DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
4751 BEST ROAD, SUITE 140
COLLEGE PARK, GEORGIA 30337

CESAS-RD-P April 8, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023), SAS-2018-00306

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.[1] 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.[2] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[3] 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. SUMMARY OF CONCLUSIONS.

[1] 33 CFR 331.2.
[2] Regulatory Guidance Letter 05-02.
[3] 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.

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 Area "A"	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, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

A. Size: ~0.5-acre
B. Coordinates: Latitude: 33.4498, Longitude: -82.0862
C. Nearest City or Town: Augusta
D. County: Richmond
E. State: Georgia

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

A. The Savannah River, located approximately 33,000 linear feet (~10 linear kilometers) northeast of the subject review, is the nearest 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 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.

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

N/A. The subject aquatic resource is hydrologically isolated and does not have a flowpath from the nearest TNW.

6. SECTION 10 JURISDICTIONAL WATERS[4]: 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. 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

[4] 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.

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").[5] 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).

[5] 51 FR 41217, November 13, 1986.

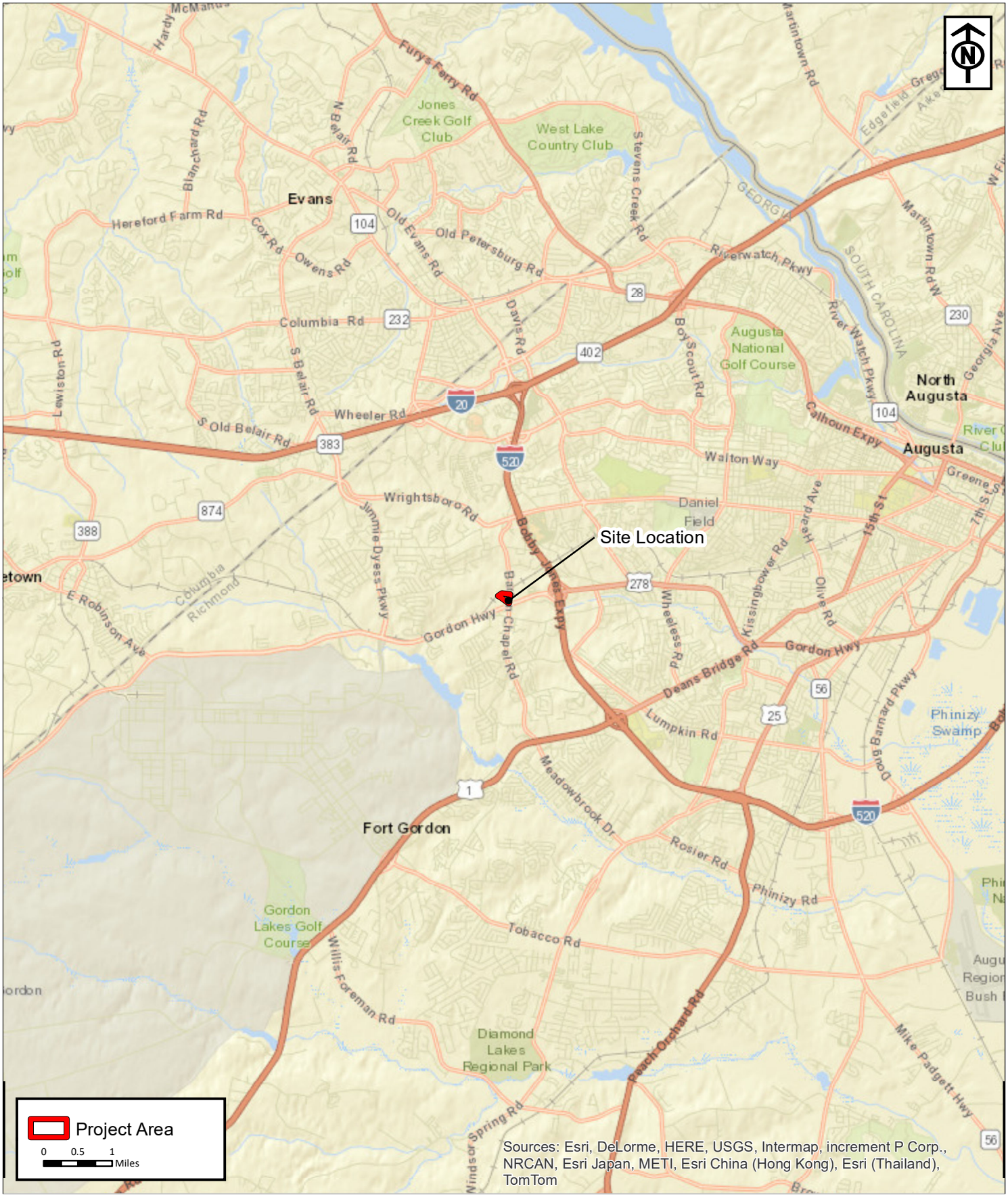
Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wetland Area "A"	0.45	Wetland lacks a continuous surface connection to water of the US

