DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

SAS-RD-C January 18, 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] SAS-2021-00723

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.

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[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.

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	**JD or Non-JD**	**Section 404/Section 10**
Wetland MA	JD	Section 404
Wetland MB	JD	Section 404
Wetland MC	JD	Section 404
Borrow Area P1	Non-JD	N/A
Borrow Area P2	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. _, 143 S. Ct. 1322 (2023)

   e. 20190625 Section 10 Waters List Savannah District

   f. 2007 Rapanos Approved Jurisdictional Determination Form Instructional Guidebook

3. REVIEW AREA. The project review area is an approximately 77.3-acre site located adjacent to Uncle Shed's Road and approximately 0.3 miles west of Georgia State Route 204 in Bloomingdale, Chatham County, Georgia (Latitude: 32.0641, Longitude: -81.3638).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS

CONNECTED.[5] The Ogeechee River is the nearest TNW. This determination was made based on a review of desktop data resources described in Section 9 of this memorandum including review of the SAS Section 10 Waters list and a field visit conducted on January 11, 2024.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS
Although labelled MA, MB, and MC, these are all one wetland and part of an overall larger wetland system outside the project review area. Wetlands MA, MB, and MC are part of a wetland system that meets the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic Gulf Coastal Plain Regional Supplement. This wetland system is contiguous with the Ogeechee River, a TNW.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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 administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant

[5] 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.
[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.

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):

Name of Aquatic Resource	**Size (in acres)**	**Contiguous with or abutting? If so, list water**	**Describe continuous surface connection**
Wetland MA Wetland MB Wetland MC	3.37 0.66 0.80	Yes, Ogeechee River	Although labelled MA, MB, and MC, these are all one wetland which is part of an overall larger wetland system outside the project review area. Wetlands MA, MB, and MC are part of a wetland system that meets the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic Gulf Coastal Plain Regional Supplement. This wetland system is contiguous with the Ogeechee River, a TNW.

Wetlands MA, MB and MC total 4.83 acres located at the project area (approximately 0.4 miles from the Ogeechee River) and are all one wetland. Site inspection observations along with LiDAR mapping and a review of other desktop data resources described in Section 9 of this memorandum, support the determination that Wetland MA, MB, and MC are all part of the same larger wetland system that is contiguous with the Ogeechee River, a TNW.

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.

Name of excluded feature	Size (in acres)	Specific exclusion a-e
Borrow Area P1	39.46	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.
Borrow Area P2	3.66	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.

Borrow Area P1 (P1) was created in dry land for the purpose of obtaining sand and is currently maintained. There is a pipe culvert located at the northwestern most tip of P1 that goes under the unnamed road (that borders the northern edge of P1) into an eroded swale on the north side of the road. There is an area of upland between this swale and the larger wetland system that is just outside the project area. Due to the swale not having a discrete connection to the wetland, there is no continuous surface connection between P1 and the wetland contiguous with the Ogeechee River. The entire perimeter of P1 was viewed during the site visit and no other outfalls, ditches or connections were observed.

[8] 51 FR 41217, November 13, 1986.

The entire perimeter of Borrow Area P2 (P2) was also viewed, and no outfalls, ditches or connections were observed. P2 lacks a continuous surface connection to a water of the US. Historic aerial imagery and historic topographic mapping as well as NWI mapping support the determination that Borrow Area P1 and Borrow Area P2 were created in dry land. There are existing mining permits which support that P1 and P2 were created incidental to construction activity and pits excavated in dry land for the purpose of obtaining sand. Based on site inspection, desktop review including data sources listed in Section 9, and references listed in Section 2, Borrow Area P1 and Borrow Area P2 are identified as "preamble waters" under specific exclusion "e" and non-jurisdictional.

