

ck#: 695392  
FILED FOR RECORD  
7/29/2005 03:35pm  
PAID: 24.00  
Daniel W. Massey, Clerk  
Superior Court of Chatham County  
Chatham County, Georgia

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**AFTER RECORDING RETURN TO:**  
Edward A. Kazmarek  
McKenna Long & Aldridge LLP  
303 Peachtree Street, Suite 5300  
Atlanta, Georgia 30308

### **DECLARATION OF RESTRICTIVE COVENANTS AND NOTICE**

THIS DECLARATION is made this 19<sup>th</sup> day of July, 2005, by  
ATLANTA GAS LIGHT COMPANY a Georgia Corporation (hereinafter referred to as  
"Declarant").

### **WITNESSETH:**

**WHEREAS**, Declarant owns the property depicted on Exhibit "A" and particularly  
described on Exhibit "B" hereto attached and made a part hereof (the "Type 5 Property"); and

**WHEREAS**, the Type 5 Property contains "hazardous substances" as defined under the  
Georgia Hazardous Site Response Act, O.C.G.A. §12-8-90, *et seq.*, and, accordingly, Declarant  
desires to restrict the use of the Type 5 Property as provided herein.

**NOW, THEREFORE**, Declarant does hereby subject the Type 5 Property to the  
covenants, restrictions, easements and rights hereinafter stated:

1. Definitions. For purposes of this Declaration, the following terms shall have the  
following meanings, unless the context requires otherwise:

"AGLC" shall mean Atlanta Gas Light Company, a Georgia corporation, its  
successors and assigns.

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"Director" shall mean the Director of EPD, as hereinafter defined.

"Engineering Controls" means those features of site indicated as such on the attached "C."

"EPD" shall mean the Georgia Department of Natural Resources, Environmental Protection Division, as well as any successor state agency with responsibility for and jurisdiction over environmental matters.

"Functionally Equivalent Engineering Control" means measures, including but not limited to a parking deck or similar structure, to control and prevent exposure to MGP materials to the same or greater extent as provided by the Engineering Controls. To be a Functionally Equivalent Engineering Control, the measures must be depicted in a drawing stamped and signed by a Professional Engineer registered in the State of Georgia and containing the statement, "I hereby certify that I have reviewed the measures depicted on this drawing and find them to control and prevent exposure to MGP materials remaining on this property to the same extent as previous measures." This drawing must then be recorded with an amendment to this "Declaration of Restrictive Covenants and Notice" requiring that such controls be subject to all requirements set forth herein.

"Hazardous Substances" shall have the same meaning as under HSRA, as hereinafter defined.

"HSRA" shall mean the Hazardous Site Response Act, O.C.G.A. § 12-8-90, *et seq.*

2. Revocation. That certain "Declaration of Restrictive Covenants and Notice" relating to the Type 5 Property filed on March 2, 2001 is hereby revoked and replaced with this present instrument.

3. Restrictive Covenants. Declarant hereby:

(a) prohibits the use or extraction of groundwater beneath the Type 5 Property for any purpose;

(b) prohibits the removal, destruction, or alteration of the Engineering Controls on the Type 5 Property in such a way as to make any of the underlying MGP materials accessible, unless such controls are restored or replaced in a manner so as to constitute a Functionally Equivalent Engineering Controls;

(c) prohibits excavation within the lateral support areas of the structures or masonry wall shown on the attached Exhibit "D" in such a way as to make any of the underlying MGP materials accessible or to compromise the lateral support provided by the soil to those structures; notwithstanding the foregoing, the structures, masonry wall, or lateral support for the same, may be changed or removed provided that a Functionally Equivalent Engineering Control is installed;

(d) prohibits excavation, construction, utility installation or maintenance, and similar land disturbing activities in soil, both above and below the water table, except in

accordance with the Post Removal Health and Safety Guidance for the Former Manufactured Gas Plant (Savannah, GA), as may be modified or updated from time to time), as filed with the City of Savannah Building Department;

