



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
1104 NORTH WESTOVER BOULEVARD
ALBANY, GEORGIA 31707

SAS-RD-M

06Nov2023

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 SAS-2023-00299

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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	JD or Non-JD	Section 404/Section 10
C1	Non-JD	NA
C2	Non-JD	NA
C3	Non-JD	NA
C4	Non-JD	NA
C5	Non-JD	NA
C6	Non-JD	NA
C7	Non-JD	NA
C8	Non-JD	NA
C9	Non-JD	NA
C10	Non-JD	NA
F1	Non-JD	NA
F2	Non-JD	NA
F3	Non-JD	NA
F4	Non-JD	NA
F5	Non-JD	NA
MP1	Non-JD	NA
MP2	Non-JD	NA

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.

- A. Project Are Size (in acres):169 acres
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 30.9312 Longitude: -84.5806
- C. Nearest City or Town: Bainbridge
- D. County: Decatur County
- E. State: Georgia

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.
 - A. Name of nearest downstream TNW, Territorial Sea or interstate water: Flint River, which is a TNW.
 - B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and a field visit conducted on 1Nov2023, a review of the SAS Section 10 list (for a water body that is navigable-in-fact under federal law for any purpose (such as Section 10, RHA), that water body categorically qualifies as a Section 404 "traditional navigable water" subject to CWA jurisdiction under 33 CFR 328.3(a)(1)), and documented (include in AR) occurrences of boating traffic on the identified water.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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

⁵ 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.

⁶ 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.

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): 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”).⁷ 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.

Name of excluded feature	Size (in acres)	Specific exclusion a-e
MP1	2.34	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 the resulting body of water meets the definition of waters of the United States
MP2	0.34	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 the resulting body of water meets the definition of waters of the United States

- 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

⁷ 51 FR 41217, November 13, 1986.

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
- 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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
C1	0.12	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C2	0.05	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C3	0.06	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C4	0.01	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C5	0.07	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C6	0.27	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C7	0.24	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C8	1.46	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water

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C9	0.49	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
C10	3.32	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
F1	0.39	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
F2	1.02	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
F3	0.09	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
F4	2.73	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water
F5	0.21	non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water

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. 1. Date of Office (desktop review): 25Oct2023
- 2. Date(s) of Field Review (if applicable): 1Nov2023
- b. Data sources used to support this determination (included in the administrative record).
 - Aquatic Resources delineation submitted by, or on behalf of, the requestor: Project Peyton May 10, 2023
 - Aquatic Resources delineation prepared by the USACE: Title and Date
 - Wetland field data sheets prepared by the Corps: Title and Date
 - OHWM data sheets prepared by the USACE: Title and Date
 - Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
 - Photographs: Appendix C of the AJD package submitted on behalf of the requestor.
 - Aerial Imagery: Figure 3, Aerial Photograph.
 - LIDAR: SAS-2023-00299, Lidar, 6Nov2023
 - USDA NRCS Soil Survey: Figure 4, Soil Map
 - USFWS NWI maps: Title and Dates
 - USGS topographic maps: Figure 2, USGS Quadrangle Map
 - USGS NHD data/maps: Title and Dates
 - Section 10 resources used: Title and Dates
 - NCDWR stream identification forms
 - Antecedent Precipitation Tool Analysis: List Date(s)
 - Other sources of Information: Figure 5, FEMA Flood Map

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10. OTHER SUPPORTING INFORMATION.

There is no natural or man-made discrete and/or confined surface water connection between or among the subject features and any other jurisdictional water. Further, there is no evidence of surface-water flow to or from these features, nor are they located within the mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is a very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into these features. The observations and findings for each feature are detailed as follows:

Wetland C9 and C8 - The 0.49 and 1.46-acre wetlands are located along the western edge of the review area. They are approximately 1.3 miles from the nearest TNW, the Flint River. The areas are located within a pine plantation, that have been clear cut recently, and adjacent to a rail line. During the site visit no continuous ditches nor culverts were noted along or under the rail line. Additionally, there did not appear to be any wetlands boarding the rail line across from the subject features. The attached LIDAR image and topographic map do not depict a depressional surface feature between the subject wetlands and any other waters. The upland soils located between the subject wetlands and the nearest jurisdictional wetland are mapped Hornsville fine sandy loam, which have a loamy texture and are considered well drained. During the site visit no surface water connection were noted between the subject wetlands and any other waters.

