



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

SAS-RD-C

May 29, 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),<sup>1</sup> SAS-2011-00558

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

<b>Name of Aquatic Resource</b>	<b>JD or Non-JD</b>	<b>Section 404/Section 10</b>
Wetland A	Non-JD	N/A
Wetland B	Non-JD	N/A
Wetland C	Non-JD	N/A
Wetland D/E Wetland D Wetland E	Non-JD	N/A

Although labelled Wetland D and Wetland E, Wetland D and Wetland E function as one wetland (Wetland D/E).

## 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. 2008 Rapanos Guidance

3. REVIEW AREA. The project review area is an approximately 28.0-acre site located adjacent to and south of Georgia State Route 30 and approximately 0.73 miles west of Augusta Road, in Port Wentworth, Chatham County, Georgia (Latitude 32.1947, Longitude -81.2107).
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>5</sup> Saint Augustine Creek is the nearest TNW. The project review area is located approximately 1.01 miles from Saint Augustine Creek; however, the aquatic resources within the review area are not connected to Saint Augustine

<sup>5</sup> 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.

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Creek. This determination based on a review of desktop data resources described in Section 9 of this memorandum including review of the SAS Section 10 Waters list.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

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”).<sup>8</sup> 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. 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

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).

<b>Name of excluded feature</b>	<b>Size (in acres)</b>	<b>Type of resource generally not jurisdictional</b>
Wetland A	7.39	Wetland lacks a continuous surface connection to water of the US
Wetland B	0.53	Wetland lacks a continuous surface connection to water of the US
Wetland C	0.47	Wetland lacks a continuous surface connection to water of the US
Wetland D/E Wetland D Wetland E	0.92 0.37	Wetland lacks a continuous surface connection to water of the US

Wetland A, Wetland B, Wetland C, Wetland D, and Wetland E are wetlands that meet 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. Wetland A is located in the center of the project area and appears to continue past the eastern project boundary; however, aerial imagery and LiDAR show that Wetland A appears to end along the edge of the development to the east. This development borders the project area to the south as well. There is no evidence to support a continuous surface connection between Wetland A and a water of the US; therefore, Wetland A is determined to be non-jurisdictional. Wetland B is to the northeast of Wetland A. Wetland B is surrounded by uplands and lacks a continuous surface connection to a water of the US; therefore, Wetland B is determined to be non-jurisdictional. Based on LiDAR mapping and aerial imagery, Wetland C appears to be a closed, depressional wetland surround by uplands. Uplands verified by Permit action SAS-2022-00999 by letter dated January 25, 2023, support no connection between Wetland C and other nearby wetlands, and there is no evidence supporting a continuous surface connection between Wetland C and a water of the US. Based on current and historical aerial imagery, there have not been any significant changes to the site since January 25, 2023, and current conditions indicate uplands are still present. Wetland C is determined to be non-jurisdictional. Wetland D and Wetland E are located in the southern corner of the project area. Although labelled Wetland D and Wetland E, Wetland D and Wetland E function as one wetland (Wetland D/E). Uplands were verified by Permit action SAS-2022-00999 by letter dated January 25, 2023, supporting no connection between Wetland D/E and other nearby wetlands. Based on current and historical aerial imagery, there have not been any significant changes to the site since January 25, 2023, and current conditions indicate uplands are still present. Wetland D/E consists of different soils than nearby wetlands and shown as different wetland classification than nearby wetlands on NWI mapping. Wetland D/E is 4-5 ft. higher in

