



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

SAS-RD-C

7 March 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),¹ SAS-2024-00871

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 the state of Georgia 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.

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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 B	Non-JD	Section 404
Wetland C	Non-JD	Section 404
Wetland D	Non-JD	Section 404
Wetland E	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): 155 acres
- b. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 31.787857 Longitude: -81.374333
Latitude: 31.786246 Longitude: -81.366310
- c. Nearest City or Town: Midway
- d. County: Liberty County
- e. State: Georgia
- f. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
970011270	AJD	A total of 1,710 acres (Laurel View Tract) located along the Jones Creek was evaluated and determined 20,624 acres of wetlands (total of 26 individual wetlands) and 17,641 acres of borrow pits (total of 2 pits) were isolated and determined to be non-jurisdictional. Verification issued on 13 December 2001.

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Regulatory File No.	Type	Outcome
SAS-2008-01211	PJD	The authorization under 970011270 expired and was reassigned a new regulatory file number (SAS-2008-01211). The PJD covered the same 1,710-acre review area as covered under the prior 970011270 AJD. All waters were considered as jurisdictional under the PJD. Verification was issued on 13 July 2009.
SAS-2022-00329	AJD	Evaluated 183.73 acres of the 1,710-acre parent site evaluated under Ref. No. 970011270 and SAS-2008-01211. This 183.73-acre review area is immediately adjacent on the south side of the current review area of this MFR (SAS-2024-00871). A total of 62.12 acres of wetland and 15.96 acres of pond waters were determined to be jurisdictional under this AJD; and 3.52 acres of pond were determined to be non-jurisdictional. Verification for the adjacent 183.73-acre review area was issued on 6 May 2024.
SAS-2022-00551	ARDR/AJD Combo	Evaluated 229.84 acres of the 1,710-acre parent site evaluated under Ref. No. 970011270 and SAS-2008-01211. This 229.84-acre review area is immediately adjacent on the east side of the current review area evaluated under this MFR (SAS-2024-00871). Wetland EE (2.09 acres) assessed under SAS-2022-00551 abuts to Wetland E (0.7 acres) evaluated in this MFR; the portion of Wetland EE was determined to be an isolated wetland in the SAS-2022-00551 JD. A total of 4.94 acres of wetlands were determined to be non-jurisdictional under the AJD; all remaining waters reviewed under the ARDR were determined to be jurisdictional. Verification for the adjacent 229.84-acre review area was issued on 20 January 2023.
SAS-2024-00871	ARDR	Evaluated 155 acres of the 1,710-acre parent site evaluated under Ref. No. 970011270 and SAS-2008-01211. ARDR evaluation is being conducted concurrently with this AJD. All wetland areas were determined to be aquatic features within the 155-acre review area.

- g. Any additional, relevant site-specific information: This project site has primarily consisted of untouched forested woodlands based on aerial imagery available between 1985 and 2025. A dirt access road was constructed sometime between 1985 and 1993 (as seen on available historic aerials) and transects the review area from north-to-south. The historic aerials show approximately 23 acres in the eastern portion of the review area (east of the dirt access road) that has been routinely harvested for silviculture, whereas the area west of the dirt access road has remained relatively untouched since 1999. Evidence is not present for significant manipulation of the site over an extended period of time beyond the silviculture practices conducted within the review area.

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: Jones Creek, which is a TNW.

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 located upstream within the creek).

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

The wetlands evaluated in this MFR 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.

However, Wetlands B, C, D, and E do not exhibit a continuous surface connection to nearby jurisdictional wetlands (as evaluated in the 2024 ARDR verification [SAS-2024-00871] for the 155-acre review area) or a requisite water that would connect to the aforementioned TNW and thereby are not jurisdictional.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ N/A

⁵ 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.

⁶ 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.

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.

