



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

SAS-RD-C

4 April 2025

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-2024-00696

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 the state of Georgia 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland A	Non-JD	Section 404
Wetland B	Non-JD	Section 404
Ditch A	Non-JD	Section 404
Ditch B	Non-JD	Section 404

## 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, 143 S. Ct. 1322 (2023)

## 3. REVIEW AREA.

- A. Project Are Size (in acres): 5.14 acres
- B. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 32.113025 Longitude: -81.242413
- C. Nearest City or Town: Pooler
- D. County: Chatham County
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes)

Regulatory File No.	Type	Outcome
930012600	JD	On 22 September 1993, a Verification of Jurisdictional Delineation was issued to Norfolk Southern Co. for the delineation of a 65 acre parcel in Pooler, GA. All delineated wetlands were determined to be jurisdictional under the JD.
930012600	JD	On 6 March 1995, a Notification of Jurisdictional Determination was issued to Central of GA Railroad Co./Norfolk Southern RR. Co. All wetlands were determined to be jurisdictional under the JD

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930012602	NWP 26	On 23 September 1996, permit authorization was issued to Norfolk Southern Corp.; this permit authorized 7.75 acres of fill into jurisdictional wetland areas with special condition to restore 5.87 acres of wetland and place 38.95 acre of wetland and 5.85 acre of uplands in a restrictive covenant.
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G. Any additional, relevant site-specific information: The current 5.14-acre review area is within the authorized wetland impact area permitted in the 1996 NWP 26 issued to Norfolk Southern Corporation (SAS-1993-12600). Norfolk Southern Corporation (prior permittee) obtained authorization under NWP 26 for impacts to 7.75 acres of wetland during construction of a commercial/residential development. As mitigation to this authorization, the prior permittee preserved the remaining 38.95 acres of wetlands within the property and restored 5.87 acres of wetland area previously used as a logging deck. All mitigation and monitoring required under the 1996 authorization were completed in accordance with the permit.

The current 5.14-acre review area was previously cleared, filled, and graded under the 1996 NWP 26 authorization (SAS-1993-12600) and drainage ditches were installed at that time in preparation for development. All authorized site work was completed in 1997, and since that time the site has been maintained as vacant lots (Lot 102, 104, and 106).

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: Salt Creek, which is a TNW, is approximately 5.17 miles southeast of the review area.

B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and a field visit conducted on 17 January 2025, 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 occurrences of boating traffic on the identified water (identified from aerial imagery and observed private recreational dock facilities within the creek).

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

The wetlands meet 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 Region Supplement. Additionally, the ditches exhibit OHWM characteristics.

However, Wetlands A and B and Ditches A and B do not exhibit a continuous surface connection to a requisite water that would connect to the aforementioned TNW and are not jurisdictional.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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>5</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>6</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>7</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>7</sup> 51 FR 41217, November 13, 1986.

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Ditch A	0.41	Previously impacted under the 1996 NWP 26 authorization with clearing, grading, and fill placement. Drainage Ditch A was installed at that time in preparation for development; however offsite flow is impeded (i.e., ditch elevations slope upward towards the south, west, and north) allowing water to remain within the ditch area for extended periods of time. As such, there is no evidence of a continuous surface connection through the adjacent properties that would connect Ditch A to a requisite water.
Ditch B	0.02	Previously impacted under the 1996 NWP 26 authorization with clearing, grading, and fill placement. Drainage Ditch B was installed at that time in preparation for development; however offsite flow is impeded (i.e., ditch elevations slope upward towards the south, west, and north) allowing water to remain within the ditch area for extended periods of time. As such, there is no evidence of a continuous surface connection through the adjacent properties that would connect Ditch B to a requisite water.
Wetland A		Previously impacted under the 1996 NWP 26 authorization with clearing, grading, and fill placement. Drainage ditches (Ditch A and Ditch B) were installed at that time in preparation for development; however offsite flow is impeded allowing water to remain and support the three parameters for wetland conditions at the collection point of Ditch A. There is no evidence of a continuous surface connection on the adjacent properties that would connect Wetland A to a requisite water.
Wetland B	7.05	Previously impacted under the 1996 NWP 26 authorization with clearing, grading, and fill placement. Drainage ditches (Ditch A and Ditch B) were installed at that time in preparation for development; however offsite flow is impeded allowing water to remain and support the three parameters for wetland conditions at the collection point of Ditch A. There is no evidence of a continuous surface connection on the adjacent properties that would connect Wetland B to a requisite water.