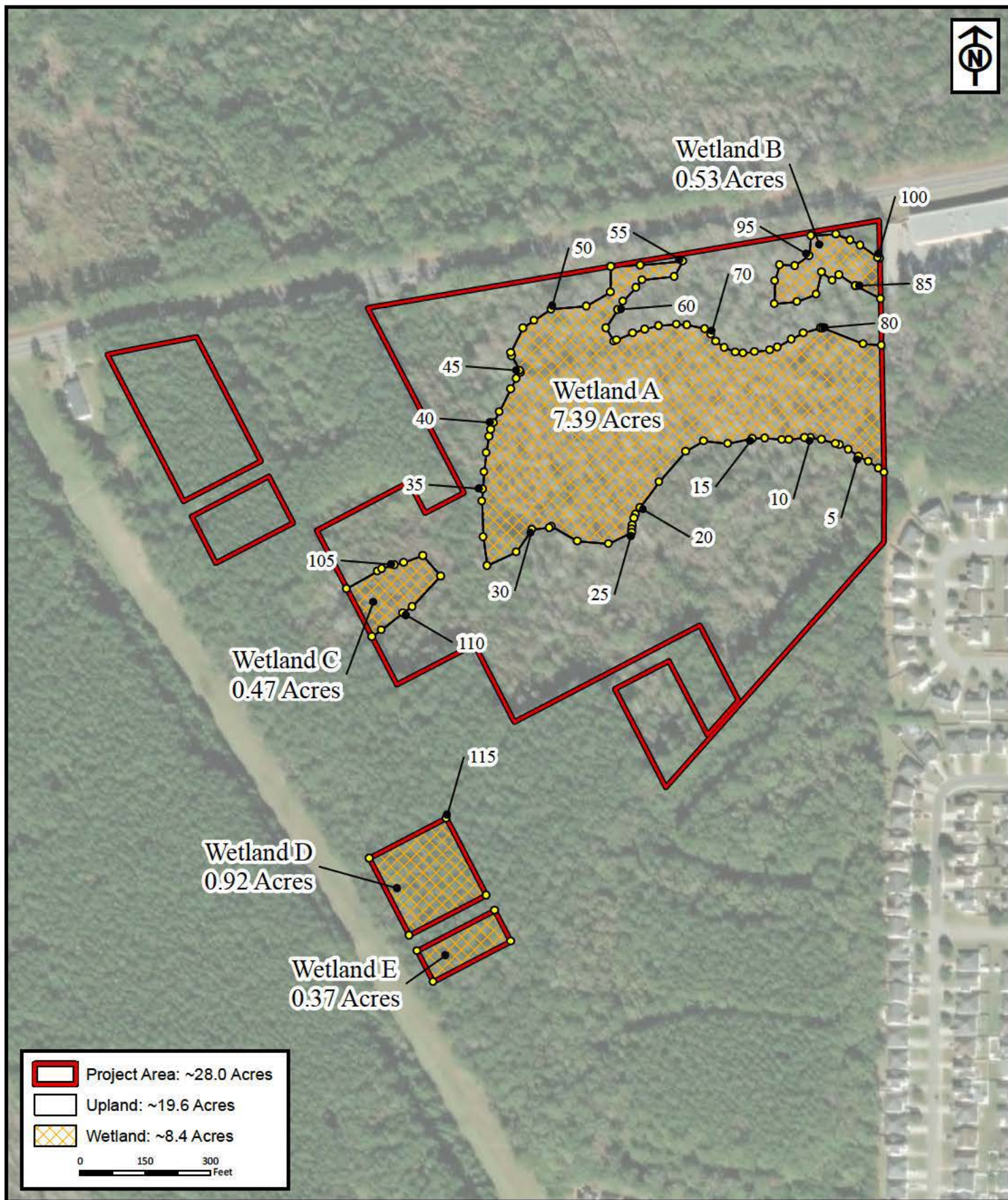
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elevation than nearby wetlands. No evidence was found to support a continuous surface connection between Wetland D/E and a water of the US; therefore, Wetland D/E is determined to be non-jurisdictional.

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: May 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]
  - 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 030601090307.
  - f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.
  - g. National Wetlands Inventory map(s): Chatham County, GA.
  - h. Photographs: Aerial: Ortho Aerial 2018 and Google Earth 2023, 2022 and 2003.
  - i. 20190625 Section 10 Waters List – Savannah District.
  - j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
  - k. Antecedent Precipitation Tool Analysis: [REDACTED] agent site visit on February 2, 2024.
10. OTHER SUPPORTING INFORMATION. Jurisdictional determination partially supported by USACE Permit action SAS-2022-00999 by letter dated January 25, 2023, for nearby property to the west.
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.





