



3715 Davinci Court, Suite 300
Peachtree Corners, GA 30092
770.717.3200
dukerealty.com

February 1, 2019

Mr. Kevin Keller, AICP
Planning & Development Director
Town of Braselton
4986 Hwy 53
Braselton, GA 30517

Re: Stream Buffer and Setback Variance Application

Dear Mr. Keller:

Please find enclosed one (1) original and nine (9) copies of the completed Town of Braselton Stream Buffer and Setback Variance Application for an approximately 82-acre parcel located on Jesse Cronin Road. Also enclosed is a check in the amount of \$400.00 to cover administrative and advertising costs associated with the submittal.

Please do not hesitate to contact me if you have any questions or need additional information.

Regards,

DUKE REALTY CORPORATION

A handwritten signature in blue ink that reads "David Sprinkle" with a long horizontal flourish extending to the right.

David Sprinkle
Development Services Manager

TOWN OF BRASELTON
Received
02/01/19

TOWN OF BRASELTON, GEORGIA

STREAM BUFFER AND SETBACK VARIANCE APPLICATION

An applicant seeking a grant of variance from the stream buffer protection regulations found in Section 15.5 of the Town of Braselton's Development Code must submit to the Town one original and nine (9) completed copies of this application along with all information required to be included with this application (see application checklist) together with a \$400 fee to cover administrative and advertising costs. A public hearing will be held on a valid application from thirty (30) to sixty (60) days after the Town's receipt of such application. The applicant must be present at such hearing.

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: Duke Realty Limited Partnership ADDRESS: 3715 Davinci Court; Suite 300 CITY: Peachtree Corners STATE: Georgia ZIP: 30092 PHONE: (770) 717-3200	A C H Properties LP & NAME: T M H Properties LP ADDRESS: 1492 Jesse Cronin Road CITY: Braselton STATE: Georgia ZIP: 30517 PHONE:
CONTACT PERSON: David Sprinkle PHONE: (770) 717-3220 FAX: (770) 717-3312	

* Include any and all persons having a property interest and/or financial interest in any business entity having property interest (use additional sheets if necessary)

APPLICANT IS THE:		
OWNER'S AGENT	PROPERTY OWNER	CONTRACT PURCHASER
PRESENT ZONING DISTRICT(S): Manufacturing-Distribution (M-D)		
COUNTY TAX MAP NO. 124	TAX PARCEL NO: 004	
ACREAGE: 82.05		
ADDRESS OF PROPERTY: Jesse Cronin Road		

BRASELTON CLERK'S OFFICE USE ONLY

Date Received: _____ Received by: _____ Case Number: _____

STREAM BUFFER AND SETBACK VARIANCE APPLICATION

CHECKLIST

In addition to the application form, all materials and information listed below must be submitted with the application in order for it be accepted by the Town of Braselton

1. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
SEE EXHIBIT 1
2. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
SEE ENCLOSED RESPONSES
3. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
SEE EXHIBIT 2 & 2A
4. Documentation of unusual hardship should the buffer be maintained;
SEE ENCLOSED RESPONSES
5. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
SEE ENCLOSED RESPONSES
6. A calculation of the total area and length of the proposed intrusion;
SEE EXHIBIT 2
7. A stormwater management site plan, if applicable; and,
SEE EXHIBIT 3
8. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
SEE ENCLOSED RESPONSES

**STANDARDS GOVERNING THE GRANT OF A STREAM BUFFER AND SETBACK
VARIANCE**

PURSUANT TO SECTION 15.5.3 OF THE TOWN OF BRASELTON DEVELOPMENT CODE, THE ZONING BOARD OF APPEALS FINDS THAT THE FOLLOWING CONDITIONS ARE RELEVANT IN BALANCING THE INTEREST IN PROMOTING THE PUBLIC HEALTH, SAFETY, MORALITY OR GENERAL WELFARE AGAINST THE RIGHT TO THE UNRESTRICTED USE OF PROPERTY AND SHALL GOVERN THE CONSIDERATION OF STREAM BUFFER VARIANCE REQUESTS. THE ZONING BOARD OF APPEALS WILL ONLY GRANT STREAM BUFFER VARIANCES IN THE FOLLOWING CASES:

1. When a property's shape, topography or other physical conditions prevents land development unless a buffer variance is granted.
2. Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.
3. Variances will not be considered when, following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property.
4. Any variance granted by the Zoning Board of Appeals must require mitigation measures to offset the effects of any proposed land development on the parcel.

