



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

SAS-RD-C

13 December 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-2006-01743 (MFR 1 of 1)²

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.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2006-01743

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 C	Non-JD	N/A
Wetland D	Non-JD	N/A
Wetland E	Non-JD	N/A
Wetland I	Non-JD	N/A
Wetland L	Non-JD	N/A
Wetland O	Non-JD	N/A
Wetland T	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. 651 (2023)

3. REVIEW AREA.

- a. Project Are Size (in acres): 463.4
- b. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 31.84102 Longitude: -81.527984
- c. Nearest City or Town: Hinesville
- d. County: Liberty
- e. State: Georgia
- f. Other associated Jurisdictional Determinations (see next page)

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2006-01743

Regulatory File No.	Type	Outcome
SAS-2006-01743	AJD	An AJD was issued for the same review area on October 10, 2007. The wetland delineation boundaries for the previous AJD aligned closely with those in this AJD. The jurisdictional status was the same for the previous AJD and this AJD with all the resources listed in Section 1 of this MFR being classified as non-jurisdictional.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A, all aquatic resources within the AJD are non-jurisdictional.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A, all aquatic resources within the AJD are non-jurisdictional.
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.

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

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2006-01743

- 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

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 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

⁸ 51 FR 41217, November 13, 1986.

- 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 C	0.51	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.
Wetland D	0.25	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.
Wetland E	0.30	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.
Wetland I	0.58	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.
Wetland L	0.12	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2006-01743

Wetland O	0.46	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland is non-jurisdictional.
Wetland T	1.97	This wetland lacks a continuous surface connection to water of the US. The wetland is surrounded by uplands on all sides. Based on a site visit conducted on November 26, 2024, and the resources listed in Section 9 of this MFR, the Corps determined there is no discrete feature present that would constitute a continuous surface connection to an a(1)-a(6) water. As a result, this wetland 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.

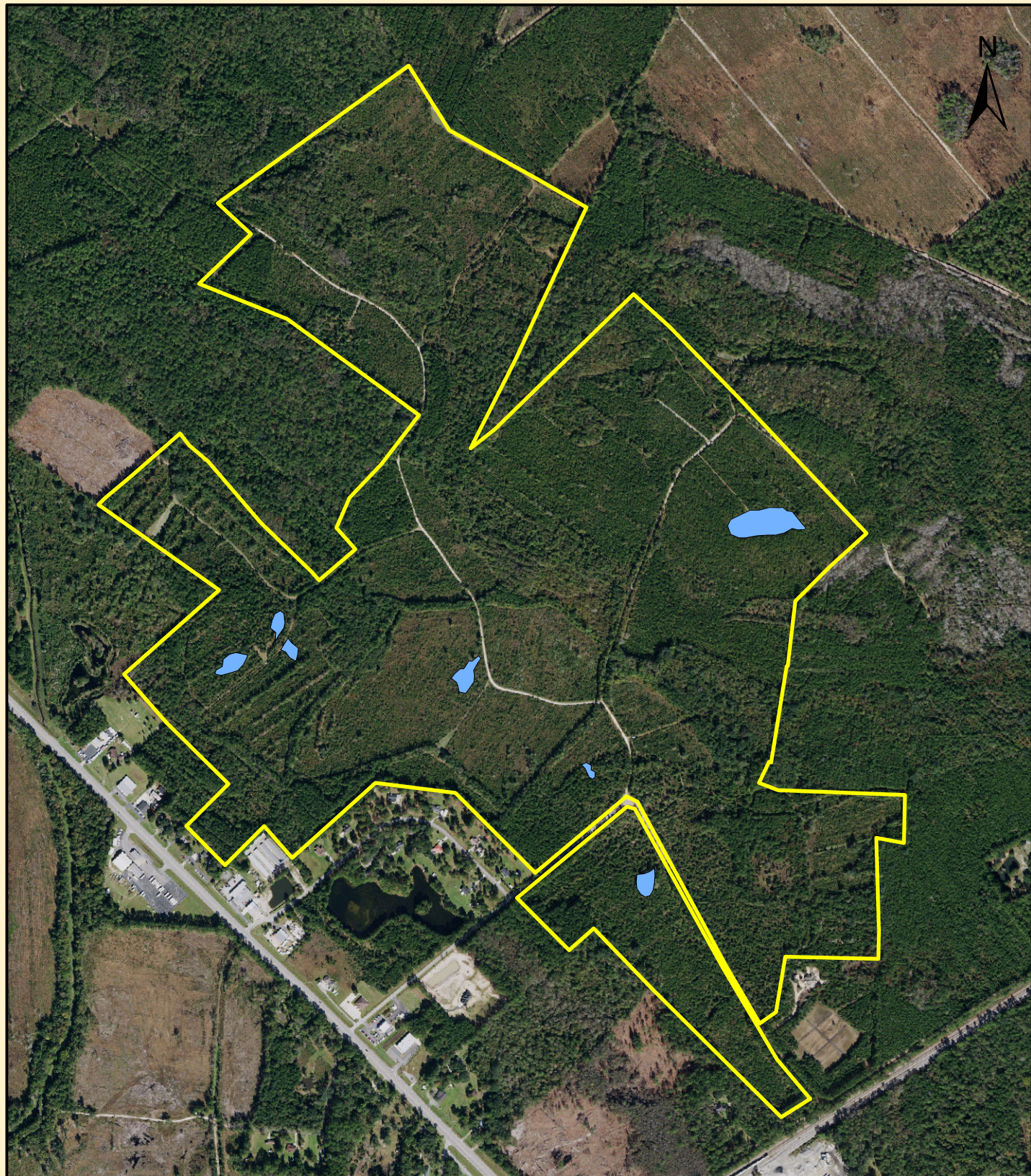
a. Date of Field Review: November 26, 2024