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").⁷ 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

⁷ 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 B	1.0	Wetland B is depressional and lacks a continuous surface connection to waters of the US.
Wetland C	0.09	Wetland C is segmented from Wetland D by a access road crossing. Wetland C is depressional and lacks a continuous surface connection to waters of the US.
Wetland D	8.0	Wetland D is depressional and lacks a continuous surface connection to waters of the US.
Wetland E	0.07	Wetland E, within the review area, is depressional and lacks a continuous surface connection to waters of the US. Wetland E abuts the review area and is connected to the non-jurisdictional Wetland EE off-site (SAS-2022-00551 verified 20 January 2023).

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

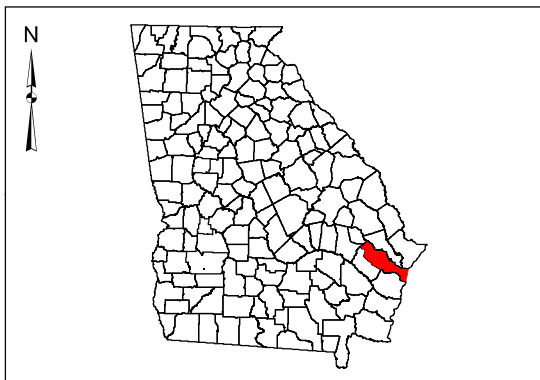
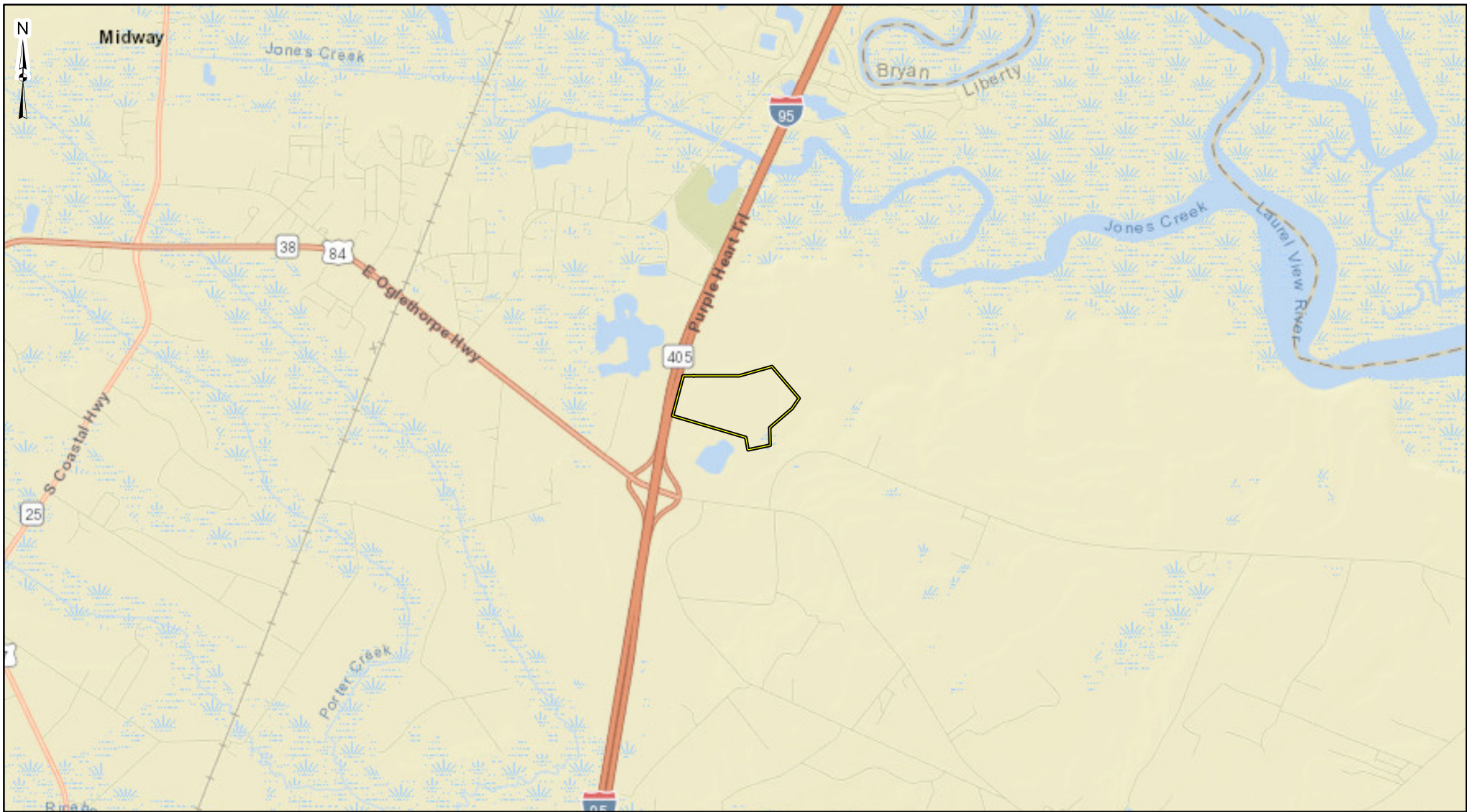
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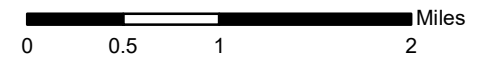
- b. Data sources used to support this determination (included in the administrative record).
- ☒ Aquatic Resources delineation submitted by, or on behalf of, the applicant: Sub-Meter GPS Delineation Exhibit (AJD), dated October 2024 (Figure No. 7a) and Sub-Meter GPS Delineation Exhibit (ARDR), dated August 2024 (Figure No. 7b) prepared by Terracon.
 - ☒ Wetland field data sheets provided by the applicant: 19 July 2024 prepared by Terracon.
 - ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. 970011270 dated 13 December 2001; and USACE No. SAS-2008-01211 dated 13 July 2009.
 - ☒ Photographs: provided by Terracon and verified during the 17 January 2025 site visit.
 - ☒ Aerial Imagery provided by, or on behalf of, applicant: ESRI World Imagery Basemap (Figure No. 7a) prepared by Terracon; 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 October 2024 (Figure No. 6) prepared by Terracon; 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 October 2024 (Figure No. 5) prepared by Terracon.
 - ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Inventory dated October 2024 (Figure No. 4) prepared by Terracon.
 - ☒ USGS topographic maps: provided by, or on behalf of, applicant: USGS Topographic Survey dated October 2024 (Figure No. 2) prepared by Terracon.
 - ☒ 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: processing data for the 19 July 2024 survey and 17 January 2025 site visit could not be completed at this time of this MRF due to the APT program being inoperable.