(e) requires that any new underground utilities, including water, sewer, gas, and electric power, be installed in a manner to prevent migration of gases or fumes through the utility connections into structures and buildings;

(f) prohibits residential uses on the ground level of any buildings within the Type 5 area, unless (1) for new buildings, a barrier is installed, which barrier must either be impervious or vented in such a way as to prevent volatile portions of the MGP materials from migrating to the building and (2) for the existing apartment building, appropriate measures are implemented to assure indoor air quality does not exceed applicable standards; and

(g) agrees to install and maintain permanent markers on each side of the Property that delineate the Type 5 area and prohibits the disturbance or removal of such markers.

The foregoing restrictions and covenants are made in accordance with Ga. Comp. R. & Regs. 391-3-19-.08(7) as those measures necessary to avoid interference with a remedial action, operation and maintenance, long term monitoring, or other measures to ensure the integrity of any remedial action. The foregoing are hereinafter collectively referred to as the "Restrictive Covenants".

4. Improvements. Any and all improvements located in whole or in part on all or any portion of the Type 5 Property, and the construction, operation, use and maintenance of the Type 5 Property and such improvements, shall be subject to and shall comply with the Restrictive Covenants.

5. Covenants running with the land. Declarant acknowledges and agrees that the Restrictive Covenants are appurtenant to and run with the land, and shall be binding and enforceable against all future owners of the Type 5 Property including Declarant, its successors and assigns, and any trustee appointed to manage the Type 5 Property. Should a transfer or sale of the Type 5 Property occur before such time as the Restrictive Covenants have been amended or revoked then said Restrictive Covenants shall be binding on the transferee(s) or purchaser(s).

The Restrictive Covenants shall inure to the benefit of EPD, AGLC and their respective successors and assigns and shall be enforceable by the Director or his agents or assigns and AGLC or its successors and assigns in a court of competent jurisdiction. The Restrictive Covenants shall remain in full force and effect in accordance with O.C.G.A. § 44-5-60(c), unless and until the Director determines that the Type 5 Property meets the applicable Risk Reduction Standards, as defined in the Rules for Hazardous Site Response Chapter 391-3-19-.07.

6. Severability. In the event that any of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect in a final ruling or judgment of a court of competent jurisdiction from which no appeal has been or can be taken, the remainder of the Restrictive Covenants shall not be affected thereby and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

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7. Statutory Notice. The Type 5 Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this property. This notice is provided in compliance with the Georgia Hazardous Site Response Act. This Declaration is made in accordance with the Corrective Action Plan submitted to EPD on December 5, 2000 (revised January 2, 2001), as modified by the Basis of Design Work Plan for Phase I On-Site Soil Corrective Action (June 4, 2002, approved by EPD on August 8, 2002) and the Basis of Design Work Plan for Off-Site Properties and Phase II On-Site Areas (October 11, 2003, approved by EPD on December 4, 2003).

8. General Provisions.

(a) Headings. The use of headings, captions and numbers in this Declaration is solely for the convenience of identifying and indexing the various provisions in this Declaration and shall in no event be considered otherwise in construing or interpreting any provision in this Declaration.

(b) Non-Waiver. Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(c) Time of Essence. Time is of the essence of this Declaration.

(d) Applicable Law. This Declaration shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

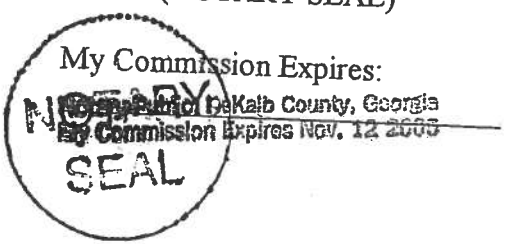
IN WITNESS WHEREOF, Declarant has signed and sealed this Declaration, all the day, month, and year first above written.

