



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

SAS-RD-C

2 July 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-2025-00530

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	N/A
Wetland B	Non-JD	N/A
Wetland C	Non-JD	N/A
Wetland D	Non-JD	N/A
Pond A	Non-JD	N/A

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

3. REVIEW AREA.

- a. Project Area Size (in acres): 19.23 acres
- b. AJD Review Area Size (in acres, if different): same
- c. Center Coordinates of the Project Area (in decimal degrees):
Latitude: 32.0784122 Longitude: -81.3205180
- d. Nearest City or Town: Bloomingdale
- e. County: Chatham County
- f. State: Georgia

g. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
SAS-2020-00354	AJD	Evaluated a larger review area of 106.08 acres. Could not locate the 2020 Final AJD in the archive files; however, draft files and the data entry in ORM for the 2020 AJD identifies Pond 1 and Pond 2 (a former abandoned borrow pit area). The Pond 2 area overlaps the current AJD review area evaluated in this MFR. Pond 1 and Pond 2 were determined non-jurisdictional due to the aquatic resources not meeting any of the adjacency criteria as defined in paragraphs (c)(1)(i), (ii), (iii), and (iv). Additionally, the ponds do not abut any (a)(1) through (a)(3) water, are not inundated by flooding from an (a)(1) through (a)(3) water in a typical year, are not separated from an (a)(1) through (a)(3) water by a natural berm, bank, dune or similar natural feature, and are not physically separated from an (a)(1) through (a)(3) water by an artificial dike, barrier, or similar artificial structure with a direct hydrologic connection. Verification for the 106.08-acre review area was issued on 23 July 2020.
SAS-2025-00132	ARDR	Evaluated 76-acre site that is adjacent to the south of the AJD review area evaluated in this MFR. Pond A and Wetland C areas abut this ARDR review area. However, no wetland areas were identified within the 76-acre ARDR review area. All non-wetland waters and pond areas were determined to be aquatic features within the 76-acre review area. Verification for the 76-acre adjacent review area was issued on 6 May 2025.

- h. Any additional, relevant site-specific information: This project site has been historically managed for timber harvest (shown on historical aerials predating 1993). Logging roads have been observed and predate 1993 on historic aerial imagery. Additionally, historic aerials from 1999 show prior mining in the western portion of the site and extending to the parcel immediately west of the site. Mining operations ceased by 2005, and the excavated area has since filled with water comprising of the current Pond A area. An access road to the pond transects the project site. As such, the project area has had significant manipulation over an extended period of time due to the silviculture and mining practices conducted within the project 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: N/A, no resources within the review area are connected to 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 18 June 2025.

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. Based on historic aerial review between 1971 - 2025, Wetland A abuts a non-relatively permanent water (non-RPW) immediately to the north outside of the 19.23-acre project area/review area and thereby is not contiguous with a requisite water (i.e., relatively permanent water [RPW]) that would connect to a TNW and thereby is not jurisdictional. Wetland B is connected to Pond A (an abandoned borrow pit) and bounded to the north by upland area. Both Wetland B and Pond A extend offsite to the west. Based on the 2020 AJD verification for the larger overlapping 108.06-acre review area (SAS-2020-00354) which evaluated the area to the west of the current AJD review area, Pond A (and the associated Wetland B area) does not abut any (a)(1) through (a)(3) water, is not inundated by flooding from an (a)(1) through (a)(3) water in a typical year, is not separated from an (a)(1) through (a)(3) water by a natural berm, bank, dune or similar natural feature, and is not physically separated from an (a)(1) through (a)(3) water by an artificial dike, barrier, or similar artificial structure with a direct hydrologic connection. As such, Pond A and the associated Wetland B area do not exhibit a continuous surface connection to a requisite water that would connect to a TNW and thereby are not jurisdictional. Wetland C borders the southern boundary of the current AJD review area. Based on the 2025 ARDR verification for the adjacent 76-acre site (SAS-2025-00132), Wetland C does not extend further south to the adjacent site and is a depressional feature entirely surrounded by upland areas. As such, and based on current guidance, Wetland C does not exhibit continuous surface connection to nearby jurisdictional requisite water and thereby is not jurisdictional. Wetland D is bounded to the east by Little Neck Road, just outside of the current AJD review area, and surrounded by upland areas within the current AJD review area. There is no culvert present under Little Neck Road that exhibits a continuous surface connection of Wetland D to a jurisdictional requisite water offsite. Therefore Wetland D is not a jurisdictional water.

