



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

SAS-RD-C

22 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-2024-00922.

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
Tidal Creek (1-A)	JD	Section 404/Section 10
Tidal Creek (1-B)	JD	Section 404/Section 10
Tidal Creek (1-C)	JD	Section 404/Section 10
Tidal Creek (2-A)	JD	Section 404/Section 10
Tidal Creek (2-B)	JD	Section 404/Section 10
Freshwater Tidal Ditch (TD-1)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-1)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-2)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-3)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-4)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-5)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-6)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-7)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-8)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-9)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-10)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-11)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-12)	JD	Section 404/Section 10
Freshwater Tidal Wetland (TW-13)	JD	Section 404/Section 10

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 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

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Definition of “Waters of the United States” Under the Clean Water Act (12 March 2025).

3. REVIEW AREA.

- a. Project Area Size (in acres): 213.35 acres
- b. AJD Review Area Size (in acres, if different): same
- c. Center Coordinates of the Project Area (in decimal degrees):
Latitude: 32.226698 Longitude: -81.152089
- d. Nearest City or Town: Rincon
- e. County: Effingham County
- f. State: Georgia
- g. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
SAS-2021-00938	ARDR	Evaluated an 836.3-acre tract review area that slightly overlaps (approx. 11 acres) on the west side of the current review area of this MFR review area. A total of 8.05 acres of wetland within the overlapping area was determined to be aquatic resources under this ARDR. Verification for the adjacent 836.3-acre review area was issued on 3 December 2021.

- h. Any additional, relevant site-specific information: Several man-made irrigation or drainage channels transect the site and predate 1951 historic aerials. These man-made irrigation or drainage channels direct flows north-to-south and east-to-west and connect to Knoxville Creek and the unnamed tributary to Knoxville Creek located within the project limits. These channels are potential remnants of prior agricultural uses (i.e., rice production) and are un-vegetated and tidally influenced, draining out during low tides. A dirt access road was constructed sometime between 1999 and 2003 (as seen on available historic aerials) and enters the review area from the west. Historic aerials show approx. 64.5 acres in the western limits of the site was used for silviculture sometime between 1999 and 2003, however there is no further evidence that silviculture practices have continued within the review area since the last harvest in 2003. The remaining review area to the east has remained relatively untouched since 1951. Evidence is not present for significant manipulation of the site over an extended period of time beyond the 2003 timber harvest or the pre-1951 potential rice production 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: Savannah River, which is a TNW and an interstate water.
 - b. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum, 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). Additionally, based on a review several maps listed in Section 9 of this memorandum, the identified water is shown as an aquatic feature and crossing the interstate boundary of Georgia/South Carolina.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

The tidal creeks and freshwater tidal ditch are relatively permanent waters (RPW). The freshwater tidal ditch connects to an unnamed tributary to Knoxville Creek and also to Knoxville Creek, both RPWs. Knoxville Creek flows to the Savannah River, a TNW. The Ordinary High Water Marks (OHWM) of the unnamed tributary and of Knoxville Creek were indicated by the following physical characteristics: break in slope on the bank, shelving at the top of bank, unvegetated channel bar, mud cracks, secondary channels, change in vegetation type, exposed roots below intact soil layer, wracking/presence of organic litter, presence of large wood, and water staining. The wetlands are tidally influenced and meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic Gulf Coastal Plain Regional Supplement and are contiguous with the unnamed tributary and Knoxville Creek.

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

Name of Aquatic Resource	Size (in acres)	Method for determining Section 10 jurisdiction
Tidal Creek (1-A; Knoxboro Creek)	2.56	Accessed by boat for field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery).
Tidal Creek (1-B; Knoxboro Creek)	1.15	Accessed by boat for field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery).
Tidal Creek (1-C; Knoxboro Creek)	0.49	Accessed by boat for field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery).
Tidal Creek (2-A; Unnamed Tributary to Knoxboro Creek)	0.90	Accessed by boat for field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery).
Tidal Creek (2-B; Unnamed Tributary to Knoxboro Creek)	4.72	Accessed by boat for field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery).
Freshwater Tidal Ditch (TD-1)	7.40	Field observations by agent during normal precipitation conditions, OHWM stream identification form, site overview from remote and online resources (aerial and LiDAR imagery). Tidally influenced from Tidal Creek 1 (1-A, 1-B, 1-C) and Tidal Creek 2 (2-A, 2-B).
Freshwater Tidal Wetland (TW-1)	15.80	The wetland boundary is abutting and contiguous with Freshwater Tidal Ditch (TD-1), an RPW. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-2)	13.49	The wetland boundary is abutting and contiguous with Freshwater Tidal Ditch (TD-1), an RPW. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-3)	44.92	The wetland boundary is abutting and contiguous with Tidal Creek (1-A; Knoxboro Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-4)	36.85	The wetland boundary is abutting and contiguous with Freshwater Tidal Ditch (TD-1), an RPW. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-5)	26.90	The wetland boundary is abutting and contiguous with Tidal Creek (2-B; unnamed tributary to Knoxboro Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.