Signed, sealed and delivered  
in the presence of:

Julius H. Gibson  
Unofficial Witness

Adrienne J. Acasnot  
Notary Public

(NOTARY SEAL)



DECLARANT:  
ATLANTA GAS LIGHT COMPANY,  
a Georgia Corporation

By: Jeffrey P. Brown

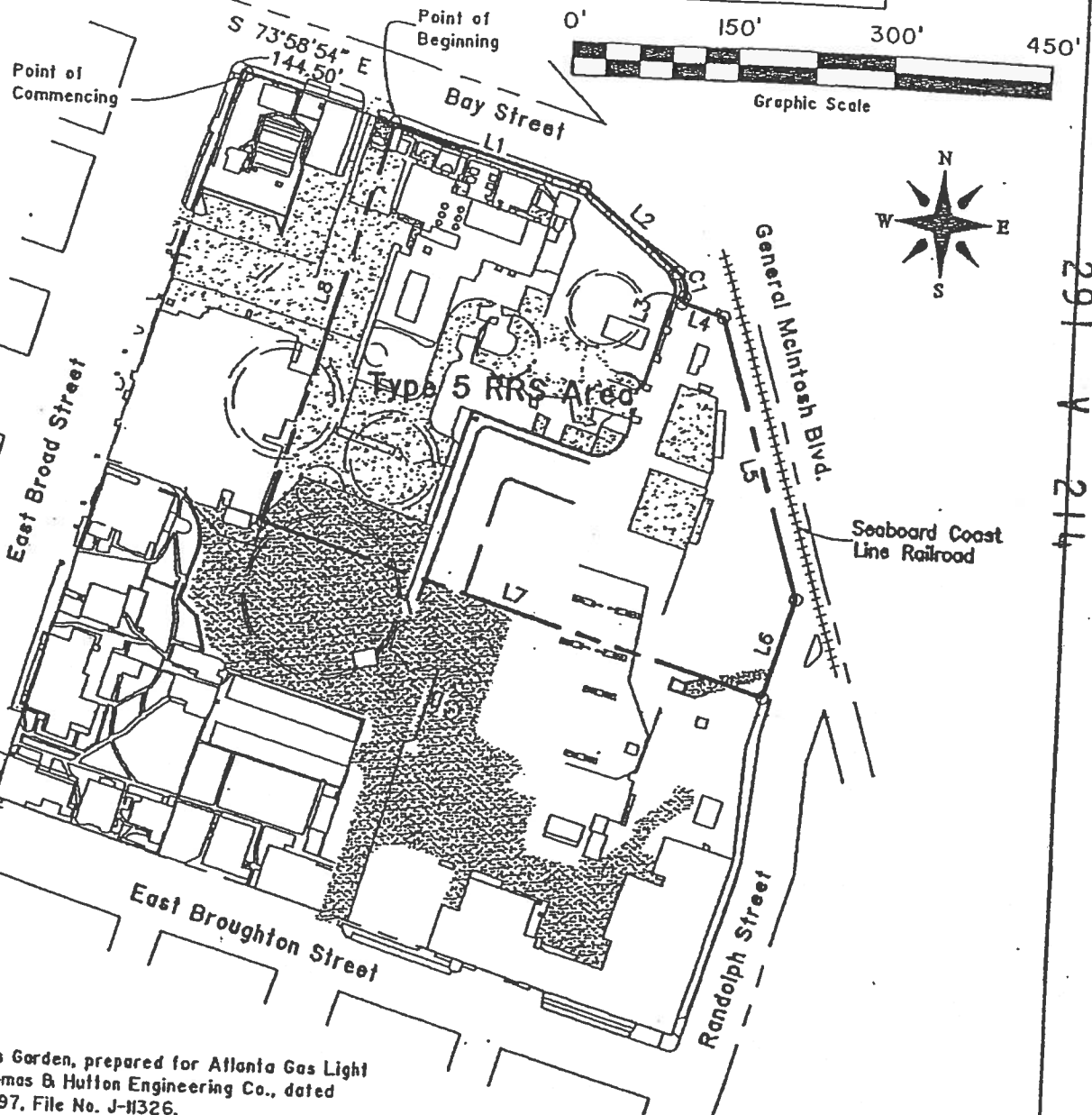
Name: Jeffrey P. Brown

Title: VP & Assoc. General Counsel

(CORPORATE SEAL)