ID	Latitude	Longitude
1	32.195274	-81.208802
2	32.194470	-81.208791
3	32.194499	-81.208832
4	32.194540	-81.208907
5	32.194574	-81.208981
6	32.194618	-81.209055
7	32.194648	-81.209120
8	32.194656	-81.209150
9	32.194683	-81.209255
10	32.194696	-81.209333
11	32.194694	-81.209378
12	32.194683	-81.209496
13	32.194684	-81.209548
14	32.194695	-81.209673
15	32.194694	-81.209768
16	32.194660	-81.209948
17	32.194680	-81.210130
18	32.194614	-81.210263
19	32.194422	-81.210461
20	32.194262	-81.210606
21	32.194222	-81.210639
22	32.194196	-81.210652
23	32.194153	-81.210665
24	32.194128	-81.210669
25	32.194105	-81.210669
26	32.194036	-81.210841
27	32.194055	-81.211074
28	32.194149	-81.211263
29	32.194142	-81.211281
30	32.194131	-81.211410
31	32.193989	-81.211527
32	32.193906	-81.211743
33	32.194087	-81.211771
34	32.194313	-81.211777
35	32.194389	-81.211772
36	32.194498	-81.211760
37	32.194618	-81.211742
38	32.194720	-81.211724
39	32.194764	-81.211711
40	32.194806	-81.211689
41	32.194876	-81.211645
42	32.195021	-81.211559
43	32.195085	-81.211515
44	32.195121	-81.211484
45	32.195134	-81.211489
46	32.195227	-81.211549
47	32.195249	-81.211555
48	32.195403	-81.211464
49	32.195450	-81.211378
50	32.195521	-81.211251

ID	Latitude	Longitude
51	32.195538	-81.210988
52	32.195625	-81.210811
53	32.195787	-81.210806
54	32.195793	-81.210586
55	32.195814	-81.210274
56	32.195719	-81.210336
57	32.195698	-81.210576
58	32.195652	-81.210621
59	32.195565	-81.210717
60	32.195514	-81.210759
61	32.195400	-81.210845
62	32.195315	-81.210787
63	32.195323	-81.210769
64	32.195365	-81.210648
65	32.195389	-81.210559
66	32.195411	-81.210455
67	32.195419	-81.210323
68	32.195414	-81.210245
69	32.195388	-81.210112
70	32.195351	-81.210069
71	32.195308	-81.210033
72	32.195268	-81.209967
73	32.195239	-81.209887
74	32.195233	-81.209830
75	32.195239	-81.209746
76	32.195251	-81.209632
77	32.195268	-81.209574
78	32.195317	-81.209471
79	32.195356	-81.209381
80	32.195388	-81.209252
81	32.195388	-81.209236
82	32.195283	-81.208937
83	32.195824	-81.208809
84	32.195567	-81.208806
85	32.195651	-81.208990
86	32.195720	-81.209112
87	32.195687	-81.209164
88	32.195739	-81.209243
89	32.195600	-81.209282
90	32.195553	-81.209426
91	32.195542	-81.209593
92	32.195686	-81.209589
93	32.195788	-81.209553
94	32.195782	-81.209440
95	32.195844	-81.209331
96	32.195970	-81.209319
97	32.195976	-81.209134
98	32.195941	-81.209027
99	32.195906	-81.208952
100	32.195828	-81.208825

ID	Latitude	Longitude
101	32.193463	-81.212606
102	32.193768	-81.212789
103	32.193876	-81.212560
104	32.193891	-81.212527
105	32.193916	-81.212432
106	32.193929	-81.212365
107	32.193973	-81.212223
108	32.193842	-81.212089
109	32.193651	-81.212304
110	32.193609	-81.212374
111	32.193505	-81.212533
112	32.191825	-81.211771
113	32.191575	-81.212347
114	32.192065	-81.212640
115	32.192315	-81.212064
116	32.191531	-81.211595
117	32.191281	-81.212171
118	32.191477	-81.212288
119	32.191727	-81.211712