



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

SAS-RD-C

July 23, 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-2022-00830

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.

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 A	JD	Section 404
Wetland B	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. 2007 Rapanos Approved Jurisdictional Determination Form Instructional Guidebook
- f. 2008 Rapanos Guidance

3. REVIEW AREA. The project review area is an approximately 38.33-acre site located south of Interstate 16 and west of Interstate 95, adjacent to Pooler Parkway, in Pooler, Chatham County, Georgia (Latitude 32.0706, Longitude -81.2779).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁵ The Little Ogeechee River is the nearest TNW. The project

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.

review area is located approximately 0.94 miles from the Little 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, and a field visit conducted on April 20, 2023.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetland A 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 A is part of a wetland system that abuts the Ogeechee River, a TNW.
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 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

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.

SAS-RD-C

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- 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 A	15.25	Yes, Little Ogeechee River	Wetland A is part of a large wetland system that abuts the Little Ogeechee River, a TNW.

During the April 20, 2023, site visit, Wetland A was observed, and it was determined that the wetland meets 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. Wetland A continues offsite to the north, south, and west and is part of a larger wetland system that abuts the Little Ogeechee River, a TNW. LiDAR and aerial imagery along with NWI mapping support the determination that Wetland A is part of a wetland system abutting the Little Ogeechee River. Wetland A has a continuous surface connection to a TNW so Wetland A 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”).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. 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

⁸ 51 FR 41217, November 13, 1986.

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 B	0.47	Wetland B is a closed, depressional wetland that lacks a continuous surface connection to a water of the US.

During the April 20, 2023, site visit, Wetland B was observed, and it was determined that the wetland meets 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. Wetland B is a 0.47-acre closed, depressional wetland that is surrounded by uplands as observed during the site. LiDAR mapping shows that

Wetland B is surrounded by uplands with no continuous surface connection to a water of the U.S. The uplands surrounding the wetland are approximately 1-3 ft. higher in elevation than the surface elevation of the wetland. Wetland B is approximately 500 ft. from the nearest potentially jurisdictional water and approximately 1.5 miles from the nearest TNW. According to NRCS soil mapping, the Wetland B consists of a different soil type (Ocilla complex soil) than the soil types (mainly Cape Fear soils and Pelham loamy sand soils) in the areas of Wetland A and the larger wetland system which Wetland A is part of. Based on the desktop review of data resources described in Section 9 of this memorandum and the Corps site visit on April 20, 2023, Wetland B lacks a continuous surface connection to a water of the US; therefore, Wetland B is determined to be non-jurisdictional.

