



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

SAS-RD-C

17 June 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-2022-01076, MFR 1 of 1²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CESAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2022-01076

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.

- 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 Area #1	JD	Section 404
Wetland Area #2	Non-JD	N/A
Wetland Area #3	Non-JD	N/A
Wetland Area #4	JD	Section 404
Stormwater Pond	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)

3. REVIEW AREA.

- A. Project Are Size (in acres): 27.23
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 31.74638 Longitude: -81.34001
- C. Nearest City or Town: Midway
- D. County: Liberty
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes)

Regulatory File No.	Type	Outcome
SAS-2005-01799	AJD	Verified by letter dated 09 December 2005. Similar shape and configuration of wetlands as current proposal. All wetlands had the same jurisdictional determination as proposed in this memorandum.

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: North Newport River, which is a TNW, is located 0.7 miles from the site.

B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum, 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

The jurisdictional wetlands on this property continue offsite for approximately 2,000ft to the North Newport River, a traditionally navigable water (TNW). When using the best available data (Section 9(b) of this MFR), there are no visible breaks or disconnections between the onsite wetlands and North Newport River.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

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.

CESAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2022-01076

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 Area #1	0.65	Yes, North Newport River	The wetland boundary is connecting and contiguous through off property wetlands that lead to North Newport River (a TNW). This wetland system is contiguous with Wetland Area #4 via off property wetlands.
Wetland Area #4	5.10	Yes, North Newport River	The wetland boundary is connecting and contiguous through off property wetlands that lead to North Newport River (a TNW). This wetland system is contiguous with Wetland Area #1 via off property wetlands.

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.

⁸ 51 FR 41217, November 13, 1986.

CESAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2022-01076

Name of excluded feature	Size (in acres)	Specific exclusion a-e
Stormwater Pond	0.28	This artificial pond was created by excavating dry land to collect and retain water with the purpose of draining dry land.

- 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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland Area #2	0.17	This wetland lacks a continuous surface connection to water of the US. Using the resources outline in Section 9 of this MFR, the Corps determined that this wetland is a closed depressional wetland surrounded by uplands.
Wetland Area #3	0.06	This wetland lacks a continuous surface connection to water of the US. Using the resources outline in Section 9 of this MFR,

CESAS-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2022-01076

		the Corps determined that this wetland is a closed depressional wetland surrounded by uplands.
--	--	--

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. Date of Office (desktop review): 23 May 2024

b. Data sources used to support this determination (included in the administrative record).

- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Titled [REDACTED].
- ☒ Previous AJD addressing the same review area: SAS-2005-01799, dated 09 December 2005
- ☒ Aerial Imagery: Google Earth, dated 23 May 2024
- ☒ LIDAR: NOAA LIDAR, dated 23 May 2024
- ☒ USDA NRCS Soil Survey: Hydric Rating by Map Unit, dated 23 May 2025
- ☒ USFWS NWI maps: National Wetland Inventory, dated 23 May 2025
- ☒ USGS NHD data/maps: Dated 23 May 2024
- ☒ Section 10 resources used: Savannah District Section 10 waters
- ☒ Antecedent Precipitation Tool Analysis: 04 August 2022

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.

AREA NOTE:

PROPERTY - 27.23 ACRES
 UPLANDS - 21.28 ACRES
 WETLANDS - 5.95 ACRES
 STORM WATER POND - 0.28 ACRES



ISLAND HIGHWAYS (80' R/W)

PP PP

PAVED ROADWAY

WETLAND AREA #1
 AREA = 0.65 AC

SHEET 2

WETLAND AREA #2
 AREA = 0.17 AC

SHEET 3

WETLAND AREA #3
 AREA = 0.06 AC

EXISTING STORM WATER
 DETENTION POND
 AREA = 0.28 AC

Property: 1
 1186035 SQ FT
 27.23 ACRES

WETLAND AREA #4
 AREA = 5.10 AC

SHEET 4

SHEET 5

SHEET 6



GRAPHIC SCALE
 1 inch = 200 ft.