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. 1. Date of Office (desktop review): December 2024 and January 2025
2. Date(s) of Field Review (if applicable): 17 January 2025
- b. Data sources used to support this determination (included in the administrative record).
  - ☒ Aquatic Resources delineation submitted by, or on behalf of, the applicant: Aquatic Resource Delineation GPS Exhibit, dated 4 February 2025 (Figure No. 8) prepared by Resource Land Consultants.
  - ☒ Wetland field data sheets provided by the applicant: 11 July 2024 prepared by Resource Land Consultants.

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- ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. 930012600 dated 22 September 1993 and 6 March 1995.
- ☐ Photographs: USACE site visit photos were collected on 17 February 2025, however, photos were lost during bulk download transfer and inadvertent computer freeze and could not be included in this decision document.
- ☒ Aerial Imagery provided by, or on behalf of, applicant: 2022 Ortho Aerial Imagery dated 26 July 2024 (Figure No. 5) prepared by Resource Land Consultants; and Google Earth Aerial Imagery 2024 Airbus and Historical Aerial Imagery between 1985 and 2025.
- ☒ LIDAR provided by, or on behalf of, applicant: NOAA Topographic Lidar dated 26 July 2024 (Figure No. 7) prepared by Resource Land Consultants; and NOAA Lidar Elevation and Hillshade data, maps prepared from the National Regulatory Viewer (Georgia).
- ☒ USDA NRCS Soil Survey provided by, or on behalf of, applicant: NRCS Soil Survey dated 26 July 2024 (Figure No. 3) prepared by Resource Land Consultants.
- ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Inventory dated 26 July 2024 (Figure No. 4) prepared by Resource Land Consultants.
- ☒ USGS topographic maps: provided by, or on behalf of, applicant: USGS Topographic Survey dated 26 July 2024 (Figure No. 2) prepared by Resource Land Consultants.
- ☒ USGS NHD data/maps: NHD-TNW data provided on the National Regulatory Viewer (Georgia).
- ☒ Section 10 resources used: SAS Section 10
- ☒ Antecedent Precipitation Tool Analysis: 11 July 2024 and 17 January 2025

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.





RLC Project No.:	21-047.1
Figure No.:	1
Prepared By:	CO
Sketch Date:	7/26/2024
Map Scale :	1 inch = 1 miles