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.

Name of Aquatic Resource	Size (in acres)	Method for determining Section 10 jurisdiction
Freshwater Tidal Wetland (TW-6)	2.43	The wetland boundary is abutting and contiguous with Freshwater Tidal Ditch (TD-1), an RPW. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-7)	15.31	The wetland boundary is abutting and contiguous with Tidal Creek (1-A; Knoxville Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-8)	2.85	The wetland boundary is abutting and contiguous with Tidal Creek (2-A; unnamed tributary to Knoxville Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-9)	8.18	The wetland boundary is abutting and contiguous with Tidal Creek (2-A; unnamed tributary to Knoxville Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-10)	0.87	The wetland boundary is abutting and contiguous with Tidal Creek (1-A; Knoxville Creek), Tidal Creek (2-A; unnamed tributary to Knoxville Creek), and Freshwater Tidal Ditch (TD-1), all RPWs.
Freshwater Tidal Wetland (TW-11)	4.34	The wetland boundary is abutting and contiguous with Tidal Creek (2-B; unnamed tributary to Knoxville Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-12)	2.88	The wetland boundary is abutting and contiguous with Tidal Creek (2-A; unnamed tributary to Knoxville Creek) and Freshwater Tidal Ditch (TD-1), both RPWs. Wetland falls within the MHW line.
Freshwater Tidal Wetland (TW-13)	15.52	The wetland boundary is abutting and contiguous with Tidal Creek (1-B and 1-C; Knoxville Creek) and Tidal Creek (2-B; unnamed tributary to Knoxville Creek), all RPWs. Wetland falls within the MHW line.

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.
- TNWs (a)(1): Discussed in Section 6- Section 10 Jurisdictional Waters.
 - Interstate Waters (a)(2): N/A.
 - Other Waters (a)(3): N/A.
 - Impoundments (a)(4): N/A.
 - Tributaries (a)(5): Discussed in Section 6- Section 10 Jurisdictional Waters.
 - The territorial seas (a)(6): N/A.
 - Adjacent wetlands (a)(7): Discussed in Section 6- Section 10 Jurisdictional Waters.

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.
- 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

⁷ 51 FR 41217, November 13, 1986.

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).

N/A.

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): April 2025
2. Date(s) of Field Review (if applicable): Virtual field review conducted 5 May 2025, on-site field verification was not required following application/RAI provided site data and desktop review.
- b. Data sources used to support this determination (included in the administrative record).
 - ☒ Aquatic Resources delineation submitted by, or on behalf of, the applicant: Wetland Delineation Sketch dated 5 May 2025 (Figure No. 7) prepared by Soil & Wetland Consulting (SWC).
 - ☒ Wetland field data sheets submitted by, or on behalf of, the applicant: 10 October 2024 prepared by SWC.
 - ☒ OHWM data sheets submitted by, or on behalf of, the applicant: 23 September 2024 prepared by SWC.
 - ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. SAS-2021-00938 dated 3 December 2021.
 - ☒ Photographs: provided by SWC.
 - ☒ Aerial Imagery provided by, or on behalf of, applicant: Google Earth Aerial Imagery 2024 Airbus and Historical Aerial Imagery between 1951 and 2025.
 - ☒ LIDAR provided by, or on behalf of, applicant: Lidar Elevation Map dated 7 October 2024 (Figure No. 5) prepared by SWC; 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 Map dated 7 October 2024 (Figure No. 4) prepared by SWC.
 - ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Inventory dated 7 October 2024 (Figure No. 3) prepared by SWC; and obtained on the NWI website.
 - ☒ USGS topographic maps provided by, or on behalf of, applicant: USGS Topographic Survey dated 7 October 2024 (Figure No. 2) prepared by SWC.
 - ☒ Section 10 resources used: SAS Section 10 List