1618 Airport Road
 Hinesville, Georgia 31313

(912) 231-5157
 Fax (912) 368-5180

SHEET INDEX
 LIBERTY COUNTY, GEORGIA

PAGE 1 OF 7

RBF
N:536730.7610
E:913730.2100

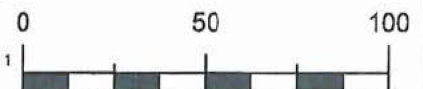


EXISTING BOX CULVERT

ISLAND HIGHWAYS (80' R/W)

IPF AG WELLS
N:636449.4338
E:914109.1753

WETLAND AREA #1
AREA = 0.65 AC



GRAPHIC SCALE
1 inch = 50 ft.

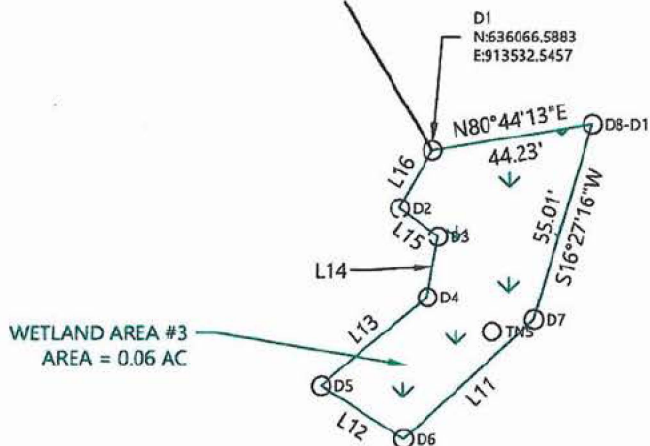
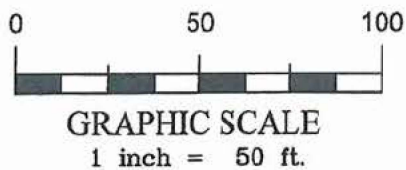
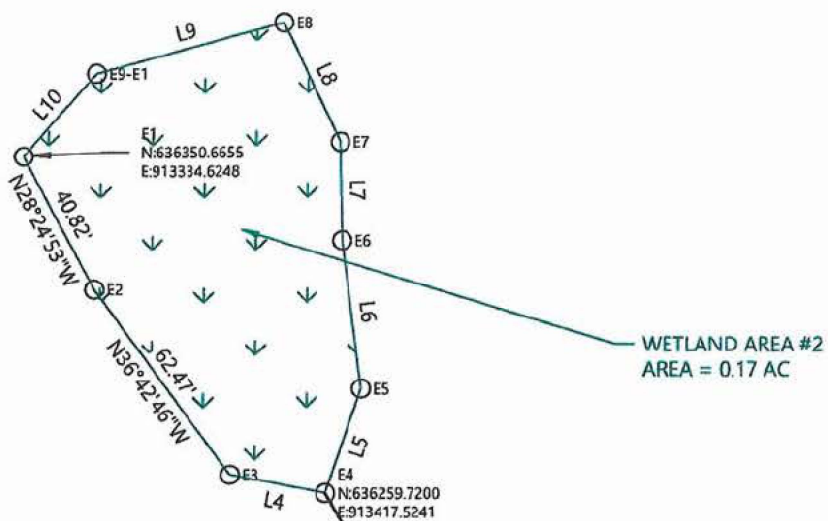
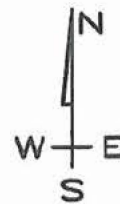