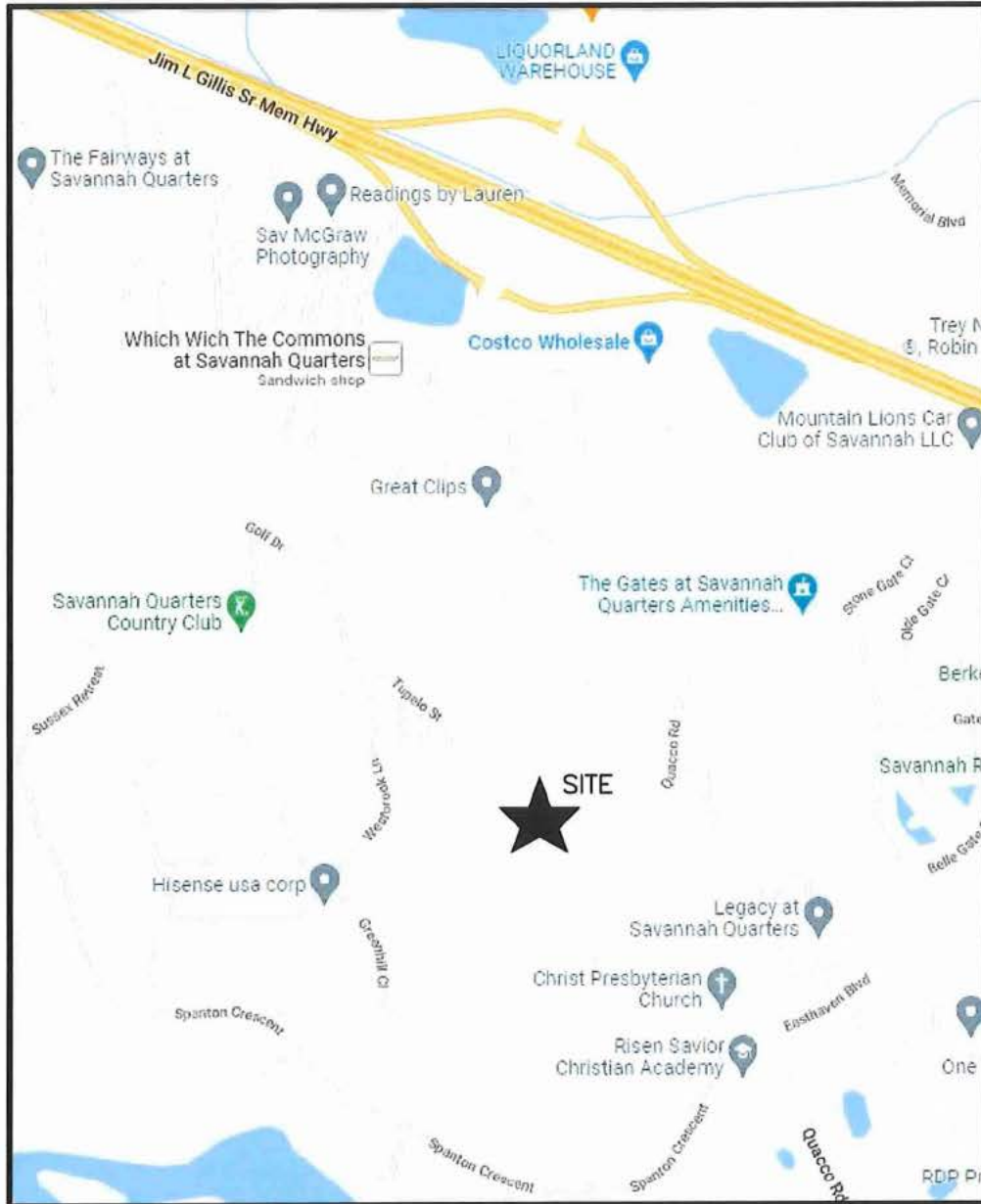
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office (Desk) Determination: July 2024 Field Visit: April 20, 2023
 - b. Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Approved Jurisdictional Determination request and exhibit submitted by Sligh Environmental Consultants, Inc.
 - c. Data sheets prepared/submitted by or on behalf of the applicant/consultant: submitted by Sligh Environmental Consultants, Inc.
 - d. U.S. Geological Survey map(s): Chatham County 1' = 1000 ft.
 - e. U.S. Geological Survey Hydrologic Atlas: HUC 030602040201.
 - f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.
 - g. National Wetlands Inventory map(s): Chatham County, GA.
 - h. Photographs/Aerial Imagery: Google Earth Aerial 2023, 2022 and 2011.
 - i. NOAA Topographic LiDAR: 2018 NOAA LiDAR.
 - j. Antecedent Precipitation Tool Analysis: Corps site visit on April 20, 2023.
 - k. 20190625 Section 10 Waters List Savannah District

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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.