# Exhibit A

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	20.00'	23.83'	22.45'	S 16°24'36" E	68°16'34"



Reference:  
Plat of Trustees Garden, prepared for Atlanta Gas Light Company by Thomas & Hutton Engineering Co., dated December 19, 1997, File No. J-11326.

Building locations, utility locations, and other background information was taken from drawings provided by others, and has not been verified in the field by Thomas & Hutton Engineering Co.

Prepared By:  
Thomas & Hutton Engineering Co.  
PO Box 2727  
Savannah, Ga. 31402  
912-234-5300

152820.7 SQ. FT.  
3.51 ACRES

LINE	BEARING	DISTANCE
L1	S 73°58'54" E	183.57'
L2	S 50°32'53" E	113.73'
L3	S 17°43'40" W	5.41'
L4	S 72°57'11" E	40.12'
L5	S 17°45'45" E	261.67'
L6	S 17°24'54" W	95.18'
L7	N 73°04'28" W	486.90'
L8	N 16°35'25" E	375.26'

Exhibit  
Type 5 Area  
Former Manufactured Gas Plant  
Trustees Garden  
City of Savannah, Chatham County, Georgia  
Prepared For:  
Atlanta Gas Light Company

Scale: 1"=150'	Date: 10/29/03	Type 5 Area
Drawn: DEY	Checked: DEY	Job: J-16268

## Exhibit B

### Legal Description Type 5 Risk Reduction Standards Area Trustees Garden

That certain area, being a portion of the Trustees Garden, lands of the Atlanta Gas Light Company, lying and being in the 2nd Georgia Militia District, City of Savannah, Chatham County, Georgia, being more particularly described as follows:

Commence at the intersection of the southerly right of way line of Bay Street, and the easterly right of way line of East Broad Street; thence proceed easterly along the southerly right of way line of Bay Street S 73°58'54" E, a distance of 144.50 feet to the POINT OF BEGINNING; thence continue along the southerly right of way line of Bay Street the following courses and distances: S 73°58'54" E a distance of 183.57 feet to a point; thence S 50°32'53" E a distance of 113.73 feet to a point; thence with a curve turning to the right, said curve having a radius of 20.00 feet, a central angle of 68°16'34", a chord length of 22.45 feet bearing S 16°24'36" E, thence along the arc of said curve 23.83 feet to a point; thence S 17°43'40" W a distance of 5.41 feet to a point; thence S 72°57'11" E a distance of 40.12 feet to a point at the intersection of the southerly right of way line of Bay Street and the westerly right of way line of the Seaboard Coast Line Railroad; thence along said Railroad right of way line, S 17°45'45" E a distance of 261.67 feet to a point at the intersection of the westerly right of way line of the Seaboard Coast Line Railroad and the westerly right of way line of Randolph Street; thence along the westerly right of way line of Randolph Street, S 17°24'54" W a distance of 95.18 feet to a point; thence leave the westerly right of way line of Randolph Street and run N 73°04'28" W a distance of 486.90 feet to a point; thence N 16°35'25" E a distance of 375.26 feet to the POINT OF BEGINNING; said area containing 152,820.7 square feet, or 3.51 acres more or less.

