



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

SAS-RD-C

17 May 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-2024-00919

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 A	Non-JD	Section 404
Wetland B	Non-JD	Section 404

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (13 November 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (25 August 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* (2 December 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. Memorandum from Russel Kaiser, U.S. EPA Acting Director for the Office of Water and Stacey Jensen, U.S. Department of the Army Acting Director of Policy and Legislation for the Office of the Secretary of the Army (Civil Works) "Memorandum to Re-Evaluate Jurisdiction for NOW-2003-60436" (19 December 2023).
- f. Memorandum from Benita Best-Wong, U.S. EPA Deputy Assistant Director for the Assistant Administrator for Water and Robyn Colosimo, U.S. Department of the Army Senior Official for the Assistant Secretary of the Army (Civil Works) "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (12 March 2025).

3. REVIEW AREA.

- a. Project Area Size (in acres): 125.56 acres
- b. AJD Review Area Size (in acres, if different): Same as project area.

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- c. Center Coordinates of the Project Area (in decimal degrees):
Latitude: 32.1990736 Longitude: -81.5308342
- d. Nearest City or Town: Pembroke
- e. County: Bryan County
- f. State: Georgia
- g. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
SAS-2006-00302	AJD	Review evaluated a total of 353.11 acres (Glisson Family Tract). Located in the western and eastern areas of Georges Branch (north of Mill Creek) and determined 30.32 acres of wetlands (total of 7 individual wetlands) were all jurisdictional. Verification issued on 17 March 2006.
SAS-2006-00302	PJD	Review evaluated the same 353.11 acres that was covered under the Glisson Family Tract AJD verified in 2006 (presented above). This PJD determined 30.32 acres of wetlands (total of 7 individual wetlands) were all potentially jurisdictional under the CWA. Verification issued on 10 October 2012.
SAS-2006-00100	JD	Review covered the McReelsen Development Tract (undetermined acreage) for the residential development located on the west side of Page Road directly across from the current review area. Archive files could not be located and ORM entries do not outline further details on the jurisdictional determination made during this review. Review processed 21 March 2006.

- h. Any additional, relevant site-specific information: A majority of the project area was routinely utilized for silviculture whereas the southern portion of the project area was primarily utilized for agriculture, these practices predate 1981 historic aerials. As such, the project area has had significant manipulation over an extended period of time due to the silviculture and agriculture practices conducted within the project area. Based on historic aerials, the silviculture and agriculture activity appears to have ended around 2005 and the project area reverted back to natural growth. In 2022, approximately 35.5 acres was cleared in the south-central portion of the project area to develop the Black Creek Waste Water Treatment Facility (WWTF) and Land Application Spray (LAS) field, and associated access road.
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: Ogeechee River, 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 river).

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. Wetland A is transected by Page Road, located just outside of the review area to the west, and the wetland appears to continue west of the road and abuts Georges Branch, a non-relatively permanent water (non-RPW). Wetland B is a depressional feature and entirely surrounded by upland areas. As such, and based on current guidance, Wetlands A and B do not exhibit continuous surface connection to nearby jurisdictional wetlands or a jurisdictional requisite water (i.e., relatively permanent water [RPW]) 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

⁷ 51 FR 41217, November 13, 1986.

the review area and describe how it was determined to be a waste treatment system.

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Wastewater Treatment Pond 1	2.95	Waste Treatment System Exclusion
Wastewater Treatment Pond 2	2.06	Waste Treatment System Exclusion

- 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 A	3.35	Wetland A is divided by the Page Road crossing (immediately outside of the review area). A culvert is present under Page Road to connect Wetland A to the remaining wetland area on the western side of Page Road (outside of the review area). This continued wetland area abuts Georges Branch, a non-RPW, and therefore lacks a continuous surface connection to a requisite water of the US under current regulations and guidance.
Wetland B	4.35	Wetland B is depressional and surrounded by uplands. Wetland B lacks a continuous surface connection to a requisite water of the US under current regulations and guidance.