1618 Airport Road
Hinesville, Georgia 31313

(912) 231-5157
Fax (912) 368-5180

WETLAND PLAT
LIBERTY COUNTY, GEORGIA

PAGE 2 OF 7

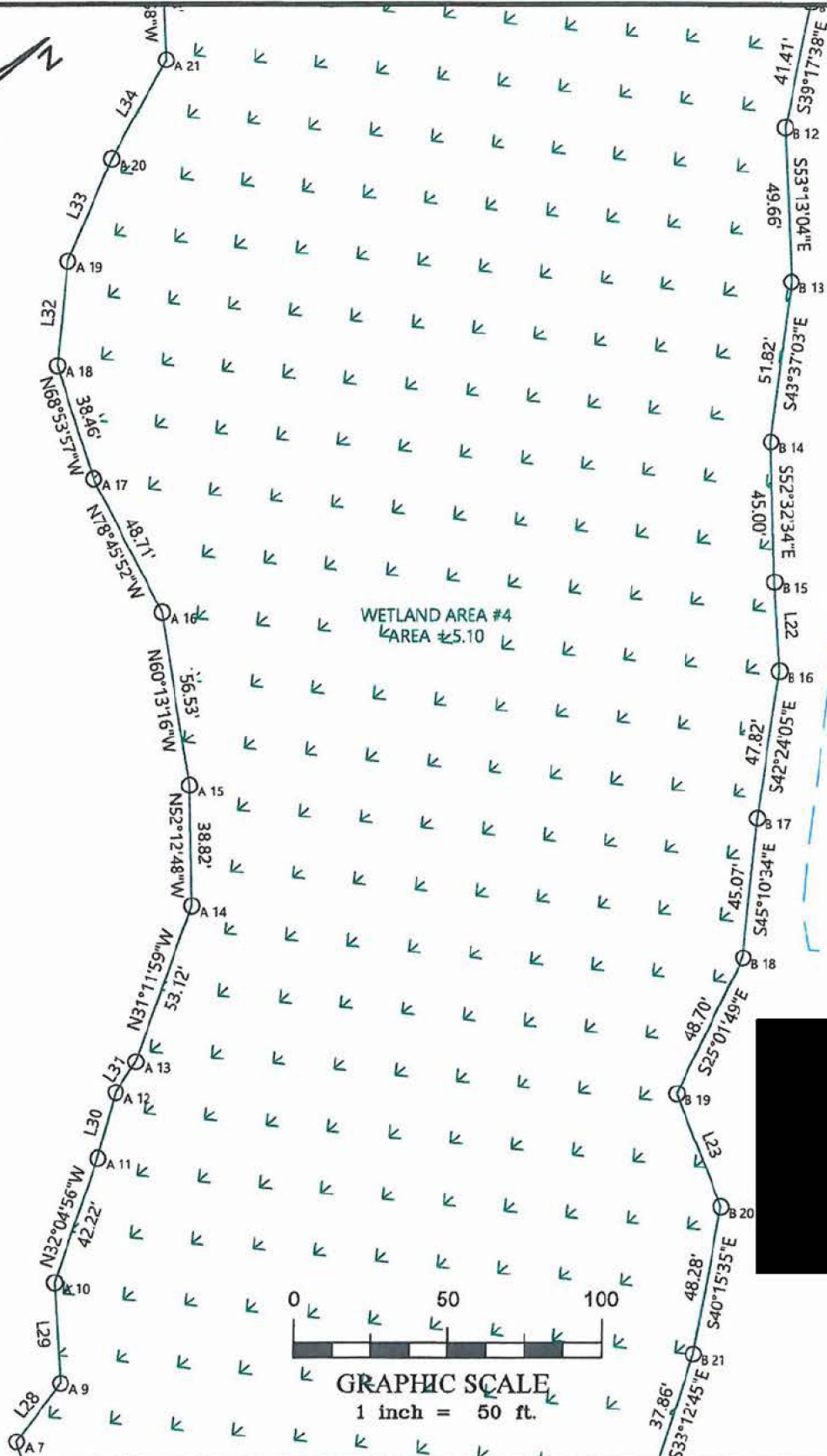
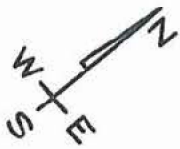


1618 Airport Road
Hinesville, Georgia 31313

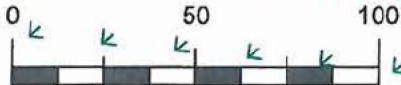
(912) 231-5157
Fax (912) 368-5180

WETLAND PLAT
LIBERTY COUNTY, GEORGIA

PAGE 3 OF 7



WETLAND AREA #4
AREA ±5.10



GRAPHIC SCALE
1 inch = 50 ft.