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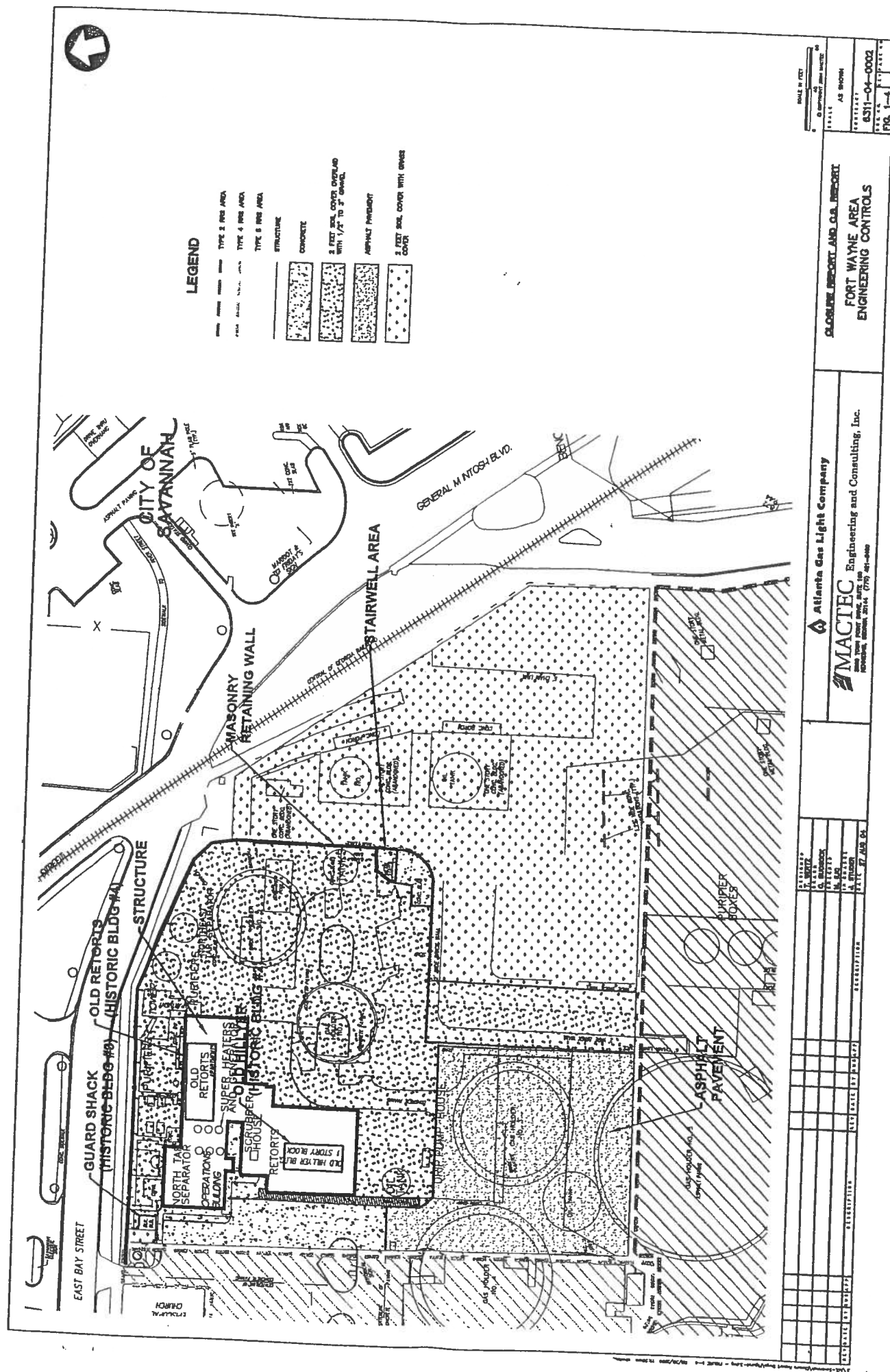
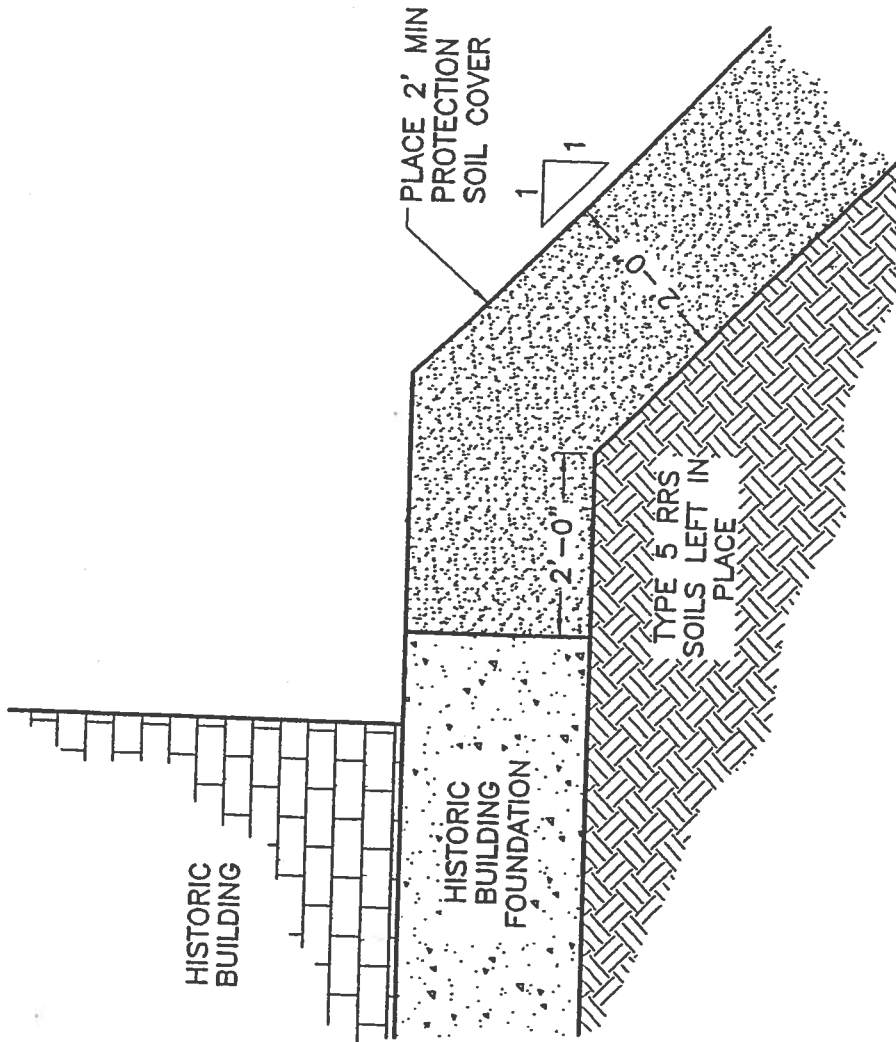


