

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| | | | |
|--------------------------------------|--|---------------------------------|-------------------|
| Applicant: ALDOT | | File Number: SAM-2021-00736-AKG | Date: 07/03/2024 |
| Attached is: (AJD Ephemeral Streams) | | | See Section below |
| | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A | |
| | PROFFERED PERMIT (Standard Permit or Letter of permission) | B | |
| | PERMIT DENIAL WITHOUT PREJUDICE | C | |
| | PERMIT DENIAL WITH PREJUDICE | D | |
| XX | APPROVED JURISDICTIONAL DETERMINATION | E | |
| | PRELIMINARY JURISDICTIONAL DETERMINATION | F | |

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Amy K. Gavin
Mobile District, Regulatory Project Manager
600 Vestavia Parkway, Suite 203
The Shelby Building
Vestavia Hills, Alabama 35216
Amy.K.Gavin@usace.army.mil
334-467-8779

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Krista Sabin
Regulatory Review Officer
South Atlantic Division
60 Forsyth St SW, Floor M9
Atlanta, Georgia 30303-8803
Krista.D.Sabin@usace.army.mil
904-314-9631

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

| | |
|---|-------------------|
| <hr/> Signature of appellant or agent. | Date: |
| Email address of appellant and/or agent: | Telephone number: |



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
600 VESTAVIA PARKWAY, SUITE 203
VESTAVIA HILLS, ALABAMA 35216

CESAM-RD-N

July 3, 2024

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 SAM-2021-00736-AGK; MFR #2 of #2²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Alabama due to litigation.

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).

| Aquatic Resource | Individual Feature |
|-------------------------|---|
| AE1 | Non-jurisdictional, non-relatively permanent waters |
| AE2 | Non-jurisdictional, non-relatively permanent waters |
| AE3 | Non-jurisdictional, non-relatively permanent waters |
| AE4 | Non-jurisdictional, non-relatively permanent waters |
| AE5 | Non-jurisdictional, non-relatively permanent waters |
| AE6 | Non-jurisdictional, non-relatively permanent waters |
| AE7 | Non-jurisdictional, non-relatively permanent waters |
| AE8 | Non-jurisdictional, non-relatively permanent waters |
| AE9 | Non-jurisdictional, non-relatively permanent waters |
| AE10 | Non-jurisdictional, non-relatively permanent waters |
| AE11 | Non-jurisdictional, non-relatively permanent waters |
| AE12 | Non-jurisdictional, non-relatively permanent waters |
| AE13 | Non-jurisdictional, non-relatively permanent waters |
| AE14 | Non-jurisdictional, non-relatively permanent waters |
| AE15 | Non-jurisdictional, non-relatively permanent waters |
| AE16 | Non-jurisdictional, non-relatively permanent waters |
| AE17 | Non-jurisdictional, non-relatively permanent waters |
| AE18 | Non-jurisdictional, non-relatively permanent waters |
| AE19 | Non-jurisdictional, non-relatively permanent waters |
| AE20 | Non-jurisdictional, non-relatively permanent waters |
| AE21 | Non-jurisdictional, non-relatively permanent waters |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AMG

| | |
|------|---|
| AE22 | Non-jurisdictional, non-relatively permanent waters |
| AE23 | Non-jurisdictional, non-relatively permanent waters |
| AE24 | Non-jurisdictional, non-relatively permanent waters |
| AE25 | Non-jurisdictional, non-relatively permanent waters |
| AE26 | Non-jurisdictional, non-relatively permanent waters |
| AE27 | Non-jurisdictional, non-relatively permanent waters |
| AE28 | Non-jurisdictional, non-relatively permanent waters |
| AE29 | Non-jurisdictional, non-relatively permanent waters |
| AE30 | Non-jurisdictional, non-relatively permanent waters |
| AE31 | Non-jurisdictional, non-relatively permanent waters |
| AE32 | Non-jurisdictional, non-relatively permanent waters |
| AE33 | Non-jurisdictional, non-relatively permanent waters |
| AE34 | Non-jurisdictional, non-relatively permanent waters |
| AE35 | Non-jurisdictional, non-relatively permanent waters |
| AE36 | Non-jurisdictional, non-relatively permanent waters |
| AE37 | Non-jurisdictional, non-relatively permanent waters |
| AE38 | Non-jurisdictional, non-relatively permanent waters |
| AE39 | Non-jurisdictional, non-relatively permanent waters |
| AE40 | Non-jurisdictional, non-relatively permanent waters |
| AE41 | Non-jurisdictional, non-relatively permanent waters |
| AE42 | Non-jurisdictional, non-relatively permanent waters |
| AE43 | Non-jurisdictional, non-relatively permanent waters |
| AE44 | Non-jurisdictional, non-relatively permanent waters |
| AE45 | Non-jurisdictional, non-relatively permanent waters |
| AE46 | Non-jurisdictional, non-relatively permanent waters |
| AE47 | Non-jurisdictional, non-relatively permanent waters |
| AE48 | Non-jurisdictional, non-relatively permanent waters |
| AE49 | Non-jurisdictional, non-relatively permanent waters |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

| | |
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| AE50 | Non-jurisdictional, non-relatively permanent waters |
| AE51 | Non-jurisdictional, non-relatively permanent waters |
| AE52 | Non-jurisdictional, non-relatively permanent waters |
| AE53 | Non-jurisdictional, non-relatively permanent waters |
| AE54 | Non-jurisdictional, non-relatively permanent waters |
| AE55 | Non-jurisdictional, non-relatively permanent waters |
| AE56 | Non-jurisdictional, non-relatively permanent waters |
| AE57 | Non-jurisdictional, non-relatively permanent waters |
| AE58 | Non-jurisdictional, non-relatively permanent waters |
| AE59 | Non-jurisdictional, non-relatively permanent waters |
| AE60 | Non-jurisdictional, non-relatively permanent waters |
| AE61 | Non-jurisdictional, non-relatively permanent waters |
| AE62 | Non-jurisdictional, non-relatively permanent waters |
| AE63 | Non-jurisdictional, non-relatively permanent waters |
| AE64 | Non-jurisdictional, non-relatively permanent waters |
| AE65 | Non-jurisdictional, non-relatively permanent waters |
| AE66 | Non-jurisdictional, non-relatively permanent waters |
| AE67 | Non-jurisdictional, non-relatively permanent waters |
| AE68 | Non-jurisdictional, non-relatively permanent waters |
| AE69 | Non-jurisdictional, non-relatively permanent waters |
| AE70 | Non-jurisdictional, non-relatively permanent waters |
| AE71 | Non-jurisdictional, non-relatively permanent waters |
| AE72 | Non-jurisdictional, non-relatively permanent waters |
| AE73 | Non-jurisdictional, non-relatively permanent waters |
| AE74 | Non-jurisdictional, non-relatively permanent waters |
| AE75 | Non-jurisdictional, non-relatively permanent waters |
| AE76 | Non-jurisdictional, non-relatively permanent waters |
| AE77 | Non-jurisdictional, non-relatively permanent waters |

| | |
|------|---|
| AE78 | Non-jurisdictional, non-relatively permanent waters |
| AE79 | Non-jurisdictional, non-relatively permanent waters |
| AE80 | Non-jurisdictional, non-relatively permanent waters |
| AE81 | Non-jurisdictional, non-relatively permanent waters |
| AE82 | Non-jurisdictional, non-relatively permanent waters |
| AE83 | Non-jurisdictional, non-relatively permanent waters |
| AE84 | Non-jurisdictional, non-relatively permanent waters |
| AE85 | Non-jurisdictional, non-relatively permanent waters |
| AE86 | Non-jurisdictional, non-relatively permanent waters |
| AE87 | Non-jurisdictional, non-relatively permanent waters |

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 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* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)
- e. 2003 SWANCC Guidance

3. REVIEW AREA. The review area is a 2,873 acre linear transportation project located in wetlands and tributaries to Mud Creek, Whirl Creek, Sam's Creek, Sweetwater Creek, Beaver Creek, Springfield Creek, Little Creek, Mill Creek, and other waters near the Cities of Thomasville, Dixon Mills, Wayne, Linden, Providence, and Gallion in Clarke, Marengo, and Hale Counties, Alabama. More specifically, the project is located along 24-miles of U.S. Highway 43 (US 43) commencing near Latitude 31.938615 North, Longitude 87.737193 West and terminating near Latitude 32.264244 North, Longitude 87.794696, and 12-miles of State Road 69 (SR 69) commencing near Latitude 32.360458 North, Longitude 87.756323 West and terminating near Latitude 32.516792 North, Longitude 87.694230 West within Sections 2 and 11, Township 11 North, Range 3 East; Sections 4, 9, 15, 16, 22, 27,

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

34 and 35, Township 12 North, Range 3 East; Sections 3, 4, 9, 16, 21, 28 and 33 Township 13 North, Range 3 East; Sections 4, 9, 15, 16, 21, 28 and 33 Township 14 North, Range 3 East; Sections 16, 17, 20, 21, 28, 29, and 33, Township 15 North, Range 3 East; Sections 11, 12 and 14, Township 16 North, Range 3 East; Sections 5, 6 and 7, Township 16 North, Range 4 East; Sections 5, 7, 8, 17, 18, 19, 20, 29, 31 and 32, Township 17 North, Range 4 East; Sections 28, 29 and 32, Township 18 North, Range 4 East. The project is in the Middle Tombigbee-Chickasaw 8-digit hydrologic unit code (HUC 03160201) and Lower Black Warrior (HUC 03160113). The review area is depicted on the attached Figures.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The ephemeral streams are not connected to a TNW, interstate water or territorial seas.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The ephemeral streams are not connected to a TNW, interstate water or territorial seas
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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.

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

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”).⁹ 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

⁹ 51 FR 41217, November 13, 1986.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

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
- 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).

The aquatic resources described in the table below are non-jurisdictional, non-relatively permanent waters. There are a total of 87 non-relatively permanent waters totaling 9,712 feet (0.934 acres).

| Waters_Name | HGM_Code | Amount | Waters_Type | Lat | Long |
|--------------------|-----------------|------------------------|------------------------------------|------------|-------------|
| AE1 | R6 RIVERINE | 87 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.948805 | -87.738457 |
| AE2 | R6 RIVERINE | 105 LF (0.012 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.948997 | -87.738617 |
| AE3 | R6 RIVERINE | 103 LF (0.009 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.949177 | -87.738647 |
| AE4 | R6 RIVERINE | 70 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.949228 | -87.738731 |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

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| AE5 | R6 RIVERINE | 278 LF (0.042 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.952341 | -87.739868 |
| AE6 | R6 RIVERINE | 169 LF (0.019 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.953249 | -87.740532 |
| AE7 | R6 RIVERINE | 65 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.956602 | -87.741135 |
| AE8 | R6 RIVERINE | 139 LF (0.018 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.962103 | -87.742828 |
| AE9 | R6 RIVERINE | 77 LF (0.011 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.962257 | -87.743309 |
| AE10 | R6 RIVERINE | 31 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.963541 | -87.743324 |
| AE11 | R6 RIVERINE | 71 LF (0.005 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.964254 | -87.745483 |
| AE12 | R6 RIVERINE | 216 LF (0.024 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.971083 | -87.751923 |
| AE13 | R6 RIVERINE | 94 LF (0.008 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.972849 | -87.753281 |
| AE14 | R6 RIVERINE | 110 LF (0.005 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.976606 | -87.754326 |
| AE15 | R6 RIVERINE | 73 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.979055 | -87.755699 |
| AE16 | R6 RIVERINE | 19 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.983145 | -87.757439 |
| AE17 | R6 RIVERINE | 152 LF (0.024 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.983147 | -87.756523 |
| AE18 | R6 RIVERINE | 136 LF (0.005 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.984465 | -87.757050 |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