Wetlands C1, C2, C3, and C4 – The 0.12, 0.05, 0.06, and 0.01-acre wetlands are located along the northern boarder of the review area. They are approximately 1.3 miles from the nearest TNW, the Flint River. The areas are located within a pine plantation that has been clear cut recently. During the site visit there were no surface water features noted that could potentially connect these features and any other waters. The attached LIDAR image and topographic map do not depict a depressional surface feature between the subject wetlands and any other waters. The upland soils located between the subject wetlands and the nearest jurisdictional wetland are mapped Lakeland Sand, which have a sandy texture and are considered well drained.

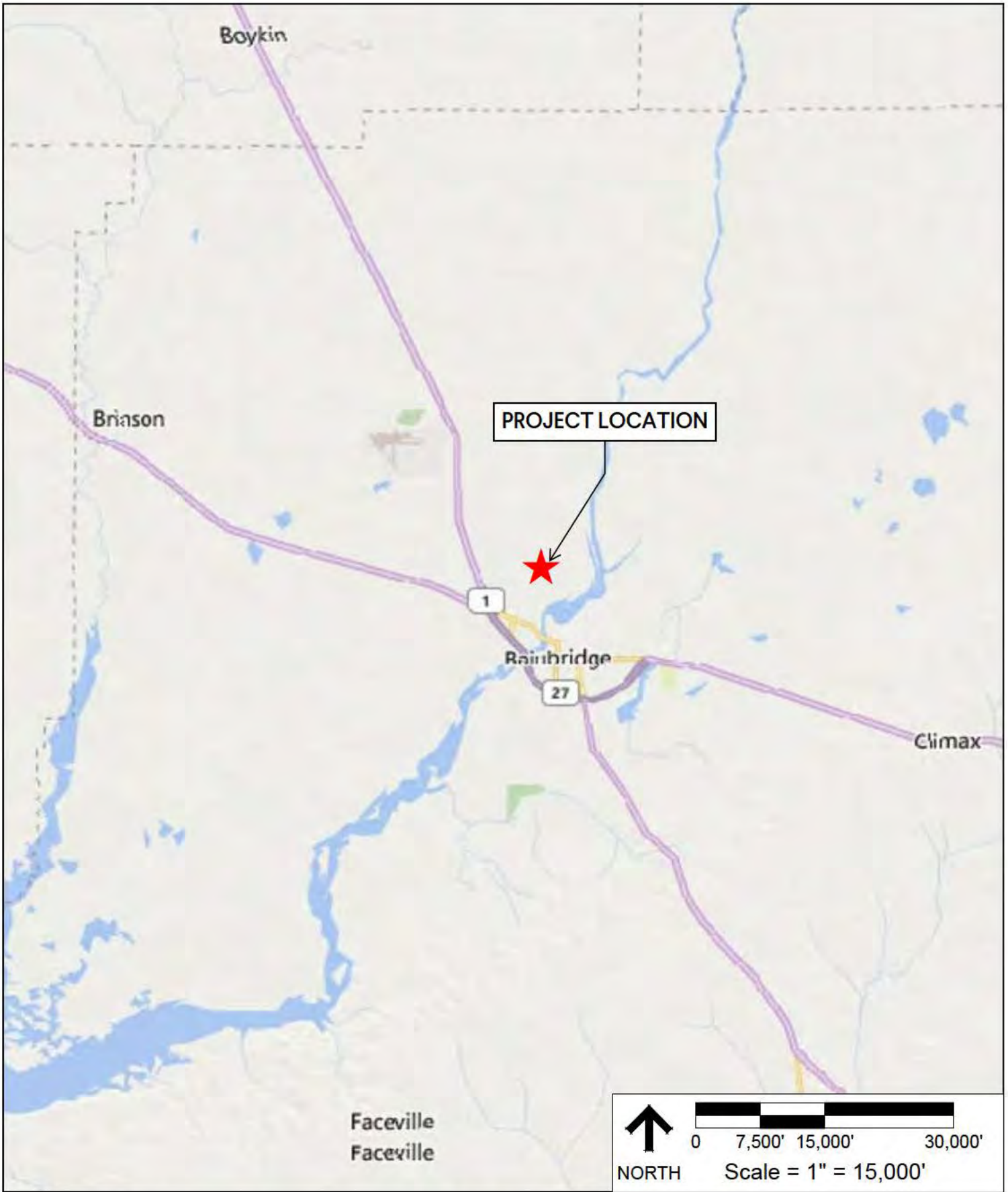
Wetlands C5, C6, C7, F1, F2, and F3 – The 0.07, 0.27, 0.24, 0.39, 1.02, and 0.09-acre wetlands are located in the center of the subject review area. They are approximately 1.3 miles from the nearest TNW, the Flint River. The areas are located within a pine plantation that has been clear cut recently. During the site visit there were no surface water features noted that could potentially connect these features and any other waters. The attached LIDAR image and topographic map do not depict a depressional surface feature between the subject wetlands and any other waters. The upland soils located between the subject wetlands and the nearest jurisdictional wetland are mapped Nankin loamy fine sand, which have a sandy texture and are considered well drained.