VICINITY MAP



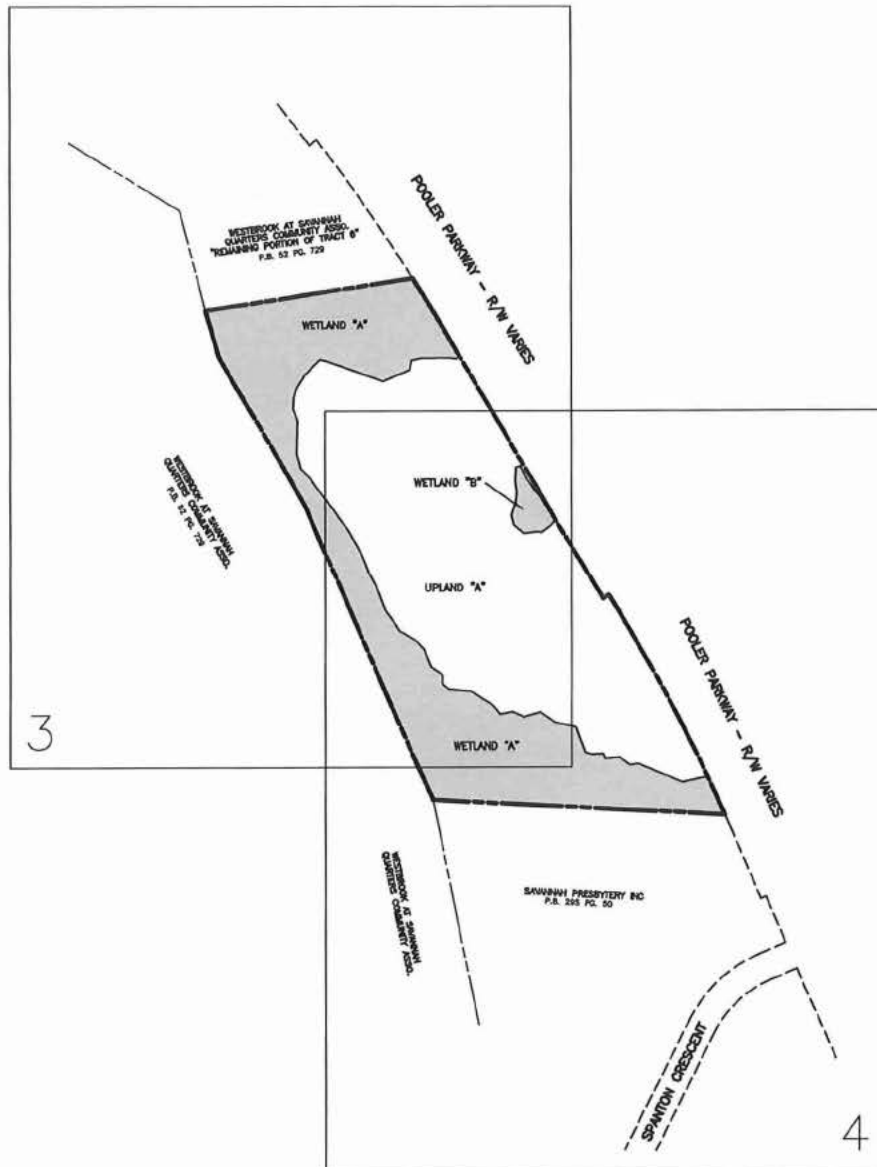
"I HEREBY CERTIFY THAT THE WETLANDS AS SHOWN ON THIS SURVEY WERE LOCATED USING GPS EQUIPMENT AT SURVEY GRADE AND SUB-METER ACCURACY. THE PURPOSE OF THIS SURVEY IS FOR THE LOCATION OF WETLANDS ONLY AND NOT BOUNDARY ESTABLISHMENT OR PROPERTY CONVEYANCE."

Matthew Anderson

WETLANDS MAP FOR:
NORTHPOINT DEVELOPMENT

"TRACT 6B OF SOUTHWEST QUADRANT DEVELOPMENT"
LOCATION: 7TH G.M.D. CHATHAM CO., GA.
CITY OF POOLER
DRAWN: JULY 25, 2022
BY: JAMES MATTHEW ANDERSON-GA. R.L.S. 3280
SCALE: N/A
22046 TRACT 6B WETLAND DRAWING.DWG
SHEET 1

JAMES M. ANDERSON & ASSOCIATES, INC.
REGISTERED LAND SURVEYORS
P.O. BOX 894 104 OAK STREET
STATESBORO, GA. 30459
PHONE: (912) 764-2002



OVERALL BOUNDARY ACREAGE
BOUNDARY TRACT = 38.33 ACRES

WETLANDS ACREAGE
WETLAND AREA "A" = 15.25 AC.
WETLAND AREA "B" = 0.47 AC.
TOTAL WETLAND = 15.72 AC.
AREA

UPLANDS ACREAGE
UPLAND AREA "A" = 22.61 AC.
TOTAL UPLAND = 22.61 AC.
AREA

TOTAL ACREAGE
WETLANDS = 15.72 AC.
UPLANDS = 22.61 AC.
TOTAL = 38.33 AC.