Please respond to the following standards in the space provided or use an attachment as necessary.

1. Does the property's shape, topography or other physical conditions prevent land development unless a buffer variance is granted? _____

SEE RESPONSES ON FOLLOWING PAGES

2. Are there unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship? _____

SEE RESPONSES ON FOLLOWING PAGES

STANDARDS GOVERNING THE GRANT OF A STREAM BUFFER VARIANCE (cont.)

(#2 cont.)

3. Following the adoption of these regulations on March 12, 2007, have the actions of the property owner created the conditions of a hardship on the property?_____

SEE RESPONSES ON FOLLOWING PAGES

4. What mitigation measures are proposed to offset the effects of land development on the parcel?_____

SEE RESPONSES ON FOLLOWING PAGES

The following factors will be considered in determining whether to issue a variance:

1. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
2. The locations of all streams on the property, including along property boundaries;
3. The location and extent of the proposed buffer or setback intrusion;
4. Whether alternative designs are possible which require less intrusion or no intrusion;
5. The long-term and construction water-quality impacts of the proposed variance;
6. Whether issuance of the variance is at least as protective of natural resources and the environment.

Responses to Standards Governing the Grant of a Stream Buffer and Setback Variance

Introduction:

The applicant is seeking a variance from the provisions of the Town of Braselton Development Code, Section 15.5 – Stream Buffer Protection for the development of a warehousing/distribution facility on the subject property located on Jesse Cronic Road adjacent to Park 85. The site is currently zoned Manufacturing-Distribution (M-D) which permits the proposed use per Article VIII of the Development Code.

As shown on the attached Site Plan exhibit(s), the project includes the construction of a single warehouse/distribution building, site access and interior circulation drives, truck courts, car parking, and stormwater management facilities. Due to the location of on-site streams and the associated buffers and setbacks, the lawful use and development of the property as proposed is severely restricted unless the requested variance is granted.

The applicant has invested significant resources into the investigation of the property and preliminary design of the proposed development. Throughout the iterative design process, several site plan options were considered. It is evident that due to the stream locations and excessive buffer and setback restrictions, site topography, and other limiting factors, there is no alternative plan option that can achieve the project purpose while completely avoiding impacts to these natural features.

Georgia law and the procedures of Braselton require us to raise Federal and State constitutional objections during an application process. While Duke Realty, the "Applicant," anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the constitutional objections at this time (attached at the end of this narrative).

1. Does the property's shape, topography, or other physical conditions prevent land development unless a buffer variance is granted?

Yes. The subject property is approximately 82-acres forming a roughly triangular shape bounded by Jesse Cronic Road to the north, Interstate-85 right-of-way to the south, and a tributary of the Mulberry River to the west. The property is predominantly open grassland currently used to pasture cattle, with an area of wooded upland located in the southwest portion of the site. The property's natural features (as illustrated on Exhibit 1 – Existing Conditions Survey) include several ditches/streams, small areas of wetland, and floodplain. The site slopes toward Perennial Stream #2, which is approximately 2,550 ft. long and traverses the site from northeast to southwest. Perennial Stream #3 is approximately 800 ft. long and enters the site from under I-85 to the south before intersecting with Stream #2 and flowing toward Perennial Stream #1, which forms the western property line. The applicant has received authorization from the Department of the Army – Corps of Engineers to fill/relocate Perennial Streams #2 & 3 pursuant to Individual Permit #SAS-2006-02238.

The applicant has also been issued Section 401 Water Quality Certification and Stream Buffer Variance from the Georgia Department of Natural Resources – Environmental Protection Division.

Existing topography indicates 40-50 ft. of fall from Jesse Cronin Road, and 25-35 ft. of fall from I-85 to Perennial Stream #2 located in the center of the site. A recently completed geotechnical investigation notes the presence of subsurface rock and partially weathered rock beneath the typical upland Piedmont soil profile, which includes a thin layer of topsoil underlain by clayey soil types.