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.

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.

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.

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*.

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
Pond A	0.29	Pond A does not meet provisions under a(3)(i) through (iii) (SAS-2020-00354, verified 23 July 2020).

⁷ 51 FR 41217, November 13, 1986.

- 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	0.037	Wetland A extends north outside of the current review area. This continued wetland area abuts an unnamed drainage channel that based on historic aerials is a non-RPW, and therefore lacks a continuous surface connection to a requisite water of the US under current regulations and guidance.
Wetland B	0.015	Wetland B is depressional and surrounded by uplands to the east, north, and west and connects to a non-jurisdictional pond to the south (Pond A, discussed in Section 8.e.). Wetland B (and the associated Pond A) lacks a continuous surface connection offsite to a requisite water of the US under current regulations and guidance (SAS-2020-00354, verified 23 July 2020).
Wetland C	0.048	Wetland C is depressional and lacks a continuous surface connection to requisite waters of the US under current regulations and guidance. Wetland C abuts the ARDR review area to the south and does not extend offsite (SAS-2025-00132, verified 6 May 2025).
Wetland D	0.71	Wetland D is surrounded by upland areas within the review area and bounded to the east by Little Neck Road (immediately outside of the review area). No culvert is present under Little Neck Road that exhibits a continuous surface connection to a requisite water offsite. Therefore, Wetland D is depressional and 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): April 2025 and June 2025
2. Date(s) of Field Review (if applicable): 18 July 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 Resources Delineation GPS Exhibit, dated 22 October 2024 (Figure No. 8) prepared by Resource and Land Consultants (RLC).
 - ☒ Wetland field data sheets submitted by, or on behalf of, the applicant: 24-25 September 2024, prepared by RLC.

