



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

SAS-RD-C

June 4, 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-2022-00471

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.

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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).

<b>Name of Aquatic Resource</b>	<b>JD or Non-JD</b>	<b>Section 404/Section 10</b>
Wetland 1 (W1)	JD	Section 404
Ditch 1 (D1)	JD	Section 404
Pond1 (P1)	Non-JD	N/A
Wetland 2 (W2)	Non-JD	N/A
Wetland 3 (W3)	Non-JD	N/A
Wetland 4 (W4)	Non-JD	N/A
Wetland 5 (W5)	Non-JD	N/A
Wetland 6 (W6)	Non-JD	N/A
Wetland 7 (W7)	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. 2008 Rapanos Guidance

3. REVIEW AREA. The project review area is an approximately 187.39-acre site located at 106 Croft Road and 281 Bell Road, adjacent to Eldora Road, in Ellabell, Bryan County, Georgia (Latitude 32.2341, Longitude -81.4474).

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

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CONNECTED.<sup>5</sup> The Ogeechee River is the nearest TNW. The project review area is located approximately 0.3 miles from the Ogeechee River. 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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetland 1 is a wetland 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. Wetland 1 is part of a larger wetland system that is adjacent to the Ogeechee River. Ditch 1 was observed on site to have relatively permanent flow and drains the neighboring off site wetlands, not solely uplands. Ditch 1 is connected to and flows through a wetland system that is adjacent to the Ogeechee River.
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

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<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.

<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.

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):

Name of Aquatic Resource	Size (in acres)	Flow Regime and additional description of the tributary	Method for determining flow regime
Ditch 1 (D1)	0.4	See attached delineation map	Ditch 1 is connected to and flows through a wetland system that is adjacent to the Ogeechee River. Ditch 1 was observed on site to have relatively permanent flow and drains wetlands, not solely uplands.

- 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 (W1)	0.3	Yes, the Ogeechee River	Wetland 1 is part of a larger wetland system that is adjacent to the Ogeechee River.

Wetland 1 is a wetland 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. Wetland 1 is part of a larger wetland

system that is adjacent to the Ogeechee River. LiDAR mapping and aerial imagery support Wetland 1 being part of a larger wetland system adjacent to the Ogeechee River. Wetland 1 is determined to be jurisdictional.

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.

Name of excluded feature	Size (in acres)	Specific category a-e
Pond 1 (P1)	0.2	(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,

Pond 1 was dug between 1993 and 1999, as seen with historic aerial imagery, in an upland area of the project site. Pond 1 was field verified as having been constructed in upland and utilized for irrigation. Pond 1 is surrounded by uplands with no connection to any wetlands within the project review area. This determination was previously verified by ARDR-AJD letter SAS-2022-00471 dated April 10, 2023 (AJD for Pond 1 only).

- 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

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

- 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 2 (W2)	2.9	Wetland lacks a continuous surface connection to water of the US.
Wetland 3 (W3)	1.6	Wetland lacks a continuous surface connection to water of the US.
Wetland 4 (W4)	1.4	Wetland lacks a continuous surface connection to water of the US.
Wetland 5 (W5)	1.0	Wetland lacks a continuous surface connection to water of the US.
Wetland 6 (W6)	0.1	Wetland lacks a continuous surface connection to water of the US.
Wetland 7 (W7)	0.04	Wetland lacks a continuous surface connection to water of the US.

Wetlands 2, 3, 4, 5, 6, and 7 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. During the Corps site visit on June 6, 2022, Wetlands 2, 3, 4, 5, 6, and 7 were delineated as separate and distinct wetlands with no connection to nearby wetlands. This delineation is verified by ARDR-AJD letter SAS-2022-00471 dated April 10, 2023 (no jurisdictional determination