The development of a warehousing and distribution facility such as the one proposed requires significant earthwork and mass grading efforts to construct a flat building “pad” large enough to accommodate the building footprint and associated paved areas for site access and circulation, truck courts, and car parking. Due to the moderately sloping topography of the site, additional area is required to grade slopes necessary to create the flat buildable pad.

Due to the unique shape of the subject property and required grading efforts to accommodate the proposed use as allowed within the M-D zoning district, building placement is limited to the location as shown on the attached Exhibit 2 – Site Plan. The locations of Perennial Stream #2 flowing lengthwise through the middle of the site, and Perennial Stream #3, along with the associated Town of Braselton natural buffer and impervious setback would completely prohibit proposed development unless a variance is granted.

2. Are there unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship?

Yes. As discussed in the previous response, the locations of Perennial Streams #2 & 3 create a hardship for the lawful use of the subject property. Additionally, because the site is located within a 7-mile radius upstream of the nearest water intake along the Mulberry River, the Town of Braselton natural and impervious buffers imposed on perennial streams are doubled to 100’ and 150’ respectively. Using these dimensions, the natural buffers alone encumber 24.65 acres, while an additional 9.62 acres is encumbered by the impervious buffers. The local buffer requirements imposed on these perennial streams totals 34.27 acres (or 42%) of the 82.05 acre site.

The areas of the site located outside of the existing stream buffers are constrained by challenging topography and the presence of subsurface rock, making development of any kind within this limited area nearly impossible.

The proposed development plan presented in Exhibit 2 illustrates the optimal site configuration and orientation of a warehousing/distribution facility of this type considering the shape and topographic challenges of the property. Strict adherence to the minimal buffer requirements would render nearly half of the site unusable and prohibit development as permitted within the M-D zoning district.

3. Following the adoption of these regulations on March 12, 2007, have the actions of the property owner created the conditions of hardship on the property?

No. There have been no actions by the property owner that have created the conditions of hardship. The property has been used for agricultural purposes for decades, and a review of historic aerial imagery included in our Phase I Environmental Site Assessment Report reveals the property has remained largely unchanged dating back to 1938.

4. What mitigation measures are proposed to offset the effects of land development on the parcel?

The effects of land development on the property and within the stream buffer will be mitigated as follows:

- a. Pursuant to Individual Permit SAS-2006-02238 authorization from the Department of the Army – Corps of Engineers, the applicant shall purchase 23,080 stream mitigation credits from the Hard Labor Creek Mitigation Bank, and 11.90 wetland mitigation credits from the Rocky Creek Mitigation Bank for a total cost of approximately \$1,400,000.00.
- b. All work shall be designed and constructed in accordance with the requirements of the Georgia Erosion and Sedimentation Control Act of 1975, as amended. All BMP's shall be installed per the Manual for Erosion and Sediment Control, (latest Edition), published by the Georgia Soil and Water Conservation Commission.
- c. Per the attached Stormwater Management Plan, water quality will be achieved through detention and treatment of on-site water runoff in engineered storm water management ponds designed to handle and manage all required TSS and oil and grease removal in accordance with GAEPD requirements and as shown in the National Pollutant Removal Performance Database, Section 3.7. These measures will serve to improve the water quality discharged from the site and assist in minimizing the potential for downstream impacts.
- d. As illustrated on the attached site plan exhibits, encroachment into the 100' undisturbed natural buffer along Perennial Stream #1 is for grading purposes only and will not require the removal of any vegetation. However, in an effort to mitigate proposed impacts throughout the site, the applicant will plant additional trees in suitable zones along the Little Mulberry Creek (Perennial Stream #1), which will serve to enhance the 100' natural buffer.
- e. To mitigate proposed encroachment within the existing floodplain, the site has been designed and engineered to include suitable floodplain storage volume compensation area and a completed flood study has confirmed a no-rise condition to ensure no impacts to downstream property owners.

REQUIRED CONSTITUTIONAL NOTICES

The portions of the Braselton Development Code facially and as applied to the Property, which restrict the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Braselton Development Code facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this application would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by Braselton to grant the application as requested would constitute a taking of the Applicant's property. Because of this unconstitutional taking, Braselton would be required to pay just compensation to the Applicant.

