



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, MOBILE
CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0001

CESAM RD-I- N
PUBLIC NOTICE NO.
SAM-2007-00981-HWL

January 27, 2010

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS AND
STATE OF ALABAMA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXISTING (ATF) AND PROPOSED WETLAND FILL AND DREDGING IN
A SLOUGH OF NEELY HENRY LAKE FOR THE DEVELOPMENT OF A
RESIDENTIAL SUBDIVISION

TO WHOM IT MAY CONCERN: This District has received an application for a Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 USC 1344). Please communicate this information to interested parties.

APPLICANT: Blue Lake Estates, LLC
Post Office Box 5134
Glencoe, Alabama 35905

Mr. Matt and Ms. Ashlee Gaskin
65 River Run Trail
Gadsden, Alabama 35901

Mr. Steve and Ms. Broasha Williams
124 Arrowhead Trail
Gadsden, Alabama 35901

Dr. Jeffery and Ms. Misti Fairchild
126 River Run Trail
Gadsden, Alabama 35901

Tran Yvonne
709 Ivy Place
Rainbow City, Alabama 35906

AGENT: Gallet & Associates
Attention: Mr. Steven Howard
110 -12th Street North
Birmingham, Alabama 35203

LOCATION: In Neely Henry Lake and adjacent wetlands at the “Blue Lake Estates” and “The Peninsula at Blue Lakes” subdivisions in Gadsden, Etowah County, Alabama (33.936925, -85.978779).

WORK: The applicants wishes to obtain an after-the-fact authorization for the dredging of a slough of Neely Henry Lake and to retain an unauthorized discharge of 0.33 acres of dredge material into wetlands adjacent to the slough on lots 2 & 3 of Blue Lake Estates. The applicants also propose to place fill material into an additional 1.72 acres of wetlands in association with the further development of the subdivision.

PROJECT PURPOSE: The applicants have stated that the purpose of the proposed project is to “... develop a residential subdivision. As with any waterfront development, lots located along the water generate a bulk of the development profit. Given the location of the wetland on the Blue Lakes Estates property, it is not possible to maximize property value return without developing this portion of the property.” The Corps has determined that the basic project purpose is housing.

AVOIDANCE AND MINIMIZATION: The applicant has submitted the following statement: “approximately 0.53 acres of wetland (lots 4 and 8) will be avoided, including the spring located between lots 5 and 6. Additionally, all 0.2 acres of wetland located within The Peninsula at Blue Lakes property will be avoided.” The Corps has not evaluated the adequacy of this statement at this time.

ALTERNATIVES: The applicant has submitted the following statement; : “alternatives available to the applicant at this time are limited to the removal of fill and restoration of the wetlands (0.33 acre) or obtaining after-the-fact permit authorization. While removal of fill and subsequent wetland restoration is a possible alternative, it is not considered by the applicant to be an economically reasonable alternative as it would result in the loss of two water front lots for the applicant. As with similar residential developments, the applicant's financial strategy is based on the anticipated sale of prime water front lots. These lots, more than any others within the development, provide commercial return. Another concern of the applicant is the potential costs associated with wetland restoration, which would be compounded by the loss of the two lots.

“With regards to proposed wetland impacts, the main consideration is current property ownership. Approximately 0.93 acre of the proposed impacts (Lots 6, 7, 13 & 14) is now in individual ownership. The other 0.79 acre of wetland (Lots 3 & 5) remains in the ownership of Blue Lakes, LLC. Alternatives available for the first group of impacts outside of the requested permit authorization include (1) the repurchase of these lots by Blue Lakes, LLC, (2) the sale of these lots by the individual landowners, (3) and no action. Each alternative is discussed below.

1. The repurchase of lots by Blue Lakes, LLC was considered initially when the applicant became aware of the presence of wetlands. However, this would be problematic when

considering the willingness of all individuals to sell and their asking prices when including damages. The other consideration is the clear financial burden that re-purchasing of the lots would place on the applicant at this point. Not only would the cost mostly likely far outweigh the original selling prices, the applicant would also effectively lose these lots for future sell as waterfront property based on the presence of wetlands. For these reasons, this alternative is not considered to be a viable option.