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made for Wetlands 2, 3, 4, 5, 6, and 7, or Ditch 1 – ARDR only). Wetland 2 is surrounded by uplands as supported by LiDAR and observed during site visit. There is a lack of evidence to support Wetland 2 having a continuous surface connection with a water of the US; therefore Wetland 2 is determined to be non-jurisdictional. Wetland 3 (W3) is a closed depressional wetland surrounded by uplands, as seen on site and supported by LiDAR, and lacks a continuous surface connection to a water of the US; therefore, W3 is non-jurisdictional. Wetland 4 (W4) is also a closed depressional wetland surrounded by uplands, as seen on site and supported by LiDAR, with no continuous surface connection to a water of the US. W4 is determined to be non-jurisdictional. Wetland 5 (W5) is a closed depressional wetland surrounded by uplands, as seen on site and supported by LiDAR, and lacks a continuous surface connection to a water of the US; therefore, W5 is non-jurisdictional. Wetland 6 is also a closed depressional wetland surrounded by uplands, as seen on site and supported by LiDAR, with no continuous surface connection to a water of the US. W6 is determined to be non-jurisdictional. Wetland 7 closed depressional wetland surrounded by uplands, as seen on site and supported by LiDAR. There is no connection observed between W7 and Ditch 1. Wetland 7 lacks a continuous surface connection to a water of the US; therefore, W7 is 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/June 2024  
Field Visit: June 6, 2022
- 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): Bryan County 1'=2,000 ft.
- e. U.S. Geological Survey Hydrologic Atlas: HUC 030602020604.
- f. USDA Natural Resources Conservation Soil Survey: Bryan County, GA.
- g. National Wetlands Inventory map(s): Bryan County, GA.
- h. Photographs: Aerial: Google Earth 1993, 2017 and 2022 and

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Historic Aerial Imagery: 1981 and 2022

- i. Historical Topographic Maps: 1950, 1961, 1977, 2017 and 2022.
  - j. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
  - k. Antecedent Precipitation Tool Analysis: [REDACTED] agent site visit on April 21, 2022, and Corps site visit on June 6, 2022.
  - l. FEMA/FIRM maps: Panel ID: 13029C0080D.
10. OTHER SUPPORTING INFORMATION. Jurisdictional determination partially supported by SAS-2022-00471 ARDR-AJD verified by letter dated April 10, 2023.
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.

