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

SAS-RD-C March 26, 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-2001-13740

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 01 (W1)	JD	Section 404
Wetland 02 (W2)	JD	Section 404
Detention Pond 01 (DP1)	Non-JD	NA
Detention Pond 02 (DP2)	Non-JD	NA

   Although labelled Wetland 01 (W1) and Wetland 02 (W2), W1 and W2 function as one wetland (Wetland 1/2) connected via a culvert flowing under Flemington Village Boulevard.

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. 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. 20190625 Section 10 Waters List Savannah District

3. REVIEW AREA. The review area is an approximately 69.18-acre site located adjacent to and south of US Highway 84, and adjacent to and east of Peacock Canal in Flemington, Liberty County, Georgia (Latitude: 31.8525, Longitude: -81.5707).

Regulatory File No.	Type	Outcome
SAS-2001-13740	AJD	Wetland 01 and Wetland 02 were determined to be jurisdictional under the AJD.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.[5] Peacock Creek is the nearest TNW. This determination was made based on a review of desktop data resources described in Section 9 of this memorandum and a review of the SAS Section 10 Waters list.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetland 01 and Wetland 02 meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. Although labelled Wetland 01 (W1) and Wetland 02 (W2), W1 and W2 function as one wetland (Wetland 1/2) connected via a culvert flowing under Flemington Village Boulevard. Wetland 1/2 abuts Peacock Canal, a named waterway, that is contiguous with Peacock Creek, 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

[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.

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): 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 1/2 W1 W2	 2.02 7.00	Yes, Peacock Canal	Although labelled Wetland 01 (W1) and Wetland 02 (W2), W1 and W2 function as one wetland (Wetland 1/2) connected via a culvert flowing under Flemington Village Boulevard. Wetland 1/2 abuts Peacock Canal, a named waterway, that is contiguous with Peacock Creek, a TNW.

Based on desktop review including data sources listed in Section 9, AJD previously verified for the site by letter dated December 3, 2003, and confirmation from agent, W1 and W2 were determined to be jurisdictional waters of the US. W1 and W2 function as one wetland (Wetland 1/2) connected via a culvert flowing under Flemington Village Boulevard. Wetland 1/2 abuts Peacock Canal, a named waterway, that is contiguous with Peacock Creek, 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 "preamble water" feature	Size (in acres)	Categories a-e
DP 1	2.30	(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing
DP 2	2.92	(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing

Detention Pond 1 (DP1) and Detention Pond 2 (DP2) are artificial ponds created in dry land for the purpose of collecting and retaining water acting as settling basins. The previous delineation for SAS-2001-13740 AJD shows DP1 and DP2 were not built in waters of the US, and historic aerial imagery also supports this determination. DP1 and DP2 are stormwater control features constructed or excavated in upland to store stormwater run-off; therefore, DP1 and DP2 are determined to be 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

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

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: December 1, 2023

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

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

d. U.S. Geological Survey map(s): Liberty County, GA Quad.

e. U.S. Geological Survey Hydrologic Atlas: HUC-12: 030602040401.

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

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

h. Photographs: Aerial: Digital Globe Aerial Imagery 2023 and Google Earth 2022.