A denial of this application would constitute an arbitrary and capricious act by Braselton without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Braselton to grant the variance request for the Property in accordance with the criteria as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of the request subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

VARIANCE APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR RE-APPLICATION AFFECTING THE SAME LAND SHALL BE SUBMITTED WITHIN SIX (6) MONTHS FROM THE DATE OF THE LAST ACTION BY THE ZONING BOARD OF APPEALS UNLESS WAIVED BY BOARD OF APPEALS.

*Duke Realty Limited Partnership;
By: Duke Realty Corporation;*

By: J. C. [Signature]

Signature of Applicant

J. Christopher Brown, SVP *2/1/2019*

Applicant's Name and Title Date

Bonnie Katanach *2/1/2019*

Signature of Notary Public Date



VARIANCE PROPERTY OWNER'S CERTIFICATION

THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR RE-APPLICATION AFFECTING THE SAME LAND SHALL BE SUBMITTED WITHIN SIX (6) MONTHS FROM THE DATE OF THE LAST ACTION BY THE ZONING BOARD OF APPEALS UNLESS WAIVED BY BOARD OF APPEALS.

Thomas M. Heuckes *1/30/19*

Signature of Owner Owner's Name and Title Date

Roxanne Kennon *1/30/19*

Signature of Notary Public Date



BRASELTON CLERK'S OFFICE USE ONLY

Receipt No: _____ Amount of Fee: _____

Date: _____ Received By: _____

CONFLICT OF INTEREST CERTIFICATION FOR VARIANCES

THE UNDERSIGNED BELOW, MAKING AN APPLICATION FOR A VARIANCE, HAS COMPLIED WITH THE OFFICIAL CODE OF GEORGIA, SECTION 36-67A-1, ET SEQ., CONFLICT OF INTEREST IN ZONING ACTIONS, AND HAS SUBMITTED OR ATTACHED THE REQUIRED INFORMATION ON THE FORMS PROVIDED.

Duke Realty Limited Partnership;

By: Duke Realty Corporation;

By: J. C. Brown

Signature of Applicant

Feb. 1, 2019 J. Christopher Brown, SVP

Date

Type or print name and title

Signature of Applicant's
Attorney or Representative

Date

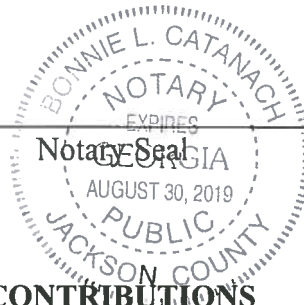
Type or print name and title

Bonnie L. Catanach

Signature of Notary Public

2/1/19

Date



DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to any official of the Town of Braselton?

☐ Yes ☒ No

J. Christopher Brown

YOUR NAME

If the answer is yes, please complete the following section:

NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or more)	DATE CONTRIBUTION WAS MADE (Within last 2 years)

Attach additional sheets if necessary to disclose or describe all contributions.

CONFLICT OF INTEREST CERTIFICATION FOR VARIANCES

THE UNDERSIGNED BELOW, MAKING AN APPLICATION FOR A VARIANCE, HAS COMPLIED WITH THE OFFICIAL CODE OF GEORGIA, SECTION 36-67A-1, ET SEQ., CONFLICT OF INTEREST IN ZONING ACTIONS, AND HAS SUBMITTED OR ATTACHED THE REQUIRED INFORMATION ON THE FORMS PROVIDED.

Signature of Applicant

Date

Type or print name and title



2.1.2019 G. Douglas Dillard/R. Baxter Russell, Attorneys for Applicant

Signature of Applicant's
Attorney or Representative

Date

Type or print name and title

Signature of Notary Public

Date

Notary Seal

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to any official of the Town of Braselton?

