

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,)	Civil Action No. <u>2:16-cv-3031-PMD</u>
)	
Plaintiff,)	
)	
vs.)	
)	
BRIDLEWOOD DEVELOPMENT, LLC;)	
WHITEHORSE I, LLC;)	
GORDEN TIMMONS; and)	
EDWARD SCOTT,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America (“United States”), through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Secretary of the United States Department of the Army, acting through the United States Army Corps of Engineers (“Corps”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil enforcement action commenced under sections 309 and 404 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319 and 1344, to obtain injunctive relief and civil penalties against Defendants Bridlewood Development, LLC, Whitehorse I, LLC, Gorden Timmons, and Edward Scott for discharging pollutants into waters of the United States in Dorchester County, South Carolina without authorization, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. The United States seeks: (a) injunctive relief prohibiting Defendants from further unauthorized discharges of pollutants; (b) injunctive relief compelling Defendants to restore and

mitigate the impacts of the unauthorized discharges of pollutants alleged in this civil enforcement action; (c) civil penalties in favor of the United States and against Defendants; and (d) such other relief as the Court may deem appropriate.

3. The United States has provided notice of the commencement of this action to the State of South Carolina pursuant to CWA section 309(b), 33 U.S.C. §1319(b).

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309(b), 33 U.S.C § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

5. Venue is proper in the United States District Court for the District of South Carolina pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 121, 1391(b) and (c) because Defendants conduct business in this District; the waters of the United States into which pollutants were discharged are located in this District; and the cause of action alleged herein arose in this District.

PARTIES

6. Plaintiff is the United States of America, and authority to bring this action is vested in the United States Department of Justice pursuant to section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

7. Defendants are Bridlewood Development, LLC, Whitehorse I, LLC, Gorden Timmons, and Edward Scott.

8. Bridlewood Development, LLC is a corporation formed under the laws of South Carolina with a business address in Ridgeville, South Carolina.

9. Whitehorse I, LLC is a corporation formed under the laws of Maryland with business addresses in Frederick, Maryland.

10. Gorden Timmons is an individual residing in Dorchester County, South Carolina, and controls or substantially controls Bridlewood Development, LLC.

11. Edward Scott is an individual residing in Maryland and controls or substantially controls Whitehorse I, LLC.

STATUTORY AND REGULATORY BACKGROUND

12. Section 101(a) of the CWA, 33 U.S.C. § 1251(a), provides that “[t]he objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

13. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except, *inter alia*, as authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

14. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include, *inter alia*, an “individual” and a “corporation.”

15. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.”

16. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, “dredged spoil,” “biological materials,” “rock,” “sand,” and “cellar dirt.”

17. Section 404(a), 33 U.S.C. § 1344(a), authorizes the Corps to issue permits for the discharge of dredged or fill material to navigable waters.

18. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

19. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

20. 33 C.F.R. § 328.3(a)(1), (5) and (7) define “waters of the United States” to include, *inter alia*: all waters that are currently used, were used in the past, or may be susceptible for use in interstate or foreign commerce (“traditional navigable waters”); tributaries of traditional navigable waters; and wetlands adjacent to traditional navigable waters or their tributaries.¹

21. 33 C.F.R. § 328.3(b) defines “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

22. 33 C.F.R. § 328.3(c) defines “adjacent” as “bordering, contiguous, or neighboring.” It further provides: “Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ‘adjacent wetlands.’”²

23. 33 U.S.C. § 1319(b) authorizes the commencement of a civil action for appropriate relief, including a permanent injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

¹ This regulation has since been amended by the “Clean Water Rule,” 80 Fed. Reg. 37,054 (June 29, 2015), but the activities in question occurred before the effective date of the Clean Water Rule. The Clean Water Rule has been stayed pending resolution of claims that it is arbitrary, capricious, and contrary to law. *See In re EPA*, 803 F.3d 804 (6th Cir. 2015).

² *See supra* n.1.

24. 33 U.S.C. § 1319(d) provides that any person who violates CWA section 301(a), 33 U.S.C. §1311(a), shall be subject to a civil penalty not to exceed \$25,000 per day for each violation.

25. Effective after January 12, 2009, 40 C.F.R. § 19.4 adjusts the \$25,000 amount provided in 33 U.S.C. § 1319(d) to \$37,500.

26. Each day that dredged or fill material remains in the place where it was discharged without authorization constitutes an additional and continuing violation of 33 U.S.C. § 1311(a).