2. The sale of the lots by the individual owners is also an alternative. However, this alternative is not considered viable for multiple reasons. Foremost, the presence of documented wetlands has essentially devalued the lots. This and current real estate market conditions would result in a significant financial loss for the lot owner should they successfully sell their property. Additionally, the lot owners purchased the lots in question seeking a specific waterfront setting. Within the Blue Lakes Estates and The Peninsula at Blue Lakes properties there are no longer available lots not containing wetlands. Excluding the lots in question, the property owners have no viable property alternatives in the vicinity similarly situated near Neely-Henry Reservoir. Regarding the 0.79 acre of wetland still owned by Blue Lakes, LLC, the available alternatives and arguments are the same as presented at the beginning of Point 8. The loss of these lots would result in a significant financial loss to the applicant.
3. The no action alternative entails no work in the wetlands proposed for impact. This alternative is considered non-viable as it would essentially render the lots in question unusable with regards to their intended use and would ultimately result in a financial loss to Blue Lakes, LLC and the individual lot owners. Within the Blue Lakes Estates property, approximately 0.53 acre of wetland (Lots 4 and 8) will be avoided, including the spring located between Lots 5 and 6. Additionally, all 0.2 acre of wetland located within The Peninsula at Blue Lakes property will be avoided. The purpose and need for impacts and compensatory mitigation are discussed in Points 3 and 12 of this letter.”

The Corps has not evaluated the adequacy of this statement at this time.

MITIGATION: The applicant has proposed to preserve 14 acres of wetlands on site via a restrictive covenant, and to purchase 0.43 wetland credits from the Yellowleaf Mitigation Bank. The Corps has not evaluated the adequacy of the mitigation plan at this time.

WATER QUALITY: The applicant has applied for state certification in accordance with Section 401(a)(1) of the Clean Water Act, and has certified that the proposed activity complies with and will be conducted in a manner that is consistent with the State Coastal Zone Management Program. Upon completion of the required advertising and public comment review, a determination relative to consistency will be made by the Alabama Department of Environmental Management.

COMMENTS: This public notice is being distributed to all known interested persons in order to assist in developing facts on which a decision by the U.S. Army Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and use of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state with particularity, the reasons for holding a public hearing.

Evaluation of the probable impacts involving deposits of dredged or fill material into waters of the United States will include the application of guidelines established by the Administrator of the U.S. Environmental Protection Agency.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known to exist which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites

or properties within the permit area. Copies of this notice are being sent to the U.S. Department of the Interior, National Park Service, Division of Archeological Services.

Preliminary review of this application and the U.S. Department of the Interior List of Endangered and Threatened Wildlife and Plants indicates that the proposed activity will not affect listed endangered or threatened species, or their critical habitat. The National Marine Fisheries Service requires the evaluation of impacts to Essential Fish Habitat of estuarine species.

Correspondence concerning this Public Notice should refer to Public Notice Number SAM-2007-00981-HWL and should be directed to:

District Engineer
ATTN: Casey Ehorn
U.S. Army Engineer District, Mobile
Birmingham Field Office
218 Summit Parkway
Homewood, Alabama 35209

with a copy to the:

Alabama Department of Environmental Management
4171 Commanders Drive
Mobile, Alabama 36615

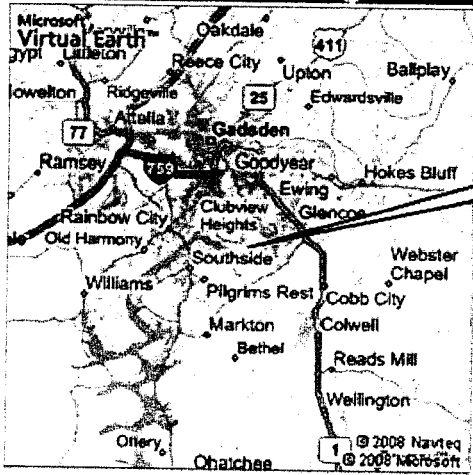
All comments must be sent in time to be received not later than 30 days from the date of this notice.

If you have any questions concerning this publication, you may contact Mr. Casey Ehorn at telephone number (205) 290-9096. Please refer to Public Notice number SAM-2007-00981-HWL.

For additional information about our Regulatory Program, please visit our web site at www.sam.usace.army.mil/RD/reg, and please take a moment to complete our customer satisfaction survey while you're there. Your responses are appreciated and will allow us to improve our services.

