



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

SAS-RD-C

August 28, 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-2017-00103

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.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2017-00103

## 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	Non-JD	NA

## 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 1.94-acre site located on Grand Central Boulevard, northwest of Pooler Parkway and south of Southern Junction Boulevard, in Pooler, Chatham County, Georgia (Latitude 32.1316, Longitude -81.2588).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>5</sup> The Little Ogeechee River is the nearest TNW. The review area is located approximately 3.64 miles from the Little Ogeechee River; however, the aquatic resource within the review area is not connected to the Little Ogeechee River.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

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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.

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
  - f. The territorial seas (a)(6): N/A
  - g. Adjacent wetlands (a)(7): 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.

## 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 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).

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

<b>Name of excluded feature</b>	<b>Size (in acres)</b>	<b>Type of resource generally not jurisdictional</b>
Wetland A	0.12	Wetland is a closed, depressional wetland that lacks a continuous surface connection to a water of the US.

The non-jurisdictional Wetland A is a closed, depressional wetland that is approximately 3.64 miles from the nearest TNW (the Little Ogeechee River). Wetland A is approximately 0.04 miles from Pipemakers Canal, the nearest named waterway. There is a man-made drainage ditch between Wetland A and the western boundary of the project area (this ditch appears on aerial imagery around 2005-2006) which does not exhibit OHWM nor does it meet wetland parameters and is not an aquatic resource. LiDAR shows an area of slight elevation between Wetland A and this drainage ditch. A previous SAS-2017-00103 delineation verified by letter dated October 30, 2017, delineates this area between Wetland A and the ditch as upland (the delineation does not include the ditch as an aquatic resource). LiDAR and aerial imagery support that determination. Viewing aerial imagery in the area post 2017 and current aerial imagery, there has been no significant work or alteration to the area since the 2017 delineation. During the June 2, 2017, site visit by the Corps, the drainage ditch was observed. It was noted that an easement of higher elevation along the ditch (the area between Wetland A and the ditch) did not have standing water nor saturated soils despite recent rainfall. This area delineated as upland separates the ditch from Wetland A. Data sheets and photos provided by the agent document a lack of wetland hydrology indicators and non-hydric soil in the area separating the ditch from Wetland A. Wetland A is surrounded by uplands and no evidence was found to support a connection to Pipemakers Canal. Based on the desktop review of data resources described in Section 9 of this memorandum, the previous delineation and documented observations during the 2017 Corps site visit, Wetland A lacks a continuous surface connection to a water of the US; therefore, Wetland A 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: August 2024
  - 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.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2017-00103

- 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, GA Quad.
- e. U.S. Geological Survey Hydrologic Atlas: HUC-12: 030601090307.
- f. USDA Natural Resources Conservation Soil Survey: Chatham County, GA.
- g. National Wetlands Inventory map(s): Chatham County, GA.
- h. 20190625 Section 10 Waters List Savannah District.
- i. Photographs: Aerial: Google Earth 2023, 2022, 2021, 2018, 2011, 2006, 2005.  
Photos taken on site and provided by Sligh Environmental agent.
- j. NOAA Topographic LiDAR: 2018-2019 NOAA LiDAR.
- k. Antecedent Precipitation Tool Analysis: Corps site visit on June 2, 2017, and agent site visit on March 15, 2024.

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.

THIS BLOCK RESERVED FOR THE CLERK OF THE SUPERIOR COURT.

PARENT TRACT 7 CONTAINS 84,490 Sq. Feet 1.940 Acres

LEGEND

- LIGHT POLE  
WATER VALVE  
FIRE HYDRANT  
WATER METER  
GRATE INLET  
STORM SEWER MANHOLE  
SANITARY SEWER MANHOLE  
ELECTRIC BOX  
TELEPHONE MANHOLE
- TELEPHONE BOX  
TELEPHONE PEDESTAL  
FIBER OPTIC MARKER  
FIBER OPTIC BOX  
BENCHMARK  
IRON PIN FOUND  
COMPUTED POINT  
IRON PIN SET
- POB POINT OF BEGINNING

SURVEYOR'S NOTES:

- THE PURPOSE OF THIS SURVEY IS TO DIVIDE "TRACT 7" OF GODLEY STATION SUBDIVISION INTO TWO PARCELS.
- ALL IRON PINS SET ARE 1/2" REBAR UNLESS STATED OTHERWISE.
- SURVEY AND BEARING BASIS ESTABLISHED WITH GPS USING A NETWORK ADJUSTED REAL TIME KINEMATIC ROVER.
- THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS RELATIVE POSITIONAL ACCURACY OF +/-0.03 FEET.
- THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 363,624 FEET.
- EQUIPMENT USED IN THIS SURVEY WAS A CARLSON MESA 2 DATA COLLECTOR AND A CARLSON BRx6 BASE AND ROVER SETUP.
- FIELD WORK COMPLETED ON MARCH 24, 2024.
- SETBACKS ARE SHOWN FROM CITY/COUNTY CODE INFORMATION & PB 34S 32A. GARMON LAND SURVEYING, LLC IS NOT LIABLE FOR ANY DISCREPANCIES. PROPERTY IS ZONED PUD PER CITY OF POOLER ZONING MAP.
- GARMON LAND SURVEYING DOES NOT WARRANT THE EXISTENCE OR NONEXISTENCE OF ANY WETLANDS OR HAZARDOUS WASTES LOCATED ON THE SUBJECT PROPERTY. WETLANDS SHOWN HEREON ARE BASED UPON A "WETLAND DELINEATION EXHIBIT", DATED MARCH 18, 2024, PERFORMED BY SLIGH ENVIRONMENTAL CONSULTANTS, INC (SAVANNAH, GEORGIA), PROVIDED TO SURVEYOR.

FLOOD ZONE

A FIELD SURVEY WAS NOT CONDUCTED TO DETERMINE THE FLOOD ZONE AREAS. ANY FLOOD ZONE LINES DISTINGUISHING BETWEEN FLOOD AREAS ARE GRAPHICALLY PLOTTED FROM FEMA FLOOD INSURANCE RATE MAPS (FIRM). A FLOOD ELEVATION CERTIFICATE MAY BE NEEDED TO DETERMINE OR VERIFY THE LOCATION OF THE FLOOD AREAS. THE SUBJECT PROPERTY'S COMMUNITY DOES PARTICIPATE IN THE PROGRAM. ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) FOR CHATHAM COUNTY COUNTY, GEORGIA, (COMMUNITY-PANEL NUMBER 13051C0019H, DATED JULY 7, 2014), PORTIONS OF THE SUBJECT PROPERTY FALL WITHIN THE FLOOD HAZARD AREA ZONES: REGULATORY FLOODWAY, ZONE AE WITH A BASE FLOOD ELEVATION OF 19, ZONE X-SHADED, AND ZONE X.

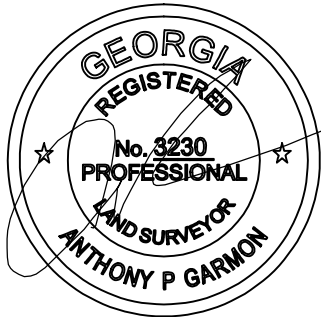
SURVEYOR CERTIFICATION

AS REQUIRED BY SUBSECTION (D) OF O.C.G.A. SECTION 15-6-67, THIS PLAT HAS BEEN PREPARED BY A LAND SURVEYOR AND APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS FOR RECORDING AS EVIDENCED BY APPROVAL CERTIFICATES, SIGNATURES, STAMPS, OR STATEMENTS HEREON. SUCH APPROVALS OR AFFIRMATIONS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENTAL BODIES BY ANY PURCHASER OR USER OF THIS PLAT AS TO INTENDED USE OF ANY PARCEL. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-67.

Anthony P. Garmon, GA P.L.S. #3230

04/12/2024

Date



APPROVED BY CITY OF POOLER PLANNING AND ZONING COMMISSION.

CHAIRMAN

Date

APPROVED BY THE MAYOR OF THE CITY OF POOLER.