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 (desktop) determination: April 2025 (CESAS-RD-P)
b. Field determination(s): March 14, 2018 (Agent)
c. Data sources used to support this determination (included in the administrative record).
☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: A wetland delineation survey, provided by the Agent, dated 3/25/2018.
☐ Aquatic Resources delineation prepared by the USACE: Title and Date
☒ Wetland field data sheets
☐ OHWM data sheets prepared by the USACE: Title and Date
☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
☐ Photographs:
☒ Aerial Imagery: Figure No. 5: *2015 Color Ortho Photograph*, as prepared by the Agent and dated 4/10/2018; historic aerials retrieved by CESAS-RD-P from Google Earth in 4/2025.
☒ LIDAR: LIDAR (3DEP DEM) and 2-foot contour imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP in 4/2025.
☒ USDA NRCS Soil Survey: Figure No. 4: *USDA - NRCS Soil Survey*, prepared by Agent, and dated 4/10/2018; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 4/2025.
☒ USFWS NWI maps: Figure No. 3: *USFWS National Wetland Inventory*, prepared by Agent, and dated 4/10/2018; NWI data retrieved by CESAS-RD-P from the NRV in 4/2025.
☒ USGS topographic maps: Figure No. 2: *USGS Topographic Survey*, prepared by Agent, and dated 4/10/2018.
☒ USGS NHD data/maps: NHD data retrieved from the NRV by CESAS-RDP in 4/2025.
☐ Section 10 resources used: Title and Dates
☐ NC DWQ stream identification forms
☐ Antecedent Precipitation Tool Analysis (List Date(s)):
☒ Other sources of Information: StreamStats data retrieved by from the NRV by CESAS-RD-P in 4/7/2025; USDM (Georgia) for 4/10/2018; and FEMA flood hazard data retrieved from the NRV by CESAS-RD-P in 4/2025.

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.:	18-049
Figure No.:	1
Prepared By:	RP
Sketch Date:	4/10/2018
Map Scale :	1 in = 2 miles