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Wetland C10/F4 – The 6.05-acre wetland is located along the southern border of the review area. It extends beyond the review area for a short distance onto the adjacent property. It is approximately 1.3 miles from the nearest TNW, the Flint River. The area is located in a pine plantation. Portions of the wetland have been recently cleared while the rest remains in pines. During the site visit there were no surface water features noted that could potentially connect these features and any other waters. The attached LIDAR image and topographic map do not depict a depressional surface feature between the subject wetlands and any other waters. The upland soils located between the subject wetlands and the nearest jurisdictional wetland are mapped Nankin loamy fine sand, which have a sandy texture and are considered well drained. Since the wetland extended beyond the property boundary aerial photos were used to verify the lack of surface features. Additionally, a vehicle survey was conducted along the public roads to the south and west of the property to verify the absence of a connection.

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.



REF. SHEET: BING STREET MAPS
 DESCRIPTION: JURISDICTIONAL DETERMINATION

► **Project Peyton**
 Bainbridge, Decatur County, Georgia

FIGURE 1

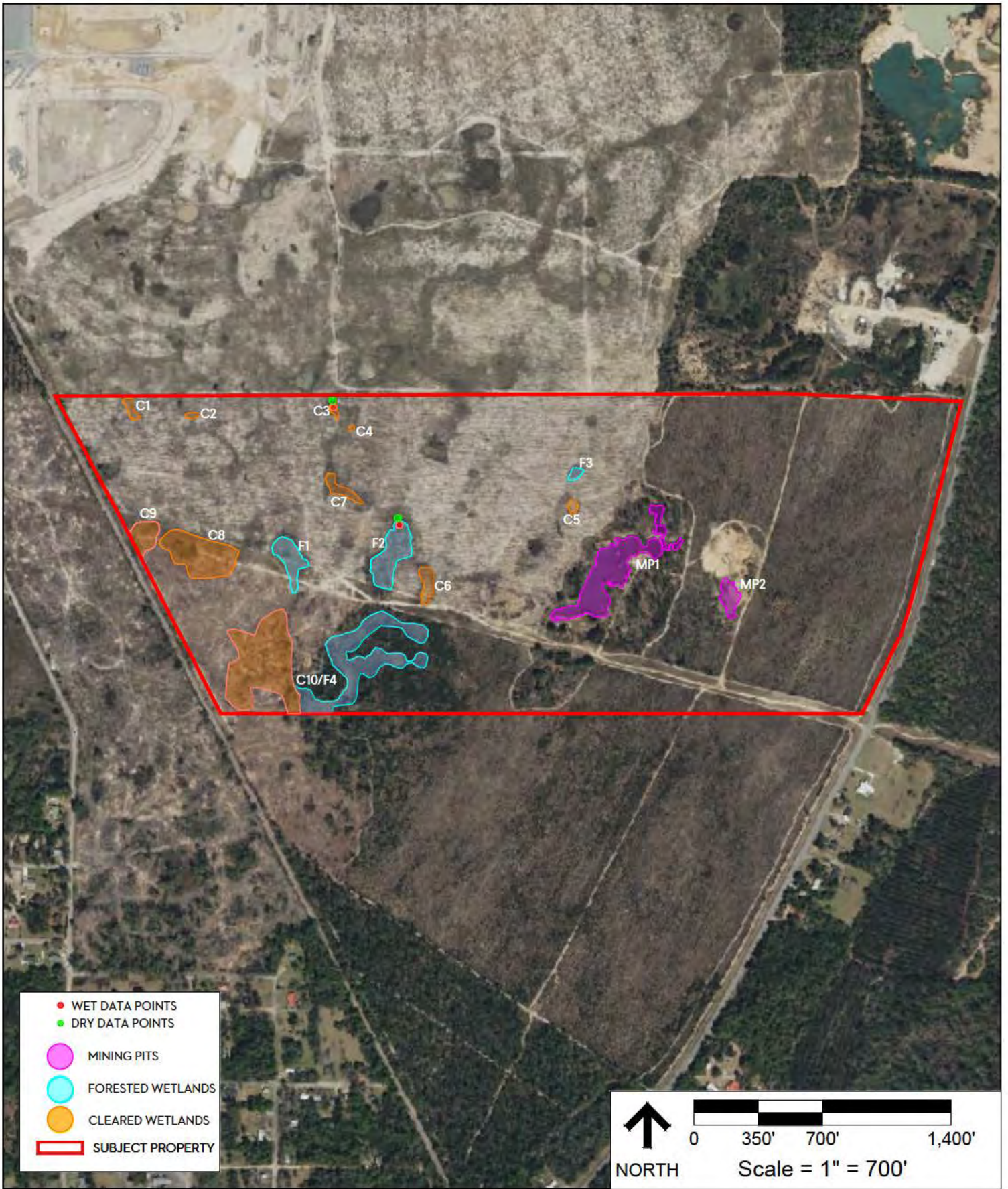
GENERAL LOCATION MAP

■ # EBHM230001

DATE: 03/30/2023

DRAWN BY: ■





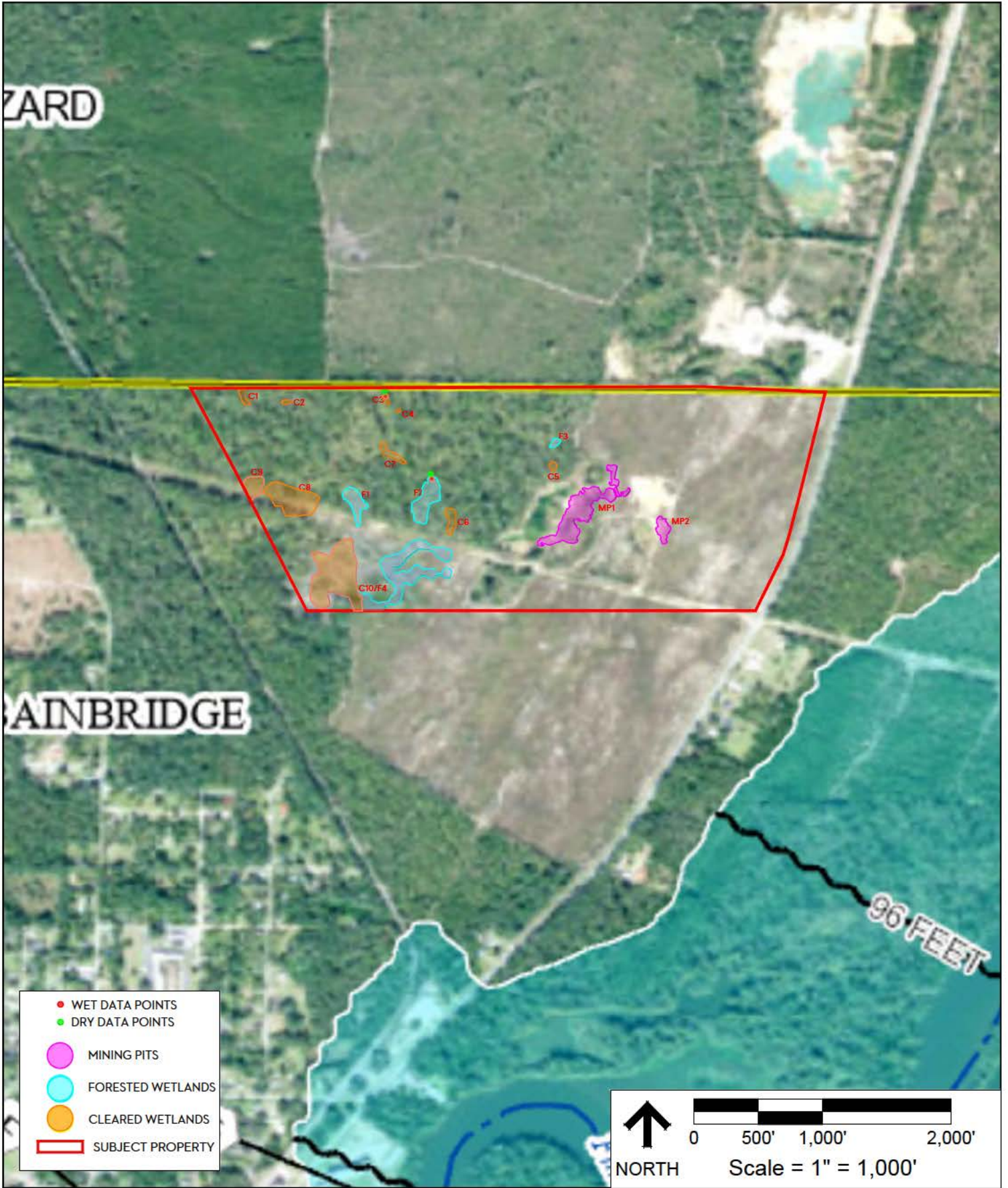
REF. SHEET: BING AERIAL IMAGERY
DESCRIPTION: JURISDICTIONAL DETERMINATION

Project Peyton
Bainbridge, Decatur County, Georgia

FIGURE 3

AERIAL PHOTOGRAPH
EBHM230001
DATE: 05/05/2023
DRAWN BY: [REDACTED]

[REDACTED]	36117	[REDACTED]
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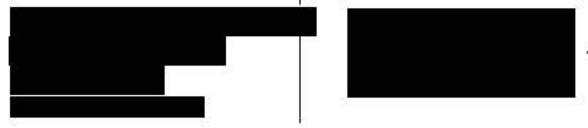


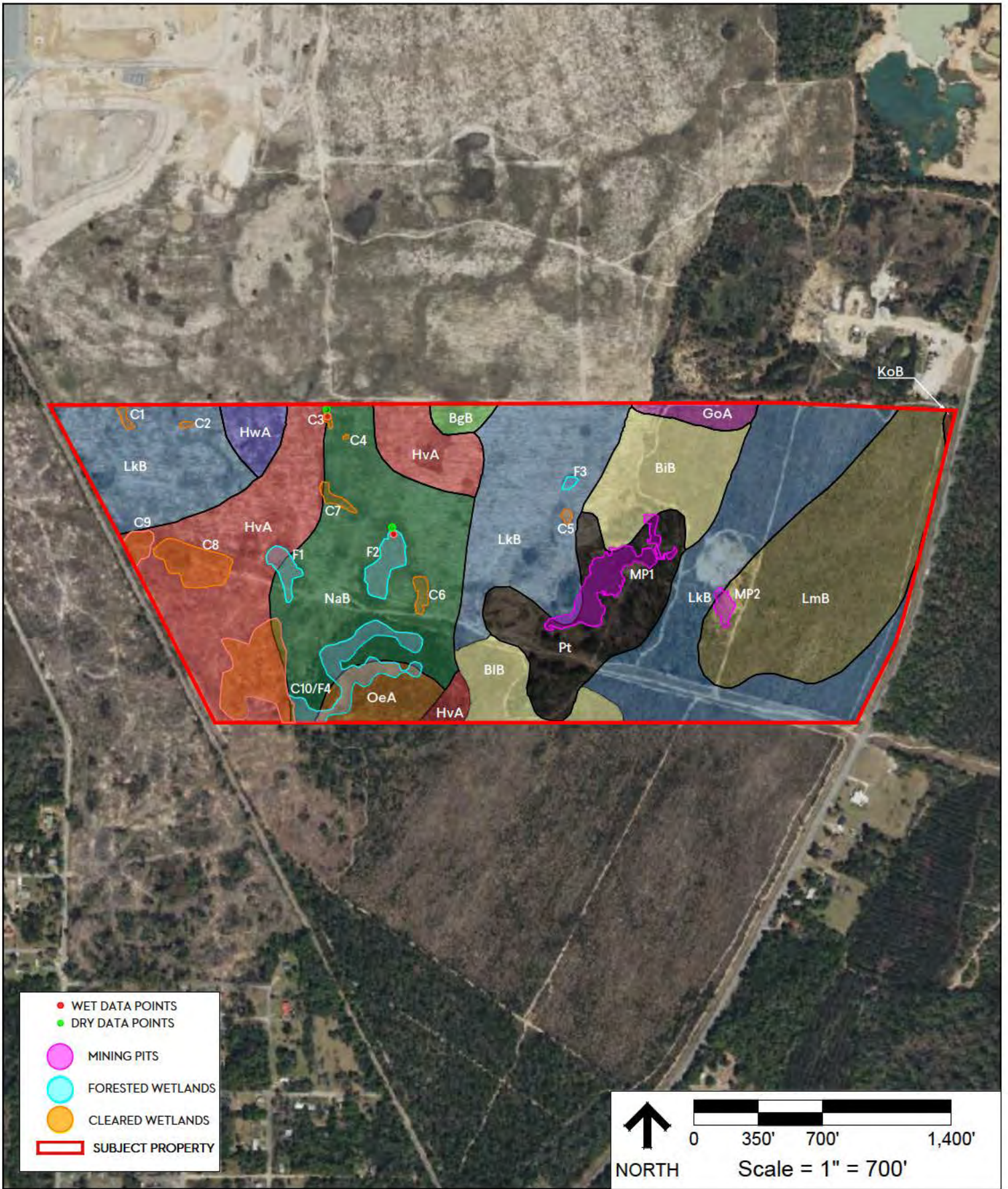
REF. SHEET: FEMA FIRM MAP #13087C0175E
 DESCRIPTION: JURISDICTIONAL DETERMINATION