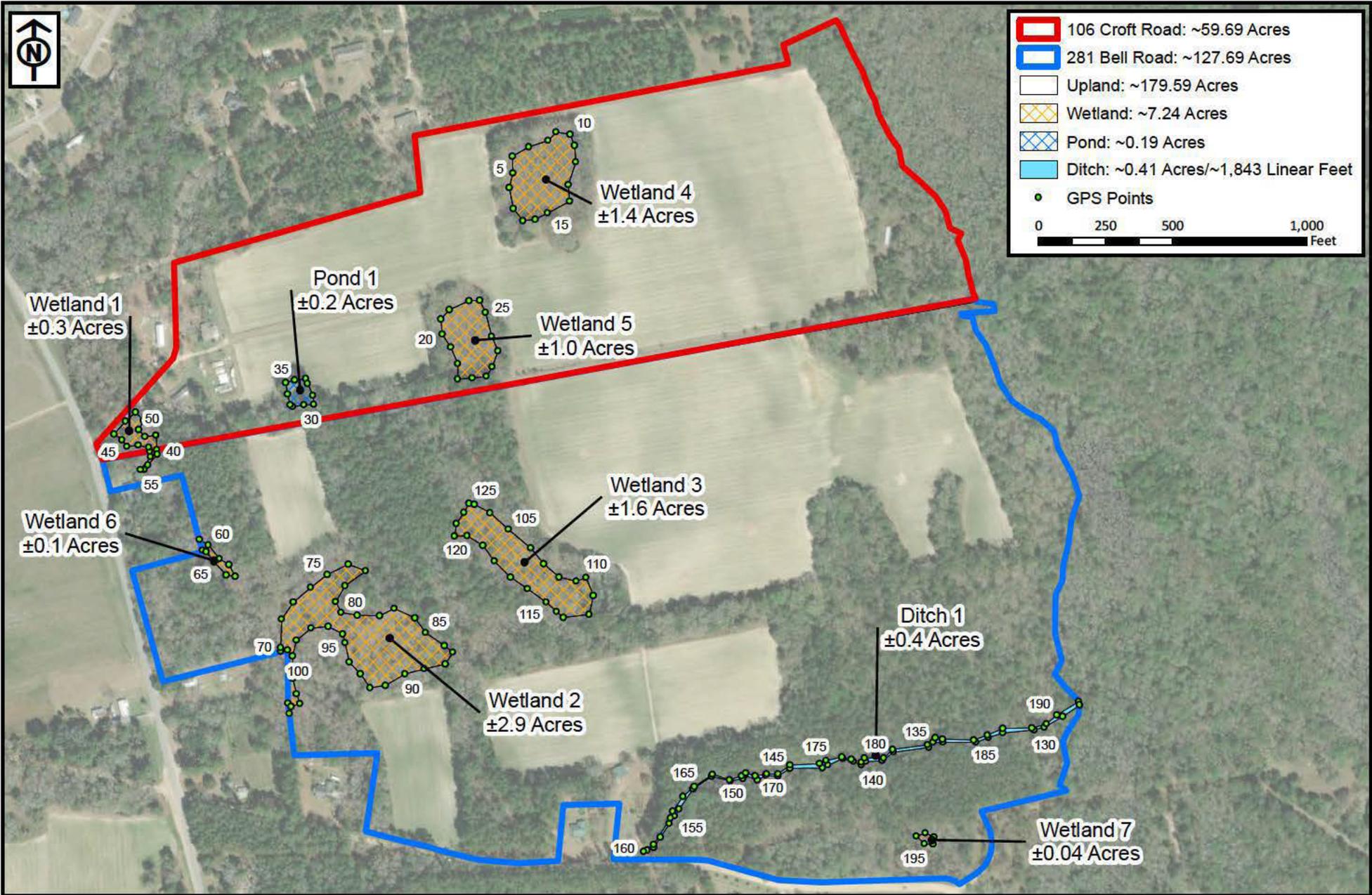
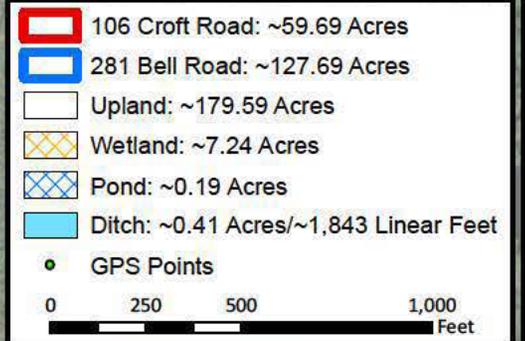


Figure No.: 22-115.1  
 Prepared By: [Redacted]  
 Sketch Date: [Redacted]  
 Map Scale : 1 inch = 500 feet

**106 Croft Road  
 & 281 Bell Road**  
 Bryan County, Georgia

**Aquatic Resource  
 Delineation GPS Exhibit**  
 Prepared For: [Redacted]

Label	Latitude	Longitude
1	32.238130	-81.443380
2	32.238120	-81.443530
3	32.238250	-81.443640
4	32.238460	-81.443690
5	32.238610	-81.443640
6	32.238780	-81.443650
7	32.238870	-81.443450
8	32.238940	-81.443220
9	32.239020	-81.443110
10	32.239000	-81.442950
11	32.238890	-81.442900
12	32.238720	-81.442880
13	32.238480	-81.442970
14	32.238310	-81.442960
15	32.238200	-81.443230
16	32.236510	-81.444150
17	32.236500	-81.444320
18	32.236660	-81.444320
19	32.236830	-81.444410
20	32.236960	-81.444510
21	32.237120	-81.444520
22	32.237220	-81.444420
23	32.237300	-81.444180
24	32.237310	-81.444050
25	32.237180	-81.443980
26	32.236940	-81.443910
27	32.236790	-81.443840
28	32.236630	-81.443910
29	32.236530	-81.443980
30	32.236250	-81.446180
31	32.236230	-81.446320
32	32.236250	-81.446350
33	32.236360	-81.446380
34	32.236480	-81.446400
35	32.236500	-81.446290
36	32.236520	-81.446160
37	32.236470	-81.446140
38	32.236340	-81.446070
39	32.236250	-81.446060
40	32.235800	-81.447960
41	32.235790	-81.448040
42	32.235820	-81.448050
43	32.235850	-81.448180
44	32.235830	-81.448310
45	32.235900	-81.448380