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

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. Office (Desk) Determination: January 17, 2024
Field Visit: January 11, 2024

b. Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Approved Jurisdictional Determination request and exhibit submitted by [redacted], Inc.

c. Data sheets prepared/submitted by or on behalf of the applicant/consultant: submitted by [redacted]

d. U.S. Geological Survey map(s): Chatham County 1'=2,000 ft.

e. U.S. Geological Survey Hydrologic Atlas: HUC 030602020605.

f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.

g. National Wetlands Inventory map(s): Chatham County, GA.

h. Photographs: Aerial: Google Earth 2023, Digital Globe 2000, and Historic Aerial Imagery: 1971, 1981, 1988, and 1993.

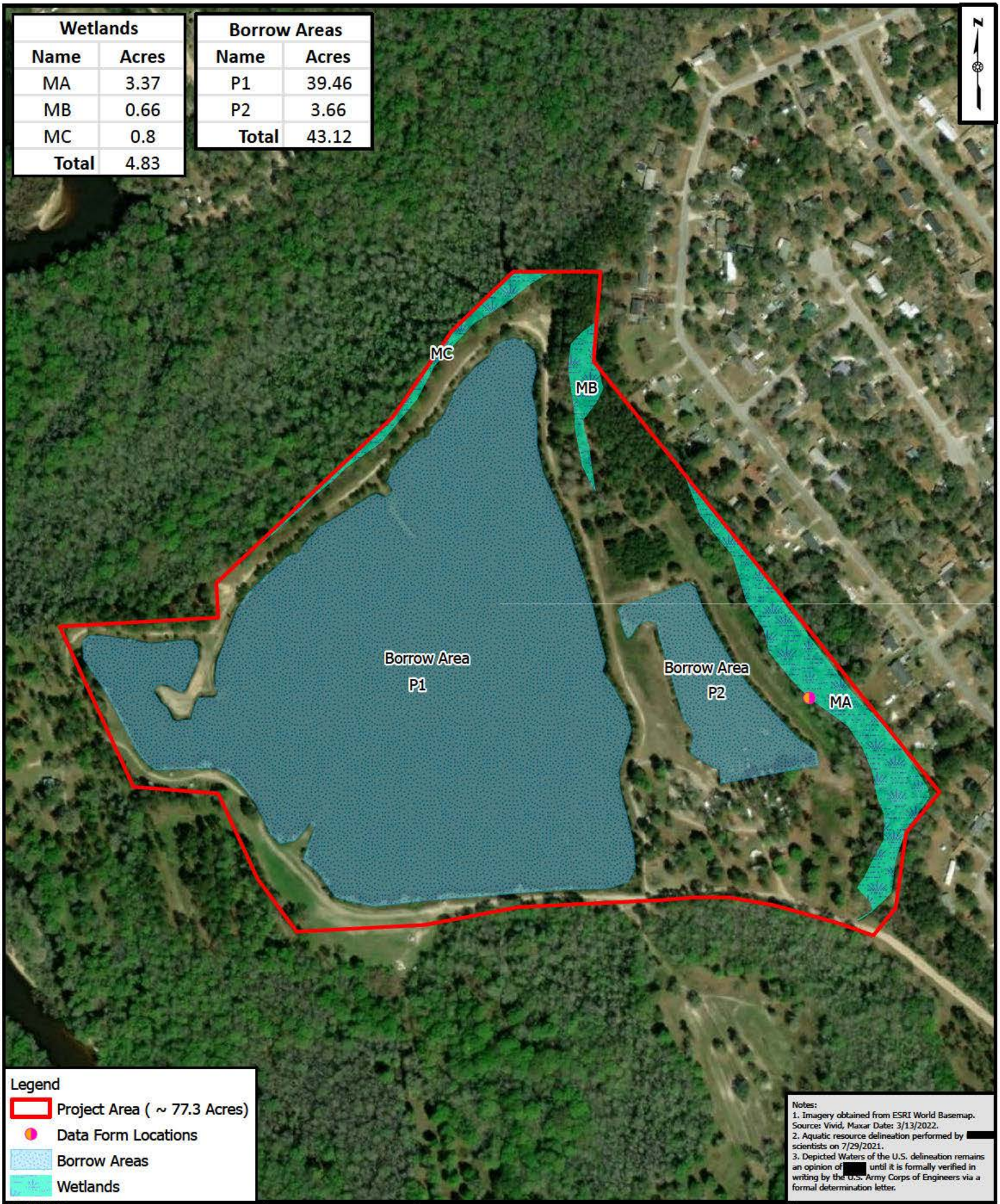
i. Historical Topographic Maps: 1950, 1961, 1968, 1972, and 2014.

j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.

k. Antecedent Precipitation Tool Analysis: [redacted] agent site visit on July 29, 2021, and Corps site visit on January 11, 2024.