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SHEET 2

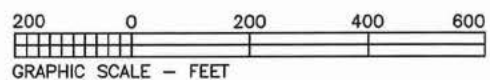
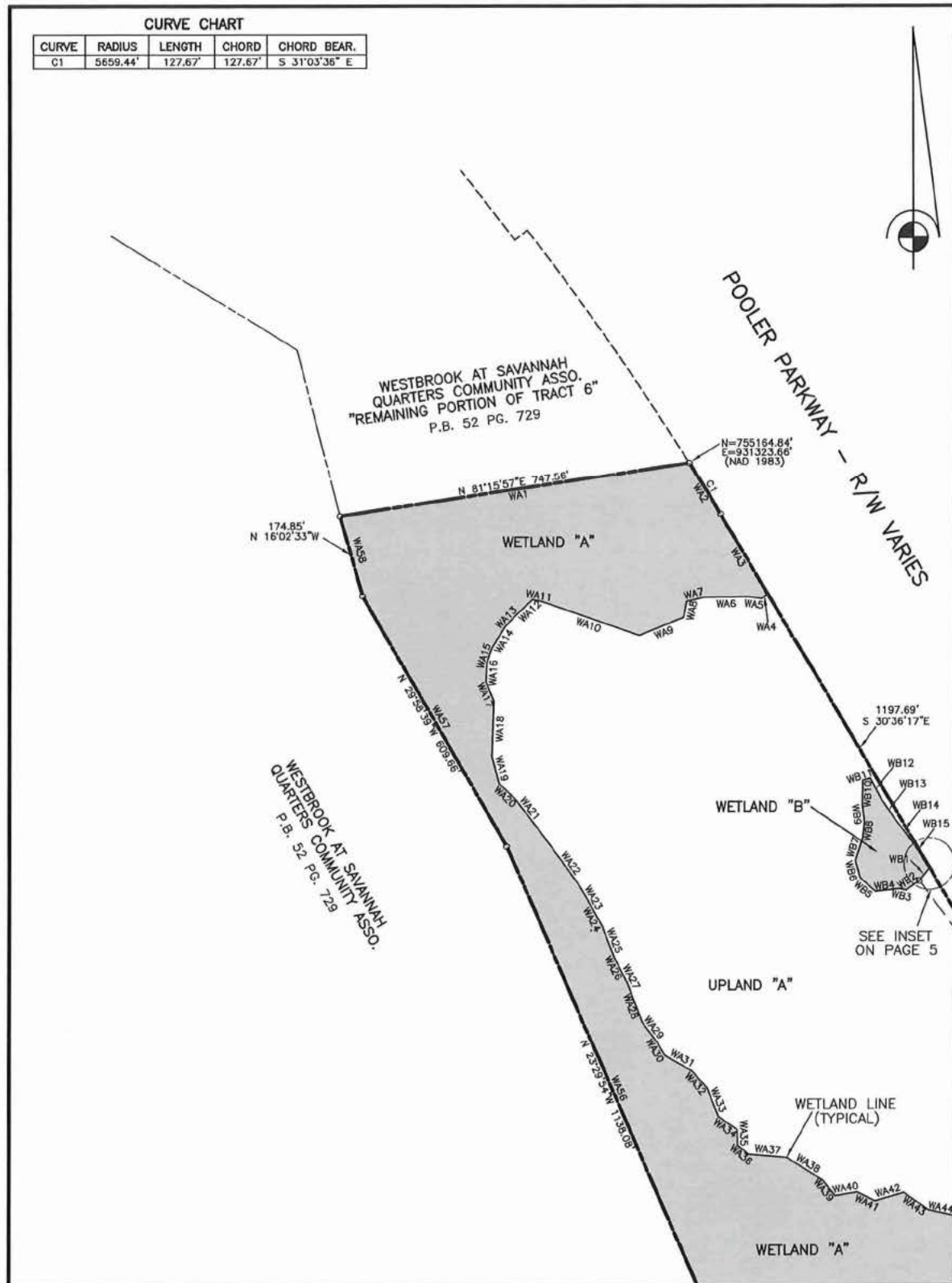