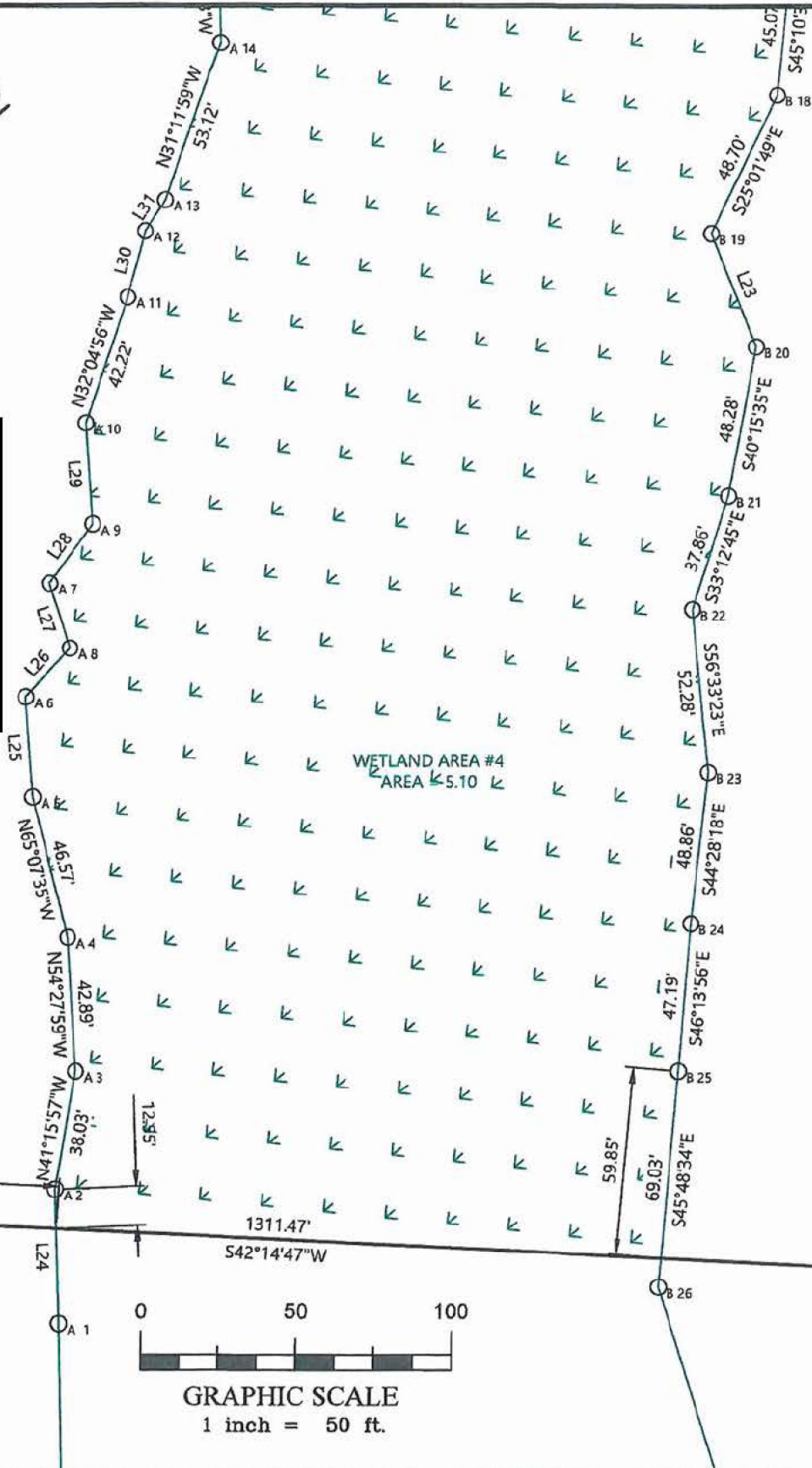
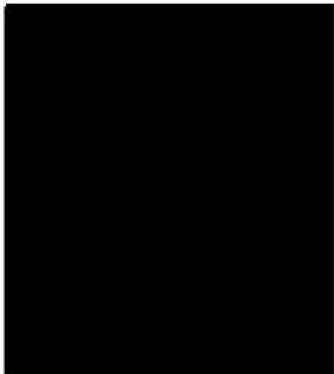
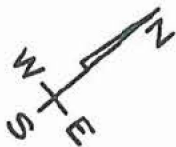
EXISTING STORM WATER POND