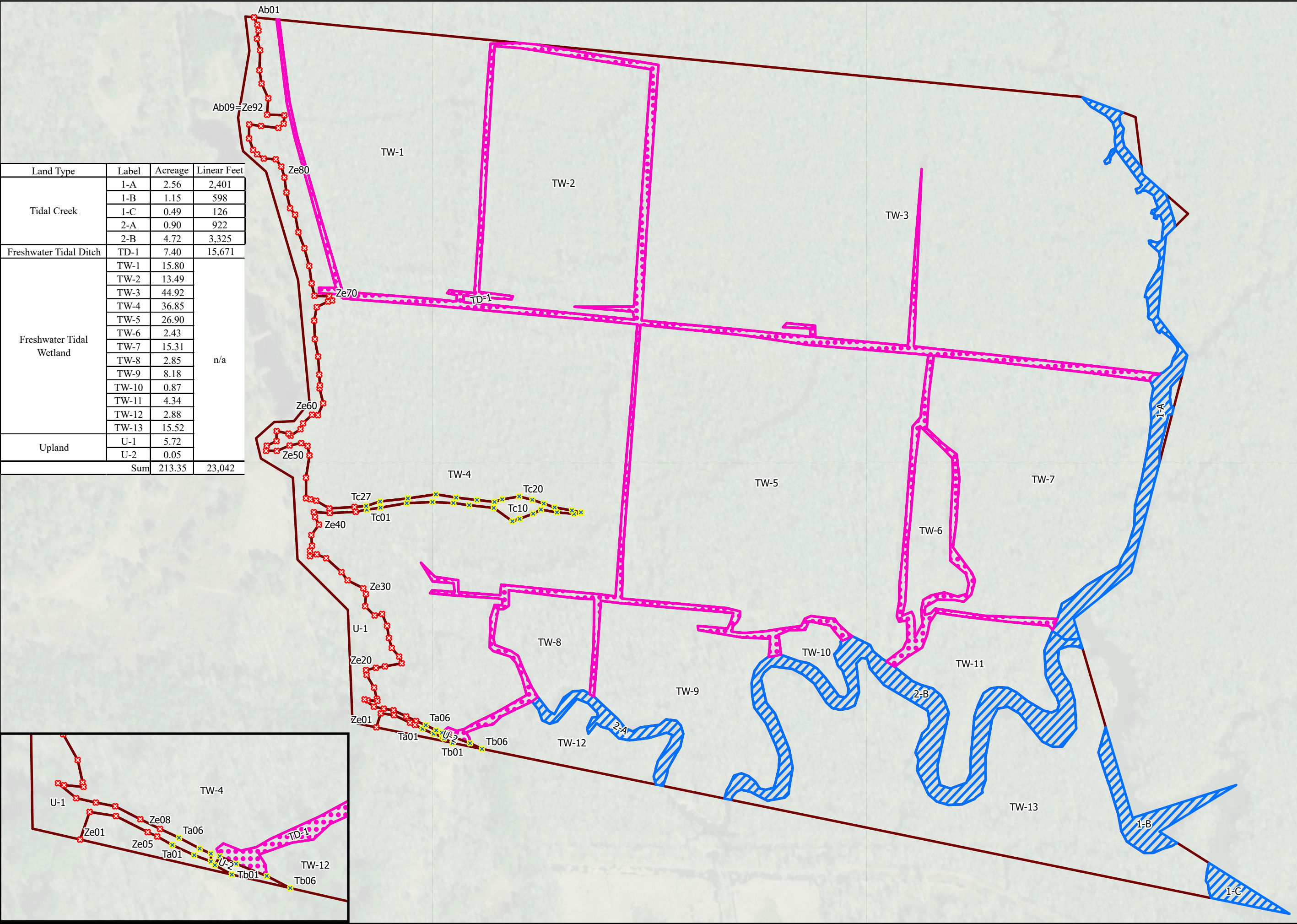
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- ☐ Antecedent Precipitation Tool Analysis: processing data for the 23 September 2024 and 10 October 2024 surveys could not be completed at this time of this MRF was drafted due to a pending IT install of the current APT v.2.9 program (pending active ticket request).
- ☐ 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 determination described herein is a final agency action.



Land Type	Label	Acreage	Linear Feet
Tidal Creek	1-A	2.56	2,401
	1-B	1.15	598
	1-C	0.49	126
	2-A	0.90	922
	2-B	4.72	3,325
Freshwater Tidal Ditch	TD-1	7.40	15,671
Freshwater Tidal Wetland	TW-1	15.80	n/a
	TW-2	13.49	
	TW-3	44.92	
	TW-4	36.85	
	TW-5	26.90	
	TW-6	2.43	
	TW-7	15.31	
	TW-8	2.85	
	TW-9	8.18	
	TW-10	0.87	
	TW-11	4.34	
	TW-12	2.88	
	TW-13	15.52	
Upland	U-1	5.72	
	U-2	0.05	
Sum		213.35	23,042

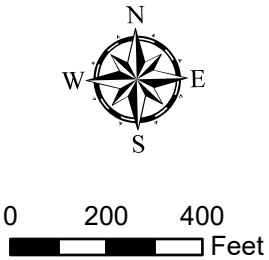


Figure Title:
Wetland
Delineation
Sketch

Project Name:
North Gate -
Tidal Swamp

Prepared For:
P51 Properties LLC
&
Yellow Pine
Properties LLC

Effingham County
Georgia

- SAS-2022-00645
Wetland Flag
- 09/2024 Wetland
Flag
- Freshwater Tidal
Wetland
- Tidal Creek
- Freshwater Tidal
Ditch
- Upland

Project Number: 524-180
Figure Number: 7
Edit Date: 5/5/2025
1 inch equals 400 feet