MOBILE DISTRICT
U.S. Army Corps of Engineers

Enclosure



Site Location



Site Location

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PROJECT

DELINEATION REPORT
 BLUE LAKES ESTATES AND
 THE PENINSULA AT BLUE LAKES
 RESIDENTIAL DEVELOPMENTS
 GADSDEN, ETOWAH COUNTY, ALABAMA
 CORPS FILE NO. SAM-2007-00981-HWL

FIGURE I

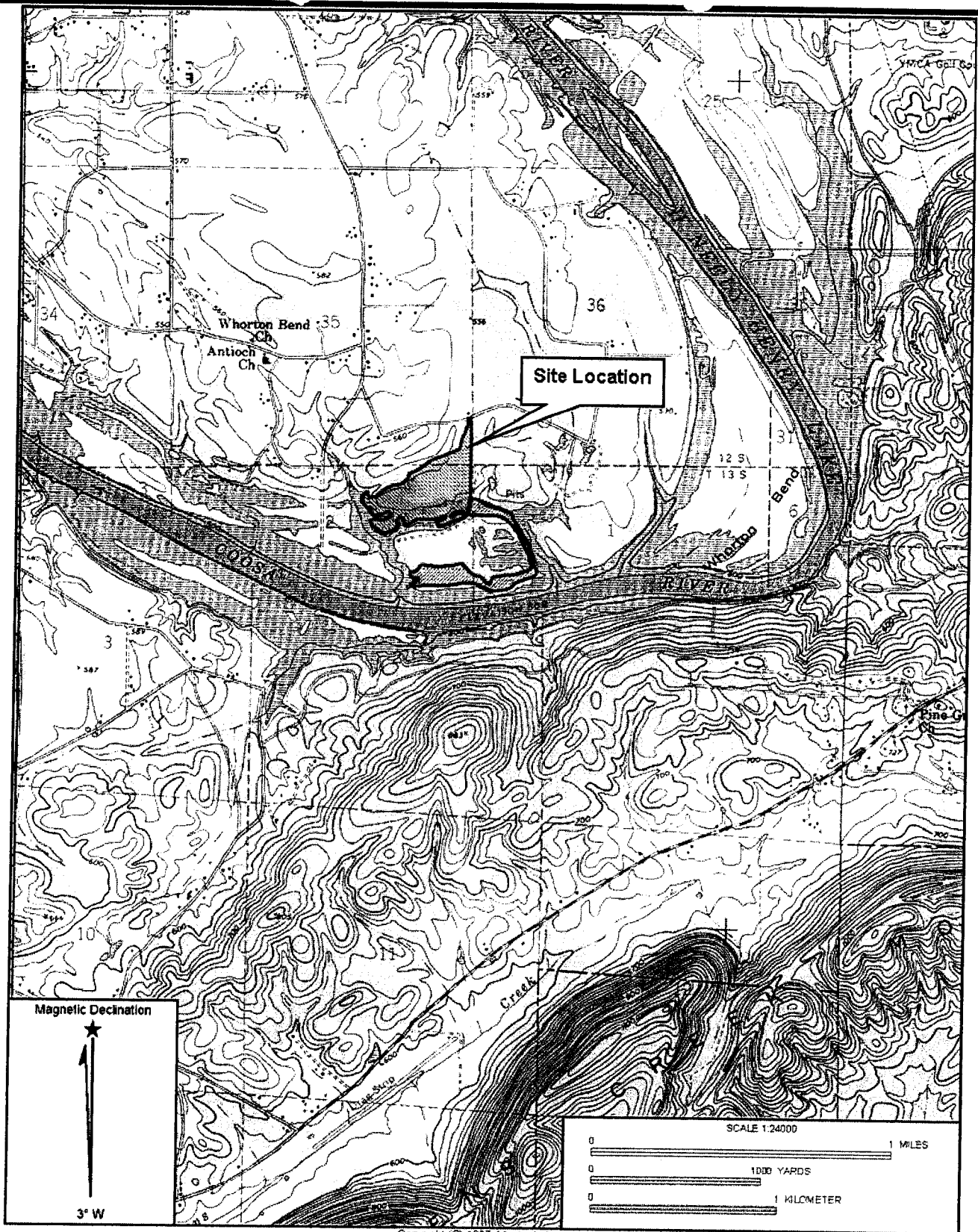
SITE VICINITY MAP

1/27/10

Gallet



& ASSOCIATES



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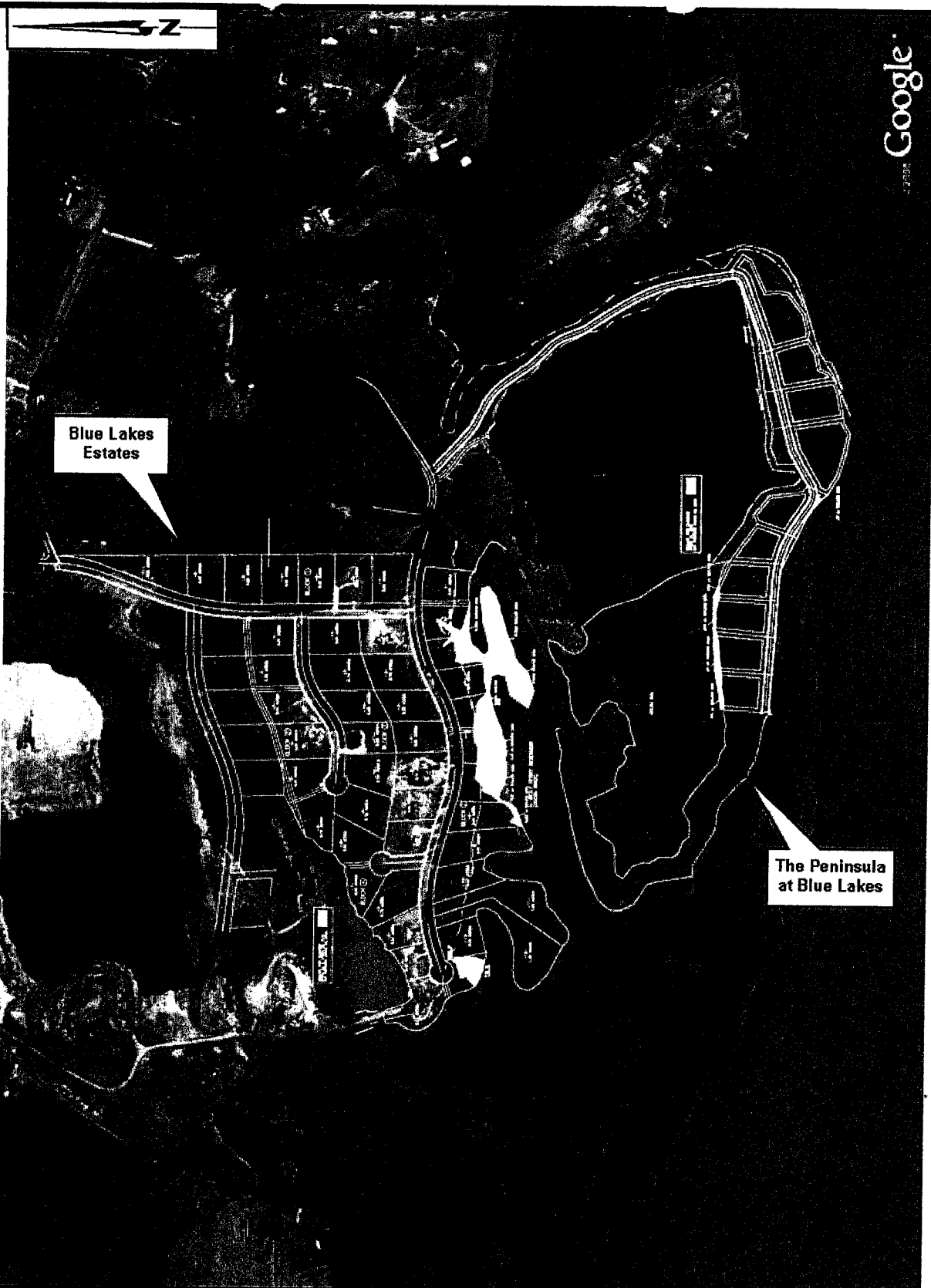
PROJECT

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 BLUE LAKES ESTATES AND
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FIGURE 2

SITE LOCATION MAP
 USGS 7.5-MINUTE TOPOGRAPHIC QUADRANGLE
 GLENCOE, ALABAMA
 DATED 1956, PHOTOREVISED 1972
 SECTION 35, TOWNSHIP 12 SOUTH, RANGE 6 EAST

1/27/10



Google

Blue Lakes Estates

The Peninsula at Blue Lakes

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THE PENINSULA AT BLUE LAKES
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GADSDEN, ETOWAH COUNTY, ALABAMA
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FIGURE 3