27. Liability for violating CWA section 101(a), 33 U.S.C. § 1311(a), is strict, joint, and several.

GENERALLY APPLICABLE ALLEGATIONS

Bridlewood Farms and Whitehorse

28. The CWA violations alleged in this civil enforcement action occurred on real property near Ridgeville in Dorchester County, South Carolina.

29. Bridlewood Development, LLC owns real property (“Bridlewood Farms”) near Carter Road near Ridgeville in Dorchester County, South Carolina, and also near the Ashley River; that property comprises approximately 92 acres.

30. Whitehorse I, LLC owns real property (“Whitehorse”) near Carter Road near Ridgeville in Dorchester County, South Carolina, and also near the Ashley River; that property comprises approximately 246 acres.

31. The location of Bridlewood Farms and Whitehorse is illustrated in Appendix A to this Complaint.

32. Bridlewood Development, LLC has owned or controlled Bridlewood Farms since at least November 2011.

33. Gorden Timmons is an authorized agent of Bridlewood Development, LLC, and the president Old South Investments, Inc., which is one of one of the co-managing members of Bridlewood Development, LLC.

34. Whitehorse I, LLC has owned or controlled Whitehorse since at least June 2011.

35. Edward Scott is the managing member of Pecador Development, LLC, which is a member of Whitehorse I, LLC.

Ashley River and its Tributaries

36. The northern portion of Bridlewood Farms and Whitehorse contains a tributary to Captains Creek.

37. That tributary carries water.

38. The direction of the flow of water in that tributary is generally from south to north to its confluence with Captains Creek.

39. Captains Creek carries waters.

40. The direction of the flow of water in Captains Creek is generally from west to east.

41. Captains Creek and the tributary located on the northern portion of Bridlewood Farms and Whitehorse are part of the Cypress Swamp watershed (Hydrologic Unit Code 03050201-05).

42. The Cypress Swamp watershed comprises approximately 139,162 acres.

43. Captains Creek is a tributary to the Ashley River.

44. Captains Creek and the tributary located on the northern portion of Bridlewood Farms and Whitehorse contribute flow to the Ashley River.

45. The Cypress Swamp watershed flows and connects into the Ashley River.

46. The Ashley River is currently used for interstate commerce.

47. The Ashley River was used in the past for interstate commerce.

48. The Ashley River is susceptible for use in interstate commerce.

49. The Ashley River is navigable-in-fact.

50. The Ashley River is part of the Ashley River watershed (Hydrologic Unit Code 03050201-06).

51. The Ashley River watershed comprises approximately 86,887 acres.

Adjacent Wetlands

52. Bridlewood Farms and Whitehorse contain—or contained prior to the discharges of pollutants alleged in this civil enforcement action—aquatic features in addition to a tributary.

53. These aquatic features are or were inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances did support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

54. These aquatic features are or were were “wetlands” within the meaning of 33 C.F.R. § 328.3(a)(7), (b).

55. Wetlands at Bridlewood Farms and Whitehorse are or were “adjacent” to a tributary to Captains Creek within the meaning of 33 C.F.R § 328.3(c).

Waters of the United States

56. The Ashley River is a traditional navigable water under 33 C.F.R. § 328.3(a)(1).

57. The tributary located on the northern portion of Bridlewood Farms and Whitehorse, either alone or in combination with similarly situated lands in the region, significantly affects or affected the chemical, physical, or biological integrity of the Ashley River.

58. Wetlands at Bridlewood Farms and Whitehorse, either alone or in combination with similarly situated lands in the region, significantly affect or affected the chemical, physical, or biological integrity of the Ashley River.

59. Captains Creek, either alone or in combination with similarly situated lands in the region, significantly affects the chemical, physical, or biological integrity of the Ashley River.

60. At all times relevant to this civil enforcement action, the Ashley River, Captains Creek, the tributary located on the northern portion of Bridlewood Farms and Whitehorse, and wetlands at Bridlewood Farms and Whitehorse constituted “waters of the United States” and “navigable waters” within the meaning of 33 U.S.C. § 1362(7).

COUNT

61. The United States repeats the allegations set forth in Paragraphs 1 through 60 of this complaint.

62. Each Defendant is a “person” under 33 U.S.C. § 1362(5).

63. Beginning in or about December 2013, Defendants or persons at their behest operated land-clearing, filling, grading, and other earthmoving equipment at Bridlewood Farms and Whitehorse.

64. This equipment operated in at least 15 acres of waters of the United States (tributary and/or adjacent wetlands) at Bridlewood Farms and Whitehorse.