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CURVE CHART

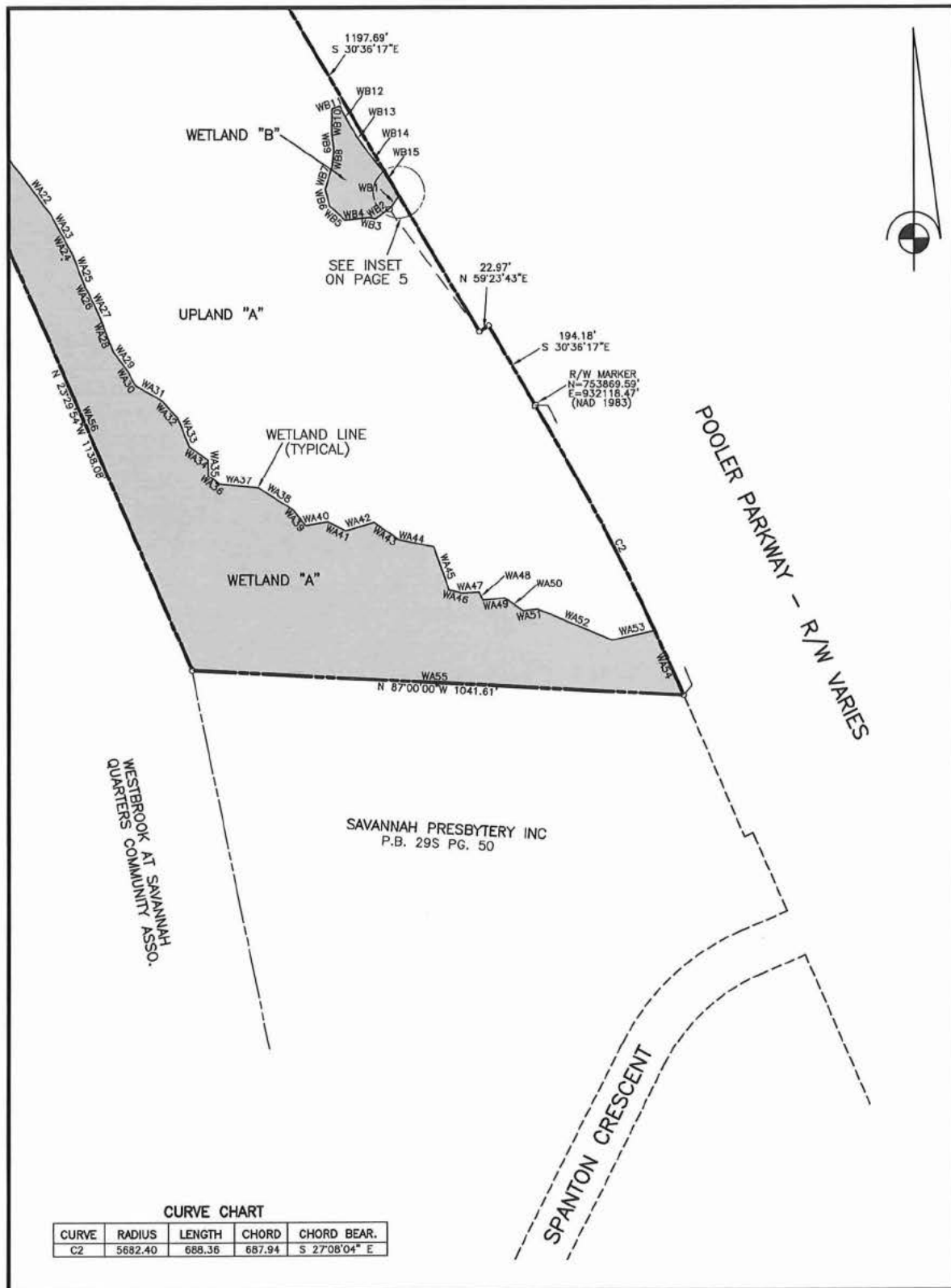
CURVE	RADIUS	LENGTH	CHORD	CHORD BEAR.
C1	5659.44'	127.67'	127.67'	S 31°03'36" E