1923 Barton Chapel Road

Richmond County, Georgia

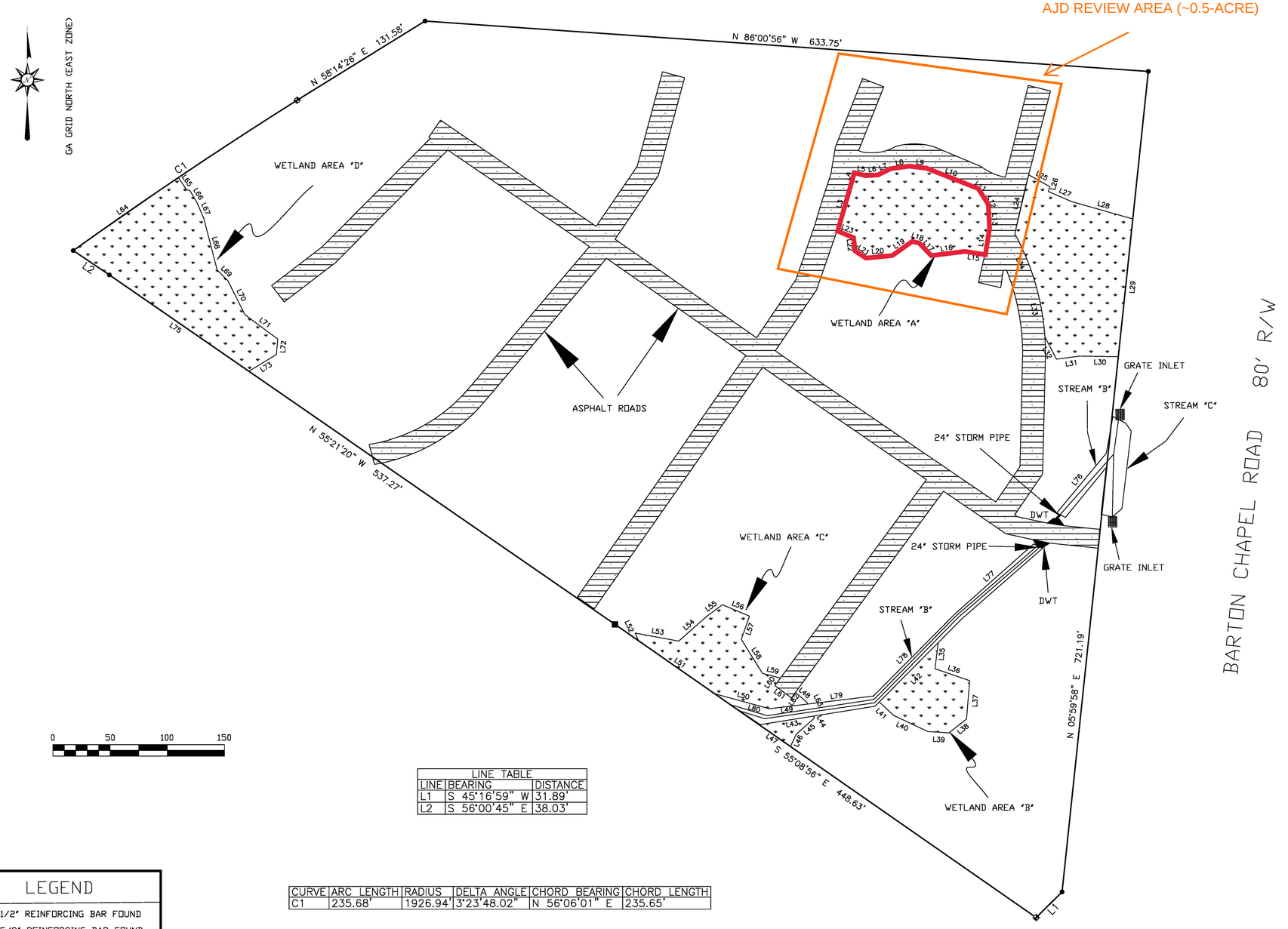
Project Location Map

Prepared For: GSC Construction

RLC
RESOURCE+LAND CONSULTANTS
411 Park of Commerce Way, Ste. 303
Savannah, Georgia 31405
912.443.5696 www.rlandc.com

Y:\2018 Projects\18-049 1923 Barton Chapel Road Locke McKnight\graphics\1_Vicinty.mxd

Source(s): ESRI Basemap, World_Street_Map



WETLAND AREA = APPROX. 0.93 ACRES
STREAM AREA = APPROX. 0.07 ACRES
UPLAND AREA = APPROX. 8.59 ACRES
TOTAL AREA = APPROX. 9.59 ACRES

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 45°16'59" W	31.89'
L2	S 56°00'45" E	38.03'

LINE TABLE		
LINE	BEARING	DISTANCE
L3	N 17°30'23" E	46.21'
L4	N 09°29'56" E	6.02'
L5	N 80°07'30" W	11.03'
L6	N 83°47'23" E	11.17'
L7	N 67°41'38" E	11.05'
L8	S 81°41'21" W	16.70'
L9	S 82°38'53" E	16.70'
L10	N 68°06'01" W	38.65'
L11	N 54°15'40" W	15.05'
L12	S 17°51'10" E	14.50'
L13	N 01°28'05" W	13.32'
L14	N 09°17'50" E	24.30'
L15	N 80°20'17" W	18.01'
L16	N 82°03'58" E	30.11'
L17	S 41°42'27" E	15.13'
L18	N 70°25'00" W	5.59'
L19	N 55°37'33" E	22.63'
L20	N 85°15'52" E	23.07'
L21	S 56°01'42" E	10.60'
L22	S 06°11'32" E	11.90'
L23	S 67°30'08" E	15.64'
L24	N 13°14'21" E	52.97'
L25	S 60°31'24" E	21.22'
L26	N 16°19'41" E	4.43'
L27	N 66°39'13" W	22.18'
L28	N 74°10'47" W	55.54'
L29	N 05°59'58" E	121.11'
L30	S 89°05'42" E	33.65'
L31	S 82°25'10" W	20.59'
L32	S 27°24'15" E	21.98'
L33	S 10°06'23" E	47.25'
L34	S 22°26'56" E	47.25'