65. As operated, this equipment constituted a “point source” within the meaning of 33 U.S.C. § 1362(14).

66. Operation of this equipment resulted in the placement of dredged spoil, biological materials, rock, sand, cellar dirt, or other earthen material constituting “pollutants” within the meaning of 33 U.S.C. § 1362(6) into waters of the United States.

67. Operation of this equipment had the effect of replacing one or more portions of waters of the United States with dry land or changing the bottom elevation of one or more portions of waters of the United States.

68. Operation of this equipment resulted in the “discharge of any pollutant” within the meaning of 33 U.S.C. § 1311(a).

69. Discharges occurred at approximately 10 areas of Bridlewood Farms or Whitehorse as illustrated on Appendix C to this Complaint (Impact Areas 1, 2, 3, 4, 5a, 5b, 5c, 6, 7, and 8).

70. At no time did Defendants or any person on Defendants’ behalf apply for, secure, or comply with a CWA permit to discharge dredged or fill material at Bridlewood Farms or Whitehorse.

71. Gordon Timmons and Edward Scott, by reason of their affiliation with the Bridlewood Development, LLC and Whitehorse I, LLC, had the responsibility and authority to prevent in the first instance, or promptly to correct, the discharges alleged herein and failed to do so.

72. Defendants violated CWA section 301(a), 33 U.S.C. § 1311(a).

73. Defendants have allowed pollutants that had been discharged without authorization to remain in waters of the United States.

74. Defendants remain in violation of 33 U.S.C. § 1311(a).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court order the following relief:

Enjoin Defendants from further discharges of pollutants except as in compliance with the CWA;

Compel Defendants to restore impacted waters of the United States;

Require Defendants to mitigate for impacted waters of the United States;

Assess and direct Defendants to pay civil penalties;

Award the United States the costs and disbursements of this action; and

Grant the United States such other relief as the Court may deem appropriate.

Respectfully submitted,

Dated: September 6, 2016

JOHN C. CRUDEN
Assistant Attorney General

ANDREW J. DOYLE
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044
(202) 514-4427 (p)
(202) 514-8865 (f)
Andrew.Doyle@usdoj.gov

- and -

BETH DRAKE
Acting United States Attorney
District of South Carolina

By: s/ Brook B. Andrews
BROOK B. ANDREWS (#10231)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
(803) 929-3000 (p)
(803) 252-2759 (f)
Brook.Andrews@usdoj.gov

Of Counsel:

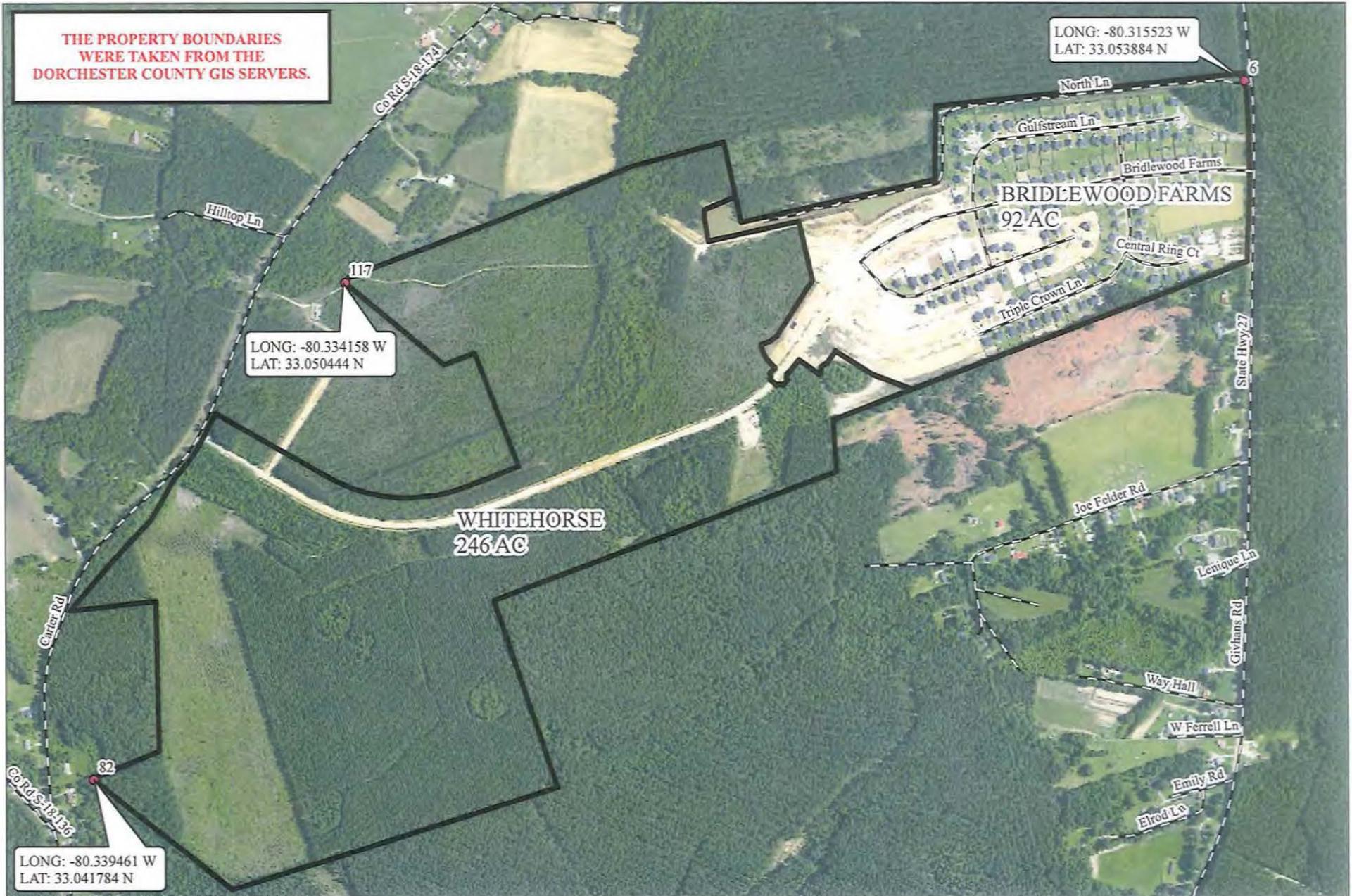
JAMES CHOATE
Assistant District Counsel
U.S. Army Corps of Eng'rs
69A Hagood Avenue
Charleston, SC 29403
(843) 329-8176 (p)
James.F.Choate@usace.army.mil

Appendices to Complaint:

Appendix A: Location of Bridlewood Farms and Whitehorse

(Appendix B intentionally omitted.)

Appendix C: Impact Areas/Location of alleged CWA violations



**THE PROPERTY BOUNDARIES
WERE TAKEN FROM THE
DORCHESTER COUNTY GIS SERVERS.**

117
LONG: -80.334158 W
LAT: 33.050444 N

6
LONG: -80.315523 W
LAT: 33.053884 N

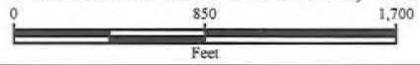
82
LONG: -80.339461 W
LAT: 33.041784 N

**WHITEHORSE
246 AC**

**BRIDLEWOOD FARMS
92 AC**

EXTERNAL SOURCES: NAD 2011 TRUE COLOR AERIAL, U.S. CENSUS ROADS, DORCHESTER COUNTY GIS PARCELS
Created By: Stephen Bennett
Date Created: February 5, 2016
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2:16-cv-03031-PMD, efdh03031-1, lcs
bridlewood/impact maps/appendix a.mxd
Sabine & Waters, Inc.
Environmental Land Management Consultants
P.O. Box 1072 Summerville, SC 29484
843.871.5385 (phone) 843.871.2950 (fax)
http://www.sabine.net
Disclaimer: This map is a graphic representation of data obtained from various sources. All efforts have been made to warrant the accuracy of this map. However, Sabine & Waters, Inc. disclaims all responsibility and liability for the use of this map.
REVISED: 4/4/2016