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|------|----------------|------------------------|------------------------------------|-----------|------------|
| AE19 | R6 RIVERINE | 59 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.986725 | -87.757080 |
| AE20 | R6 RIVERINE | 59 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.989195 | -87.757874 |
| AE21 | R6 RIVERINE | 34 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.989315 | -87.758057 |
| AE22 | R6 RIVERINE | 120 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.992006 | -87.759056 |
| AE23 | R6 RIVERINE | 47 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.993332 | -87.760971 |
| AE24 | R6 RIVERINE | 157 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.996351 | -87.763420 |
| AE25 | R6 RIVERINE | 105 LF (0.008 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 31.999809 | -87.764915 |
| AE26 | R6 RIVERINE | 103 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.000980 | -87.765274 |
| AE27 | R6 RIVERINE | 101 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.001148 | -87.765297 |
| AE28 | R6 RIVERINE | 100 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.002460 | -87.765755 |
| AE29 | R6 RIVERINE | 48 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.003502 | -87.766205 |
| AE30 | R6 RIVERINE | 119 LF (0.008 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.006302 | -87.767052 |
| AE31 | R6 RIVERINE | 122 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.008270 | -87.767120 |
| AE32 | R6 RIVERINE | 155 LF (0.021 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.009003 | -87.768280 |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AGK

| | | | | | |
|------|----------------|------------------------|------------------------------------|-----------|------------|
| AE33 | R6 RIVERINE | 50 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.011436 | -87.768814 |
| AE34 | R6 RIVERINE | 89 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.012379 | -87.769112 |
| AE35 | R6 RIVERINE | 58 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.012394 | -87.769440 |
| AE36 | R6 RIVERINE | 162 LF (0.018 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.012730 | -87.769562 |
| AE37 | R6 RIVERINE | 49 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.030994 | -87.777763 |
| AE38 | R6 RIVERINE | 95 LF (0.012 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.033291 | -87.779251 |
| AE39 | R6 RIVERINE | 37 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.033375 | -87.779572 |
| AE40 | R6 RIVERINE | 24 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.033375 | -87.779381 |
| AE41 | R6 RIVERINE | 44 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.037704 | -87.781258 |
| AE42 | R6 RIVERINE | 198 LF (0.061 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.075413 | -87.782417 |
| AE43 | R6 RIVERINE | 85 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.080830 | -87.780670 |
| AE44 | R6 RIVERINE | 100 LF (0.006 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.109516 | -87.781525 |
| AE45 | R6 RIVERINE | 102 LF (0.013 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.120949 | -87.777252 |
| AE46 | R6 RIVERINE | 49 LF (0.008 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.121021 | -87.777634 |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

| | | | | | |
|------|----------------|------------------------|------------------------------------|-----------|------------|
| AE47 | R6 RIVERINE | 23 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.123001 | -87.777847 |
| AE48 | R6 RIVERINE | 183 LF (0.012 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.126419 | -87.778976 |
| AE49 | R6 RIVERINE | 163 LF (0.010 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.128197 | -87.779709 |
| AE50 | R6 RIVERINE | 147 LF (0.019 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.128448 | -87.779388 |
| AE51 | R6 RIVERINE | 52 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.130112 | -87.780258 |
| AE52 | R6 RIVERINE | 440 LF (0.063 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.130642 | -87.780975 |
| AE53 | R6 RIVERINE | 183 LF (0.011 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.131599 | -87.781075 |
| AE54 | R6 RIVERINE | 316 LF (0.028 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.147789 | -87.782532 |
| AE55 | R6 RIVERINE | 162 LF (0.013 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.155994 | -87.784691 |
| AE56 | R6 RIVERINE | 62 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.167854 | -87.783287 |
| AE57 | R6 RIVERINE | 151 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.170021 | -87.782906 |
| AE58 | R6 RIVERINE | 141 LF (0.007 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.170265 | -87.782539 |
| AE59 | R6 RIVERINE | 138 LF (0.008 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.174232 | -87.781174 |
| AE60 | R6 RIVERINE | 75 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.177593 | -87.779144 |

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

| | | | | | |
|------|----------------|------------------------|------------------------------------|-----------|------------|
| AE61 | R6 RIVERINE | 164 LF (0.011 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.185825 | -87.776764 |
| AE62 | R6 RIVERINE | 103 LF (0.009 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.186348 | -87.777206 |
| AE63 | R6 RIVERINE | 57 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.189716 | -87.779152 |
| AE64 | R6 RIVERINE | 58 LF (0.005 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.195835 | -87.782051 |
| AE65 | R6 RIVERINE | 101 LF (0.010 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.202408 | -87.784401 |
| AE66 | R6 RIVERINE | 180 LF (0.024 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.204731 | -87.786072 |
| AE67 | R6 RIVERINE | 183 LF (0.013 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.205490 | -87.786461 |
| AE68 | R6 RIVERINE | 63 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.209038 | -87.787468 |
| AE69 | R6 RIVERINE | 52 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.209137 | -87.786659 |
| AE70 | R6 RIVERINE | 69 LF (0.009 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.210304 | -87.787346 |
| AE71 | R6 RIVERINE | 88 LF (0.009 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.210331 | -87.787781 |
| AE72 | R6 RIVERINE | 292 LF (0.023 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.228264 | -87.792892 |
| AE73 | R6 RIVERINE | 49 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.230385 | -87.793060 |
| AE74 | R6 RIVERINE | 37 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.230507 | -87.793251 |

CESAM-RD-N

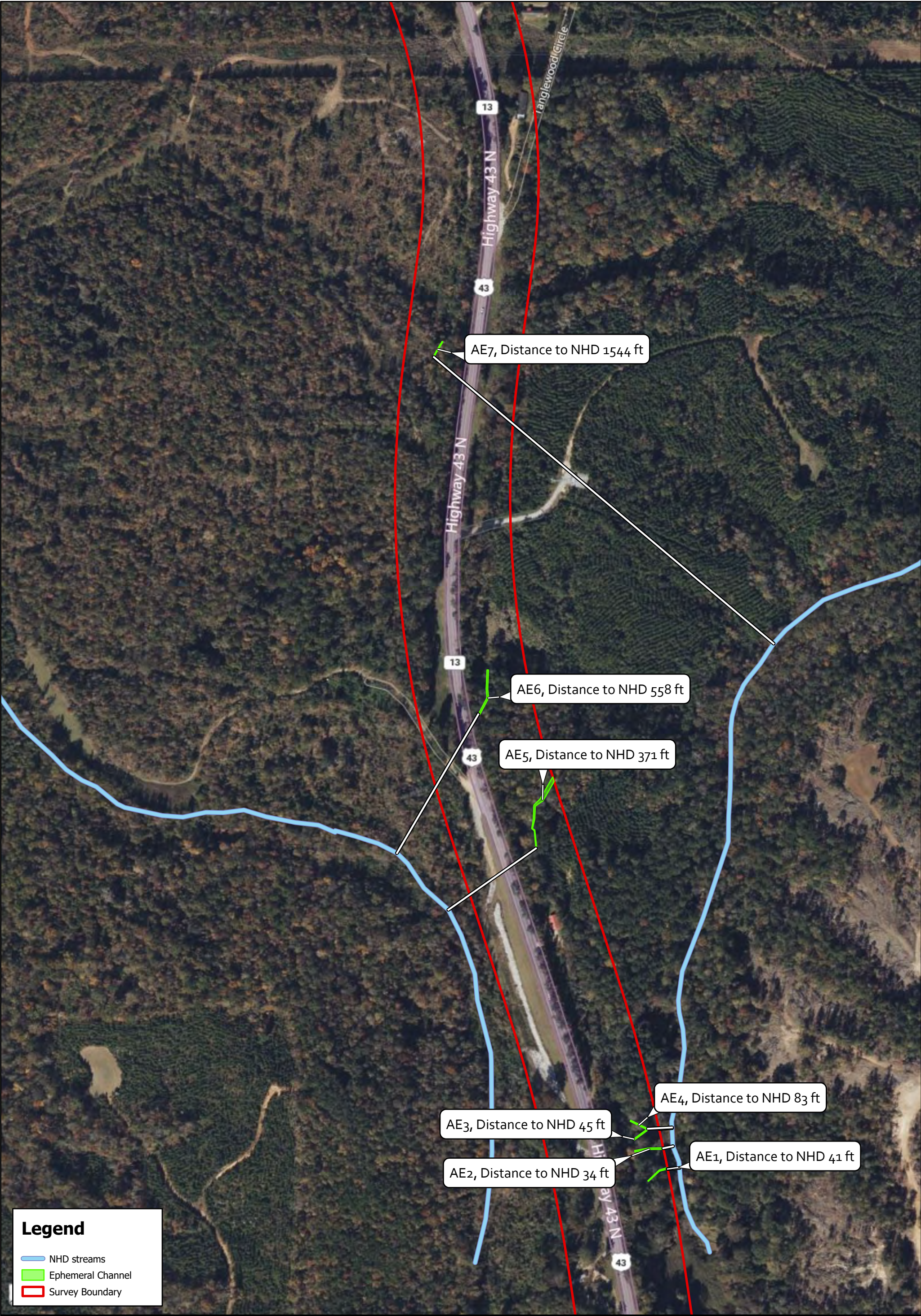
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

| | | | | | |
|------|----------------|------------------------|------------------------------------|-----------|------------|
| AE75 | R6 RIVERINE | 44 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.235790 | -87.793938 |
| AE76 | R6 RIVERINE | 48 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.239174 | -87.795296 |
| AE77 | R6 RIVERINE | 41 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.243771 | -87.794922 |
| AE78 | R6 RIVERINE | 32 LF (0.003 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.249577 | -87.795273 |
| AE79 | R6 RIVERINE | 102 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.379055 | -87.722923 |
| AE80 | R6 RIVERINE | 26 LF (0.001 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.384399 | -87.718246 |
| AE81 | R6 RIVERINE | 45 LF (0.005 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.400455 | -87.707901 |
| AE82 | R6 RIVERINE | 29 LF (0.002 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.435837 | -87.710930 |
| AE83 | R6 RIVERINE | 111 LF (0.004 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.436306 | -87.711311 |
| AE84 | R6 RIVERINE | 154 LF (0.014 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.439468 | -87.712212 |
| AE85 | R6 RIVERINE | 264 LF (0.043 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.499401 | -87.698265 |
| AE86 | R6 RIVERINE | 539 LF (0.083 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.501049 | -87.697510 |
| AE87 | R6 RIVERINE | 78 LF (0.018 acre) | NON-WOTUS- TRIB.NEGATIVE- A5 | 32.511837 | -87.694244 |

CESAM-RD-N

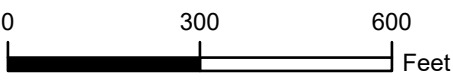
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2021-00736-AKG

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. Joint site visit conducted with Agent June 13-14, 2022, joint site visit conducted with EPA July 25-26, 2023, and multiple in office desktop evaluation and discussions have been completed since 2021.
 - b. Aerial Figures 1 – 22 and TOPO Figures 1 -22 prepared by Volkert and received on May 23, 2024, to re-evaluate aquatic resources under Pre-2015 Post Sackett Decision.
 - c. National Regulatory Viewer - USGS Topo map and aerial imagery accessed May 15, 2024; National Hydrography Data accessed May 15, 2024; National Wetland Inventory Data accessed September May 15, 2024; FEMA Flood map accessed May 15, 2024.
 - d. Google Earth Pro – Historic Aerials January 1992, October 2005, June 2006, March 2013, February 2015, March 2019, March 2023.
10. OTHER SUPPORTING INFORMATION. A previous AJD dated October 26, 2022, is available upon request. These ephemeral features were identified as jurisdictional based on the Pre-2015 regime.
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.



