



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

CESAM-RD-N

January 17, 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),<sup>1</sup> **SAM-2023-00216-AMR, MFR #1 of 6**<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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

Water ID	Latitude	Longitude	Class	Acres	Geographic Authority
1. W-5	32.3023872	-86.3537903	PEM1	0.20	Sec 404
2. W-6	32.3021011	-86.3527603	PEM1	0.09	Sec 404
3. W-7	32.3018990	-86.3533096	PEM1	0.27	Sec 404
4. W-9	32.3033409	-86.3508224	PEM1	0.32	Sec 404
5. OW-1	32.3029800	-86.3522600	L2UB	6.49	Sec 404
6. W-1	32.3034592	-86.3543396	PFO1	0.13	Non-Jurisdictional
7. W-2	32.3035011	-86.3539734	PFO1	0.01	Non-Jurisdictional
8. W-8	32.3025475	-86.3508606	PEM1	0.03	Non-Jurisdictional
9. W10	32.2999300	-86.3510200	PEM1	0.05	Non-Jurisdictional
10. W-14	32.3005066	-86.3555374	PFO1	0.28	Non-Jurisdictional
11. W-15	32.3007393	-86.3546753	PEM1	0.08	Non-Jurisdictional
12. W-26	32.3001366	-86.3545761	PEM1	0.02	Non-Jurisdictional

## 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. Wetland Delineation Report, April 19, 2023 by Volkert, Inc.
- f. 1987 USACE Wetland Delineation Manual

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- g. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region
3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a Section 10 waterway.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The flow goes east from the lake (OW1) into an unnamed RPW tributary, which flows 6,489 east then north to Catoma Creek (a perennial RPW), which then flows 11.3 miles west into the Alabama River, a TNW.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

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): 6.5-acre lake (OW 1) is an impoundment of an RPW. The RPW discharges from OW 1 and flows east, and then north outside of the review area for 6,489 linear feet to Catoma Creek. Catoma Creek, an RPW, flows west for 11.3 miles to the Alabama River (a TNW).
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wetlands W5 (0.20 ac), W6 (0.09 ac), W7 (0.27 ac), and W9 (0.32 ac). These wetlands have a continuous surface connection to OW 1 (impoundment), which flows east to an unnamed RPW tributary located east of the project site and flows east and then north for 6,489 linear feet to Catoma Creek. Catoma Creek, an RPW, flows west for 11.3 linear feet or miles to the Alabama River (a TNW).

## 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”).<sup>9</sup> 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

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<sup>9</sup> 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-2023-00216-AMR

be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A.
  - d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A.
  - e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A.
  - 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). W1 (0.13 ac), W2 (0.01 ac), W8 (0.03 ac), W10 (0.05 ac), W14 (0.28 ac), W15 (0.08 ac), W26 (0.02 ac). These wetlands are in the vicinity of the Lake (OW1) however, there is no continuous surface connection to the lake, or nearby tributaries. These wetlands are physically separated from OW1 by uplands.  
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. The USACE staff conducted a site visit on May 30, 2023.
  - b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, and recent aerials, and review of the applicant’s wetland datasheets.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.

d. NRV, NHD May 12-28, 2023.

10. OTHER SUPPORTING INFORMATION. National Wetlands Inventory via NRV.

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.



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January 17, 2024

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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),<sup>1</sup> **SAM-2023-00216-AMR, MFR #2 of 6**<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CESAM-RD-N

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## 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

	ID	Latitude	Longitude	Class	Acres	LF	Geographic Authority
1.	W-3	32.3036575	-86.3556366	PFO1	0.25	-	Non-Jurisdictional
2.	W-4	32.3030167	-86.3564072	PFO1	0.09	-	Non-Jurisdictional
3.	W-11	32.3037300	-86.3564682	PFO1	1.09	-	Non-Jurisdictional
4.	W-12	32.3053780	-86.3573303	PFO1	0.35	-	Non-Jurisdictional
5.	W-13	32.3045731	-86.3588181	PFO1	0.11	-	Non-Jurisdictional
6.	E-2	32.30381012	-86.35917664	R6	0.01	164.2	Non-Jurisdictional
7.	E-3	32.30329895	-86.35927582	R6	0.01	223.0	Non-Jurisdictional
8.	E-4	32.30324554	-86.35929871	R6	0.006	86.3	Non-Jurisdictional
9.	E-5	32.30324173	-86.35923767	R6	0.003	54.9	Non-Jurisdictional

W = Wetland E = Non-RPW

## 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. Wetland Delineation Report, April 9, 2023 by Volkert, Inc.
- f. 1987 USACE Wetland Delineation Manual

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region

CESAM-RD-N

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3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a Section 10 waterway.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- 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”).<sup>9</sup> 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 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.

