



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

SAS-RD-C

11 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-2004-11310

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	NA
Wetland B	Non-JD	NA
Wetland C	Non-JD	NA
Wetland D	Non-JD	NA
Wetland E	Non-JD	NA
Wetland F	Non-JD	NA
Ditch	Non-JD	NA

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): 32.3 acres
- b. AJD Review Area Size (in acres, if different): same
- c. Center Coordinates of the Project Area (in decimal degrees):
Latitude: 32.091554 Longitude: -81.324430
- d. Nearest City or Town: Bloomington

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e. County: Chatham County

f. State: Georgia

g. Other associated Jurisdictional Determinations (including outcomes):

Regulatory File No.	Type	Outcome
SAS-2004-11310	AJD	Evaluated the same 32.3 acre site. A total of 6.19 acres of wetland and 1,677.3 linear feet of ditch were determined to be jurisdictional under this AJD. Verification was issued on 13 July 2021.

h. Any additional, relevant site-specific information: The 2021 AJD verification led to the issuance of a Standard Permit with special conditions authorized on 5 August 2022 for the proposed residential neighborhood development project which would result in fill impacts to 4.37 acres of wetlands. Permit compliance required the purchase of 26.4 wetland mitigation credits from the Yam Grandy Mitigation Bank. Construction under this SP authorization began 1 May 2025 (i.e., upland clearing) and wetland clearing began 24 May 2025 (verification received from Mr. Brandon Smith on 13 June 2025 email response of credits being purchased prior to wetland impacts occurring on site.).

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 Wetlands A, B, C, D, E, and F are not contiguous with a requisite water (i.e., a jurisdictional wetland or relatively permanent water [RPW]) and abut to several non-RPW drainage ditches located onsite that drain to the south and flow offsite. Therefore, the wetlands onsite and the non-RPW ditches onsite 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.
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.

Name of excluded feature	Size (in acres)	Specific exclusion (a)-(e)
Ditch	0.15 acres (1,677.3 LF)	Exclusion (a): Non-tidal drainage and irrigation ditches excavated on dry land.

- 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.

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	1.34	Wetland A is depressional and surrounded by uplands. A linear drainage ditch connects Wetland A to Wetland F however the drainage ditch is a non-RPW (as outlined in Section 8.a). As such, Wetland A lacks a continuous surface connection to a requisite water of the US (i.e., RPW) under current regulations and guidance.
Wetland B	0.72	Wetland B is depressional and surrounded by uplands. Linear drainage ditches connect Wetland B to Wetland C and F however the drainage ditches are non-RPW (as outlined in Section 8.a). As such, Wetland B lacks a continuous surface connection to a requisite water of the US (i.e., RPW) under current regulations and guidance.
Wetland C	1.61	Wetland C is depressional and surrounded by uplands. A linear drainage ditch connects Wetland C to Wetland D however the drainage ditch is a non-RPW (as outlined in Section 8.a). As such, Wetland C lacks a continuous surface connection to a requisite water of the US (i.e., RPW) under current regulations and guidance.
Wetland D	0.11	Wetland D is depressional and surrounded by uplands. A linear drainage ditch connects Wetland D to Wetland E however the drainage ditch is a non-RPW (as outlined in Section 8.a). As such, Wetland D lacks a continuous surface connection to a requisite water of the US (i.e., RPW) under current regulations and guidance.
Wetland E	0.34	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 a roadside drainage ditch that flows west to Wetland F, however the roadside drainage ditch is a non-RPW (as outlined in Section 8.a.) As such, Wetland E lacks a continuous surface connection to a requisite water of the US (i.e., RPW) under current regulations and guidance.
Wetland F	2.08	Wetland F is depressional and surrounded by uplands. A linear drainage ditch carries flows from Wetland F offsite; however the drainage ditch is a non-RPW (as outlined in Section 8.a). As such, Wetland F lacks a continuous surface connection to a requisite water of the US (i.e., RPW) 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): May 2025 and June 2025.