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 Boundary



DATA SOURCES:
ESRI WMS - OpenStreetMap

Project No.:	ES237366
Date:	Mar 2024
Drawn By:	CMP
Reviewed By:	KHD



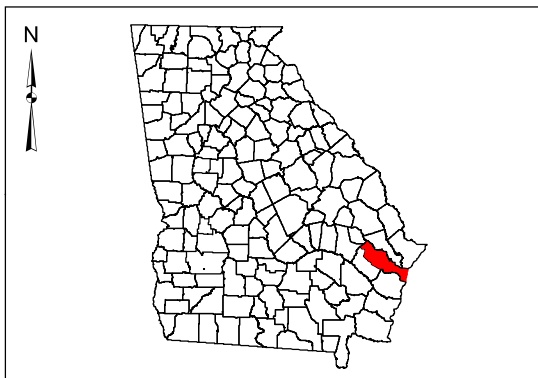
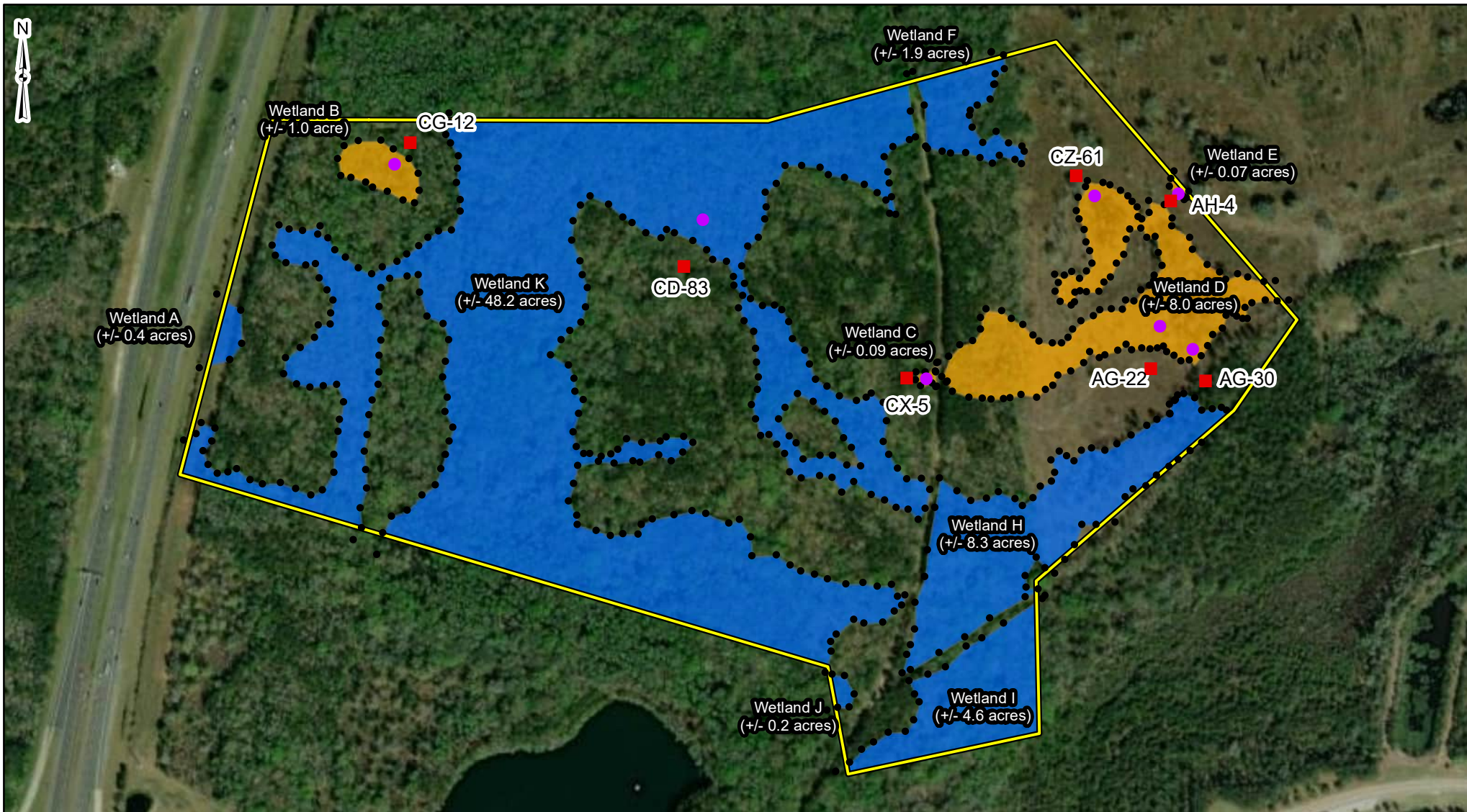
Terracon
Explore with us

2201 Rowland Avenue Savannah, GA 31404

PH. (912) 629-4000 terracon.com

Vicinity Exhibit
Laurel View
Liberty County, GA

Exhibit
1



- Project Boundary
- Wetlands (+/- 64.03 acres)
- Isolated Wetlands (+/- 9.13 acres)

• Sub-Meter GPS Data

Data Forms

Upland Data Form

Wetland Data Form

0 300 600 1,200 Feet

DATA SOURCES:
ESRI WMS - Aerial Imagery

Project No.:
ES237366

Date:
Aug 2024

Drawn By:
AJV

Reviewed By:
KHD

Terracon
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PH. (912) 629-4000 terracon.com

Sub-Meter GPS Delineation Exhibit

Laurel View -ARDR

Liberty County, GA

Exhibit

7b