Legend

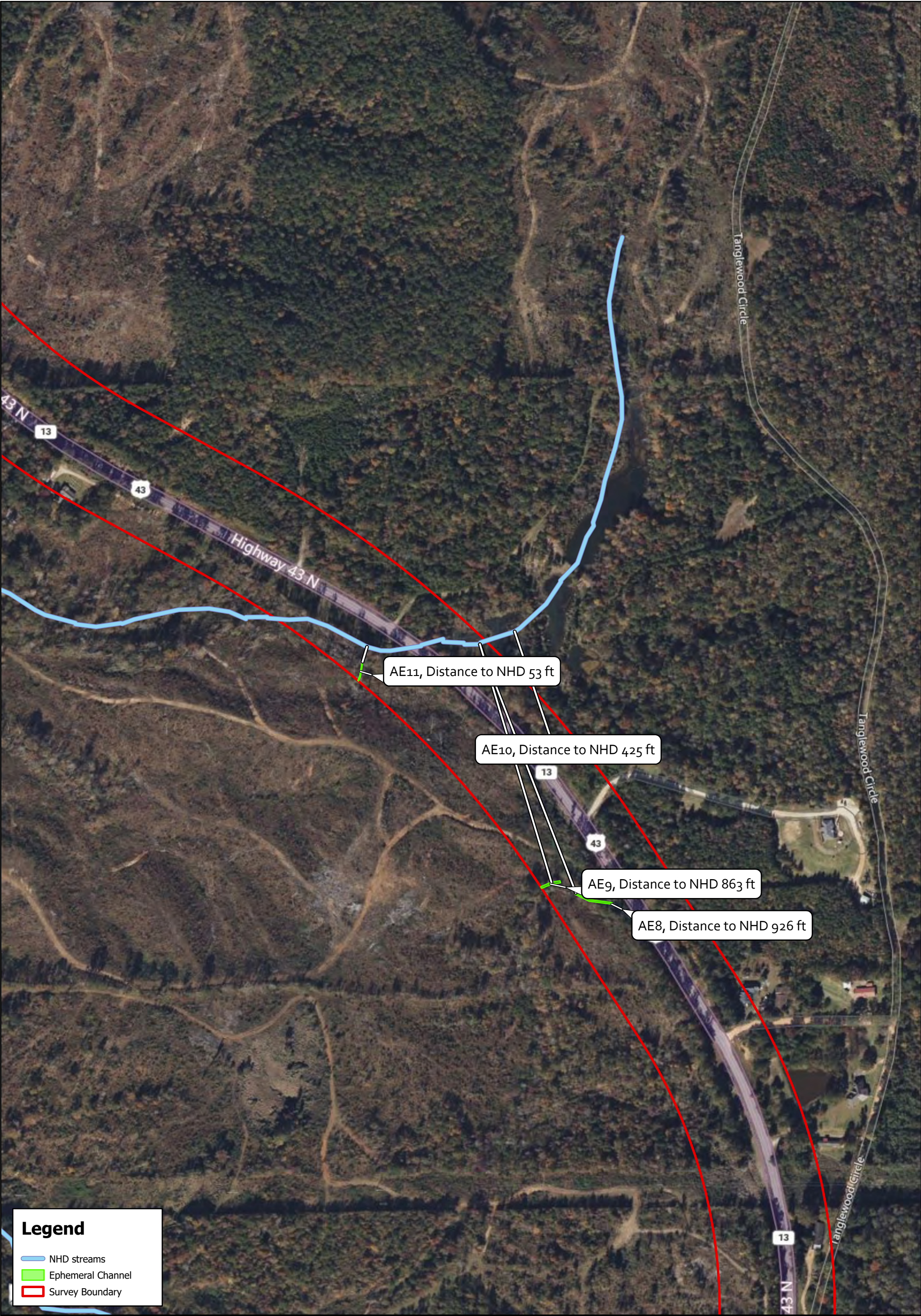
- NHD streams
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





Legend

- NHD streams
- Ephemeral Channel
- Survey Boundary

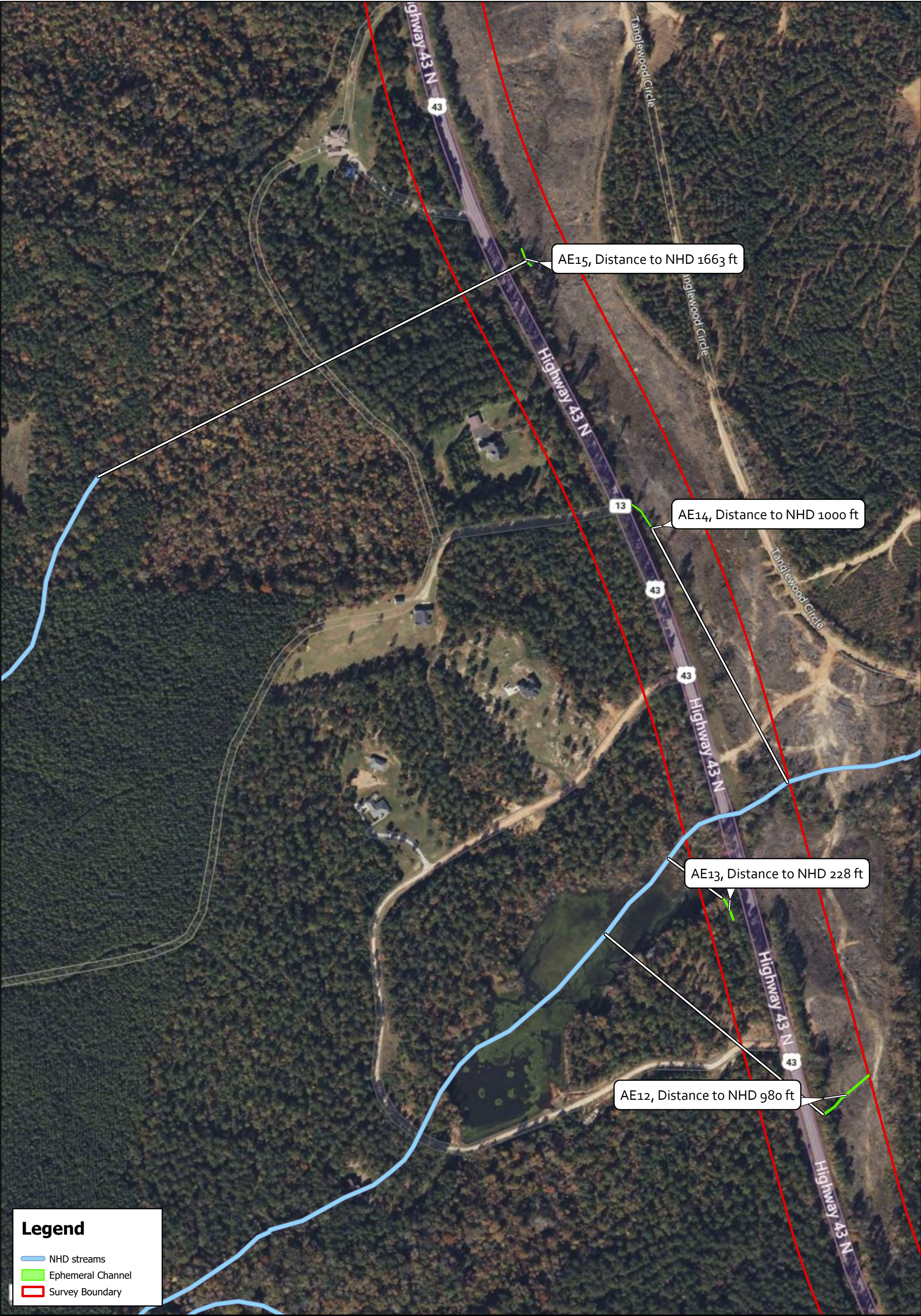


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1 inch = 300 feet

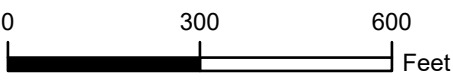
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Legend

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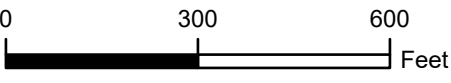
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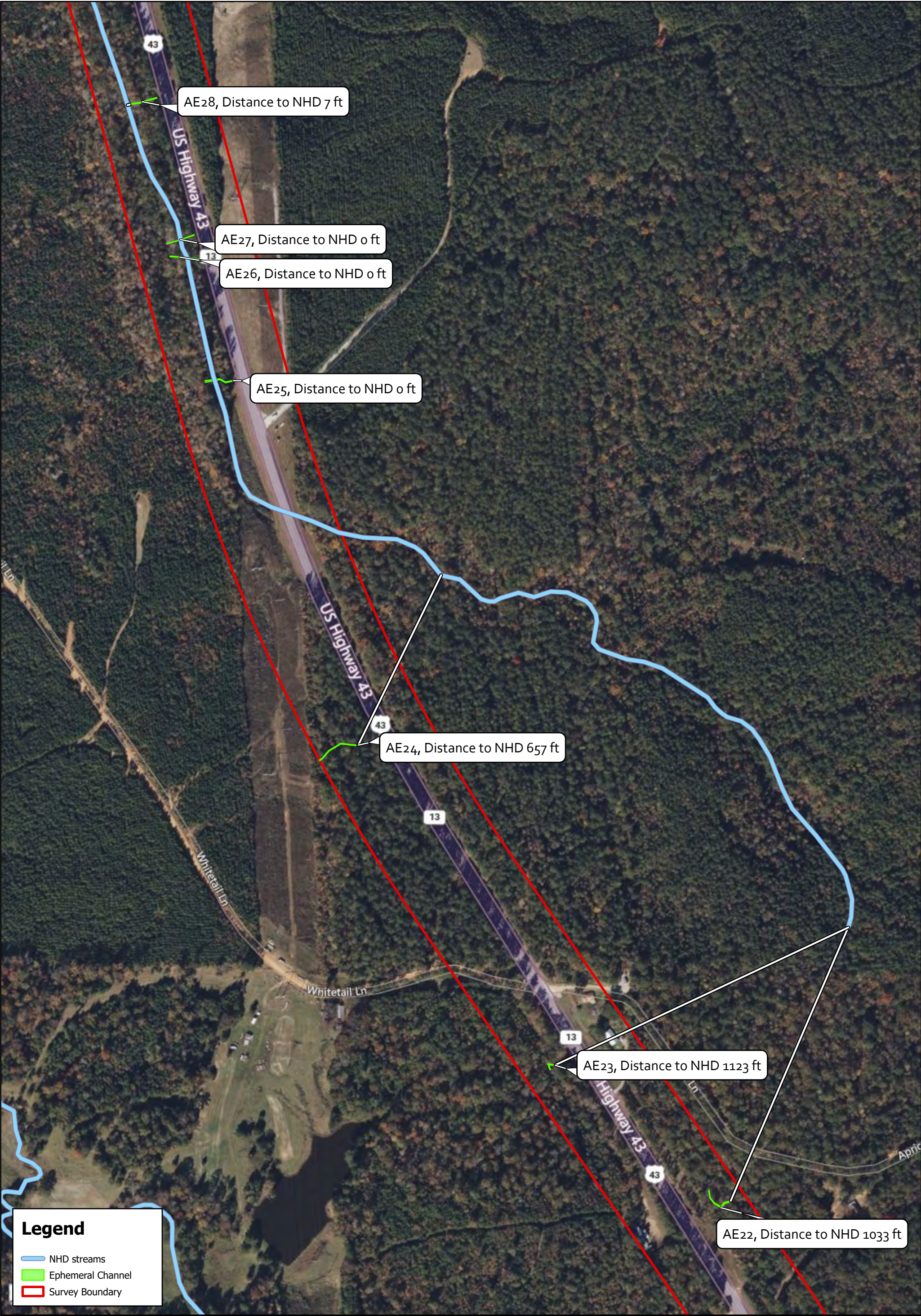
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Legend