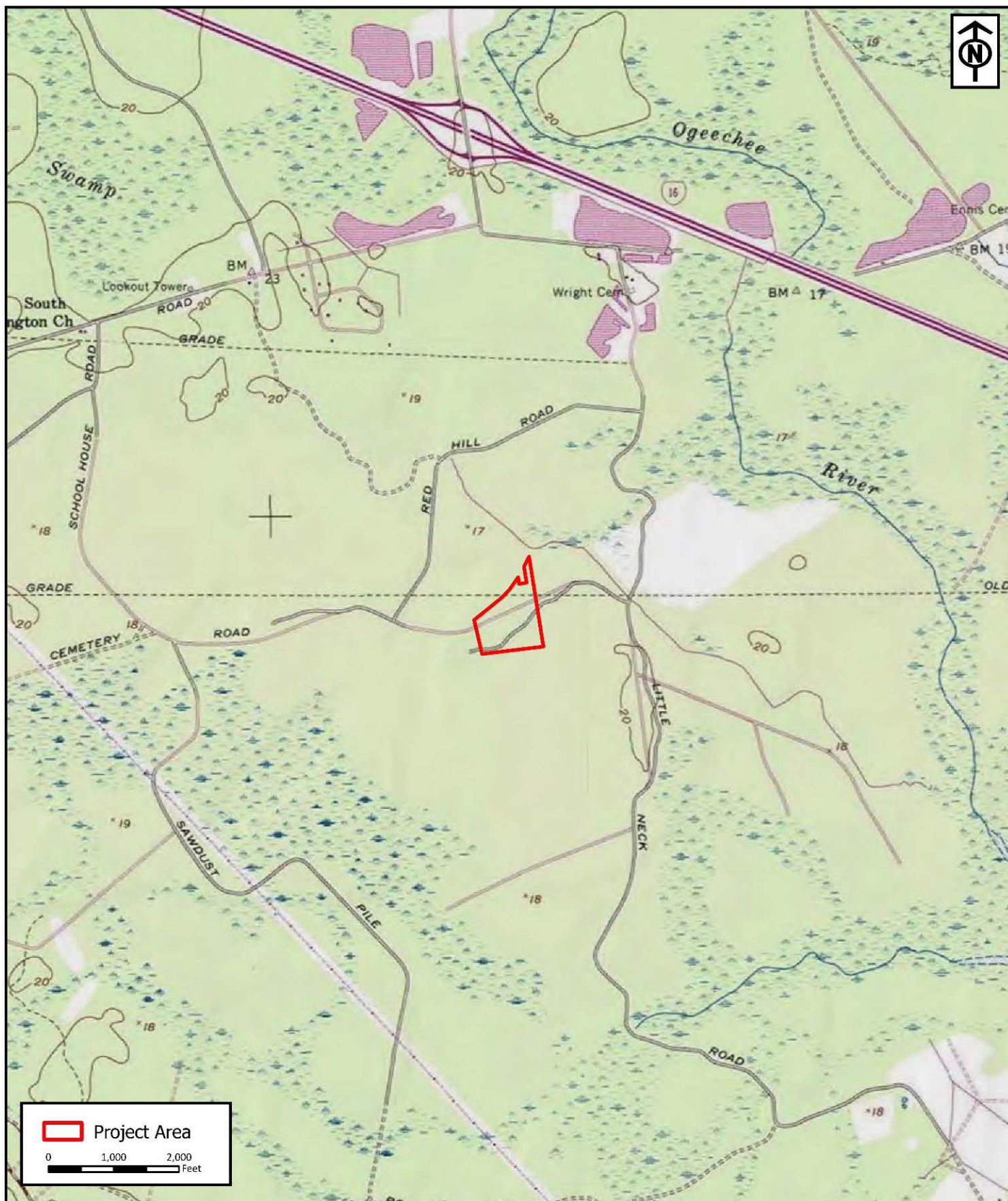
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- ☒ OHWM data sheets submitted by, or on behalf of, the applicant: received 6 June 2025 prepared by RLC.
- ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. SAS-2020-00354 dated 23 July 2020; and USACE No. SAS-2025-00132 dated 6 May 2025.
- ☒ Photographs: provided by RLC and verified during the 18 June 2025 site visit.
- ☒ Aerial Imagery provided by, or on behalf of, applicant: Ortho Aerial (Figure No. 5), dated 22 October 2024 prepared by RLC; and Google Earth Aerial Imagery 2024 Airbus and Historical Aerial Imagery between 1971 and 2025.
- ☒ LIDAR provided by, or on behalf of, applicant: NOAA Topographic Lidar (Figure No. 7), dated 22 October 2024 prepared by RLC; 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 (Figure No. 3) dated 24 October 2024, prepared by RLC.
- ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Survey (Figure No. 4), dated 22 October 2024 prepared by RLC.
- ☒ USGS topographic maps provided by, or on behalf of, applicant: USGS Topographic Survey (Figure No. 2), dated 27 August 2024 prepared by RLC.
- ☒ USGS NHD data/maps: NHD-TNW data provided on the National Regulatory Viewer (Georgia).
- ☐ Section 10 resources used: N/A.
- ☒ Antecedent Precipitation Tool Analysis: Data for the 24-25 September 2024 survey and 18 June 2025 site visit.
- ☐ 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.