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<sup>9</sup> 51 FR 41217, November 13, 1986.

CESAM-RD-N

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- 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).  
Wetlands: W3 (0.25 ac), W4 (0.09 ac), W11 (1.09 ac), W12 (0.35 ac), W13 (0.11 ac). Non-RPWs: E-2 (164 LF), E-3 (223 LF), E4 (86 LF), and E5 (54.9 LF). These wetlands and non-RPWs are located in the mid-west section of the project site. The non-RPWS flow into an un-named RPW located west of the project boundary, and flows west. The wetlands do not have a continuous surface into the RPWs west of the project site. Wetland and upland data collection determined that these wetlands are surrounded by uplands and do not have a discrete feature providing a continuous surface connection to a downstream RPW.
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. The USACE staff conducted a site visit on May 30, 2023.
  - b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, NRCS Soils, recent aerials, and review of the applicant’s wetland datasheets.
  - c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.
  - d. NRV, NHD May 12-28, 2023.
10. OTHER SUPPORTING INFORMATION. National Wetland Inventory via NRV
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

CESAM-RD-N

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CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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).

	ID	Latitude	Longitude	Class	Acres	LF	Geographic Authority
1.	W-23	32.3092613	-86.3566818	PEM1	0.11	-	Non-Jurisdictional
2.	W-25	32.3089752	-86.3544693	PFO1	0.13	-	Non-Jurisdictional
3.	E-1	32.3086357	-86.35423279	R6	0.04	431.3	Non-Jurisdictional

W = Wetland    E = Non-RPW

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. Wetland Delineation Report, April 19, 2023 by Volkert, Inc.
  - f. 1987 USACE Wetland Delineation Manual]
  - g. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region
3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a Section 10 waterway.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. TNWs (a)(1): N/A
  - b. Interstate Waters (a)(2): N/A

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- 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”).<sup>9</sup> 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 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

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<sup>9</sup> 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-2023-00216-AMR

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).  
Wetlands: W23 (0.11 ac), W25(0.13 ac), and non-RPW E1 (431 LF). These wetlands and non-RPW are located in the Northwest section of the project site near a pond off-site that flows east to an RPW. Wetland and upland data collected determined that W23 and W25 are surrounded by uplands and do not have a continuous surface connection to an RPW or TNW. E1 does not exhibit flow or standing water at least seasonally and is therefore classified as a non-jurisdictional non-RPW.
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. The USACE staff conducted a site visit on May 30, 2023.
    - b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, NRCS Soils Survey, recent aeriels, and review of the applicant’s wetland datasheets.
    - c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.
    - d. NRV, NHD May 12-28, 2023.
  10. OTHER SUPPORTING INFORMATION. National Wetlands Inventory via NRV
  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.



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

CESAM-RD-N

January 17, 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),<sup>1</sup> **SAM-2023-00216-AMR, MFR #4 of 6**<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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

Water ID	Latitude	Longitude	Class	Acres	Length	Geographic Authority
1. W-16	32.2956238	-86.3550262	PFO1	0.27	-	Sec 404
2. W-18	32.2959595	-86.3572845	PFO1	0.06	-	Sec 404
3. W-28	32.2956467	-86.3574371	PFO1	0.10	-	Sec 404
4. W-29	32.2876282	-86.3663559	PFO1	0.50	-	Sec 404
5. W-17	32.2965393	-86.3534012	PFO1	0.03	-	Non-Jurisdictional
6. W-19	32.2966156	-86.3558350	PFO1	0.06	-	Non-Jurisdictional
7. W-20	32.2963562	-86.3625031	PFO1	0.37	-	Non-Jurisdictional
8. W-21	32.2978249	-86.3608475	PFO1	0.04	-	Non-Jurisdictional
9. W-22	32.2979317	-86.3598404	PEM1	0.24	-	Non-Jurisdictional
10. W-27	32.2997894	-86.3610001	PFO1	0.21	-	Non-Jurisdictional
11. P-1	32.29003143	-86.3653107	R3UB	0.08	132.7	Sec 404
12. P-2	32.29459000	-86.3631516	R3UB	0.31	2214.0	Sec 404
13. I-1	32.29562378	-86.3603668	R4UB	0.13	1295.1	Sec 404
14. E-6	32.29722595	-86.3622284	R6	0.008	124.9	Non-Jurisdictional
15. E-7	32.29715347	-86.3621826	R6	0.009	83.0	Non-Jurisdictional
16. E-8	32.28988647	-86.3654480	R6	0.004	64.4	Non-Jurisdictional
17. E-9	32.29233551	-86.3643646	R6	0.11	1578.8	Non-Jurisdictional
18. E-10	32.29564285	-86.3561783	R6	0.01	276.5	Non-Jurisdictional
19. E-11	32.28491592	-86.3676987	R6	0.02	297.3	Non-Jurisdictional

W = Wetland    E = non-RPW    P = Perennial (RPW)    I – Intermittent (RPW)

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).