SITE AERIAL PHOTOGRAPH
DATED 2004

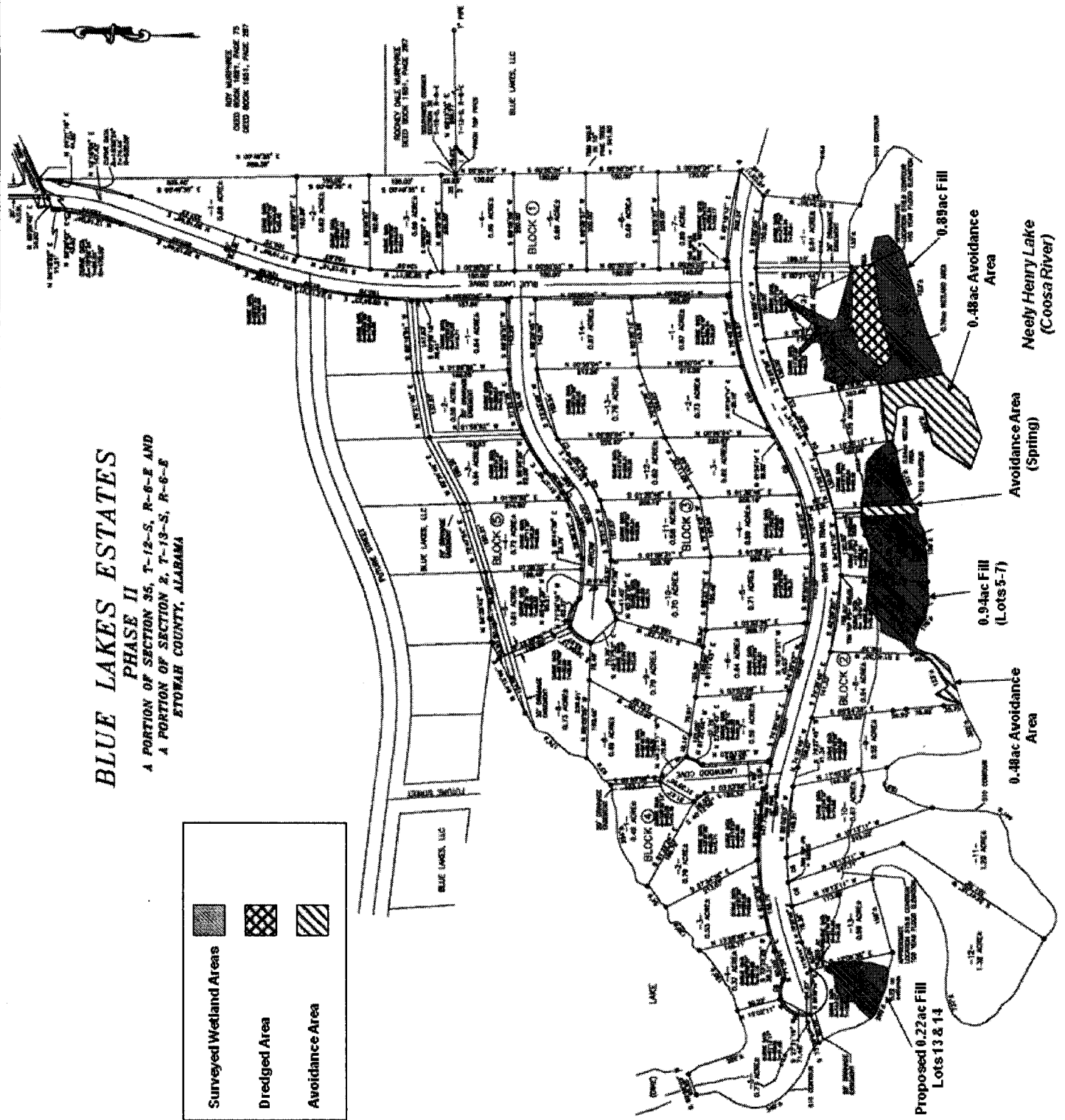
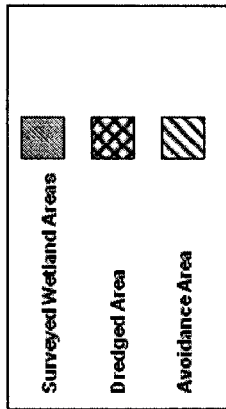
1/27/10