NHD streams

Ephemeral Channel

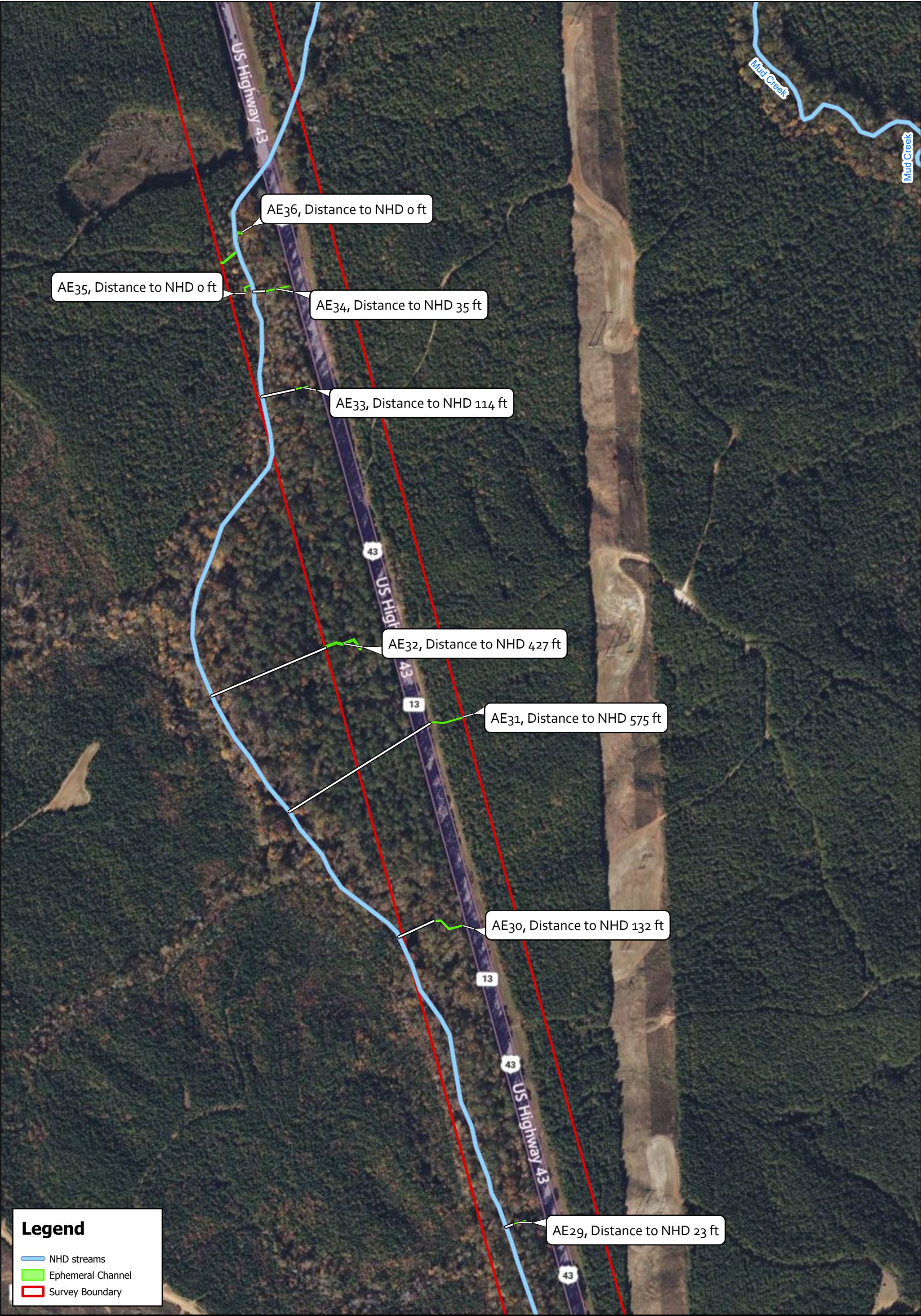
Survey Boundary



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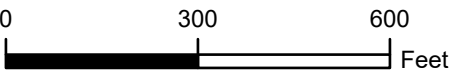
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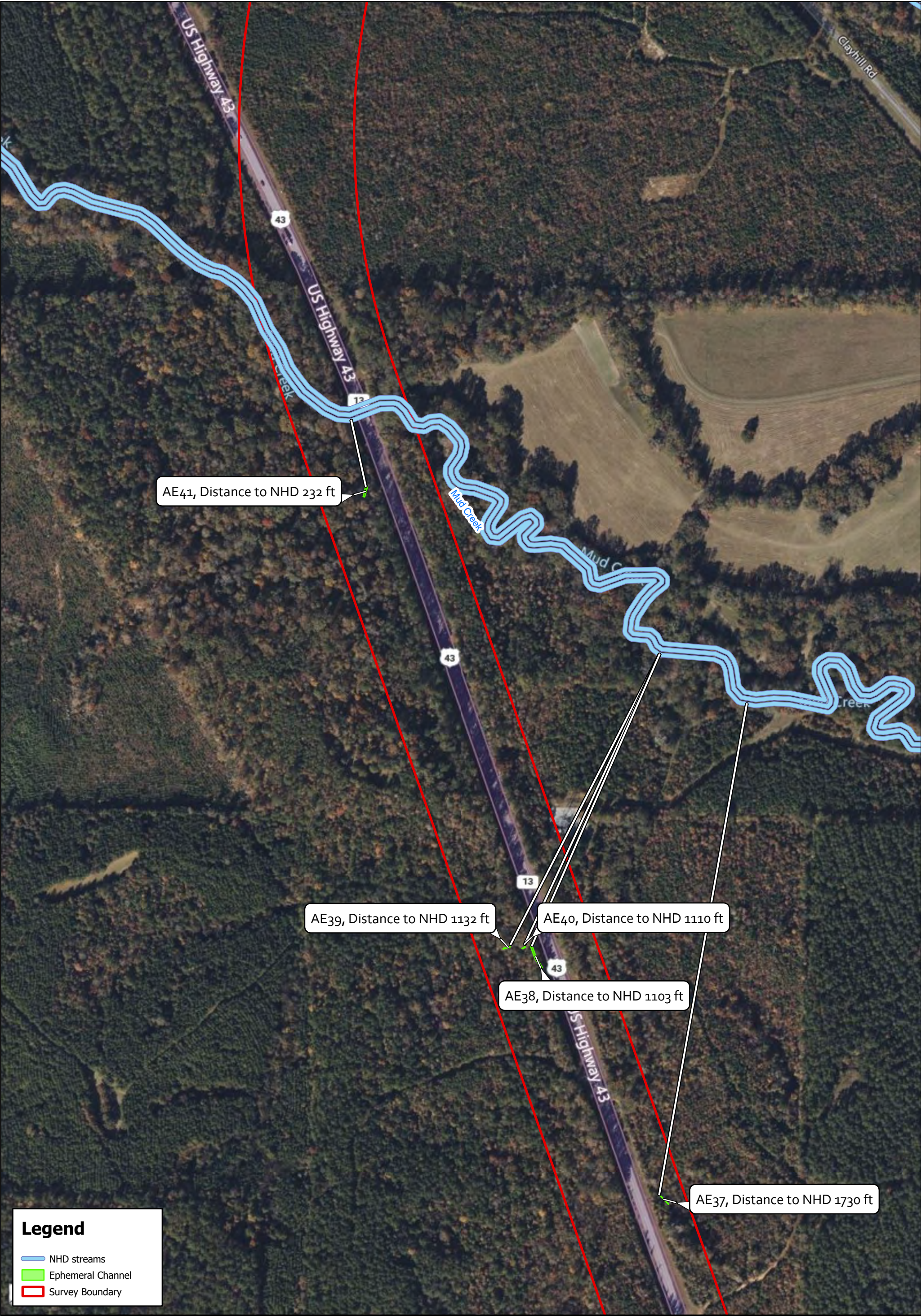
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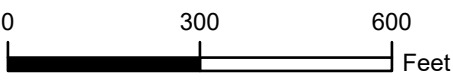
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Legend