Exhibit D

J:\ACI-Savannah\Closure Report Dwg\Historic Building.dwg -- Layout1 08/30/2004 12:00pm cbudsock



ATLANTA GAS LIGHT  
COMPANY  
SAVANNAH MPG SITE



Engineering and Consulting, Inc.  
3200 TOWN POINT DRIVE, SUITE 100  
KENNESAW, GEORGIA 30144 (770) 421-3400

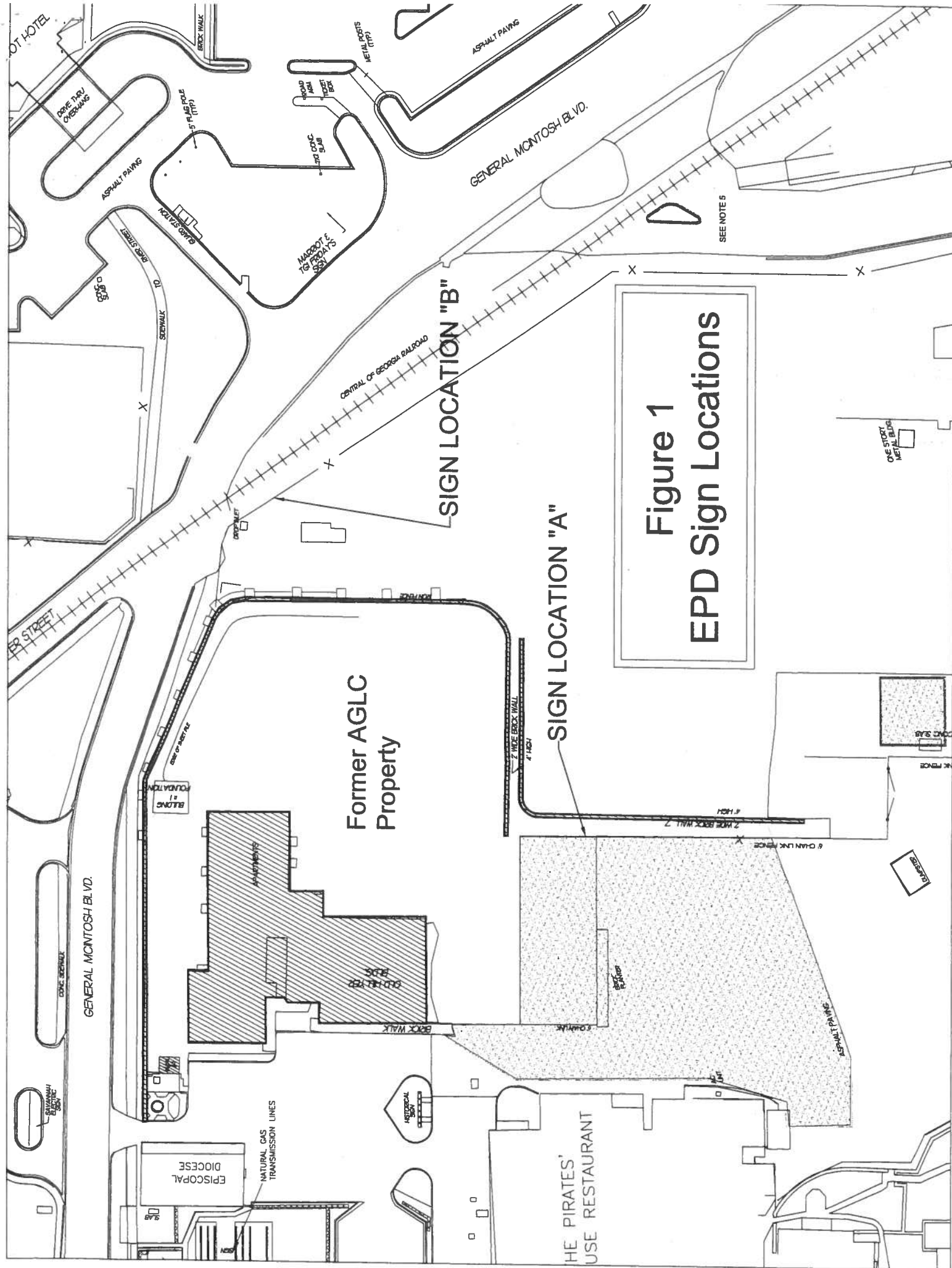
**CLOSURE REPORT AND CS REPORT**  
HISTORIC BUILDINGS  
FOUNDATION PROTECTION  
EXCAVATION LIMITS