BLUE LAKES ESTATES

PHASE II

A PORTION OF SECTION 35, T-12-S, R-6-E AND
A PORTION OF SECTION 2, T-19-S, R-6-E
ETOWAH COUNTY, ALABAMA

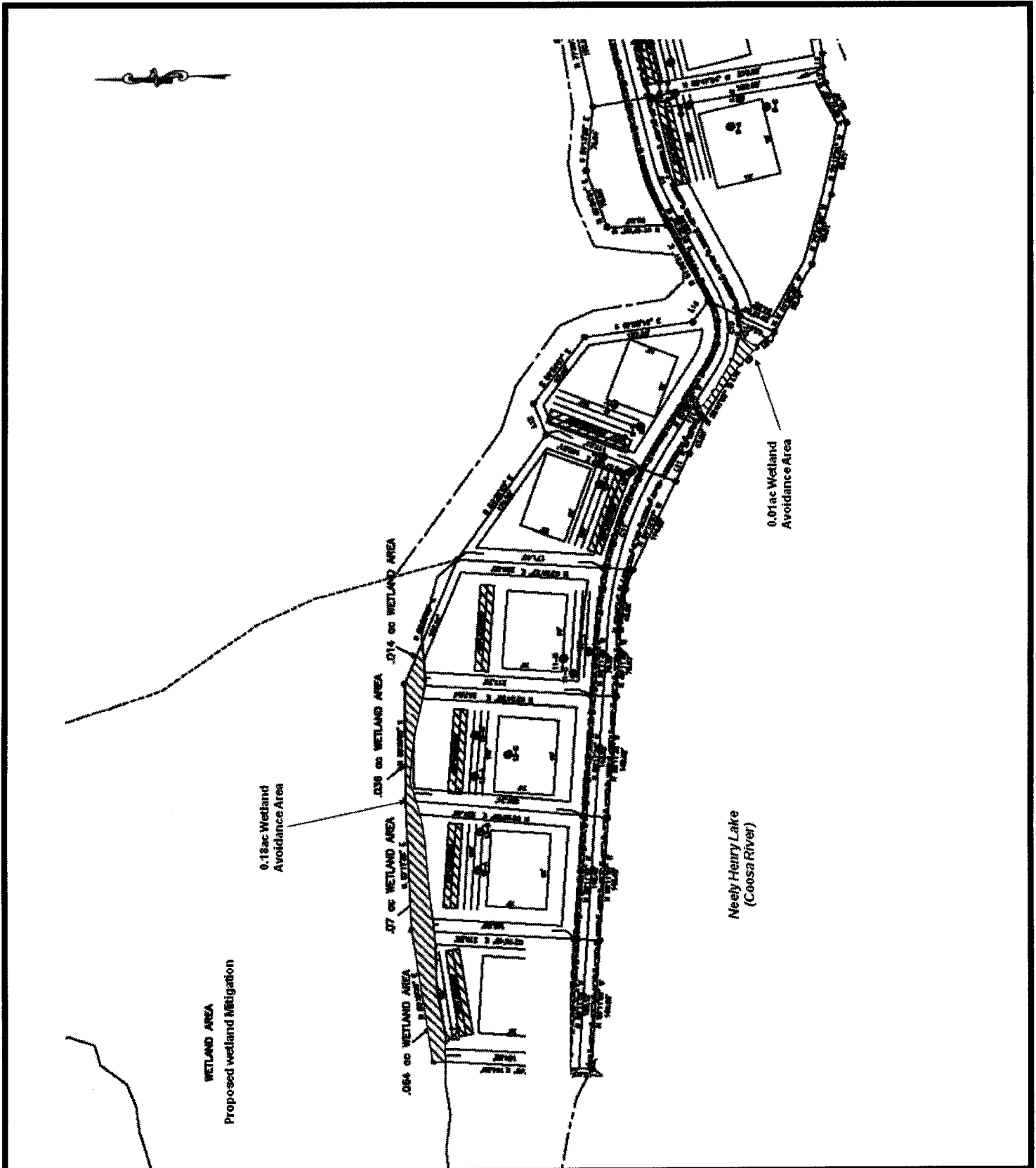


PROJECT
 SECTION 404 INDIVIDUAL PERMIT REQUEST
 BLUE LAKES ESTATES AND
 THE PENINSULA AT BLUE LAKES
 RESIDENTIAL DEVELOPMENTS
 GADSDEN, ETOWAH COUNTY, ALABAMA
 CORPS FILE NO. SAM-2007-00981-HWL

FIGURE 4
 SITE PLAN
 BLUE LAKES ESTATES

1/27/10

Provided by Jones, Blair, Waldrup and Tucker, Inc.



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SECTION 404 INDIVIDUAL PERMIT REQUEST
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FIGURE 5

SITE PLAN INSET
 THE PENINSULA AT BLUE LAKES

1/27/10

Provided by Jones, Blair, Waldrup and Tucker, Inc.