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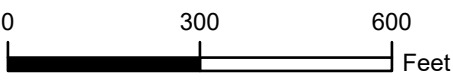
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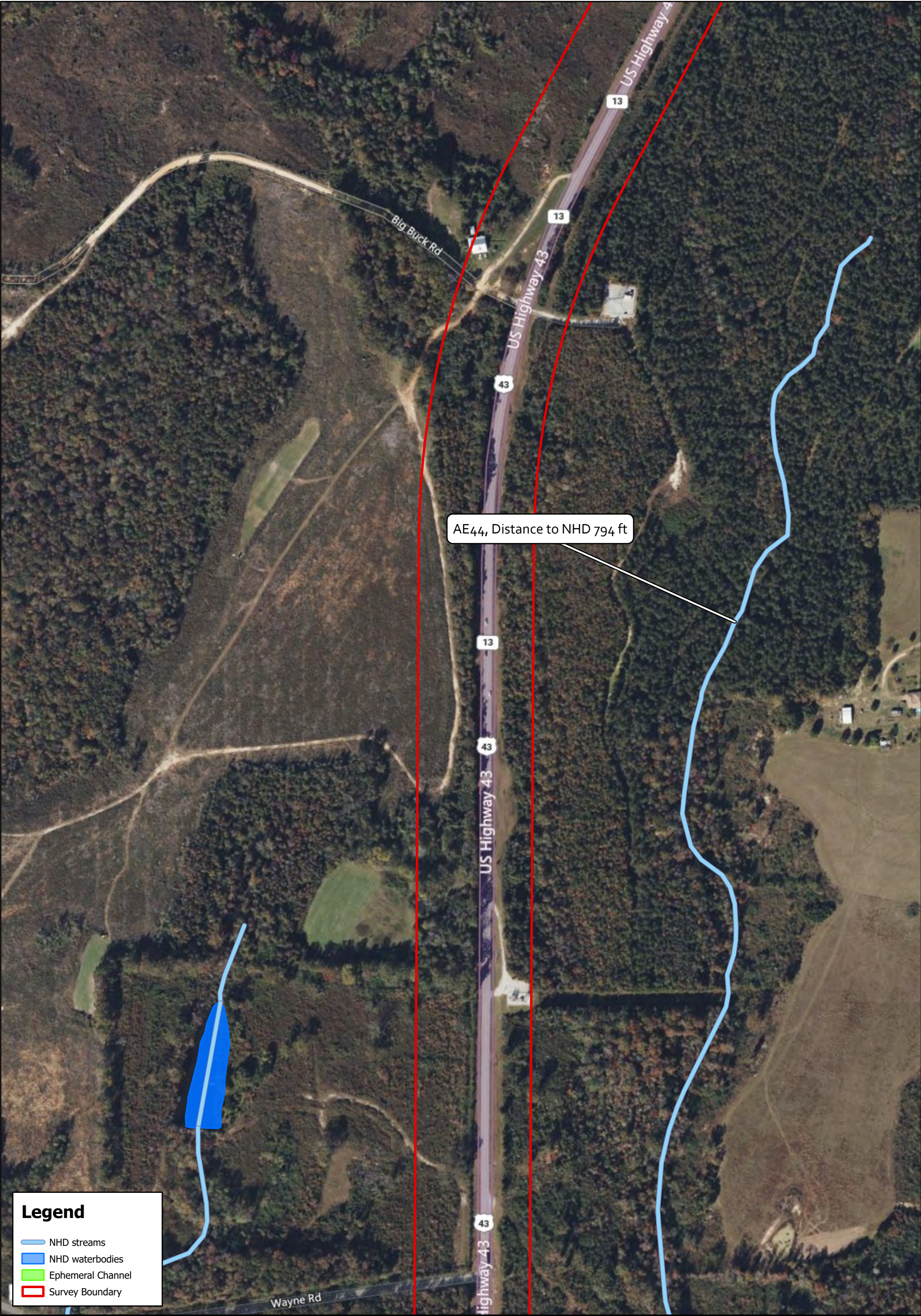
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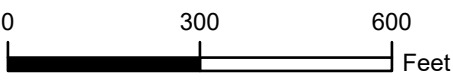
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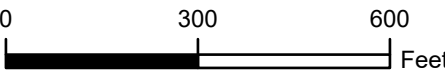
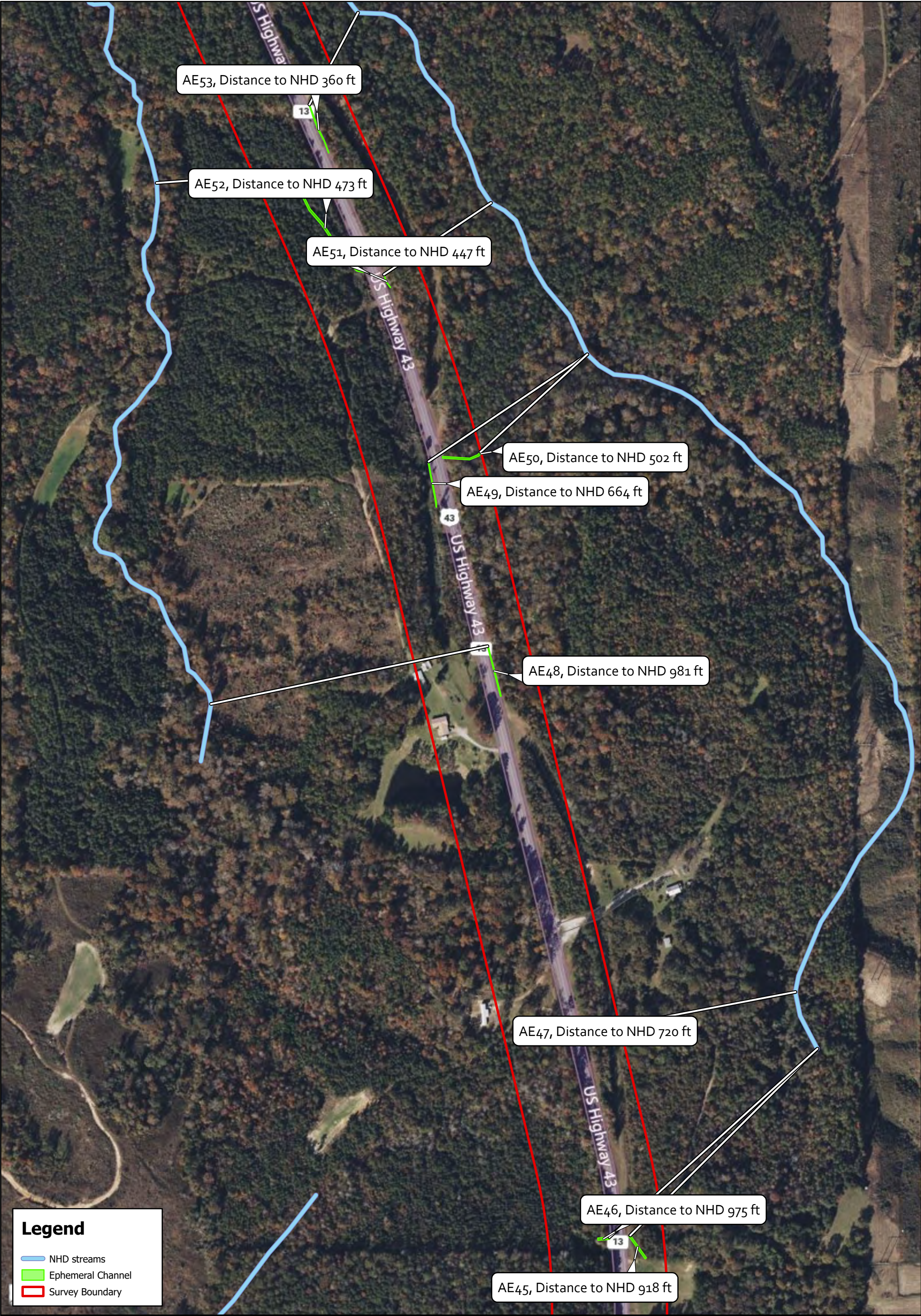
- NHD streams
- NHD waterbodies
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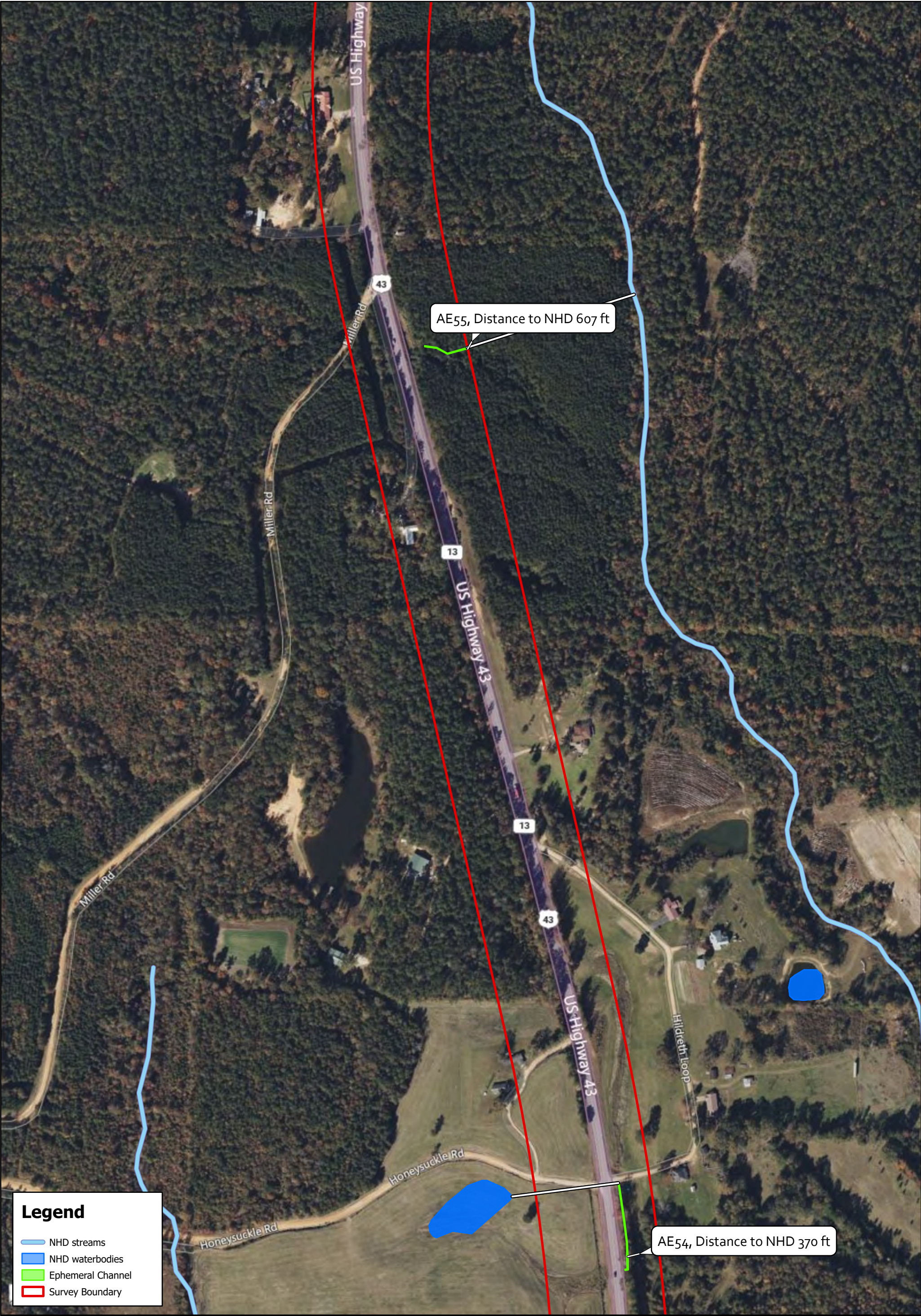
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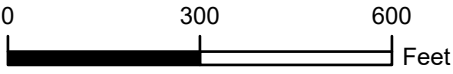
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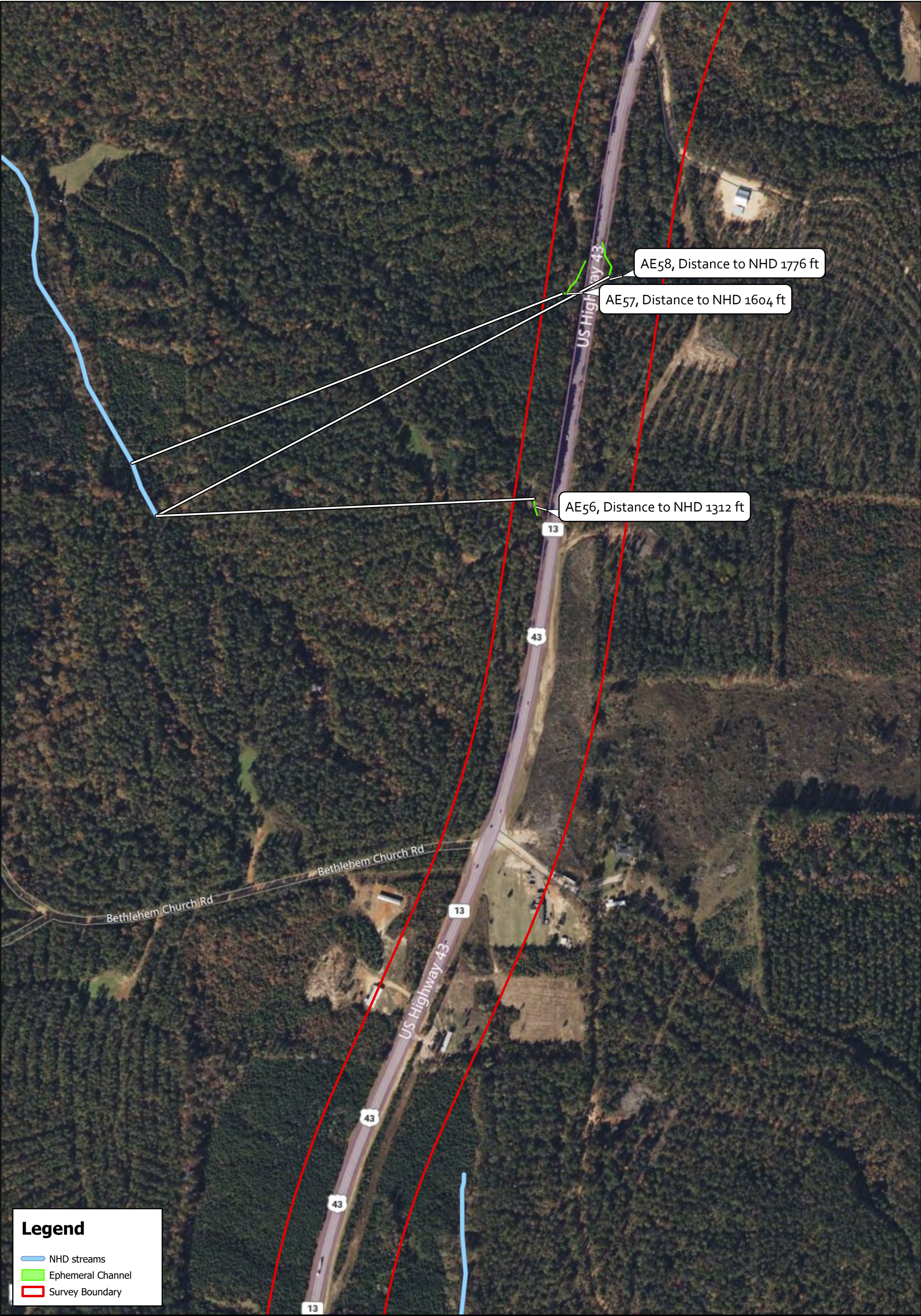
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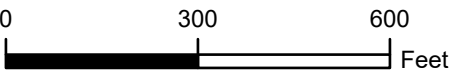
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Legend

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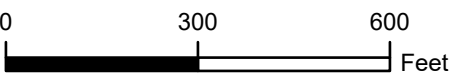
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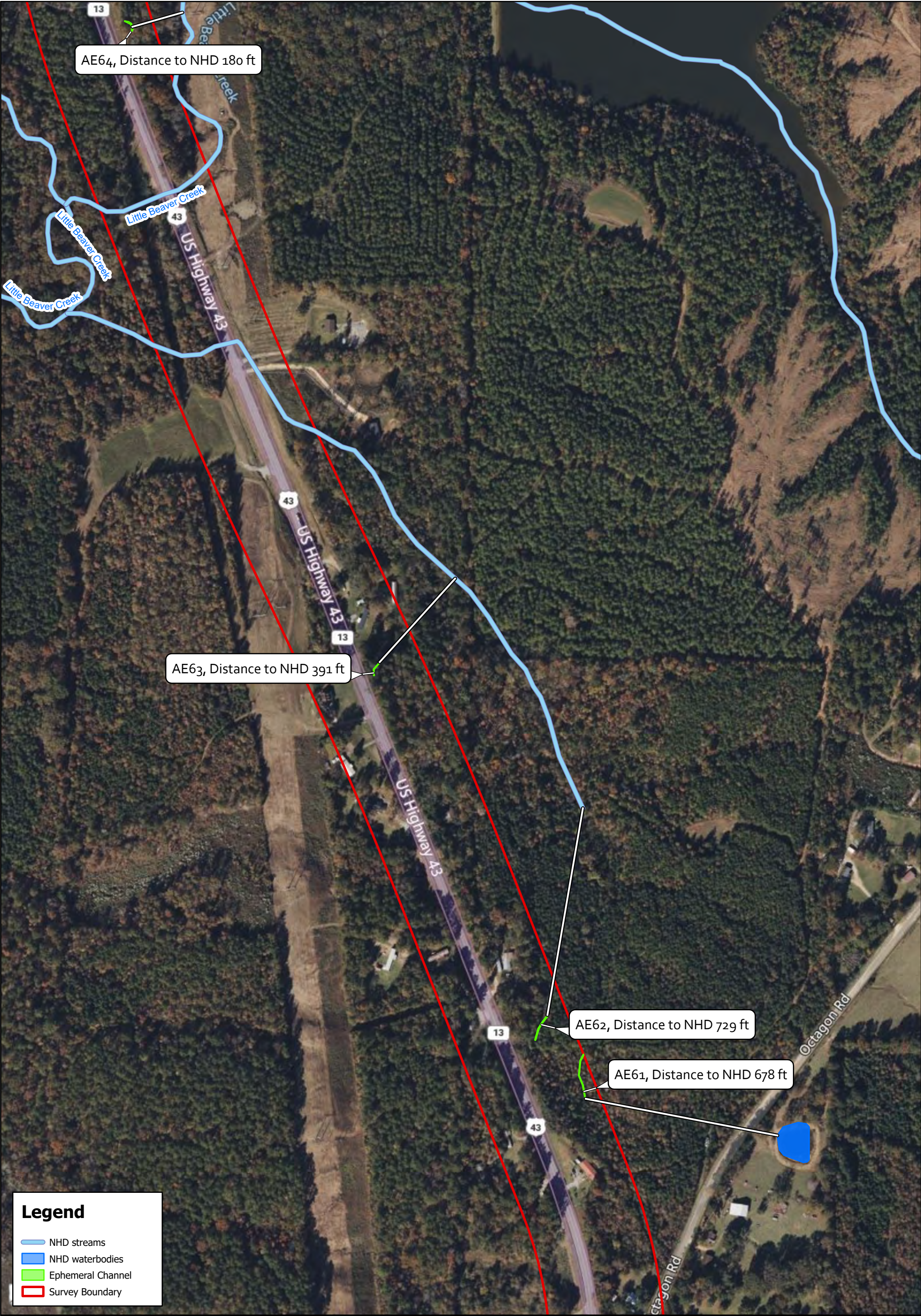
Legend