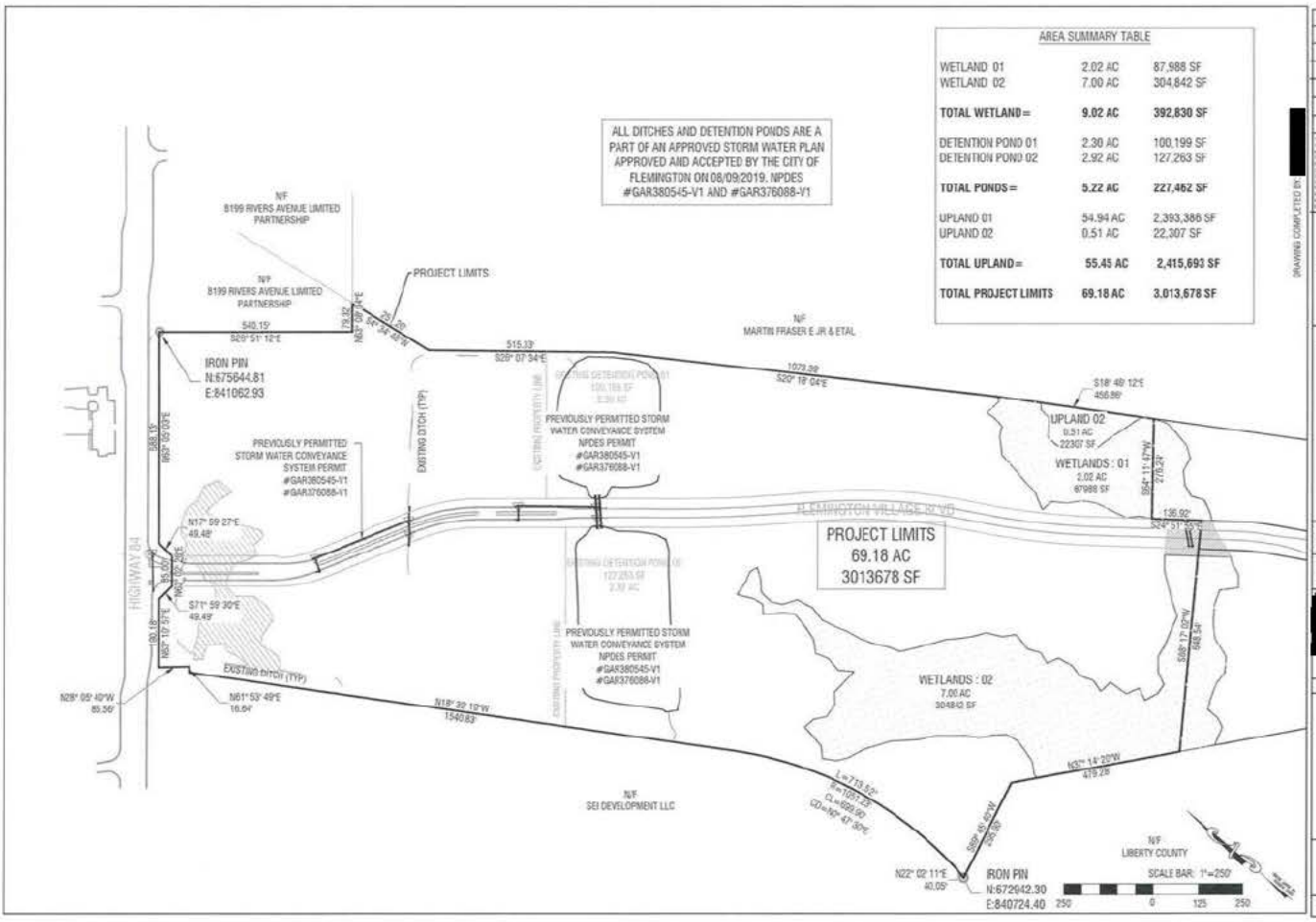
i. NOAA Topographic LiDAR: 2018 NOAA LiDAR

j. Antecedent Precipitation Tool Analysis: Agent Site Visit on September 4, 2023.

k. SAS-2001-13740: AJD December 3, 2003 and NWP November 8, 2018.

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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REVISIONS:

MUNICIPALITY: CITY OF FLEMINGTON

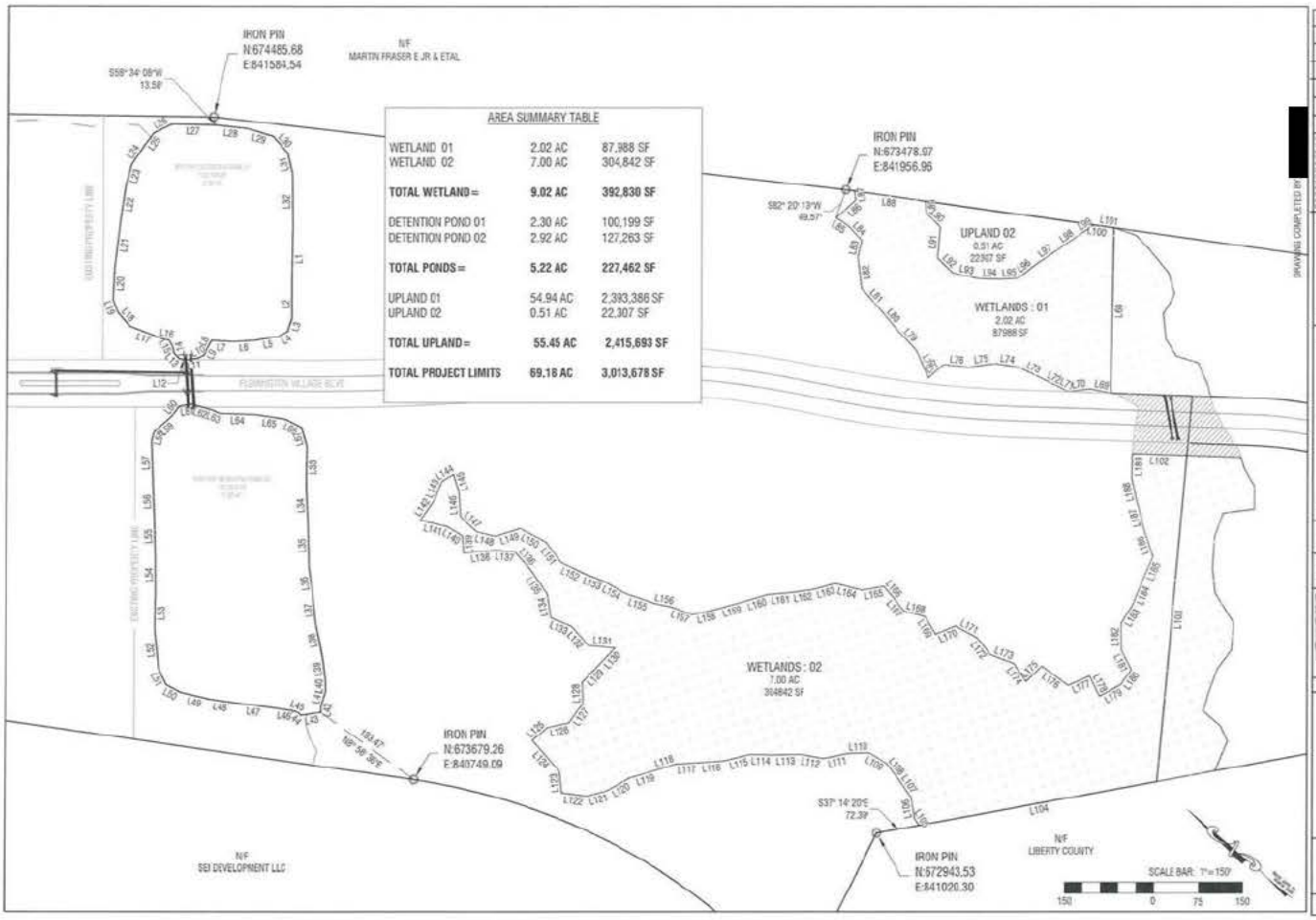
COUNTY: LIBERTY

JOB NO.: 2023-74

FLEMINGTON VILLAGE BLVD

1

PLOT DATE: August 28, 2023



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JOB NO.: 2023-74

FLEMINGTON VILLAGE BLVD

2

PLOT DATE: August 28, 2023

WETLAND LINE TABLE		
LINE #	LENGTH	DIRECTION
L68	276.24'	S64° 11' 47"W
L69	35.95'	N15° 16' 21"W
L70	36.66'	N34° 10' 49"W
L71	16.89'	N0° 34' 41"W
L72	29.20'	N0° 34' 41"W
L73	48.50'	N1° 09' 57"W
L74	39.73'	N18° 20' 04"W
L75	43.52'	N35° 21' 10"W
L76	43.48'	N20° 59' 35"W
L77	33.79'	N68° 45' 44"W
L78	50.84'	N39° 03' 22"E
L79	50.29'	N20° 09' 17"E
L80	37.80'	N23° 19' 05"E
L81	50.91'	N20° 42' 07"E
L82	52.28'	N56° 27' 30"E
L83	29.15'	N76° 09' 24"E
L84	39.48'	N20° 01' 01"E
L85	24.28'	N7° 08' 59"E
L86	44.31'	S68° 43' 56"E
L87	15.52'	N52° 53' 37"E
L88	121.43'	S18° 49' 34"E
L89	20.02'	S59° 08' 08"W
L90	33.59'	S17° 43' 18"W
L91	52.64'	S67° 59' 01"W
L92	34.57'	S17° 04' 52"W
L93	44.32'	S14° 17' 13"E
L94	38.16'	S24° 49' 49"E
L95	28.94'	S30° 27' 02"E
L96	43.83'	S64° 15' 59"E
L97	44.46'	S60° 24' 59"E
L98	44.24'	S51° 36' 45"E
L99	27.35'	S58° 49' 33"E
L100	10.70'	S18° 49' 34"E
L101	22.53'	S17° 41' 42"E
L102	91.67'	S24° 51' 55"E