1618 Airport Road
Hinesville, Georgia 31313
(912) 231-5157
Fax (912) 368-5180

WETLAND PLAT
LIBERTY COUNTY, GEORGIA





1618 Airport Road
Hinesville, Georgia 31313

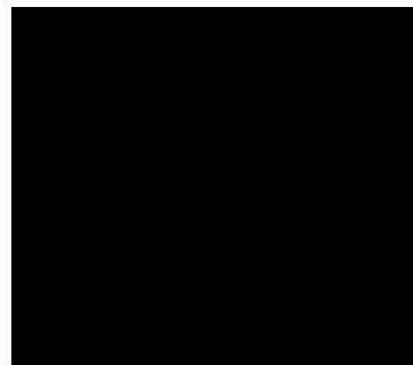
(912) 231-5157
Fax (912) 368-5180

WETLAND PLAT
LIBERTY COUNTY, GEORGIA



Parcel Line Table		
Line #	Length	Direction
L1	40.47	S20° 51' 10.15"W
L2	19.21	S7° 43' 45.98"W
L3	14.29	S8° 15' 29.60"E
L4	26.60	N79° 14' 37.17"W
L5	29.87	S18° 50' 57.24"W
L6	40.34	S7° 37' 57.23"E
L7	26.64	S1° 18' 15.05"E
L8	35.74	S26° 04' 14.92"E
L9	52.95	N74° 56' 32.94"E
L10	29.77	N41° 33' 29.28"E
L11	47.61	S47° 13' 32.53"W
L12	26.78	N57° 32' 05.25"W
L13	37.24	N50° 01' 54.47"E
L14	16.63	N9° 27' 50.15"E
L15	12.94	N53° 42' 37.83"W
L16	17.83	N28° 54' 21.15"E
L17	48.13	S51° 25' 58.68"E
L18	6.63	S70° 23' 02.31"W
L19	20.70	N69° 23' 00.16"W
L20	36.85	S44° 17' 19.29"E
L21	23.39	S22° 27' 38.24"E
L22	28.82	S54° 13' 07.51"E
L23	39.06	S72° 35' 16.35"E
L24	42.87	N52° 40' 53.48"W
L25	32.04	N55° 04' 35.51"W

Parcel Line Table		
Line #	Length	Direction
L26	21.05	N8° 21' 32.95"W
L27	21.75	N68° 36' 39.71"W
L28	23.31	N14° 14' 24.58"W
L29	32.37	N54° 46' 11.04"W
L30	21.84	N35° 34' 40.57"W
L31	11.78	N17° 10' 23.52"W
L32	33.54	N45° 23' 33.14"W
L33	35.77	N27° 30' 17.85"W
L34	36.45	N21° 19' 32.00"W
L35	26.36	N62° 26' 32.08"W
L36	24.44	N32° 31' 57.65"W
L37	27.59	N56° 58' 53.51"W
L38	42.34	N71° 47' 35.36"W
L39	36.30	N50° 13' 29.07"W
L40	35.25	N31° 15' 33.36"W
L41	38.17	N29° 07' 56.87"W



1618 Airport Road
Hinesville, Georgia 31313

(912) 231-5157
Fax (912) 368-5180

WETLAND PLAT
LIBERTY COUNTY, GEORGIA