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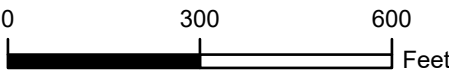
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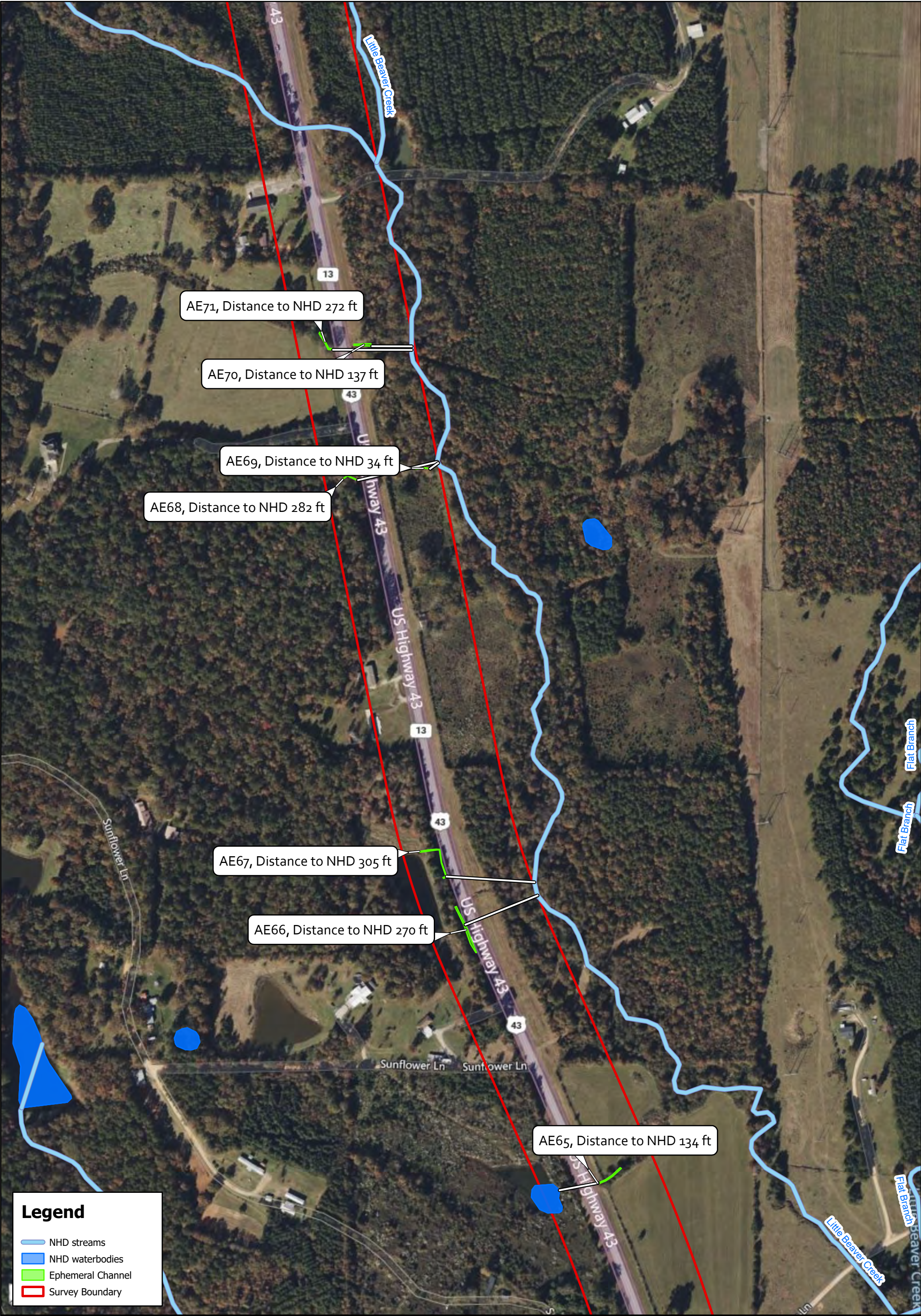
- NHD streams
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- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





Legend

NHD streams

NHD waterbodies

Ephemeral Channel

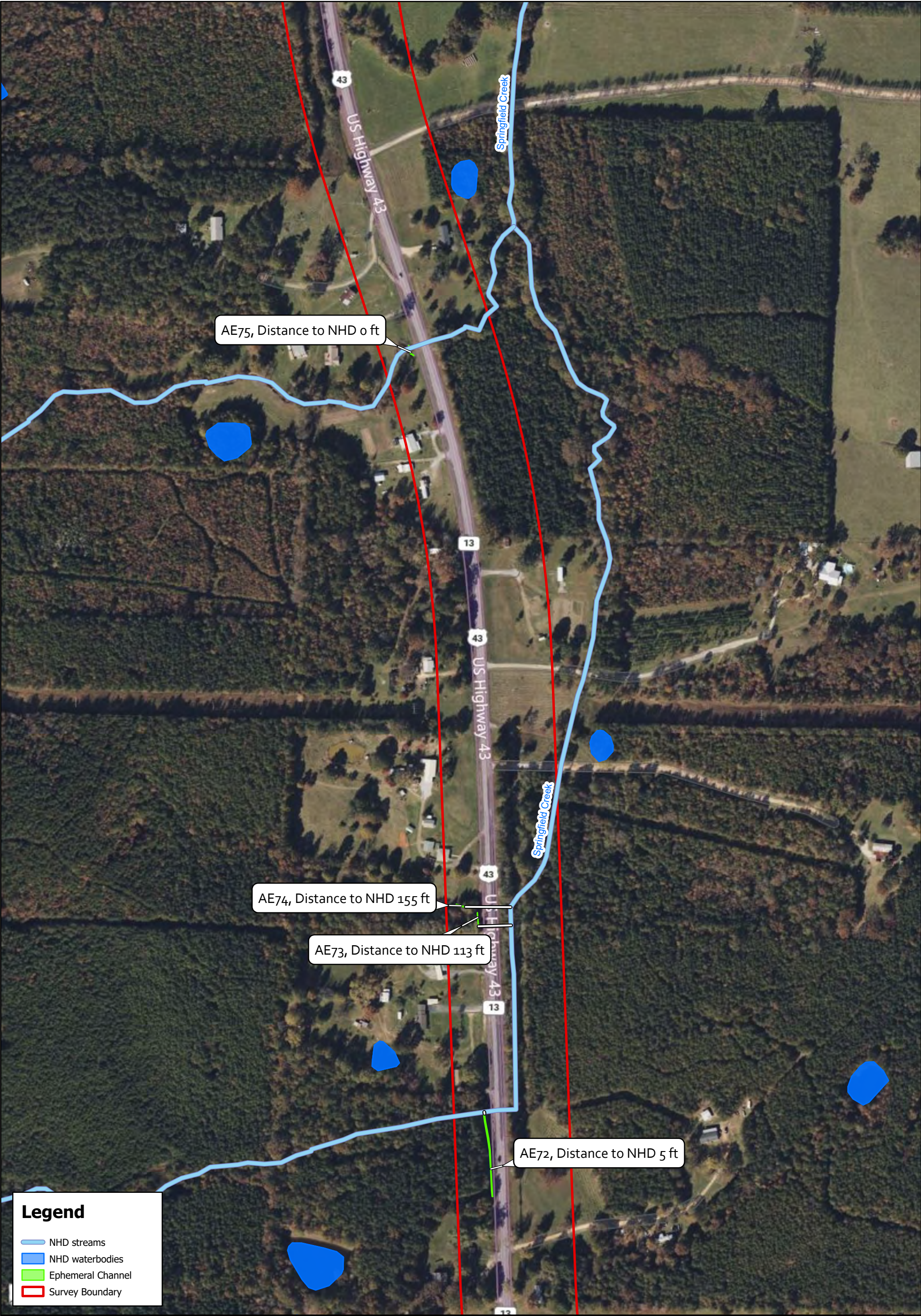
Survey Boundary



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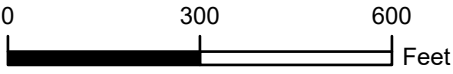
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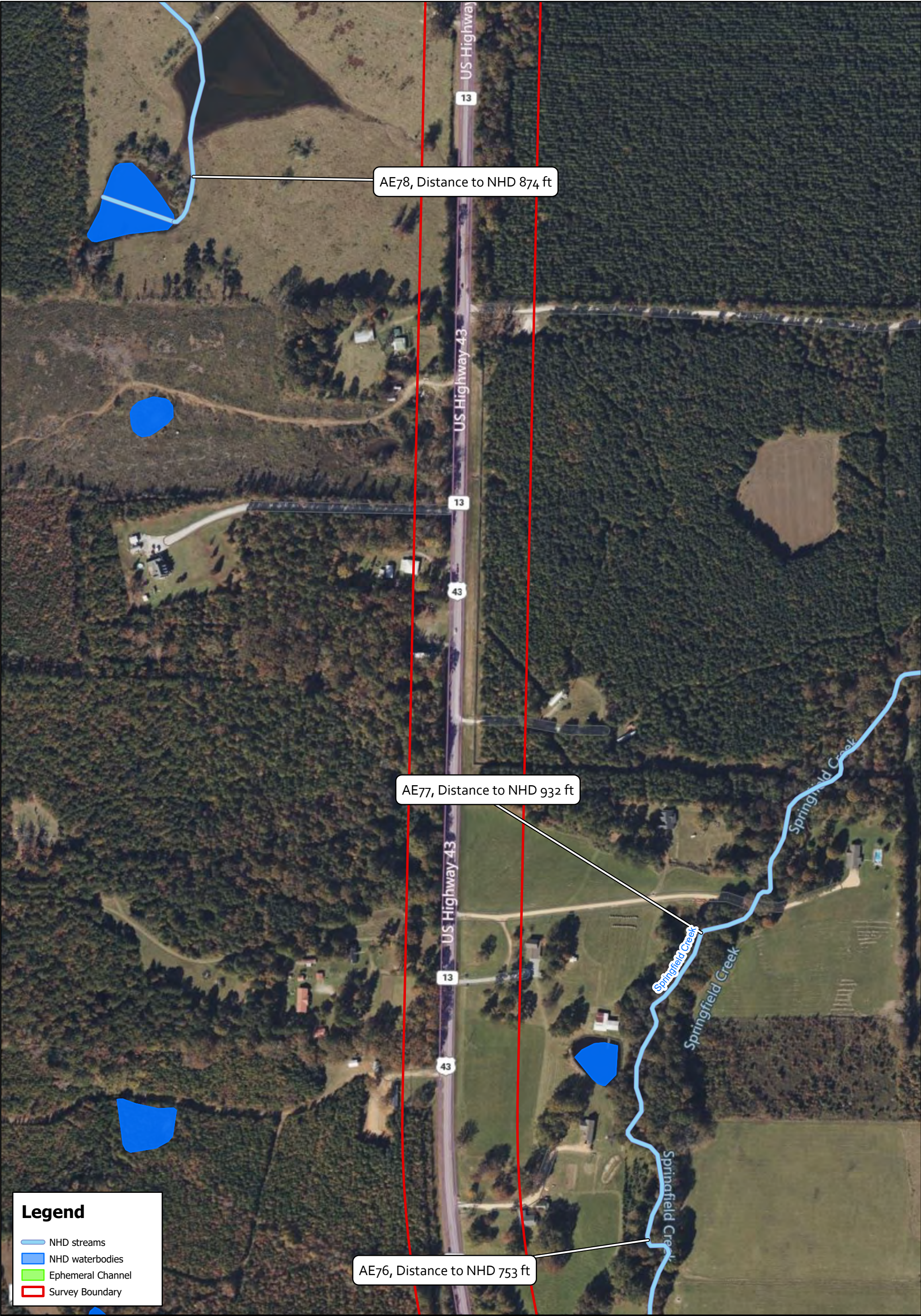
- NHD streams
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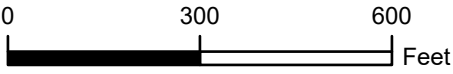
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NHD streams