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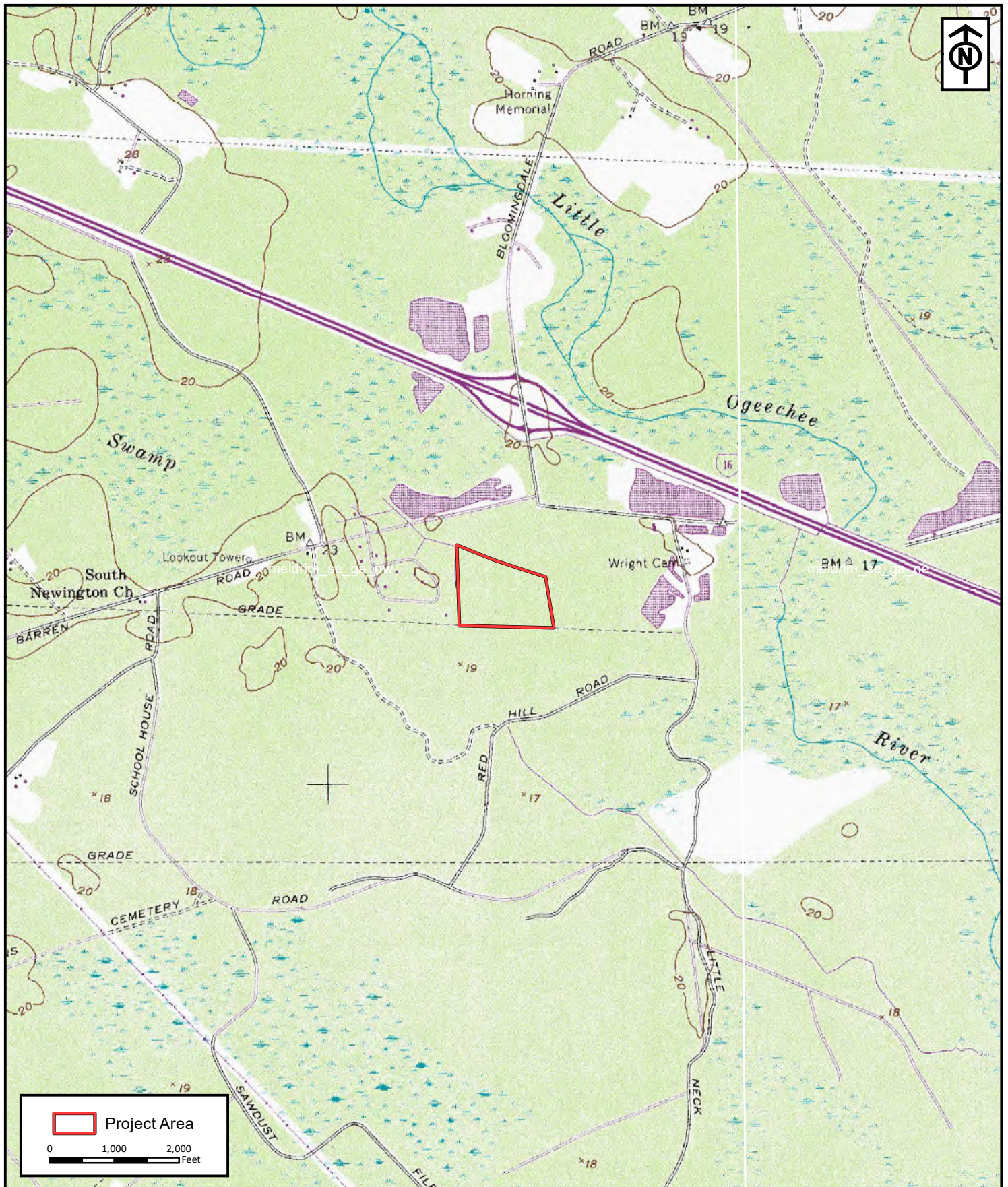
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2. Date(s) of Field Review (if applicable): 18 June 2025.
- b. Data sources used to support this determination (included in the administrative record).
- ☒ Aquatic Resources delineation submitted by, or on behalf of, the applicant: EPS Wetland Exhibit, dated 14 June 2021 (Figure No. 1) prepared by Resource and Land Consultants (RLC).
 - ☒ Wetland field data sheets submitted by, or on behalf of, the applicant: 28 December 2020 prepared by RLC.
 - ☐ OHWM data sheets submitted by, or on behalf of, the applicant: none provided.
 - ☒ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: USACE No. SAS-2004-11310 dated 13 July 2021.
 - ☒ 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) prepared by RLC; and Google Earth Aerial Imagery 2024 Airbus and Historical Aerial Imagery between 1951 and 2025.
 - ☒ LIDAR provided by, or on behalf of, applicant: NOAA Topographic Lidar (Figure No. 7) dated 25 March 2025, 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 25 March 2025, prepared by RLC.
 - ☒ USFWS NWI maps provided by, or on behalf of, applicant: National Wetlands Inventory (Figure No. 4) dated 25 March 2025 prepared by RLC.
 - ☒ USGS topographic maps provided by, or on behalf of, applicant: USGS Topographic Map (Figure No. 2) dated 25 March 2025 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: Processed data for the 28 December 2020 survey and 18 June 2025 site visit.
 - ☐ Other sources of Information: List other sources or enter N/A.
10. OTHER SUPPORTING INFORMATION. This AJD request was submitted to overturn the prior 2021 AJD determinations on jurisdiction in accordance with current regulations and guidance on “continuous surface connection” as it pertains to jurisdictional waters of the US. The aquatic resources onsite (i.e., wetlands and linear ditches) do not abut a requisite water of the United States (i.e., a RPW or TNW) and therefore are no longer considered jurisdictional under current regulations and guidance.