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SHEET 3

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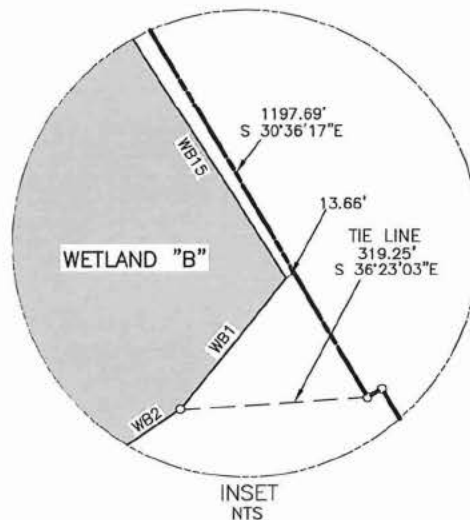
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WETLAND AREA "A"		
COURSE	BEARING	DISTANCE
WA1	N 81°15'57" E	747.56'
WA2	S 31°03'36" E	127.67'
WA3	S 30°36'17" E	196.08'
WA4	S 54°18'05" W	16.00'
WA5	N 82°59'52" W	29.30'
WA6	S 89°20'16" W	92.37'
WA7	S 76°23'46" W	37.74'
WA8	S 11°02'49" W	33.62'
WA9	S 67°49'32" W	100.61'
WA10	N 71°00'58" W	219.53'
WA11	N 79°37'23" W	20.03'
WA12	S 46°57'13" W	40.50'
WA13	S 43°16'00" W	41.09'
WA14	S 31°57'17" W	51.66'
WA15	S 17°50'56" W	34.97'
WA16	S 02°25'11" W	38.32'
WA17	S 22°54'59" E	43.85'
WA18	S 01°58'24" W	117.32'
WA19	S 14°51'10" E	58.62'
WA20	S 46°19'02" E	44.48'
WA21	S 37°03'58" E	125.36'
WA22	S 35°57'58" E	110.86'
WA23	S 29°07'59" E	62.14'
WA24	S 29°08'00" E	31.33'
WA25	S 21°27'32" E	73.61'
WA26	S 27°53'03" E	41.29'
WA27	S 27°53'04" E	16.25'
WA28	S 20°54'10" E	89.13'
WA29	S 36°54'21" E	46.21'
WA30	S 30°12'36" E	40.61'
WA31	S 60°14'21" E	64.36'
WA32	S 41°09'17" E	48.06'
WA33	S 21°49'55" E	65.12'
WA34	S 54°51'37" E	48.72'
WA35	S 00°59'41" E	32.84'
WA36	S 50°13'40" E	29.35'
WA37	S 84°44'35" E	81.51'
WA38	S 57°47'13" E	89.75'
WA39	S 38°53'51" E	41.73'
WA40	N 81°01'39" E	47.06'
WA41	S 64°05'29" E	41.97'
WA42	N 74°20'47" E	63.24'
WA43	S 55°11'24" E	64.68'
WA44	S 78°16'31" E	74.87'
WA45	S 19°29'45" E	95.43'
WA46	S 74°56'39" E	27.24'
WA47	N 86°08'43" E	36.41'
WA48	S 25°30'49" E	18.82'
WA49	N 84°49'47" E	46.92'
WA50	S 55°38'28" E	47.21'
WA51	N 83°02'27" E	31.01'
WA52	S 67°17'43" E	169.88'
WA53	N 77°56'15" E	92.79'
WA54	S 24°24'52" E	148.82'
WA55	N 87°00'00" W	1041.61'
WA56	N 23°29'54" W	1138.08'
WA57	N 29°58'39" W	609.66'
WA58	N 16°02'33" W	174.85'

WETLAND AREA "B"		
COURSE	BEARING	DISTANCE
WB1	S 38°56'15" W	33.40'
WB2	S 55°55'58" W	35.10'
WB3	N 77°30'18" W	13.26'
WB4	S 83°54'56" W	52.08'
WB5	N 49°02'01" W	43.45'
WB6	N 15°09'18" W	37.40'
WB7	N 17°36'37" E	50.39'
WB8	N 06°39'56" E	33.28'
WB9	N 06°45'46" W	35.97'
WB10	N 00°43'34" E	52.13'
WB11	N 72°10'07" E	17.35'
WB12	S 27°54'23" E	52.82'
WB13	S 34°09'46" E	51.17'
WB14	S 38°26'02" E	58.56'
WB15	S 32°31'21" E	66.01'



NOTES:

1. WETLAND DELINEATION FLAGGED BY SLIGH ENVIRONMENTAL CONSULTANTS, INC. DATE: JUNE 7, 2022.
2. BOUNDARY INFORMATION WAS COMPILED FROM A PLAT DRAWN BY HUSSEY, GAY, BELL, & DEYOUNG, INC. DATED JUNE 11, 2004. RECORDED IN BOOK 28P, PG. 86.
3. A PORTION OF THIS PROPERTY MAY BE CONSIDERED WETLANDS UNDER THE JURISDICTION OF THE CORPS OF ENGINEERS. OWNERS MAY BE SUBJECT TO PENALTY BY LAW FOR DISTURBANCE OF THESE WETLAND AREAS WITHOUT PROPER AUTHORIZATION.
4. COORDINATES SHOWN ARE STATE PLANE COORDINATES NAD 83, U.S. FEET.

WETLANDS MAP FOR: NORTHPOINT DEVELOPMENT

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SHEET 5



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