NHD waterbodies

Ephemeral Channel

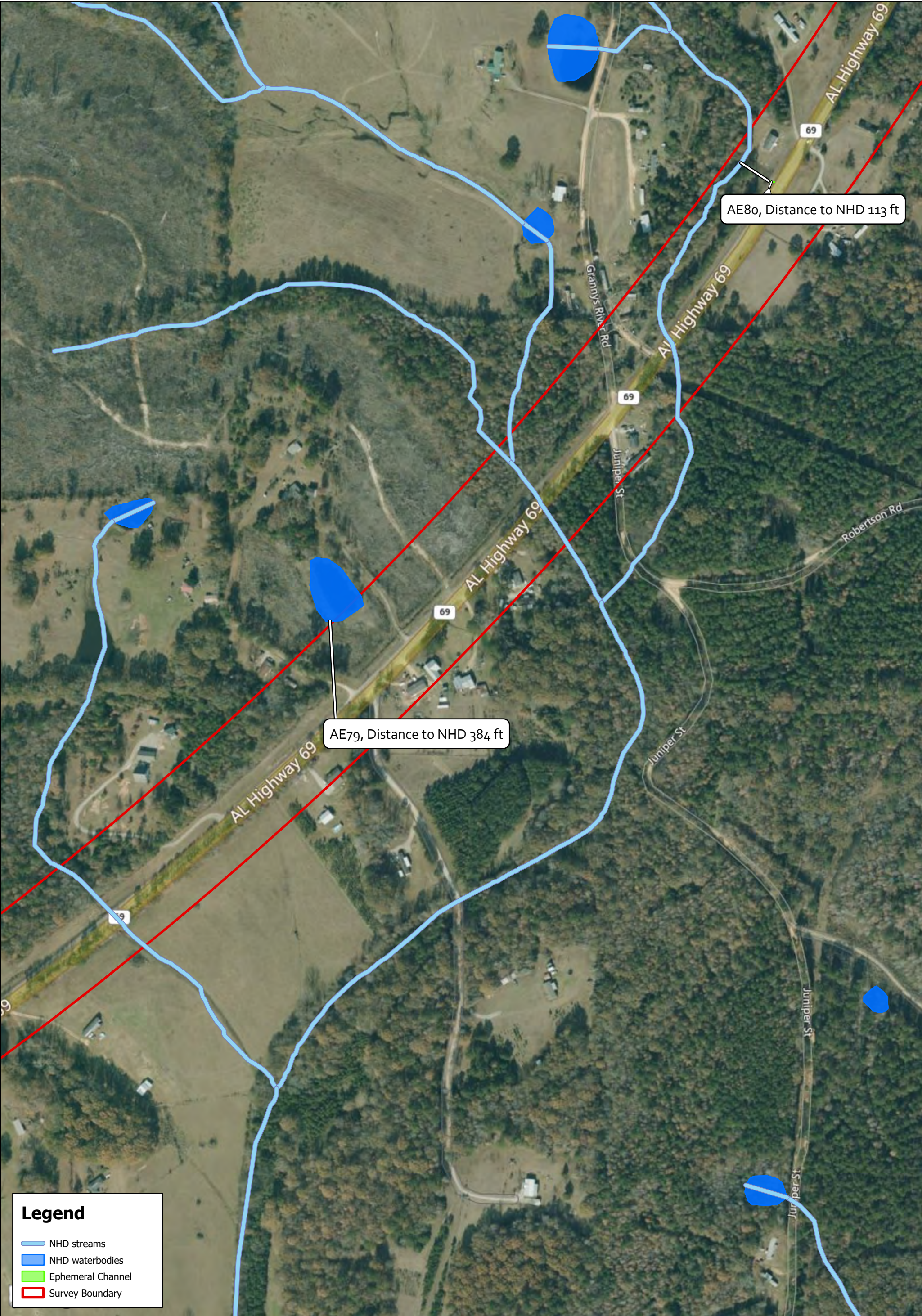
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1 inch = 300 feet

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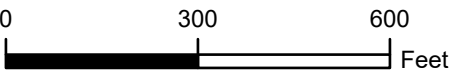
Legend

NHD streams

NHD waterbodies

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





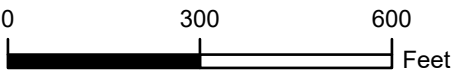
Legend

NHD streams

NHD waterbodies

Ephemeral Channel

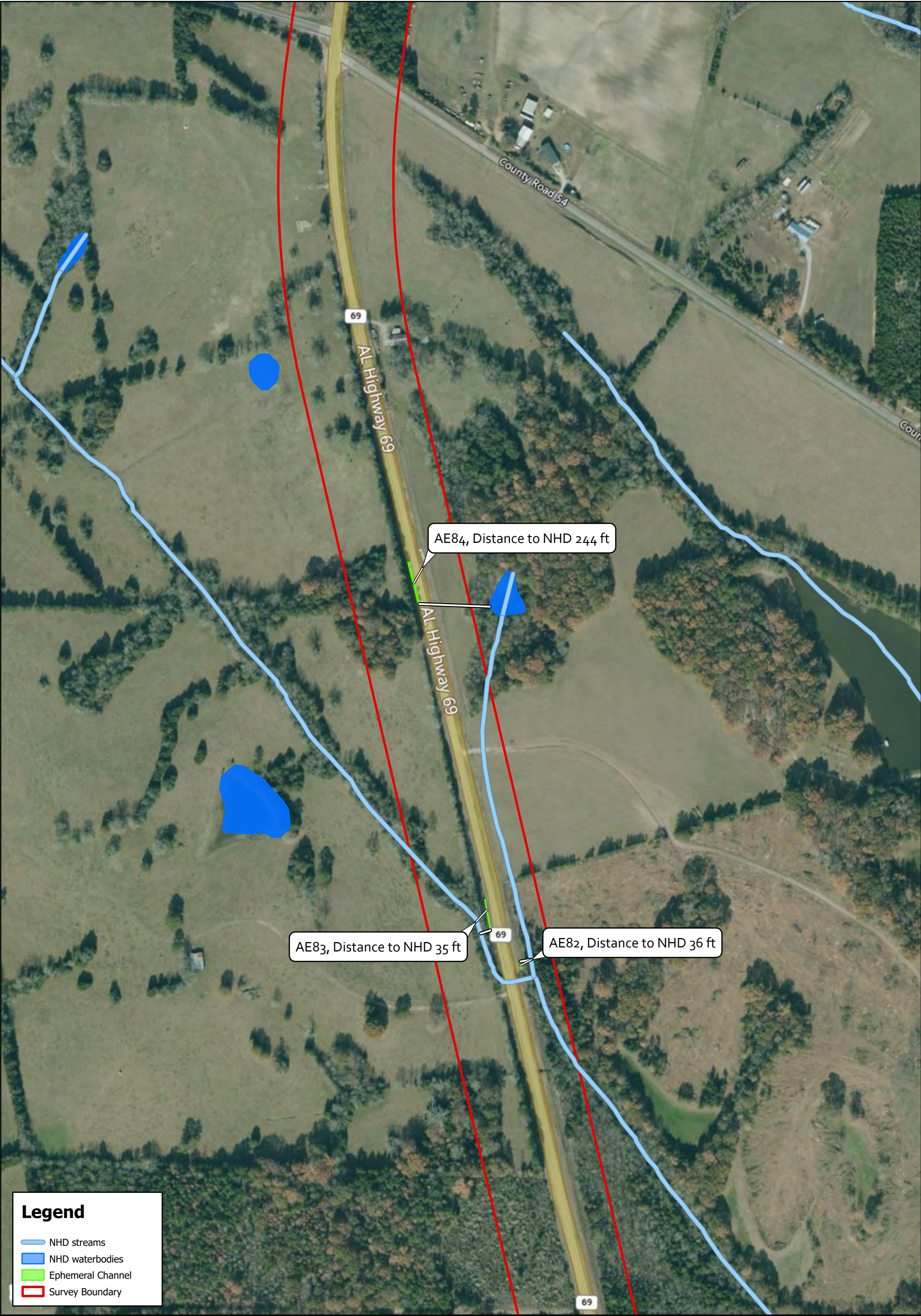
Survey Boundary



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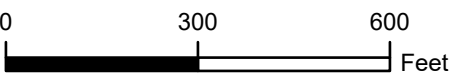
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Legend

- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

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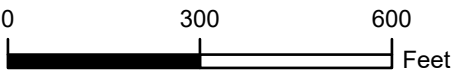


Legend

NHD streams

Ephemeral Channel

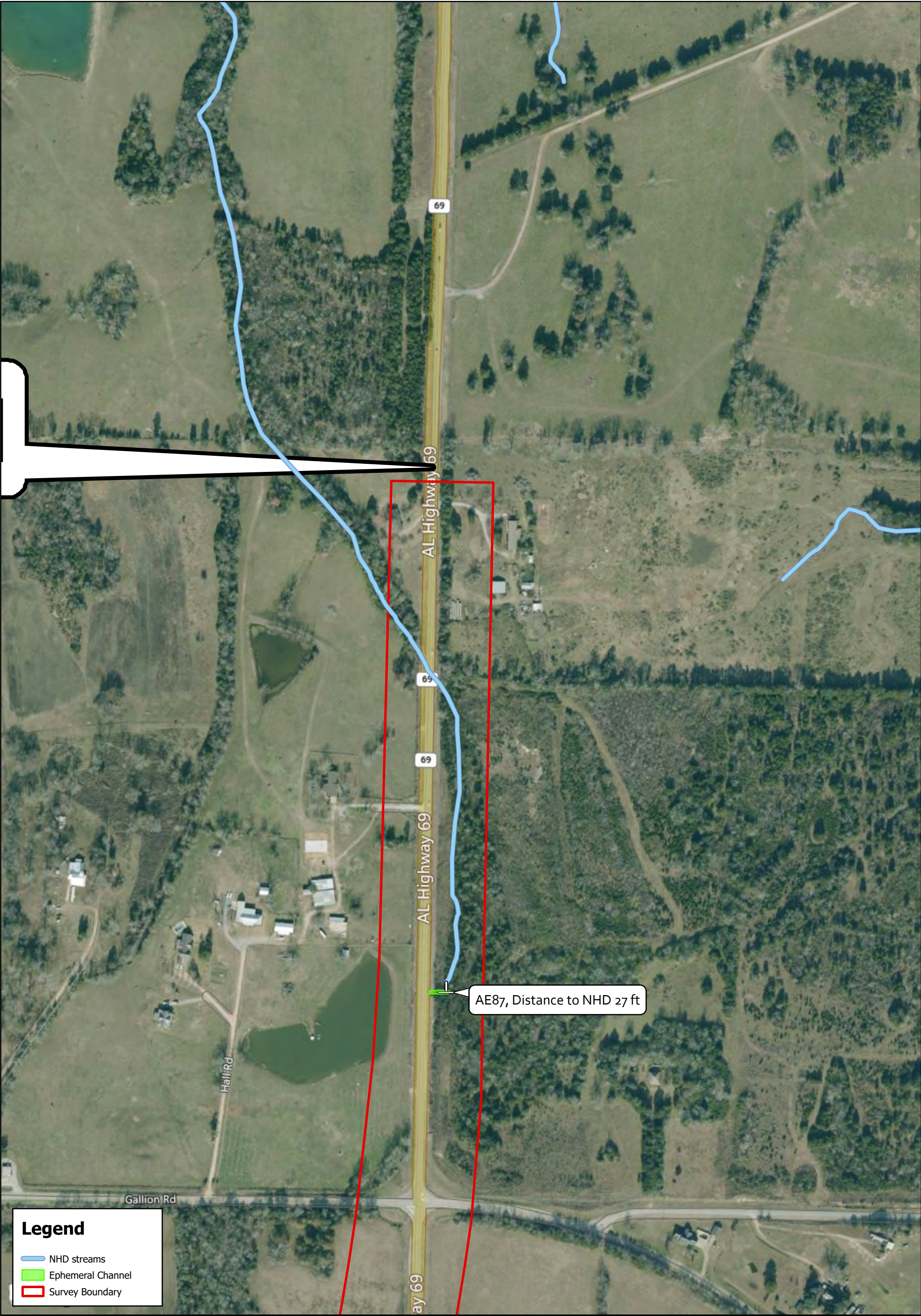
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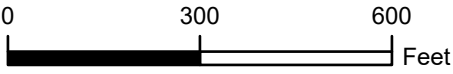