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51	32.235930	-81.448100
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61	32.234680	-81.447210
62	32.234620	-81.447100
63	32.234500	-81.447020
64	32.234510	-81.447130
65	32.234640	-81.447270
66	32.234750	-81.447370
67	32.233090	-81.446380
68	32.233190	-81.446400
69	32.233740	-81.446400
70	32.233720	-81.446480
71	32.233770	-81.446480
72	32.234060	-81.446470
73	32.234230	-81.446330
74	32.234380	-81.446110
75	32.234510	-81.445910
76	32.234620	-81.445660
77	32.234550	-81.445450
78	32.234400	-81.445700
79	32.234230	-81.445810
80	32.234120	-81.445750
81	32.234090	-81.445550
82	32.234090	-81.445290
83	32.234160	-81.445110
84	32.234060	-81.444860
85	32.233910	-81.444730
86	32.233780	-81.444510
87	32.233700	-81.444410
88	32.233590	-81.444500
89	32.233540	-81.444750
90	32.233490	-81.444980

Label	Latitude	Longitude
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94	32.233610	-81.445660
95	32.233810	-81.445700
96	32.233900	-81.445730
97	32.233980	-81.445910
98	32.233960	-81.446110
99	32.233840	-81.446290
100	32.233680	-81.446340
101	32.233450	-81.446340
102	32.233290	-81.446290
103	32.233190	-81.446250
104	32.233160	-81.446360
105	32.234960	-81.443730
106	32.234760	-81.443460
107	32.234600	-81.443300
108	32.234460	-81.443120
109	32.234430	-81.442910
110	32.234460	-81.442790
111	32.234280	-81.442700
112	32.234090	-81.442760
113	32.234050	-81.443070
114	32.234110	-81.443150
115	32.234210	-81.443270
116	32.234350	-81.443500
117	32.234470	-81.443700
118	32.234640	-81.443890
119	32.234790	-81.444030
120	32.234900	-81.444220
121	32.234900	-81.444370
122	32.235020	-81.444350
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125	32.235220	-81.444140
126	32.235130	-81.443950
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128	32.233010	-81.437060
129	32.232900	-81.437280
130	32.232870	-81.437410
131	32.232840	-81.437780
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141	32.232560	-81.439590
142	32.232590	-81.439710
143	32.232530	-81.439890
144	32.232500	-81.439960
145	32.232490	-81.440350
146	32.232420	-81.440490
147	32.232420	-81.440640
148	32.232380	-81.440740
149	32.232420	-81.440890
150	32.232390	-81.440920
151	32.232370	-81.441070
152	32.232420	-81.441290
153	32.232290	-81.441520
154	32.232090	-81.441690
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158	32.231690	-81.442000
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160	32.231650	-81.442120
161	32.231720	-81.442000
162	32.231990	-81.441790
163	32.232060	-81.441770
164	32.232210	-81.441640
165	32.232310	-81.441510
166	32.232440	-81.441280
167	32.232380	-81.441080
168	32.232420	-81.440930
169	32.232450	-81.440880
170	32.232420	-81.440770
171	32.232440	-81.440630
172	32.232440	-81.440490
173	32.232530	-81.440350
174	32.232540	-81.439990
175	32.232570	-81.439910
176	32.232600	-81.439720
177	32.232580	-81.439610
178	32.232550	-81.439480
179	32.232590	-81.439450
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186	32.232820	-81.437970
187	32.232890	-81.437780
188	32.232890	-81.437430
189	32.232930	-81.437250
190	32.233020	-81.437130
191	32.233160	-81.436860
192	32.233120	-81.436850
193	32.231780	-81.438620
194	32.231710	-81.438630
195	32.231710	-81.438730
196	32.231790	-81.438830
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