LINE TABLE		
LINE	BEARING	DISTANCE
L35	S 07°06'08" W	23.04'
L36	S 70°57'08" E	32.05'
L37	S 04°35'16" W	33.73'
L38	S 52°07'48" W	19.65'
L39	N 86°16'41" W	18.31'
L40	S 64°54'37" E	20.72'
L41	S 46°51'45" E	16.43'
L42	N 44°45'43" E	73.12'

LINE TABLE		
LINE	BEARING	DISTANCE
L43	N 80°52'51" E	47.18'
L44	S 25°33'36" E	1.88'
L45	N 48°16'45" E	21.25'
L46	N 25°13'54" E	11.91'
L47	S 55°08'56" E	34.80'
L48	S 49°52'17" E	13.02'
L49	N 83°03'44" E	33.75'
L50	S 74°39'21" E	49.75'
L51	S 55°08'56" E	80.90'
L52	N 23°51'26" W	7.37'
L53	S 79°33'13" E	38.67'
L54	N 48°38'11" E	32.49'
L55	N 53°19'28" E	17.26'
L56	S 67°09'51" E	25.66'
L57	N 19°25'12" E	21.53'
L58	N 31°56'59" W	35.09'
L59	S 75°35'45" E	16.21'
L60	N 36°20'20" E	8.31'
L61	N 53°39'40" W	18.00'
L62	N 36°20'20" E	5.86'
L63	S 25°33'36" E	1.91'

LINE TABLE		
LINE	BEARING	DISTANCE
L64	N 55°12'41" E	111.83'
L65	S 33°59'04" E	13.05'
L66	N 30°15'43" W	13.31'
L67	S 22°50'42" E	14.41'
L68	N 14°31'17" W	46.37'
L69	N 45°01'46" W	13.29'
L70	N 26°38'04" W	33.26'
L71	S 53°24'43" E	35.69'
L72	N 05°03'56" E	13.60'
L73	N 58°43'28" E	28.12'
L75	N 55°21'20" W	148.26'

LINE TABLE		
LINE	BEARING	DISTANCE
L76	N 39°43'45" E	67.74'
L77	S 49°21'11" W	92.82'
L78	N 44°27'40" E	102.70'
L79	N 81°19'52" E	94.38'
L80	S 73°18'15" E	33.74'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	235.68'	1926.94'	3°23'48.02"	N 56°06'01" E	235.65'

LEGEND

- ● = 1/2" REINFORCING BAR FOUND
- ■ = 5/8" REINFORCING BAR FOUND
- ◆ = 1/2" REINFORCING BAR SET

WETLAND DELINEATION SURVEY

PREPARED FOR

GSC CONSTRUCTION

SURVEY SHOWING THE APPROXIMATE LOCATION OF WETLANDS FOR
1923 BARTON CHAPEL ROAD

RICHMOND COUNTY, GEORGIA

SCALE 1" = 50' DATE JUNE 17, 2018

PREPARED BY:

SOUTHERN BOUNDARIES
Surveying & Mapping

1132 KIRK PLACE
AUGUSTA, GA 30909
(706) 466-2506

GEORGIA REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3329 CAMERON A. LOREY

NOTES:

1. UNDERGROUND UTILITIES MAY EXIST THAT ARE NOT SHOWN ON THIS MAP AND ARE NOT VISIBLE ON THE SURFACE. ALL UTILITIES SHOULD BE FIELD VERIFIED BEFORE ANY CONSTRUCTION OR EXCAVATION BEGINS.
2. ALL WETLANDS ARE UNDER JURISDICTION OF THE ARMY CORPS OF ENGINEERS AND/OR THE STATE OF GEORGIA DEPARTMENT OF NATURAL RESOURCES. PROPERTY OWNERS ARE SUBJECT TO PENALTY OF LAW FOR DISTURBANCE OF THESE PROTECTED AREAS WITHOUT THE PROPER PERMIT APPLICATION AND APPROVAL.
3. WETLAND DELINEATION PERFORMED BY:
   RESOURCE LAND CONSULTANTS
   41 PARK OF COMMERCE WAY, SUITE 303
   SAVANNAH, GA 31405