WETLAND LINE TABLE		
LINE #	LENGTH	DIRECTION
L103	548.13'	S68° 17' 02"W
L104	406.88'	N17° 14' 20"W
L105	14.23'	N31° 35' 31"E
L106	36.13'	N53° 28' 39"E
L107	40.49'	N28° 46' 09"E
L108	31.24'	N25° 15' 14"E
L109	33.88'	N3° 37' 12"E
L110	36.09'	N28° 47' 42"W
L111	41.47'	N38° 30' 29"W
L112	39.79'	N16° 20' 56"W
L113	48.38'	N28° 01' 23"W
L114	34.85'	N25° 46' 44"W
L115	45.64'	N40° 28' 51"W
L116	44.20'	N20° 40' 43"W
L117	36.81'	N20° 19' 22"W
L118	32.14'	N44° 55' 49"W
L119	46.38'	N43° 18' 49"W
L120	48.97'	N55° 11' 01"W
L121	32.98'	N41° 42' 51"W
L122	42.84'	N19° 15' 41"W
L123	36.09'	N57° 00' 08"E
L124	69.35'	N21° 59' 49"E
L125	32.99'	S67° 39' 31"E
L126	37.45'	S29° 10' 56"E
L127	39.68'	S81° 30' 42"E
L128	34.92'	N60° 40' 07"E
L129	44.48'	S72° 55' 57"E
L130	36.59'	S73° 54' 00"E
L131	44.95'	N21° 35' 41"W
L132	42.04'	N22° 30' 09"E
L133	39.03'	N4° 19' 23"W
L134	39.38'	N54° 37' 01"E
L135	49.65'	N29° 21' 44"E
L136	40.74'	N21° 11' 58"E
L137	31.77'	N20° 21' 20"W

WETLAND LINE TABLE		
LINE #	LENGTH	DIRECTION
L138	55.27'	N33° 11' 02"W
L139	29.32'	N58° 45' 00"E
L140	26.11'	N5° 14' 50"E
L141	47.09'	N13° 29' 57"W
L142	36.79'	S81° 59' 43"E
L143	34.78'	N86° 29' 08"E
L144	21.97'	S57° 45' 05"E
L145	30.45'	S45° 48' 05"W
L146	41.12'	S58° 55' 14"W
L147	37.64'	S15° 39' 02"W
L148	31.97'	S13° 07' 12"E
L149	43.91'	S44° 07' 48"E
L150	46.89'	S0° 39' 33"W
L151	42.32'	S26° 47' 55"W
L152	45.70'	S1° 16' 27"E
L153	32.49'	S5° 27' 55"E
L154	42.85'	S2° 13' 02"W
L155	50.88'	S7° 44' 41"E
L156	31.58'	S15° 13' 36"E
L157	38.14'	S8° 19' 55"E
L158	43.56'	S38° 51' 36"E
L159	44.48'	S42° 08' 42"E
L160	43.03'	S43° 12' 19"E
L161	39.96'	S31° 44' 07"E
L162	36.85'	S34° 50' 48"E
L163	38.63'	S42° 00' 57"E
L164	46.04'	S12° 51' 34"E
L165	37.06'	S36° 01' 15"E
L166	29.24'	S21° 51' 14"W
L167	23.76'	S25° 37' 30"W
L168	37.55'	S11° 43' 54"E
L169	34.55'	S32° 09' 06"W
L170	35.73'	S49° 58' 40"E
L171	41.56'	S1° 35' 31"W
L172	36.37'	S24° 31' 32"W