MAYOR

Date

CITY CLERK

Date

CERTIFICATE OF DEDICATION

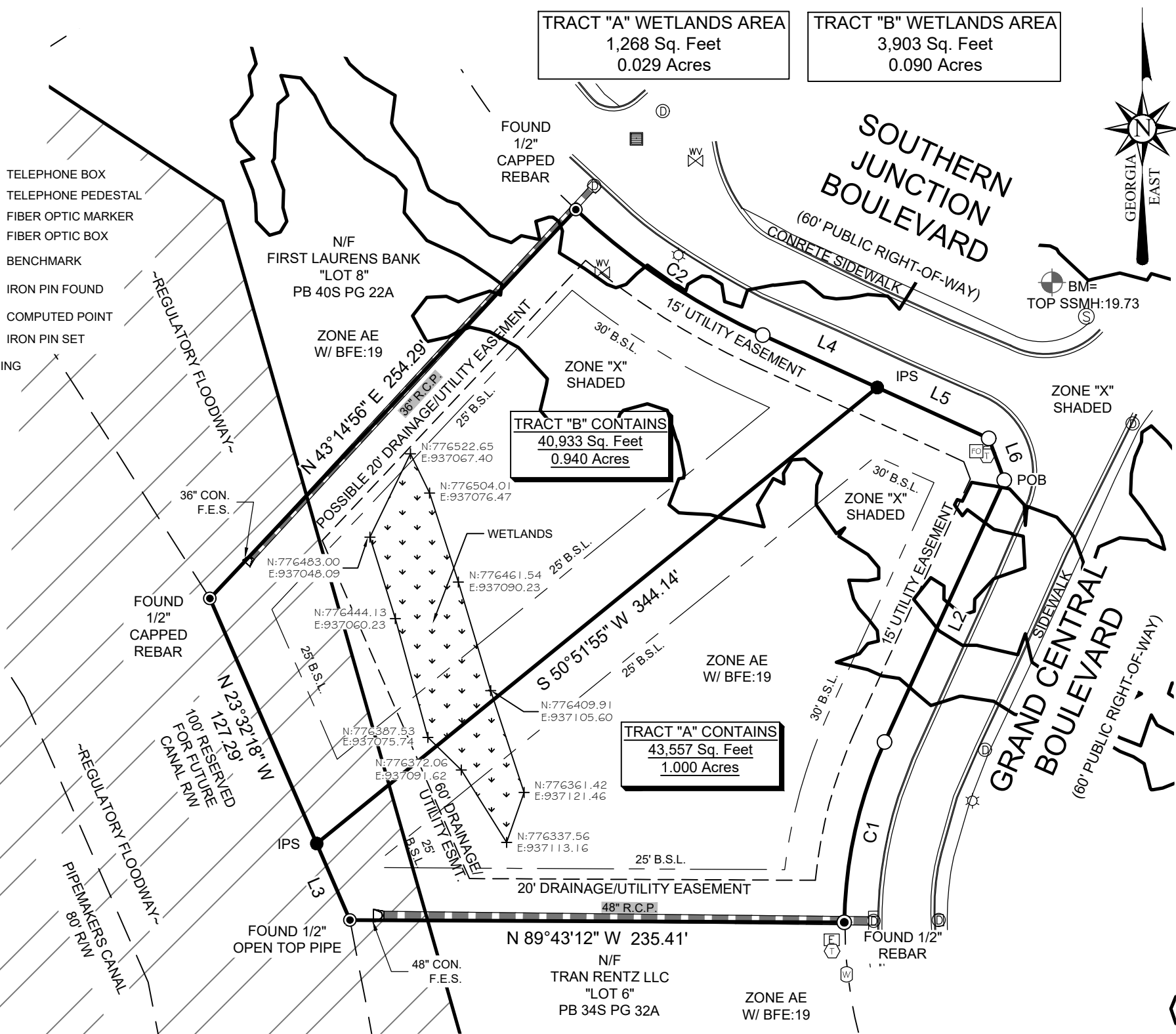
ALL STREETS, RIGHT OF WAY, EASEMENTS, AND ANY SITES FOR PUBLIC USE AS NOTED ON THIS PLAT ARE HEREBY DEDICATED FOR THE USES INTENDED.

OWNER

Date

CURVE TABLE					
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	215.64'	88.70'	88.08'	S 12°36'14" W	23°34'06"
C2	330.06'	107.71'	107.23'	S 56°06'11" E	18°41'49"

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 56°34'06" W	53.66'
L2	S 24°32'50" W	137.09'
L3	N 23°32'18" W	39.73'
L4	S 65°27'10" E	59.96'
L5	S 65°27'10" E	58.37'
L6	S 20°27'10" E	21.21'



GARMON LAND SURVEYING

1920 Railroad Street Statham Ga 30666

678-726-7582

garmonsurveying@gmail.com

REVISIONS	
DATE	DESCRIPTION
07.01.2024	ADDED COORDINATES TO WETLANDS AREA

DIVISION SURVEY FOR:

SAI PROPERTIES, LLC

LOT 7 OF GODLEY STATION,

PHASE 1

8TH G.M.D.

CITY OF POOLER

CHATHAM COUNTY, GEORGIA

DATE: 04/04/2024

DRAWN BY: JTH

CHECKED BY: BDW



SHEET 1 OF 1