## San Drive Tracts

Chatham County, Georgia

## Project Location

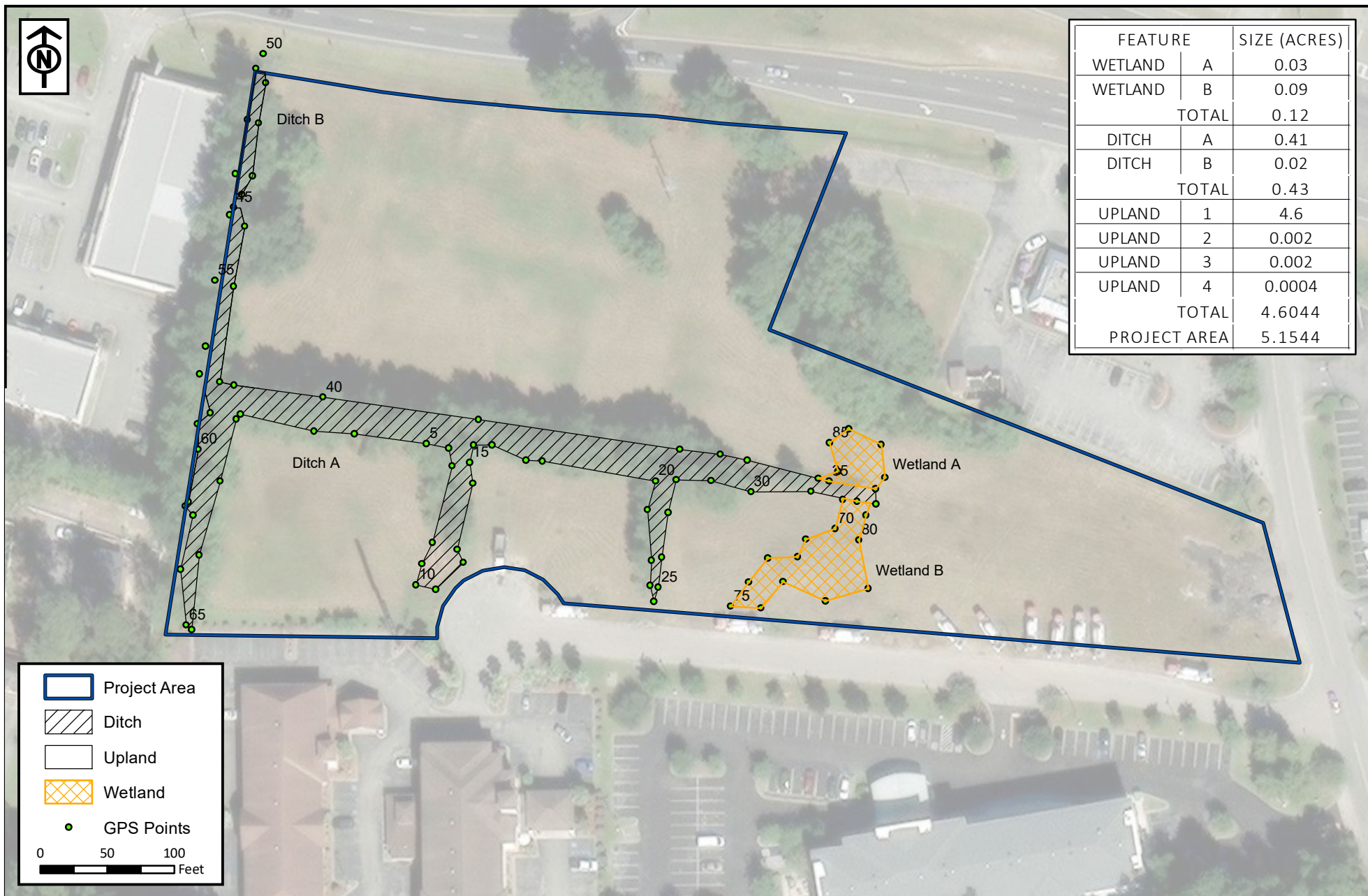
Prepared For: Live Oak Veterinary Holdings



### RESOURCE+LAND CONSULTANTS

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FEATURE		SIZE (ACRES)
WETLAND	A	0.03
WETLAND	B	0.09
TOTAL		0.12
DITCH	A	0.41
DITCH	B	0.02
TOTAL		0.43
UPLAND	1	4.6
UPLAND	2	0.002
UPLAND	3	0.002
UPLAND	4	0.0004
TOTAL		4.6044
PROJECT AREA		5.1544

 Project Area

 Ditch

 Upland

 Wetland

 GPS Points

0 50 100  
Feet

RLC Project No.: 21-047.1  
Figure No.: 8  
Prepared By: BS  
Sketch Date: 2/4/2025  
Map Scale : 1 inch = 100 feet

**San Drive Tracts**  
Chatham County, Georgia

**Aquatic Resource  
Delineation GPS Exhibit**  
Prepared For: Kimley Horn



**RESOURCE+LAND  
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