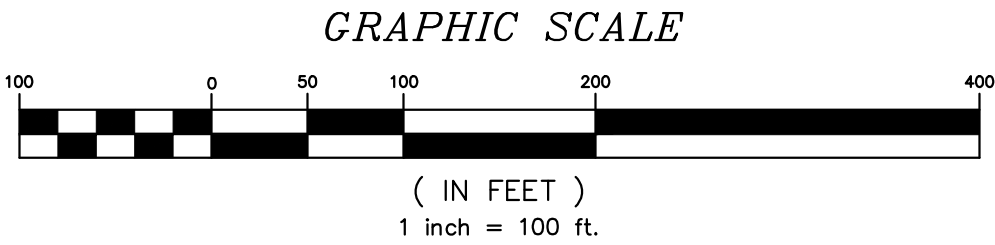
- TAX PARCEL- 165-00-01-457
- OWNER OF RECORD: MYRTLE BEACH FARMS COMPANY, INC.
8820 MARINA PARKWAY
MYRTLE BEACH, SC 29572
- THIS PROPERTY IS LOCATED IN FLOOD ZONE "X" AS SCALED FROM F.I.R.M. 45051C 0564 H DATED AUG. 23, 1999. THIS PLAT IS NOT THE BASIS FOR FLOOD ZONE DETERMINATION OR FLOOD ZONE RELATED ISSUES.
- DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
- THIS SURVEY IS ONLY VALID IF PRINT OF SAME HAS ORIGINAL SIGNATURE AND EMBOSSED SEAL OF THE SURVEYOR
- 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.
- THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OR RESTRICTIONS OF RECORD.
- 1/2" IRON PIPES SET AT ALL CORNERS UNLESS NOTED OTHERWISE.
- ALL BEARINGS ARE BASED UPON THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM (NAD83)(2007). ALL DISTANCES SHOWN ARE HORIZONTAL NOT GRID DISTANCES.



LEGEND

- IRON PIPE FOUND
- POINT
- SEWER MANHOLE
- G.S.W.S.A. GRAND STRAND WATER SEWER AUTHORITY

SPACE RESERVED FOR PLANNING APPROVAL ONLY

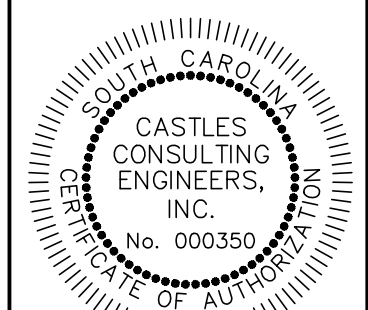


I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."

Michael D. Oliver, P.L.S. No. 13520
Vice President

JOB No.	10513
DATE:	10/11/2016
DRAWN BY:	D.M.P.
CHECKED BY:	M.D.O.
SCALE:	1"= 100
FILE:	

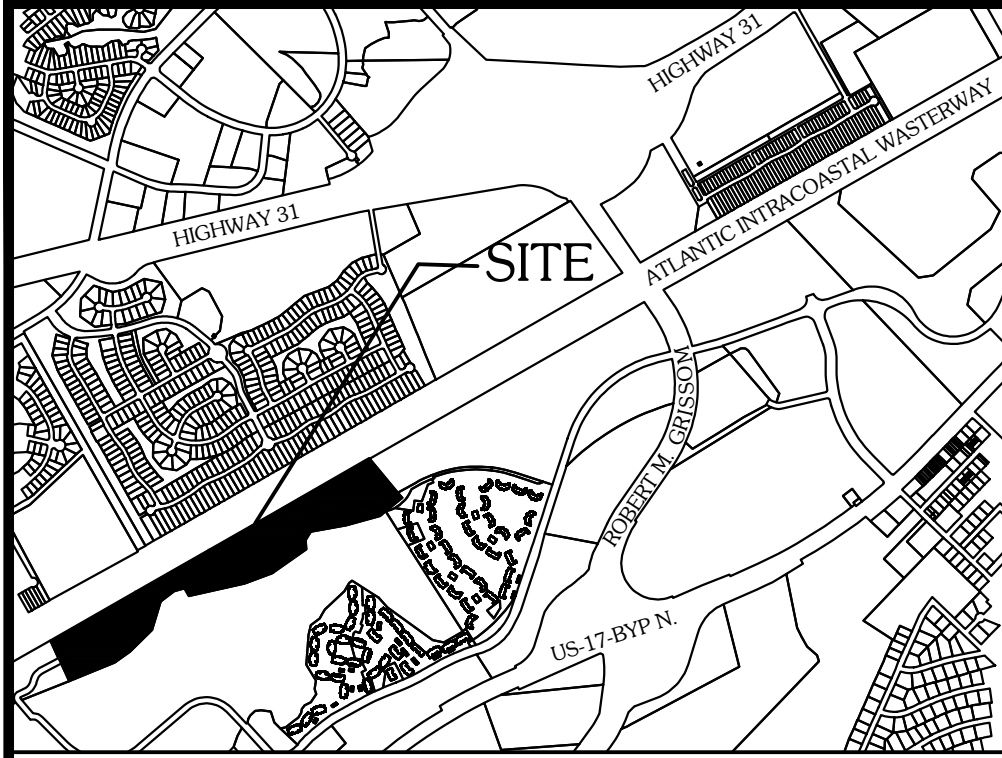
WETLAND MAP OF
GRANDE DUNES MARINA TRACT
PIN 420-00-00-2363/TMS 165-00-01-457
MYRTLE BEACH, Horry County, SOUTH CAROLINA
PREPARED FOR:
MYRTLE BEACH FARMS COMPANY, INC.