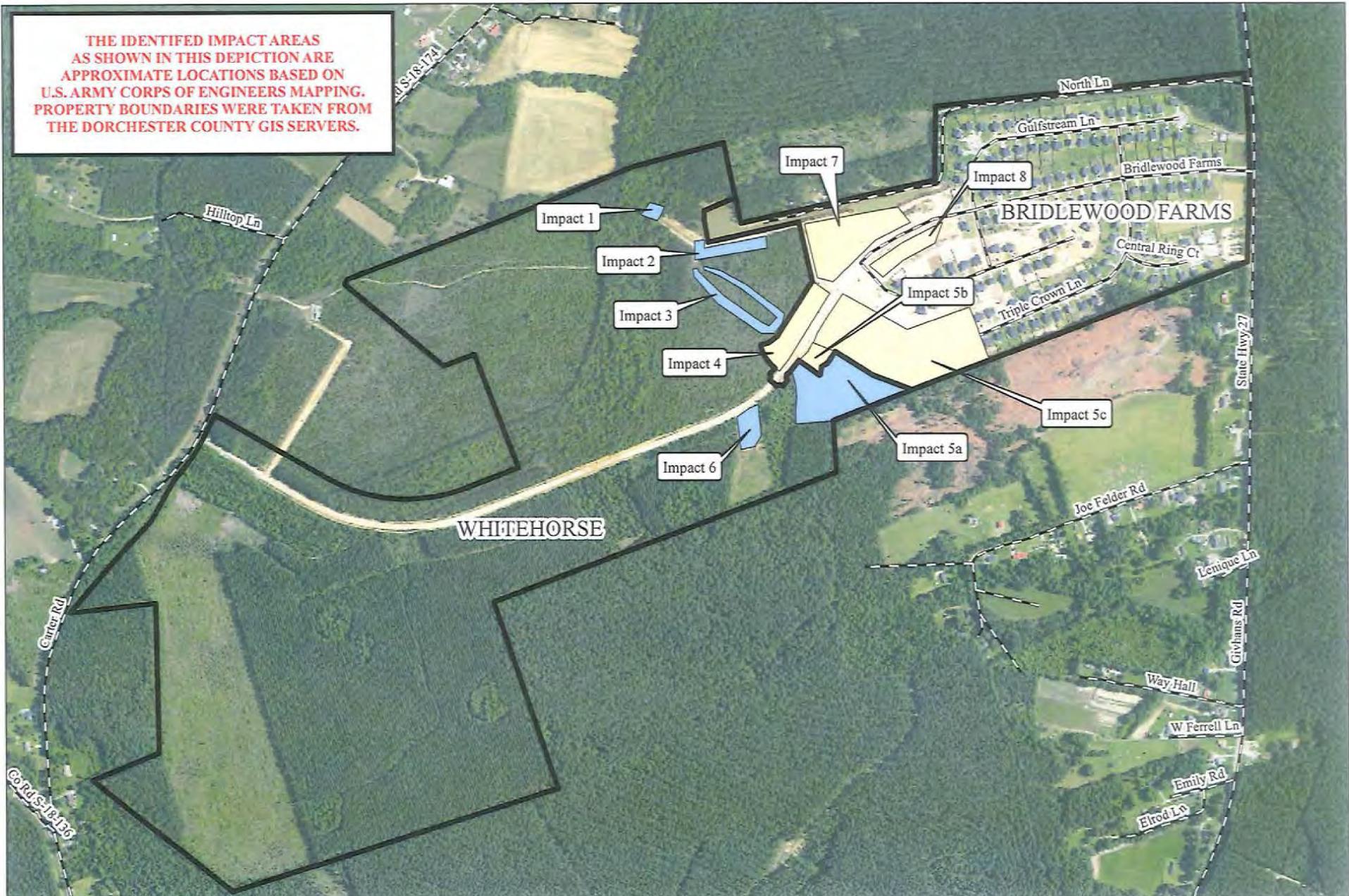
**APPENDIX A - (PAGE 1 OF 7)
BRIDLEWOOD FARMS AND WHITEHORSE PROPERTIES
DORCHESTER COUNTY, SC**



LEGEND

- PROPERTY BOUNDARY
- ROADS

**APPENDIX B
INTENTIONALLY OMITTED**



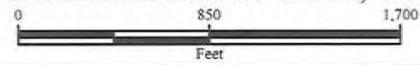
EXTERNAL SOURCES: NAD 2011 TRUE COLOR AERIAL, U.S. CENSUS ROADS, DORCHESTER COUNTY GIS PARCELS

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 Date Created: February 5, 2016
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 R:\consult\scott_cdw\whitehorse 1.1\br\bridlewood\impact_maps\appendix c.mxd
 Sabine & Waters, Inc.
 Environmental Land Management Consultants
 P.O. Box 1072 Summerville, SC 29484
 843.871.5383 (phone) 843.871.2050 (fax)
<http://www.sabine.net>

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REVISED: 4/4/2016

**APPENDIX C
 BRIDLEWOOD FARMS AND WHITEHORSE PROPERTIES
 DORCHESTER COUNTY, SC**



 	LEGEND
	<ul style="list-style-type: none"> PROPERTY BOUNDARY BRIDLEWOOD FARMS IMPACT AREAS WHITEHORSE IMPACT AREAS ROADS