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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.:	20-348.2
Figure No.:	2
Prepared By:	AB
Sketch Date:	3/25/2025
Map Scale :	1 inch = 2,000 feet

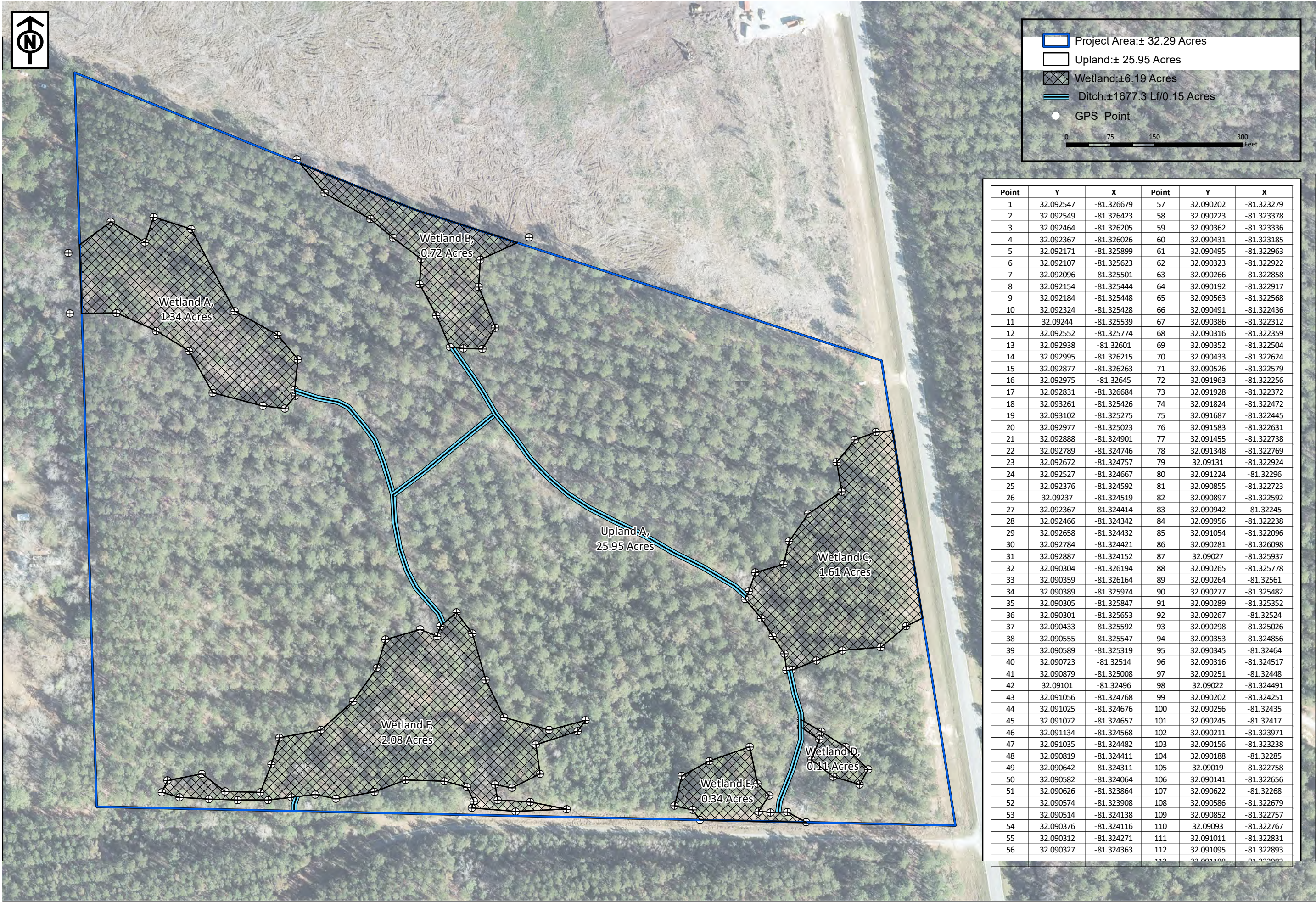
**New Hampstead
Parcel C-4**
Chatham County, Georgia