castlesengineering.com

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LAND SURVEYING
2024 Corporate Centre Drive
Suite 102
Myrtle Beach, SC 29577
Telephone: 843-448-0910
Fax: 843-448-0969
www.castlesengineering.com





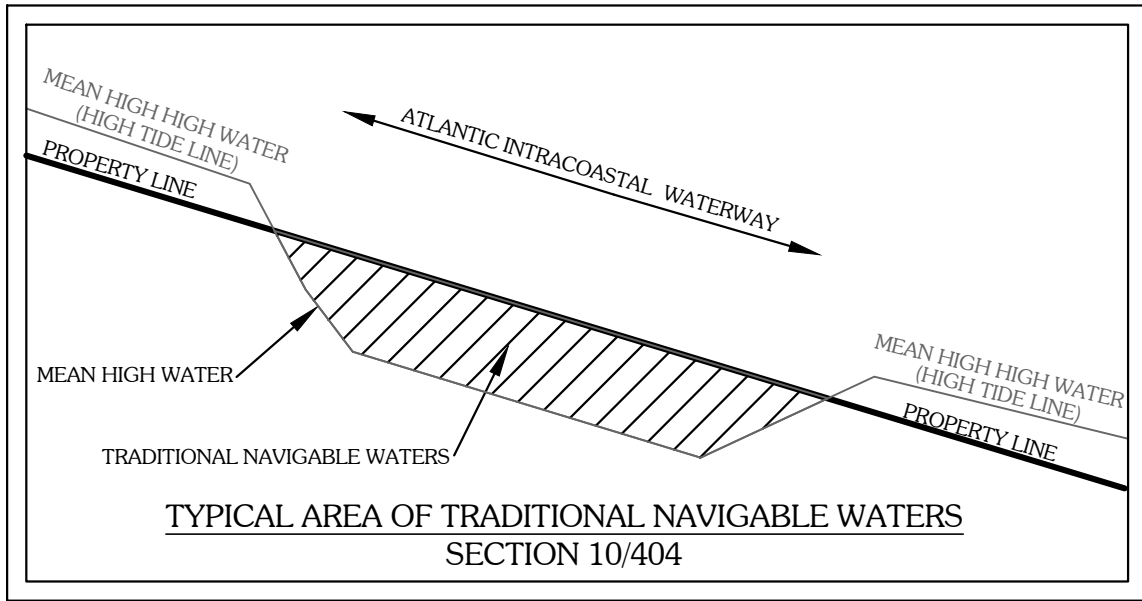
~VICINITY MAP N.T.S.~

NOTES:

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REFERENCE:

PLAT ENTITLED " BOUNDARY SURVEY & PLAT OF MYRTLEWOOD GOLF COURSE, WATERWAY TRACT & TRACT A", PREPARED FOR MYRTLE BEACH FARMS COMPANY, INC. BY ROBERT L. BELLAMY & ASSOCIATES, INC. DATED JANUARY 9, 2012 AND RECORDED IN PLAT BOOK 253 PAGE 337 AT THE HORRY COUNTY REGISTER OF DEEDS.