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: Survey of Aquatic Resources, dated 2 May 2025 (Figure No. 9), prepared by Arrowood Environmental Group.
 - ☒ Wetland field data sheets submitted by, or on behalf of, the applicant: 19 September 2024, prepared by Arrowood Environmental Group.
 - ☐ OHWM data sheets submitted by, or on behalf of, the applicant: N/A.
 - ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. SAS-2006-00302 AJD dated 17 March 2006 and PJD dated 10 October 2012.
 - ☒ Photographs: collected during the 17 January 2025 site visit.
 - ☒ Aerial Imagery provided by, or on behalf of, applicant: Google Earth Aerial Imagery September 2024 (Figure No. 5) prepared by Arrowood Environmental Group; Google Earth Aerial Imagery and NetOnline Historical Aerial Imagery between 1971 and 2025.
 - ☒ LIDAR provided by, or on behalf of, applicant: Lidar Elevation Maps dated 8 January 2024 (Figures No. 8, 10, and 11) prepared by Arrowood Environmental Group; 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: Soil Survey Map – Web Soil Survey, dated 8 January 2024 (Figure No. 6) prepared by Arrowood Environmental Group.
 - ☒ USFWS NWI maps provided by, or on behalf of, applicant: USFWS National Wetlands Inventory website; and NWI data provided on the National Regulatory Viewer (Georgia).
 - ☒ USGS topographic maps provided by, or on behalf of, applicant: Site Vicinity Map -USGS National Map dated 23 September 2024 (Figure No. 3) prepared by Arrowood Environmental Group.
 - ☒ USGS NHD data/maps: NHD-TNW data provided on the National Regulatory Viewer (Georgia).
 - ☒ Section 10 resources used: SAS Section 10 List

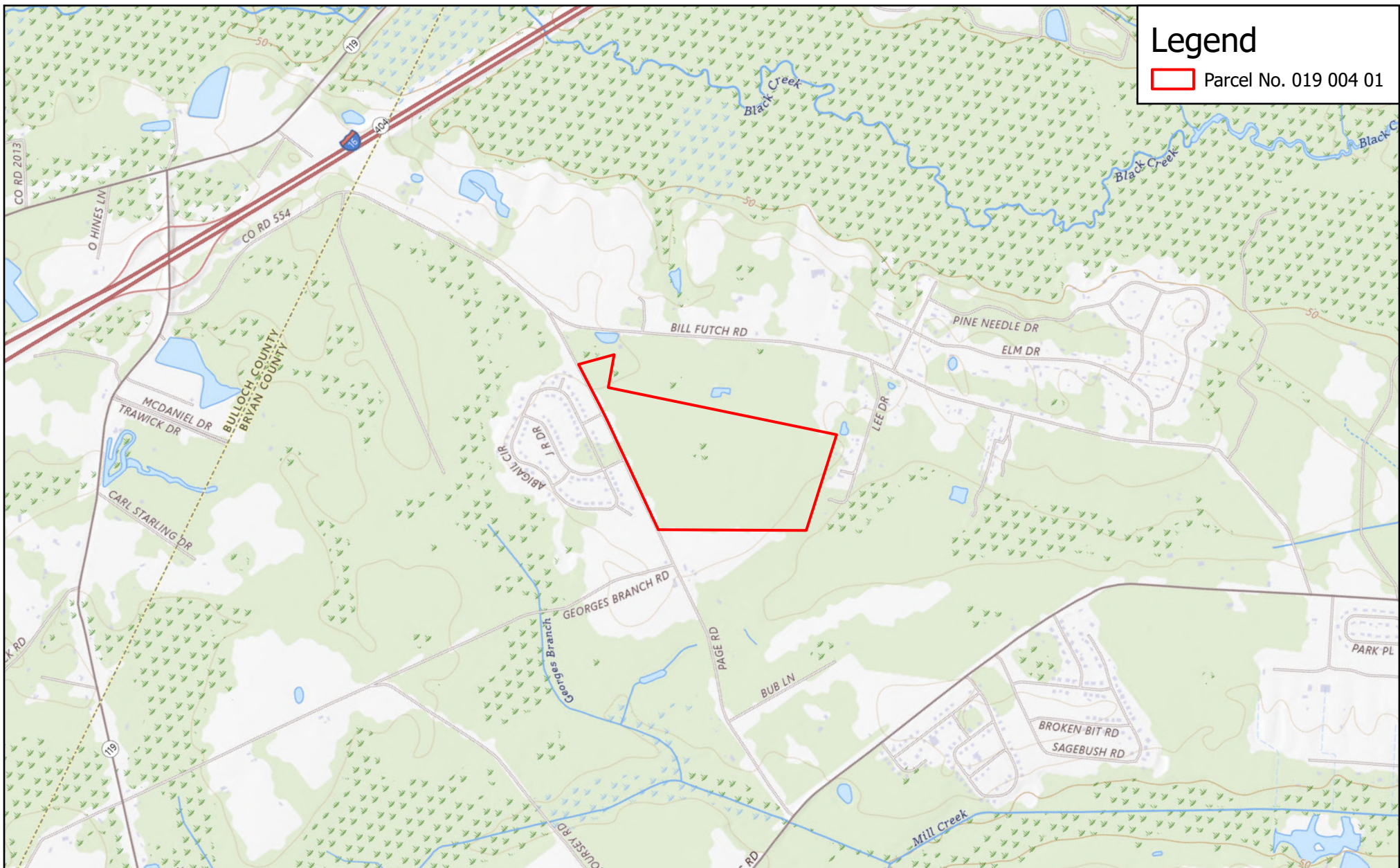
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- ☐ Antecedent Precipitation Tool Analysis: processing data for the 19 September 2024 survey and 17 January 2025 site visit could not be completed at this time of this MRF was drafted due to the APT program being inoperable nationally (pending programming updates).
- ☐ Other sources of Information: N/A.