USGS Topographic Map

Prepared For: Capstone Communities



**RESOURCE+LAND
CONSULTANTS**
41 Park of Commerce Way, Ste. 101
Savannah, Georgia 31405
912.443.5096 www.rlc.com



Point	Y	X	Point	Y	X
1	32.092547	-81.326679	57	32.090202	-81.323279
2	32.092549	-81.326423	58	32.090223	-81.323378
3	32.092464	-81.326205	59	32.090362	-81.323336
4	32.092367	-81.326026	60	32.090431	-81.323185
5	32.092171	-81.325899	61	32.090495	-81.322963
6	32.092107	-81.325623	62	32.090323	-81.322922
7	32.092096	-81.325501	63	32.090266	-81.322858
8	32.092154	-81.325444	64	32.090192	-81.322917
9	32.092184	-81.325448	65	32.090563	-81.322568
10	32.092324	-81.325428	66	32.090491	-81.322436
11	32.09244	-81.325539	67	32.090386	-81.322312
12	32.092552	-81.325774	68	32.090316	-81.322359
13	32.092938	-81.32601	69	32.090352	-81.322504
14	32.092995	-81.326215	70	32.090433	-81.322624
15	32.092877	-81.326263	71	32.090526	-81.322579
16	32.092975	-81.32645	72	32.091963	-81.322256
17	32.092831	-81.326684	73	32.091928	-81.322372
18	32.093261	-81.325426	74	32.091824	-81.322472
19	32.093102	-81.325275	75	32.091687	-81.322445
20	32.092977	-81.325023	76	32.091583	-81.322631
21	32.092888	-81.324901	77	32.091455	-81.322738
22	32.092789	-81.324746	78	32.091348	-81.322769
23	32.092672	-81.324757	79	32.09131	-81.322924
24	32.092527	-81.324667	80	32.091224	-81.322296
25	32.092376	-81.324592	81	32.090855	-81.322723
26	32.09237	-81.324519	82	32.090897	-81.322592
27	32.092367	-81.324414	83	32.090942	-81.32245
28	32.092466	-81.324342	84	32.090956	-81.322238
29	32.092658	-81.324432	85	32.091054	-81.322096
30	32.092784	-81.324421	86	32.090281	-81.326098
31	32.092887	-81.324152	87	32.09027	-81.325937
32	32.090304	-81.326194	88	32.090265	-81.325778
33	32.090359	-81.326164	89	32.090264	-81.32561
34	32.090389	-81.325974	90	32.090277	-81.325482
35	32.090305	-81.325847	91	32.090289	-81.325352
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46	32.091134	-81.324568	102	32.090211	-81.323971
47	32.091035	-81.324482	103	32.090156	-81.323238
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50	32.090582	-81.324064	106	32.090141	-81.322656
51	32.090626	-81.323864	107	32.090622	-81.32268
52	32.090574	-81.323908	108	32.090586	-81.322679
53	32.090514	-81.324138	109	32.090852	-81.322757
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56	32.090327	-81.324363	112	32.091095	-81.322893

RLC Project No.: 20-348
Figure No.: 1
Prepared By: BS
Sketch Date: 6/14/2021
Map Scale : 1 inch = 150 feet

Parcel C-4
New Hampstead
Chatham County, Georgia

GPS Wetland Exhibit
Prepared For: Zeke Gaines

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RLC
Source(s): 2018 NAPP Ortho Aerial, Chatham County