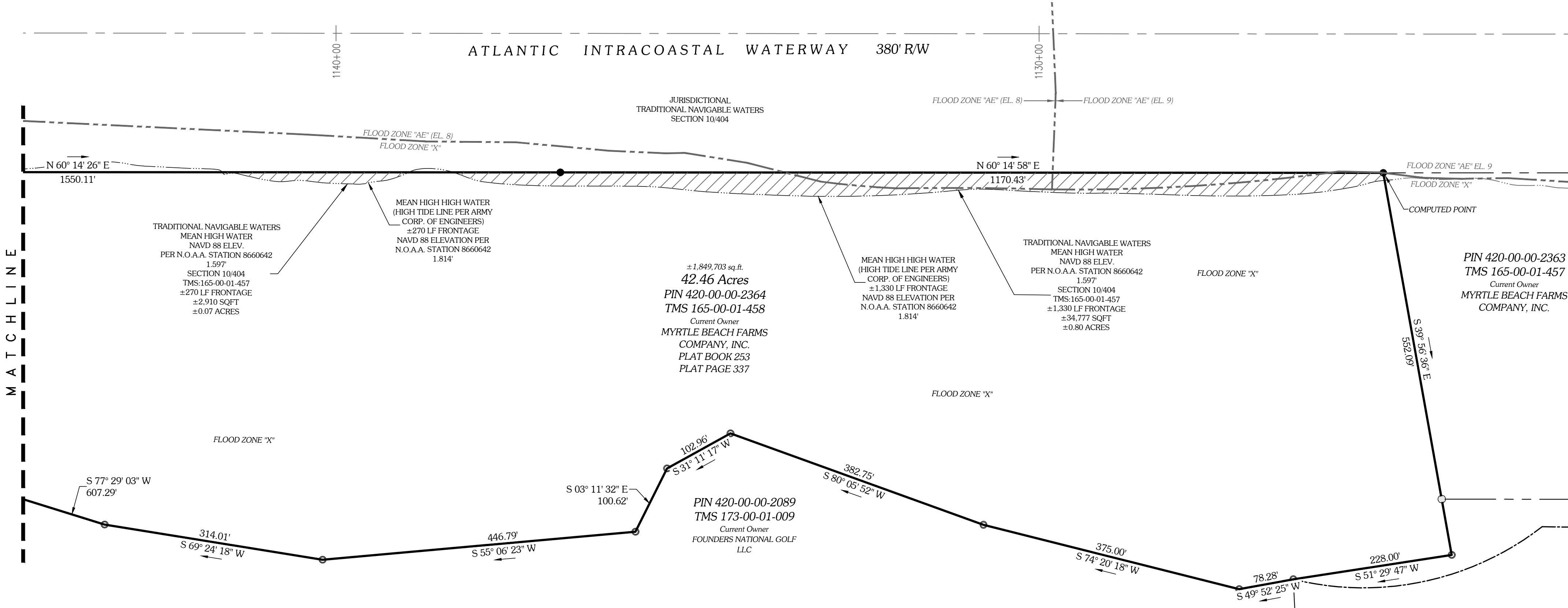
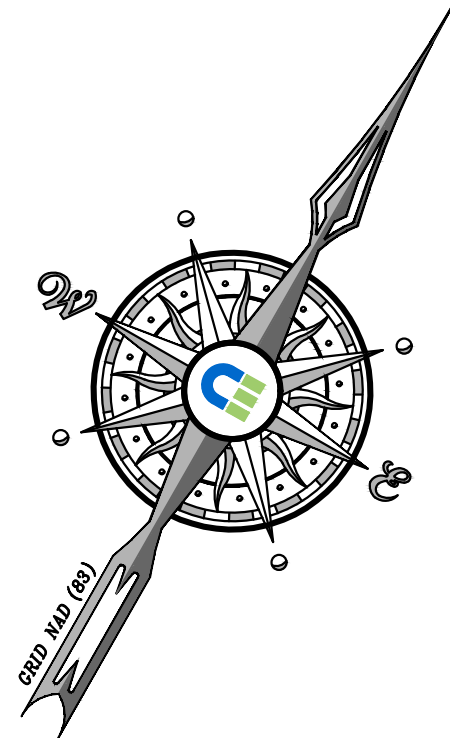
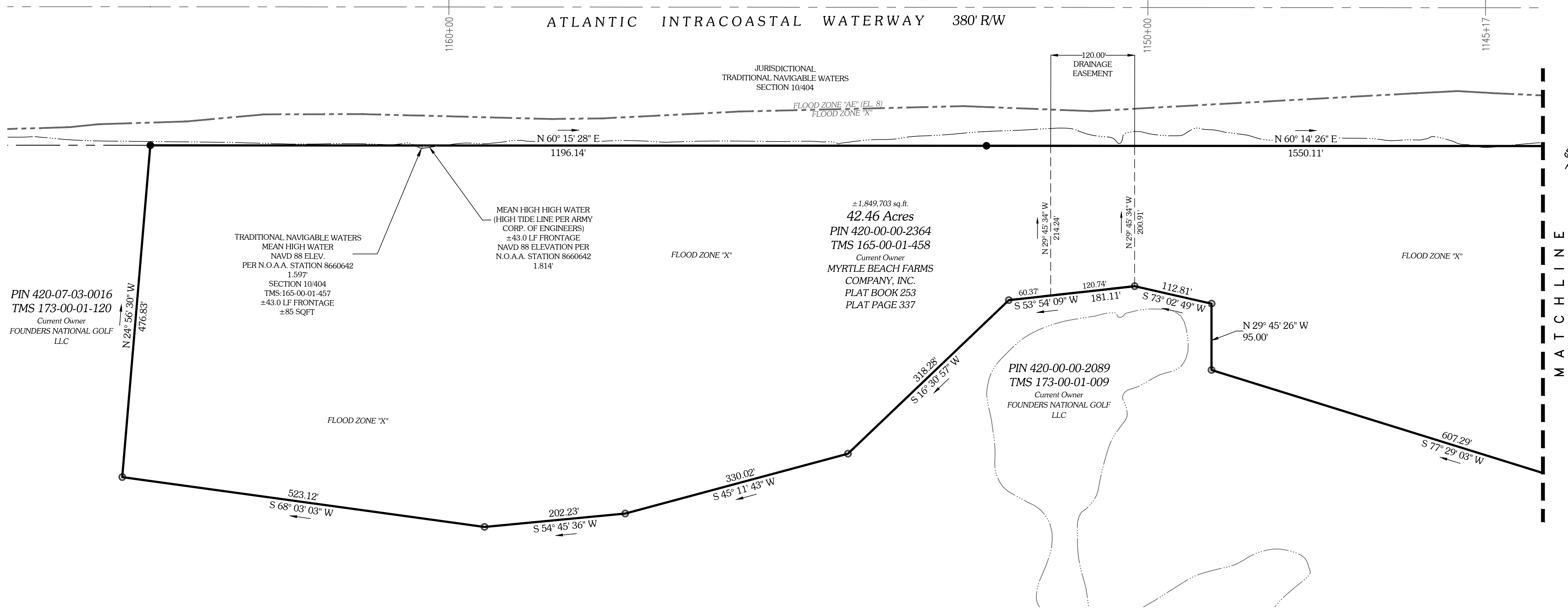
LEGEND