Legend

NHD streams

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





Legend

- NHD streams
- Ephemeral Channel
- Survey Boundary



0 300 600 Feet

1 inch = 300 feet

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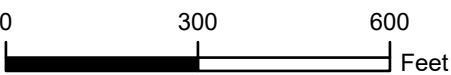


Legend

NHD streams

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

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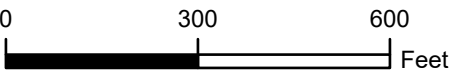


Legend

NHD streams

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

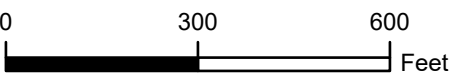
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Legend

- NHD streams
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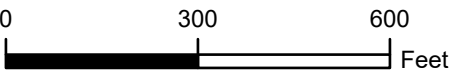


Legend

NHD streams

Ephemeral Channel

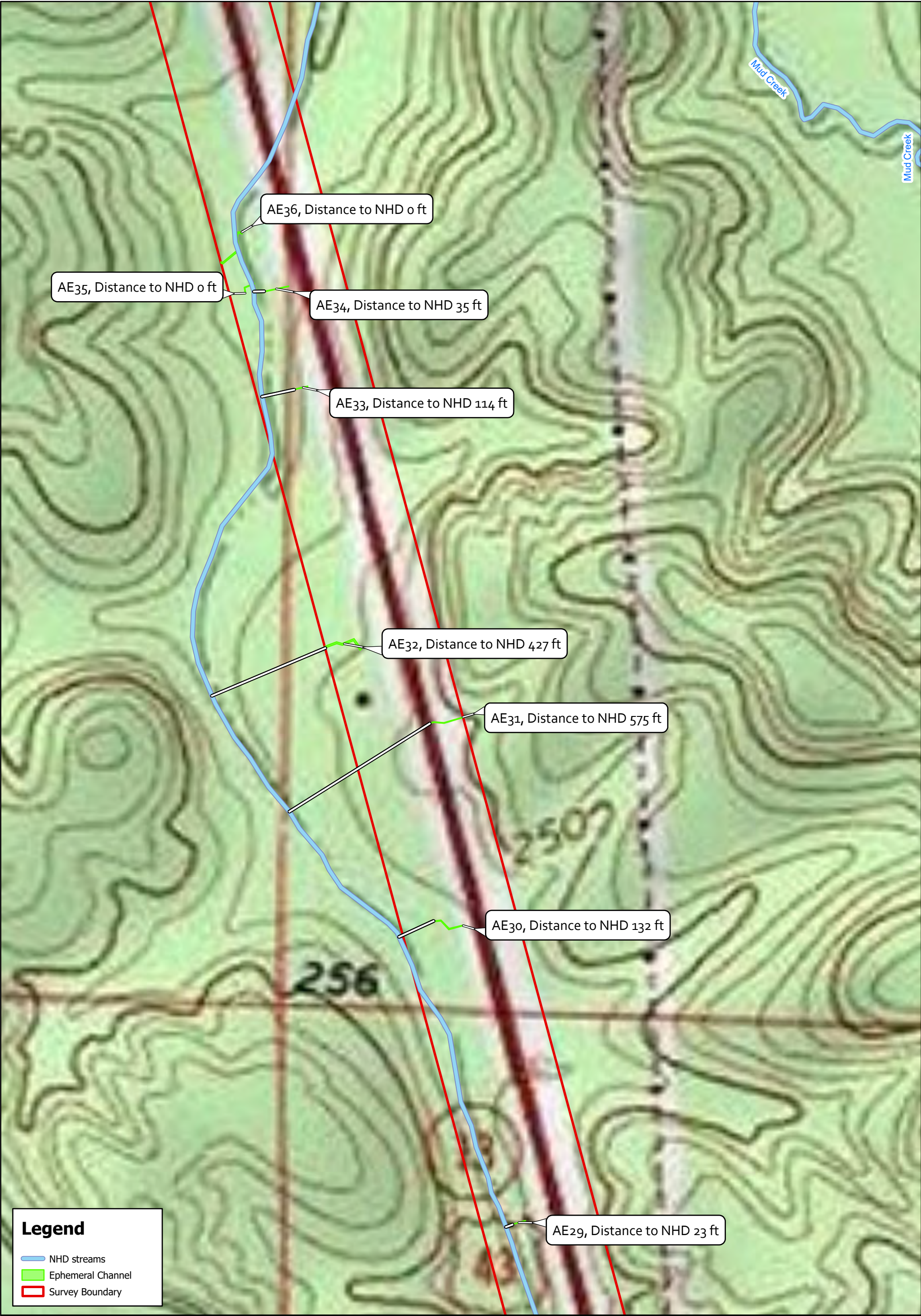
Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.



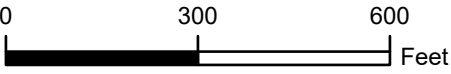


Legend

NHD streams

Ephemeral Channel

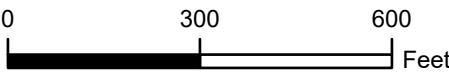
Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





1 inch = 300 feet

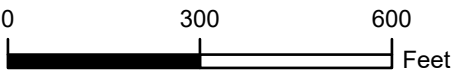
Note: This map is not intended for construction.





Legend

- NHD streams
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

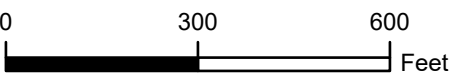
Note: This map is not intended for construction.





Legend

- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.

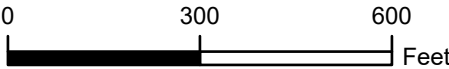






Legend

- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.





Legend

- NHD streams
- Ephemeral Channel
- Survey Boundary

0 300 600 Feet

1 inch = 300 feet

Note: This map is not intended for construction.





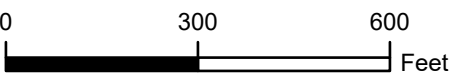
Legend

NHD streams

NHD waterbodies

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

Note: This map is not intended for construction.

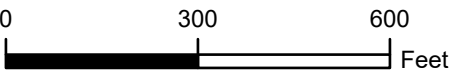






Legend

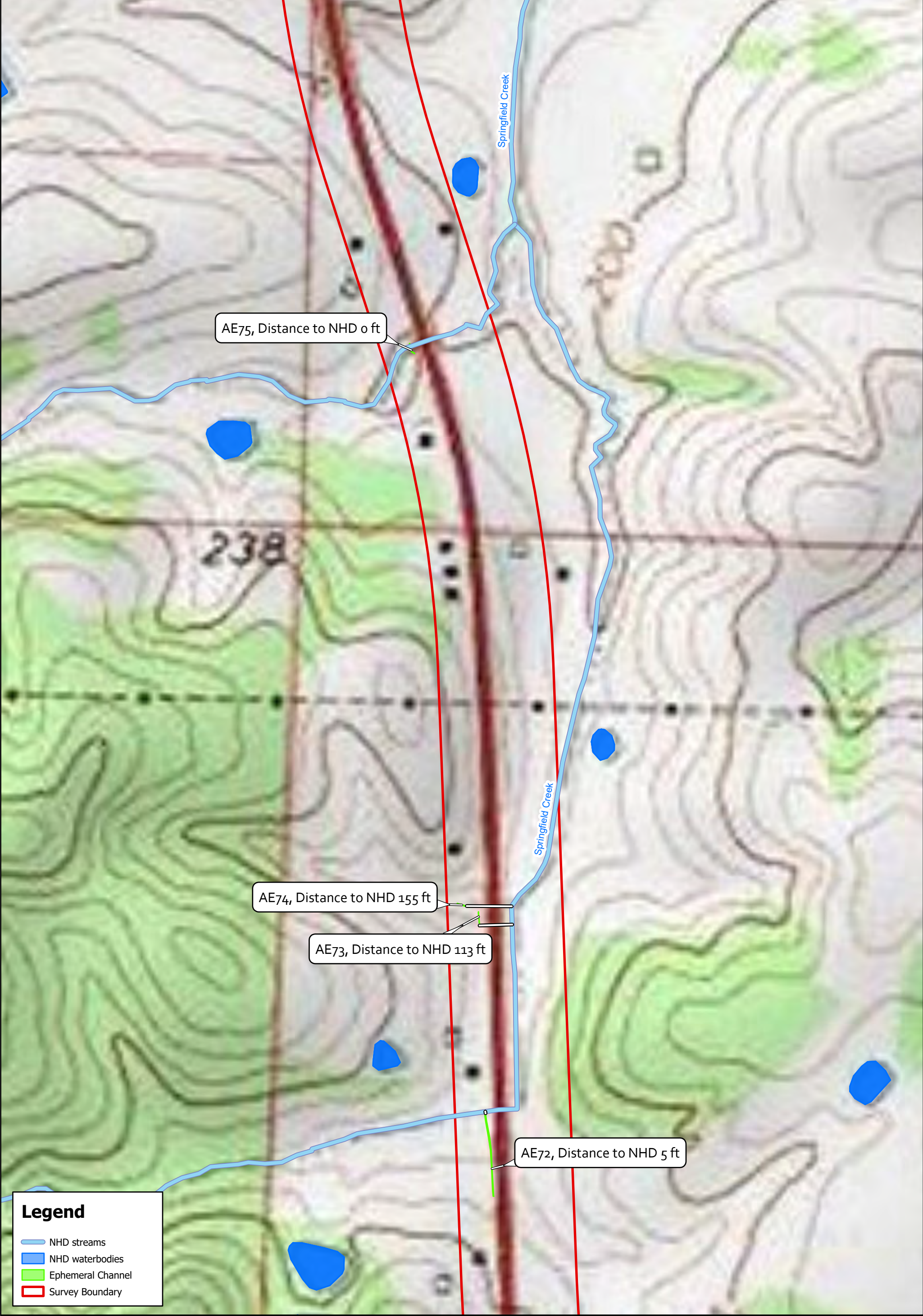
- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

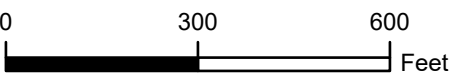
Note: This map is not intended for construction.





Legend

- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet
Note: This map is not intended for construction.





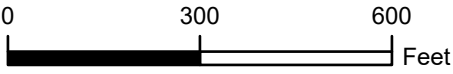
Legend

NHD streams

NHD waterbodies

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

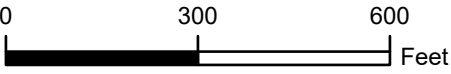
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Legend

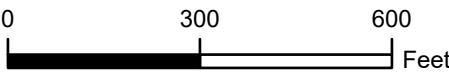
- NHD streams
- NHD waterbodies
- Ephemeral Channel
- Survey Boundary



1 inch = 300 feet

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1 inch = 300 feet

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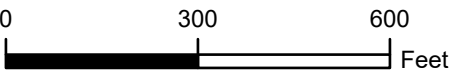
Legend

NHD streams

NHD waterbodies

Ephemeral Channel

Survey Boundary



1 inch = 300 feet

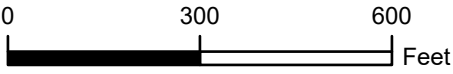
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Legend

- NHD streams
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- NHD streams
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