Project Area

0 1,000 2,000 Feet

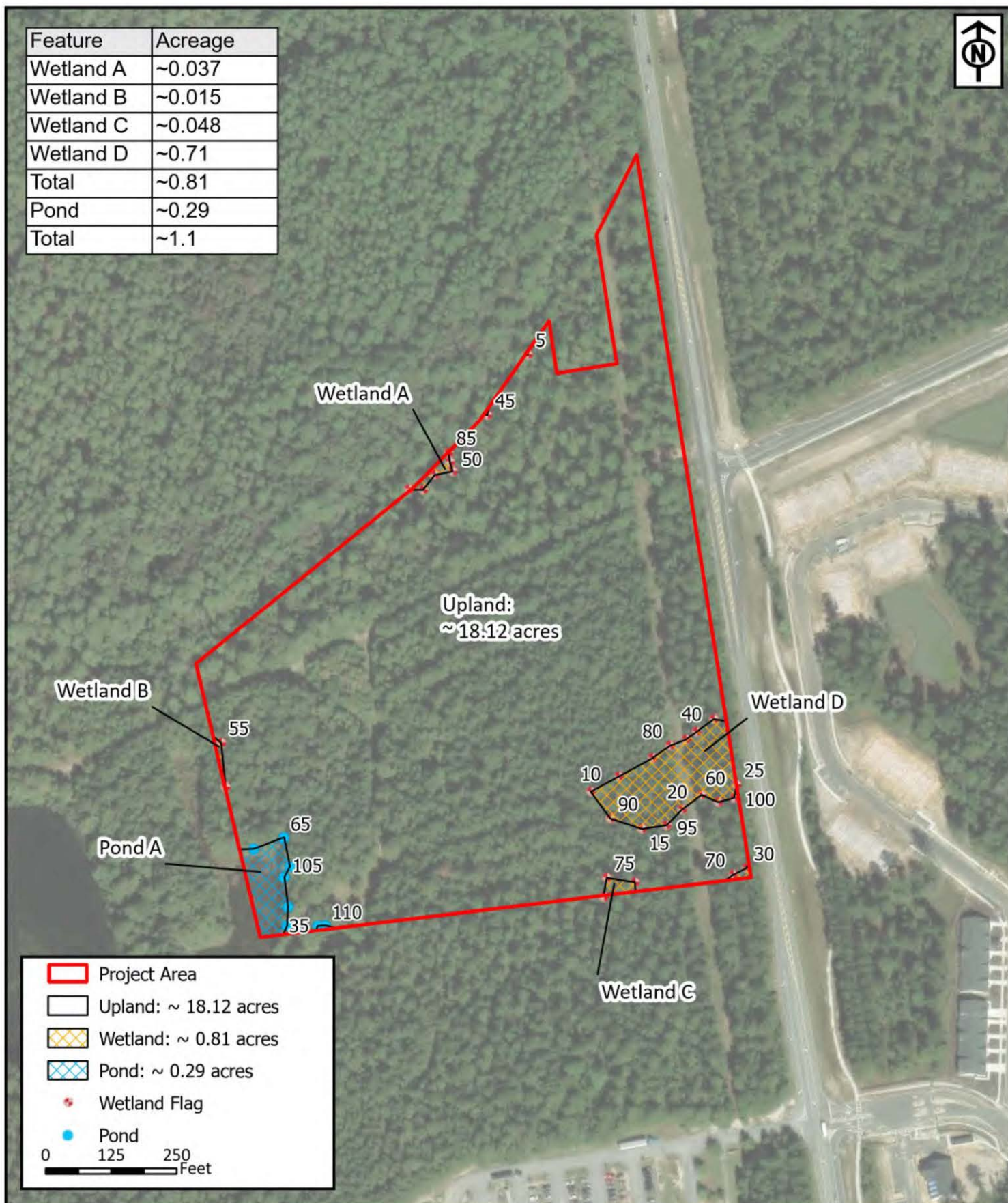
RLC Project No.:	23-104.1
Figure No.:	2
Prepared By:	AK
Sketch Date:	8/27/2024
Map Scale :	1 inch = 2,000 ft

**Parcel I-7
New Hampsted**
Chatham County, Georgia

**USGS Topographic
Survey**
Prepared For: New Hampstead, LLC

RLC
**RESOURCE+LAND
CONSULTANTS**
41 Park of Commerce Way, Ste. 101
Savannah, Georgia 31405
912.443.5996 www.rlcnc.com

Feature	Acreage
Wetland A	~0.037
Wetland B	~0.015
Wetland C	~0.048
Wetland D	~0.71
Total	~0.81
Pond	~0.29
Total	~1.1



RLC Project No.:	23-104.1
Figure No.:	8
Prepared By:	AK
Sketch Date:	10/22/2024
Map Scale :	1 inch = 250 ft

Parcel I-7
New Hampsted
Chatham County, Georgia

Aquatic Resource
Delineation GPS Exhibit
Prepared For: New Hampstead, LLC

RLC
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