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 "Non-Jurisdictional Feature Map" and dated May 25, 2023
- ☒ Previous AJD addressing the same review area: SAS-2006-01743 issued October 10, 2007
- ☒ Aerial Imagery: Source Google Earth and dated December 11, 2024
- ☒ LIDAR: Source NOAA, titled "LIDAR", and dated December 11, 2024
- ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated December 11, 2024
- ☒ USFWS NWI maps: Titled "NWI" and dated December 11, 2024
- ☒ USGS NHD data/maps: Titled "NHD" and dated December 11, 2024
- ☒ Antecedent Precipitation Tool Analysis: Dated January 15, 2022 and November 26, 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.



 Project Limits  Non-Jurisdictional Wetland

Prepared By:

sligh environmental consultants, inc.
31 Park of Commerce Way, Suite 200B
Savannah, Georgia 31405
phone (912) 232-0451
fax (912) 232-0453

Non-Jurisdictional Feature Map
Flemington Forest
Liberty County, Georgia

1,000

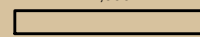
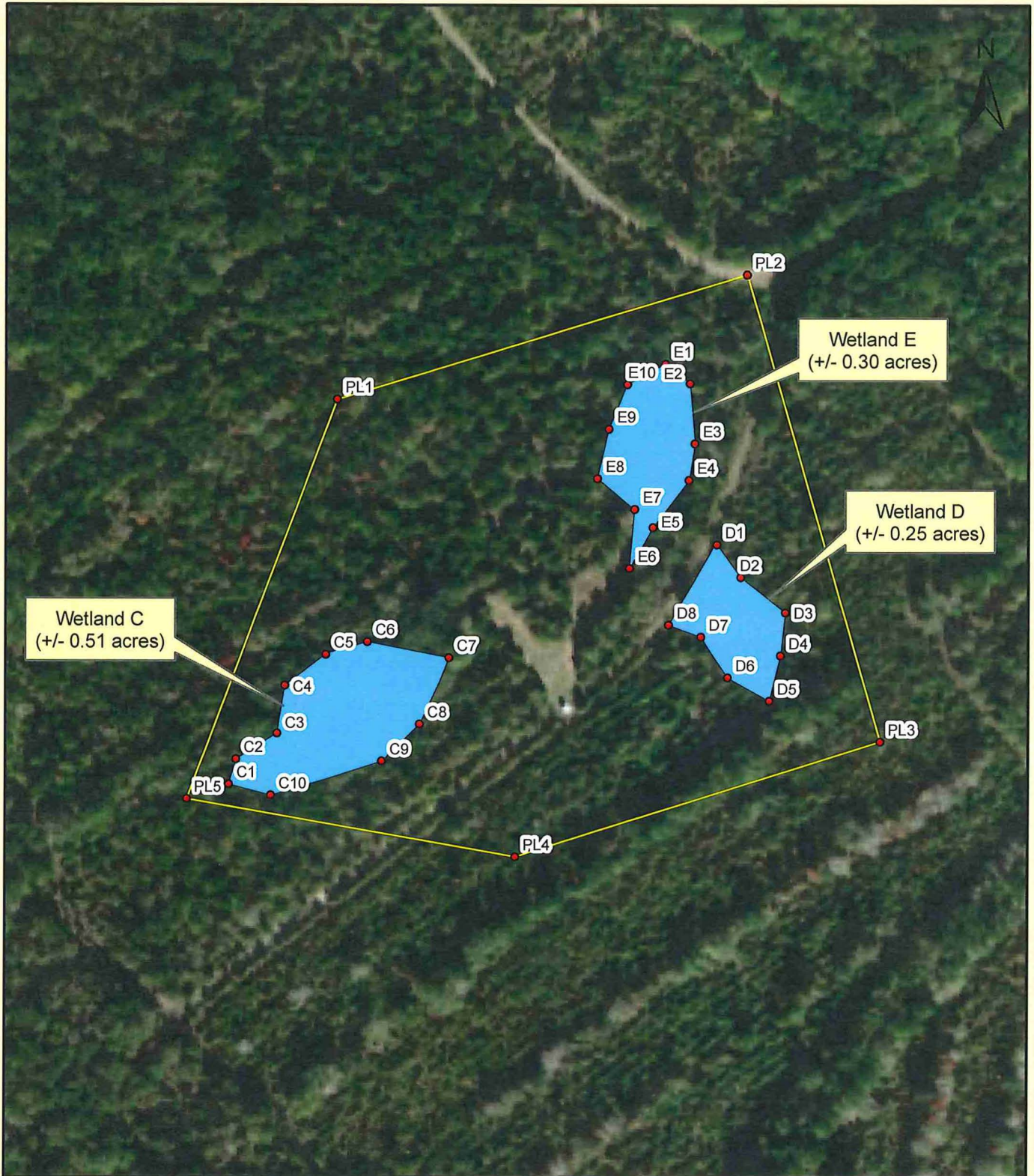
 Feet