☐ Yes ☒ No

G. Douglas Dillard/R. Baxter Russell, Attorneys for Applicant

YOUR NAME

If the answer is yes, please complete the following section:

NAME AND OFFICIAL POSITION OF GEVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or more)	DATE CONTRIBUTION WAS MADE (Within last 2 years)
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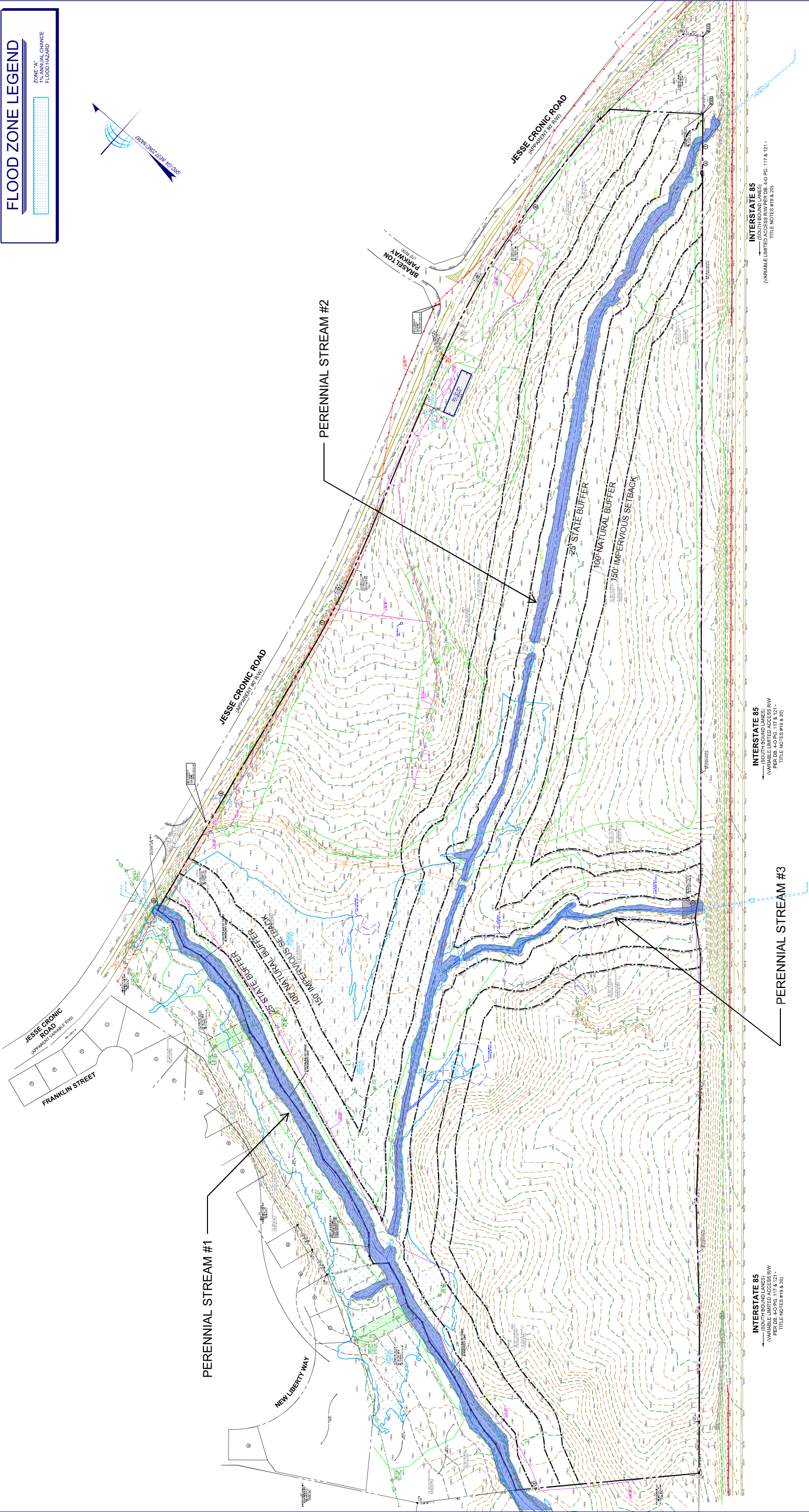
Attach additional sheets if necessary to disclose or describe all contributions.