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 det



Legend

Parcel No. 019 004 01

Site Vicinity Map – USGS National Map

Figure 3



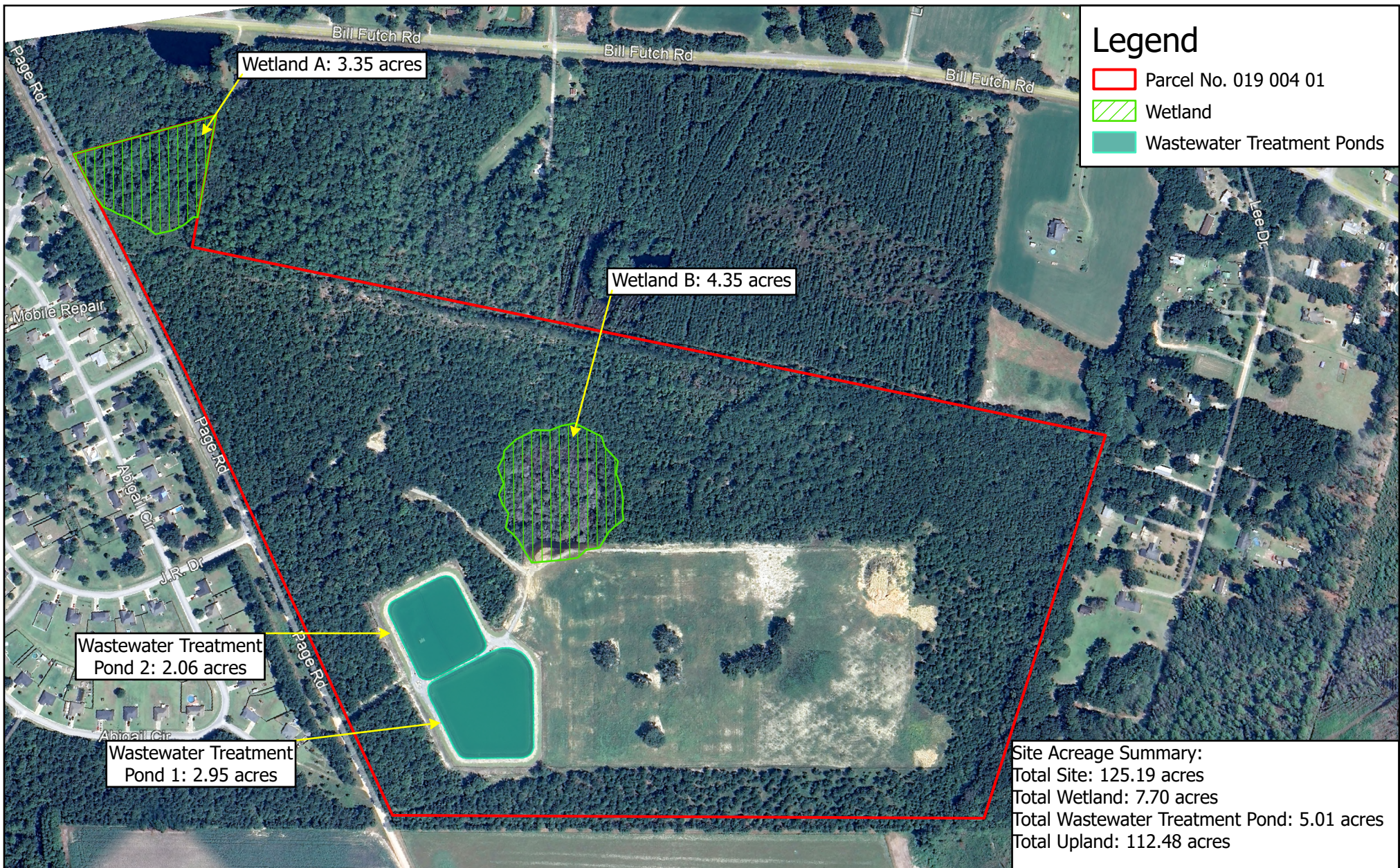
Consolidated Utilities, Inc.
Black Creek WWTF & LAS Facility
Page Road
Bryan County, Georgia




Date: 9/23/2024

Scale: 1" = 2,000'



0 1,000 2,000 Feet



	Survey of Aquatic Resources		Figure 9
	Consolidated Utilities, Inc. Black Creek WWTF & LAS Facility Page Road Bryan County, Georgia	Date: 5/2/2025	 
		Scale: 1" = 500'	