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123



Wetland C
(+/- 0.51 acres)

Wetland E
(+/- 0.30 acres)

Wetland D
(+/- 0.25 acres)

AJD - Non Jurisdictional Feature Area Non-Jurisdictional Wetland

150
Feet

Prepared By:
sligh environmental consultants, inc.
31 Park of Commerce Way, Suite 200B
Savannah, Georgia 31405
phone (912) 232-0451
fax (912) 232-0453

Non-Jurisdictional Feature Map
Flemington Forest
Liberty County, Georgia
Sheet 1 of 6

Exhibit Date: May 25, 2023
Drawn By: TCT
Reviewed By: BWV
Job Number : 01-21-123



AJD - Non Jurisdictional Feature Area

 Non-Jurisdictional Wetland

Prepared By:

sligh environmental consultants, inc.
 31 Park of Commerce Way, Suite 200B
 Savannah, Georgia 31405
 phone (912) 232-0451
 fax (912) 232-0453

Non-Jurisdictional Feature Map
 Flemington Forest
 Liberty County, Georgia
 Sheet 2 of 6

100

Feet

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123



AJD - Non Jurisdictional Feature Area

 Non-Jurisdictional Wetland

Prepared By:

sligh environmental consultants, inc.
 31 Park of Commerce Way, Suite 200B
 Savannah, Georgia 31405
 phone (912) 232-0451
 fax (912) 232-0453

Non-Jurisdictional Feature Map
 Flemington Forest
 Liberty County, Georgia
 Sheet 3 of 6

100

Feet

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123



AJD - Non Jurisdictional Feature Area

 Non-Jurisdictional Wetland

Prepared By:
sligh environmental consultants, inc.
 31 Park of Commerce Way, Suite 200B
 Savannah, Georgia 31405
 phone (912) 232-0451
 fax (912) 232-0453

Non-Jurisdictional Feature Map
 Flemington Forest
 Liberty County, Georgia
 Sheet 4 of 6

100
 Feet

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123



AJD - Non Jurisdictional Feature Area

 Non-Jurisdictional Wetland

Prepared By:

sligh environmental consultants, inc.
 31 Park of Commerce Way, Suite 200B
 Savannah, Georgia 31405
 phone (912) 232-0451
 fax (912) 232-0453

Non-Jurisdictional Feature Map
 Flemington Forest
 Liberty County, Georgia
 Sheet 5 of 6