WETLAND LINE TABLE		
LINE #	LENGTH	DIRECTION
L173	41.10'	S8° 15' 25"E
L174	37.25'	S28° 07' 01"W
L175	37.23'	S70° 53' 20"E
L176	54.58'	S9° 59' 16"W
L177	39.61'	S50° 08' 11"E
L178	37.94'	S36° 48' 57"W
L179	41.39'	S59° 39' 55"E
L180	29.50'	S82° 05' 48"E
L181	37.10'	N39° 42' 50"E
L182	44.34'	N62° 48' 21"E
L183	36.19'	S89° 30' 59"E
L184	43.87'	N85° 19' 31"E
L185	44.21'	N89° 49' 58"E
L186	47.53'	N44° 59' 24"E
L187	47.81'	N48° 11' 28"E
L188	39.83'	N52° 16' 59"E
L189	41.79'	N64° 34' 11"E

POND LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	100.77'	S83° 50' 00"W
L2	47.71'	S62° 51' 35"W
L3	23.21'	S80° 23' 19"W
L4	17.12'	N54° 53' 20"W
L5	41.43'	S36° 48' 14"W
L6	38.57'	S29° 49' 59"W
L7	34.79'	S23° 31' 33"W
L8	14.50'	N68° 18' 57"W
L9	13.55'	S87° 59' 42"W
L10	11.59'	S51° 20' 39"W
L11	17.00'	S35° 19' 31"W
L12	14.46'	S19° 29' 11"W
L13	12.79'	S19° 21' 23"E
L14	9.99'	S50° 49' 31"E
L15	13.09'	S35° 54' 00"E
L16	12.77'	S14° 57' 32"W
L17	58.52'	N5° 39' 05"W
L18	30.99'	N22° 13' 58"E
L19	21.89'	N42° 31' 41"E
L20	53.37'	N65° 57' 18"E
L21	77.34'	N70° 05' 32"E
L22	62.22'	S71° 23' 29"E
L23	37.22'	S79° 17' 17"E
L24	35.84'	S82° 57' 33"E
L25	27.15'	S80° 09' 48"E
L26	34.39'	S52° 25' 26"E
L27	71.29'	S25° 49' 51"E
L28	57.89'	S20° 38' 00"E
L29	44.22'	S10° 09' 32"E
L30	37.19'	S21° 49' 36"W
L31	35.37'	S49° 42' 32"W
L32	69.22'	S62° 30' 51"W
L33	67.32'	S63° 58' 19"W
L34	58.51'	S60° 16' 56"W
L35	75.62'	S61° 20' 19"W

POND LINE TABLE		
LINE #	LENGTH	DIRECTION
L36	50.38'	S54° 44' 44"W
L37	40.70'	S57° 21' 24"W
L38	60.12'	S51° 41' 24"W
L39	39.92'	S59° 22' 24"W
L40	19.97'	S62° 45' 30"W
L41	25.48'	S79° 46' 04"W
L42	10.02'	S65° 56' 31"W
L43	33.78'	N35° 21' 04"W
L44	6.67'	N18° 13' 38"E
L45	9.34'	N7° 07' 53"W
L46	25.12'	N18° 59' 22"W
L47	78.76'	N19° 20' 41"W
L48	35.00'	N18° 58' 00"W
L49	51.78'	N13° 19' 38"W
L50	28.75'	N1° 22' 20"E
L51	29.68'	N37° 17' 37"E
L52	63.73'	N57° 36' 05"E
L53	58.55'	N63° 43' 57"E
L54	70.62'	N62° 43' 56"E
L55	58.54'	N51° 10' 20"E
L56	39.05'	N60° 32' 57"E
L57	70.43'	N51° 06' 22"E
L58	16.60'	N78° 31' 15"E
L59	39.38'	S68° 08' 56"E
L60	21.73'	S78° 47' 47"E
L61	21.29'	S34° 53' 34"E
L62	35.09'	S10° 54' 33"E
L63	14.19'	S3° 13' 56"E
L64	69.62'	S25° 04' 50"E
L65	58.43'	S18° 22' 31"E
L66	39.88'	S0° 09' 33"E
L67	31.94'	S47° 08' 11"W

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PLOT DATE: August 28, 2023

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