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.



Wetlands	
Name	Acres
MA	3.37
MB	0.66
MC	0.8
Total	4.83

Borrow Areas	
Name	Acres
P1	39.46
P2	3.66
Total	43.12

Legend
- Project Area (~ 77.3 Acres)
- Data Form Locations
- Borrow Areas
- Wetlands

Notes:
1. Imagery obtained from ESRI World Basemap. Source: Vivid, Maxar Date: 3/13/2022.
2. Aquatic resource delineation performed by [redacted] scientists on 7/29/2021.
3. Depicted Waters of the U.S. delineation remains an opinion of [redacted] until it is formally verified in writing by the U.S. Army Corps of Engineers via a formal determination letter.

DISCLAIMER:
This drawing and the information contained herein is for general presentation purposes only and is a compilation of shapefile(s) provided by various source(s). The source and accuracy of the file(s) has not been verified by [redacted] and therefore the drawing is not intended for use as a engineering drawing or for design purposes.

Figure 6
1/30/2024
0 200 400
1 inch equals 400 Feet

Delineation Map
Fort Argyle Road Tract
[redacted]
Chatham County, GA

[redacted]

Path: S:\ArcGIS\Baker Construction\Port Argyle Road Pit Expansion\Maps\FortArgyl\RoadPitExpansion\FortArgylRoadPitExpansion.aprx User: nmcknight

Wetland Flags		
Comment	X	Y
ma8	32.062	-81.361
ma9	32.062	-81.361
ma10	32.062	-81.361
ma11	32.062	-81.361
ma12	32.062	-81.361
ma13	32.062	-81.361
ma14	32.062	-81.361
ma15	32.062	-81.36
ma16	32.063	-81.36
ma17	32.063	-81.36
ma18	32.063	-81.361
ma19	32.063	-81.361
ma20	32.063	-81.361
ma21	32.064	-81.361
ma22	32.064	-81.361
ma23	32.064	-81.362
ma24	32.064	-81.362
ma25	32.065	-81.362
ma26	32.065	-81.362
ma27	32.065	-81.362
ma28	32.065	-81.362
ma29	32.066	-81.362
ma30	32.066	-81.362
mb1	32.067	-81.363
mb10	32.066	-81.363
mb11	32.066	-81.363
mb12	32.066	-81.363
mb13	32.066	-81.363
mb14	32.066	-81.363
mb15	32.067	-81.363
mb1a	32.067	-81.363
mb2	32.067	-81.364
mb3	32.067	-81.364
mb4	32.067	-81.364
mb5	32.067	-81.364
mb6	32.066	-81.364
mb7	32.066	-81.364
mb8	32.066	-81.364
mb9	32.066	-81.363
mb9a	32.066	-81.363
mb9b	32.066	-81.363
mc1	32.068	-81.364
mc2	32.067	-81.364
mc3	32.067	-81.364
mc4	32.067	-81.365
mc4	32.067	-81.365
mc5	32.066	-81.365
mc6	32.066	-81.366
mc7	32.066	-81.366
mc7	32.066	-81.366
mc8	32.066	-81.366
mc9	32.065	-81.366
mc10	32.065	-81.367
mc11	32.065	-81.367
mc12	32.065	-81.367
md1	32.062	-81.361
md3	32.062	-81.361
md3a	32.062	-81.361
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md10	32.063	-81.36
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md12	32.065	-81.361

Project Boundary		
Comment	X	Y
Project Boundary	32.063	-81 367
Project Boundary	32.063	-81 368
Project Boundary	32.064	-81 369
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