EXHIBIT 1

EXISTING CONDITIONS SURVEY

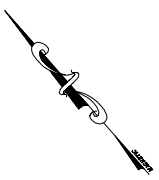
LEGEND	
CURB AND GUTTER (G&G)	IRIGATION CONTROL VALVE (ICV)
FENCE	FIRE HYDRANT (FH)
STORM DRAIN LINE	WATER VALVE (WV)
SANITARY SEWER	JUNCTION BOX (JB)
WATER LINE	HEAD WALL (HW)
UNDERGROUND POWER LINE	CURB INLET (CI)
UNDERGROUND POWER LINE	FLARED END SECTION (FES)
UNDERGROUND COMMUNICATION	OUTLET CONTROL STRUCTURE
TOPOGRAPHIC CONTOUR	SS MANHOLE (MH)
PROPERTY LINE	CLEAN OUT (CO)
CATCH BASIN (CWB)	WATER METER (WM)
DROP INLET (DI)	FIRE DEPT. CONNECTION (FDC)
WATER METER (WM)	WATER VALVE MARKER
TRANSFORMER BOX (TB)	TRANSFORMER BOX (TB)
AIR CONDITIONER (AC)	AIR CONDITIONER (AC)
ELECTRIC UTILITY	ELECTRIC UTILITY
SEWER TRAP (ST)	SEWER TRAP (ST)
LIGHT POLE (LP)	LIGHT POLE (LP)
UTILITY MANHOLE (UM)	UTILITY MANHOLE (UM)
SPOUTLIGHT	SPOUTLIGHT
GAS METER (GM)	GAS METER (GM)
GAS VALVE (GV)	GAS VALVE (GV)
COMMUNICATION BOX	COMMUNICATION BOX
TRAFFIC SIGNAL	TRAFFIC SIGNAL
MAIL BOX	MAIL BOX
SIGN	SIGN
CROSSWALK	CROSSWALK
SPOT ELEVATION	SPOT ELEVATION
CONCRETE AREA	CONCRETE AREA
OVERLAND AREA	OVERLAND AREA
RIP-RAP AREA	RIP-RAP AREA
BRICK AREA	BRICK AREA
TREELINE	TREELINE

FLOOD ZONE LEGEND	
ZONE A*	1% ANNUAL CHANCE FLOOD HAZARD



1. OWNER/DEVELOPER — DUKE REALTY LIMITED PARTNERSHIP
3715 DAVINCI COURT, SUITE 300
PEACHTREE CORNERS, GEORGIA 30092
CONTACT: MR. KEN SKINNER
PHONE: 770-638-2531

2. CIVIL ENGINEER — HAINES GIPSON & ASSOCIATES, INC.
10000 BENTLEY BLVD., SUITE 100
LAWRENCEVILLE, GA 30043
(770) 491-7550