150

Feet

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123

Point	Latitude	Longitude	PL11	31.837934	-81.526045
PL1	31.840581	-81.534279	PL12	31.837339	-81.525502
PL2	31.840946	-81.532845	PL13	31.837074	-81.525951
PL3	31.83955	-81.532385	L1	31.83758	-81.526139
PL4	31.839213	-81.533662	L2	31.837626	-81.526038
PL5	31.83939	-81.534813	L3	31.83763	-81.526033
C1	31.839433	-81.534664	L4	31.837571	-81.525918
C2	31.839508	-81.534639	L5	31.837479	-81.525919
C3	31.839584	-81.534494	L6	31.837443	-81.525829
C4	31.839727	-81.534466	L7	31.837341	-81.525832
C5	31.839819	-81.534322	L8	31.837298	-81.525882
C6	31.839856	-81.534178	L9	31.837331	-81.525964
C7	31.839808	-81.533893	L10	31.837514	-81.52606
C8	31.83961	-81.533997	PL14	31.835599	-81.525022
C9	31.8395	-81.53413	PL15	31.835654	-81.524429
C10	31.839399	-81.534516	PL16	31.834937	-81.524188
E1	31.840681	-81.533133	PL17	31.834864	-81.525016
E2	31.840622	-81.533047	O1	31.835393	-81.524873
E3	31.840443	-81.533031	O2	31.83541	-81.524707
E4	31.840334	-81.533052	O3	31.835451	-81.524579
E5	31.840193	-81.533177	O4	31.835518	-81.524453
E6	31.840071	-81.533259	O5	31.835361	-81.524449
E7	31.840248	-81.53324	O6	31.835203	-81.524466
E8	31.84034	-81.533368	O7	31.835064	-81.5245
E9	31.840488	-81.533328	O8	31.834976	-81.524566
E10	31.840621	-81.533263	O9	31.834946	-81.52468
D1	31.84014	-81.532955	O10	31.835006	-81.524785
D2	31.840042	-81.532871	O11	31.835115	-81.524869
D3	31.839936	-81.532715	O12	31.835245	-81.524882
D4	31.839808	-81.532733	PL18	31.842892	-81.523093
D5	31.839673	-81.532773	PL19	31.842947	-81.520811
D6	31.839743	-81.53292	PL20	31.842028	-81.520303
D7	31.839865	-81.533012	T1	31.841755	-81.52291
D8	31.839901	-81.533125	T2	31.842443	-81.522639
PL6	31.839107	-81.529649	T3	31.842543	-81.522389
PL7	31.840037	-81.52867	T4	31.842587	-81.522282
PL8	31.839566	-81.527957	T5	31.842624	-81.522179
PL9	31.838558	-81.528646	T6	31.842623	-81.521978
I1	31.839323	-81.529163	T7	31.842677	-81.521723
I2	31.839407	-81.529081	T8	31.84267	-81.521521
I3	31.839505	-81.528956	T9	31.842679	-81.521416
I4	31.839504	-81.528872	T10	31.842604	-81.521325
I5	31.839555	-81.528832	T11	31.84259	-81.521201
I6	31.839662	-81.528747	T12	31.842486	-81.521102
I7	31.839654	-81.528677	T13	31.842344	-81.520974
I8	31.839766	-81.528524	T14	31.842259	-81.520884
I9	31.839708	-81.528471	T15	31.842234	-81.520915
I10	31.839615	-81.528551	T16	31.842228	-81.521073
I11	31.839475	-81.528642	T17	31.842253	-81.521207
I12	31.839382	-81.528627	T18	31.842171	-81.521395
I13	31.839249	-81.528635	T19	31.842126	-81.521591
I14	31.83912	-81.528735	T20	31.842129	-81.521776
I15	31.839014	-81.528825	T21	31.842113	-81.522024
I16	31.839047	-81.528983	T22	31.842079	-81.522297
I17	31.839176	-81.529012	T23	31.842074	-81.522443
I18	31.83924	-81.529043	T24	31.842149	-81.522636
PL10	31.837582	-81.526428	T25	31.842319	-81.522709

Prepared By:

sligh environmental consultants, inc.
31 Park of Commerce Way, Suite 200B
Savannah, Georgia 31405
phone (912) 232-0451
fax (912) 232-0453

Non-Jurisdictional Feature Map
Flemington Forest
Liberty County, Georgia
Sheet 6 of 6

Exhibit Date: May 25, 2023

Drawn By: TCT

Reviewed By: BWW

Job Number : 01-21-123