- CALCULATED POINT

GRAPHIC SCALE

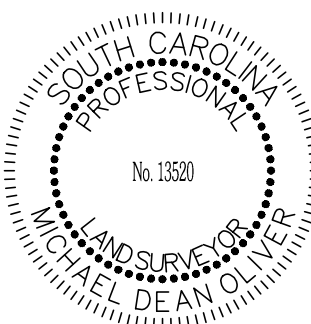


(IN FEET)
1 inch = 100 ft.

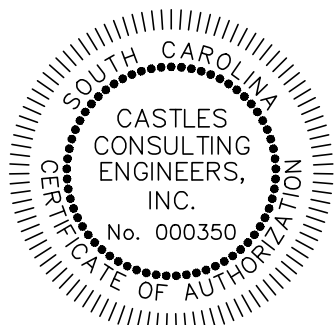


"I hereby state that to the best of my professional knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."

Michael D. Oliver, P.L.S. No. 13520
Vice President



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WETLAND MAP OF
GRANDE DUNES WATERWAY TRACT
PIN 420-00-00-2364/TMS 165-00-01-458
MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR:
MYRTLE BEACH FARMS COMPANY, INC.

JOB No.	17.543
DATE:	9-5-17
DRAWN BY:	D.M.F.
CHECKED BY:	M.D.O.
SCALE:	1"= 100'
FILE:	0:/AS/17543
REVISION	DATE