JOB NO. 6311-04-0002

FIGURE 1-5

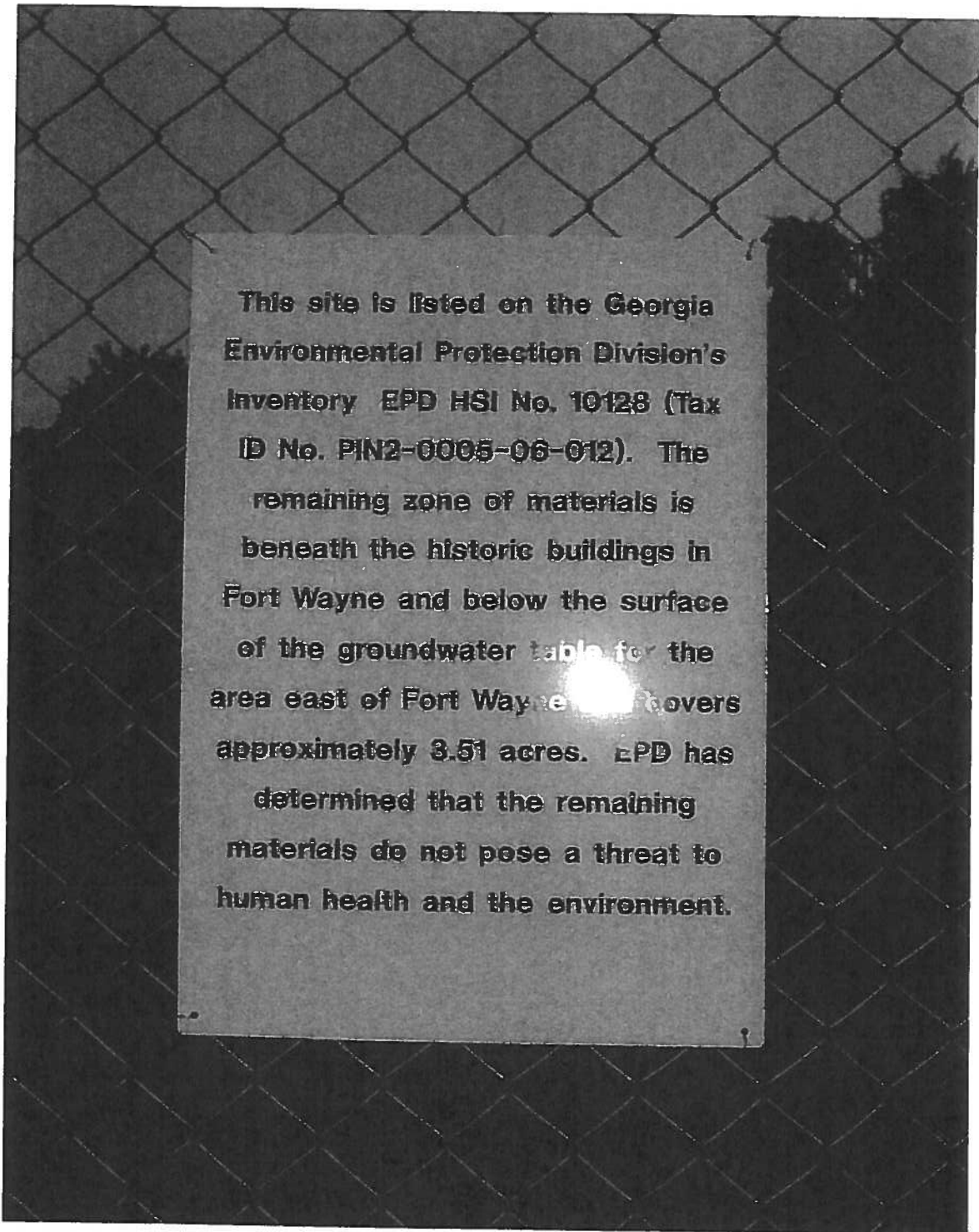
PREPARED BY/DATE  
CHECKED BY/DATE







**SIGN "A"**



This site is listed on the Georgia Environmental Protection Division's Inventory EPD HSI No. 10128 (Tax ID No. PIN2-0005-06-012). The remaining zone of materials is beneath the historic buildings in Fort Wayne and below the surface of the groundwater table for the area east of Fort Wayne. The area covers approximately 3.51 acres. EPD has determined that the remaining materials do not pose a threat to human health and the environment.

**SIGN "B"**