Project Peyton
 Bainbridge, Decatur County, Georgia

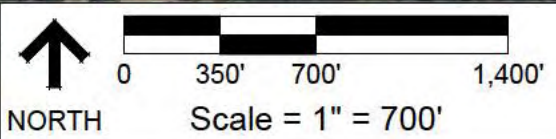
FIGURE 5

FEMA FLOOD MAP
 # EBHM230001
 DATE: 05/05/2023
 DRAWN BY: [REDACTED]





- WET DATA POINTS
- DRY DATA POINTS
- MINING PITS
- FORESTED WETLANDS
- CLEARED WETLANDS
- SUBJECT PROPERTY



REF. SHEET: DECATUR COUNTY SOIL SURVEY
 DESCRIPTION: JURISDICTIONAL DETERMINATION

Project Peyton
 Bainbridge, Decatur County, Georgia

FIGURE 4

SOIL MAP
 # EBHM230001
 DATE: 05/05/2023
 DRAWN BY: [REDACTED]



Map Unit

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
BgB	Bigbee loamy fine sand, 0 to 5 percent slopes, rarely flooded	0.8	0.4%
BIBe	Blanton loamy sand, 0 to 5 percent slopes	20.6	10.8%
GoAe	Goldsboro loamy sand, 0 to 2 percent slopes	1.1	0.6%
HvAe	Hornsvill fine sandy loam, 0 to 2 percent slopes	33.9	17.7%
HwAe	Hornsvill-Wahkiakum complex, 0 to 2 percent slopes	2.1	1.1%
KoBe	Kolomoki sandy loam, 0 to 5 percent slopes	0.1	0.1%
LkB	Lakeland sand, 0 to 5 percent slopes	60.1	31.4%
LmBe	Lucy loamy sand, 0 to 5 percent slopes	25.0	13.1%
NaBe	Nankin loamy fine sand, 2 to 5 percent slopes	27.1	14.1%
O Ae	Orangburg loamy sand, 0 to 2 percent slopes	7.7	4.0%
Pt	Pits	13.0	6.8%
Totals for Area of Interest		191.5	100.0%

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Lidar

Legend

Site Boundary

N Miller Ave

C1

C2

C3

C4

C9

C7

F3

F1

F2

C6

C5

MP1

MP2

C10/F4

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Yates Concrete Products

Roy St
St Bainbridge Cemetery

Moore St

Google Earth

Hawk St



2000 ft