Duke
REALTY

3715 Davitt Court, Suite 300
Peachtree Corners, GA 30092
770.771.3200 770.771.3312 (fx)

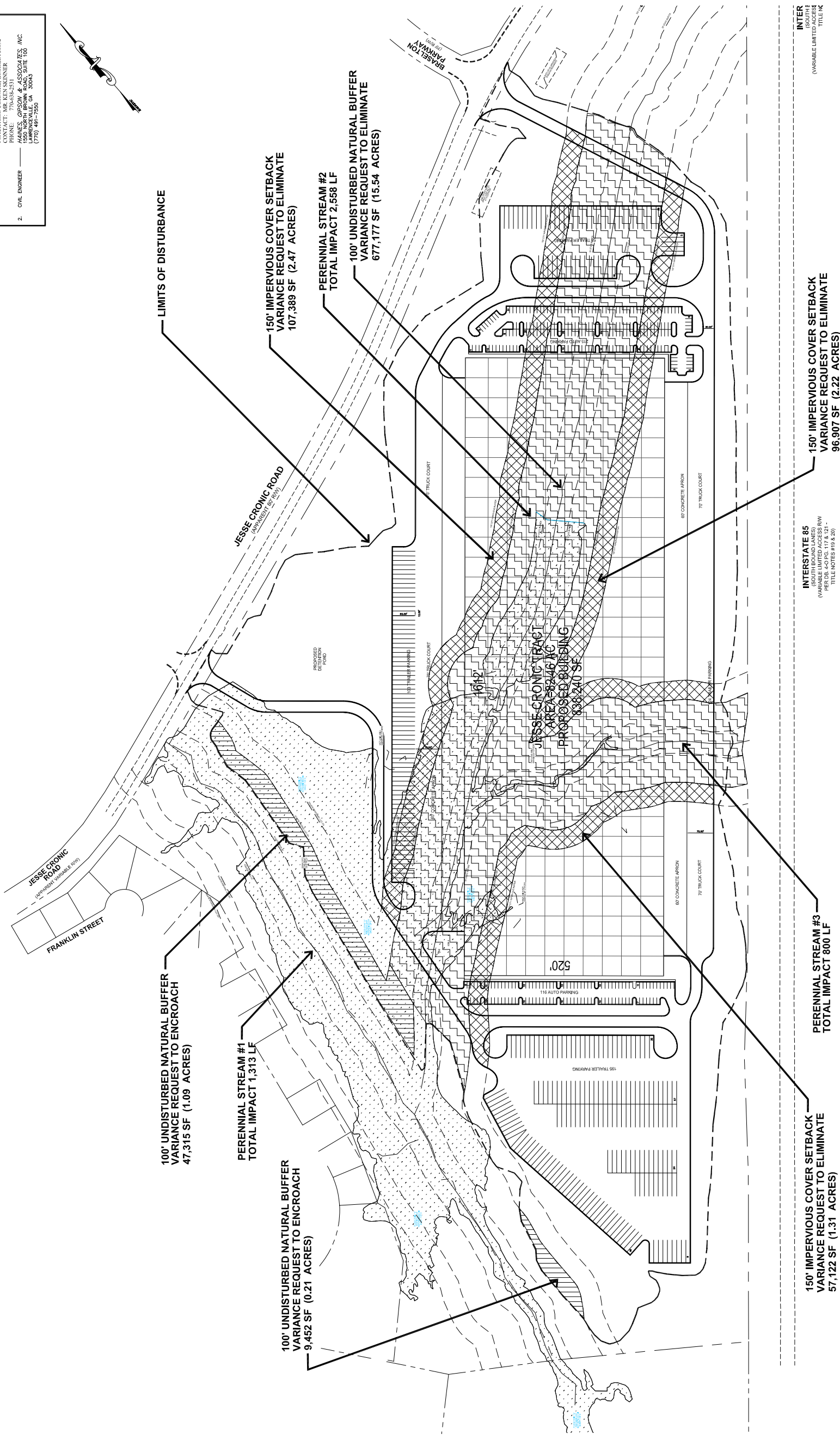
The logo for Haines Giffson & Associates. It features the company name in a large, bold, serif font. To the right of the name is a circular seal. The seal has a double-lined border. Between the lines, the words "GEORGIA" and "SOUTH CAROLINA" are written in a circular path. In the center of the seal, the text "REGISTERED" is at the top, "PLANNERS" is at the bottom, and "No. 3007" is in the middle.

DUKE- HENDERSON TRACT
JESSE CRONIC DRIVE, TOWN OF BRASELTON, GEORGIA

[illegible]

DRAWING / SHEET TITLE
BUFFER IMPACT
SITE PLAN
SHEET NUMBER

EXHIBIT-2



LEGEND	
EXTINGUISHER	
EXTINGUISHING CUBE & OTHER	
PROPOSED CONCRETE CURB & GUTTER	
PROPOSED BOLLARD	
PROPOSED RETAINING WALL	
PROPOSED FENCE	
PROPOSED PROXIMITY	
PROPOSED SIGNAGE	
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VARIANCE REQUEST TO ENCROACH IN
100' UNDISTURBED NATURAL BUFFER
56,767 SF (1.30 ACRES)

VARIANCE REQUEST TO ELIMINATE
100' UNDISTURBED NATURAL BUFFER
667,117 SF (15.54 ACRES)

VARIANCE REQUEST TO ELIMINATE
150' IMPERVIOUS SETBACK
261,418 SF (6.00 ACRES)

LIMITS OF DISTURBANCE
62.735 ACRES

BUFFER IMPACT
SITE PLAN

GRAPHIC SCALE

0 100 200 300

(IN FEET)
1 inch = 100 ft.