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- 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. Wetland Delineation Report, April 19, 2023 by Volkert, Inc.
  - f. 1987 USACE Wetland Delineation Manual
  - g. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region
3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama.
  4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a Section 10 waterway.<sup>6</sup>
  5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The I-1 flows 1,300 linear feet west into P2 (both RPWs). P2 flows 2,214 linear feet south into P1(Caney Branch). Caney Branch (RPW) flows 3.36 miles northwest into Catoma Creek. Catoma Creek (RPW) which flows 8.27 miles northwest into the Alabama River, a TNW.
  6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup> N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. TNWs (a)(1): N/A
  - b. Interstate Waters (a)(2): N/A
  - c. Other Waters (a)(3): N/A
  - d. Impoundments (a)(4): N/A.
  - e. Tributaries (a)(5): P1 (132 LF), P2 (2,214 LF) and I1 (1,295 LF) are all relatively permanent tributaries that are located in the north part of the southern linear section of the project area. P1 flows north into Caney Branch. I1 flows west into the P2 which flows south into Caney Branch.
  - f. The territorial seas (a)(6): N/A
  - g. Adjacent wetlands (a)(7): Wetlands W-16 (0.27 ac), W-18 (0.06 ac), W-28 (0.10 ac), W-29 (0.50 ac) are located in the north part of the southern linear section of the project area. Wetlands 16, 18 and 28 have a continuous surface connection by abutting I1, an intermittent RPW. Wetland 29 has a continuous surface connection by abutting P1, a perennial RPW. These wetlands and tributaries flow into Caney Branch (an RPW) which flows 3.36 miles northwest into Catoma

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<sup>8</sup> 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.

Creek, an RPW. Catoma Creek flows 8.27 miles west into Alabama River (a TNW).

## 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”).<sup>9</sup> 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 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

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<sup>9</sup> 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-2023-00216-AMR

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetlands :W-17 (0.03 ac), W-19 (0.06 ac), W-20 (0.37 ac), W-21 (0.04 ac), W-22 (0.24 ac), W-27 (0.21 ac). Non-RPWs : E-6 (125 LF) , E-7 (83 LF), E-8 (64 LF), E-9 (1579 LF), E-10 (277 LF), E-11 (297 LF). The listed wetlands are in the vicinity of P2 and I1 (RPWs); however, they do not have a continuous surface connection to P2 or I1, or other RPWs or TNWs. These wetlands are physically separated from P1, P2, and I1 by uplands. E-6, E-7, E-8, E-9, E-10, and E-11 are all non-RPWs because they do not have flow or standing water at least seasonally.

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. The USACE staff conducted a site visit on May 30, 2023.
  - b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, and recent aerials, and review of the applicant's wetland datasheets.
  - c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.
  - d. NRV, NHD May 12-28, 2023.
10. OTHER SUPPORTING INFORMATION. National Wetlands Inventory via NRV.
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.



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

CESAM-RD-N

January 17, 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),<sup>1</sup> **SAM-2023-00216-AMR, MFR #5 of 6**<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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

Water ID	Latitude	Longitude	Class	Acres	Length	Geographic Authority
1. W-30	32.2756882	-86.3716888	PFO1	0.02	-	Non-Jurisdictional
2. P-3	32.2794037	-86.3700714	R3UB	0.03	88.5	Sec 404
3. E-13	32.2747307	-86.3722687	R6	0.04	496.0	Non-Jurisdictional

W = Wetland P = RPW E = Non-RPW

## 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. Wetland Delineation Report, April 19, 2023 by Volkert, Inc.
  - f. 1987 USACE Wetland Delineation Manual
  - g. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region
3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a Section 10 waterway.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. P3 is an un-named tributary that flows 3,000 linear feet northeast (outside of the review area) into Caney Branch (a perennial RPW), which flows 3.97 miles northwest to Catoma Creek (a perennial RPW), which then flows 8.67 northwest into the Alabama River, a TNW.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- 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): P-3 (88.5 lf), an RPW, is an un-named tributary to Caney Branch located in the south part of the south linear section of the project area. P3 flows outside of the review area for 3000 lf northeast into Caney Branch (a perennial RPW), which flows 3.97 miles northwest to Catoma Creek (a perennial RPW), which then flows 8.67 northwest into the Alabama River, a TNW.
- 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”).<sup>9</sup> 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 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

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<sup>9</sup> 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-2023-00216-AMR

- 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).  
Wetland W-30(0.02 ac) and non-RPW E-13 (496 LF), are located in the south part of the southern linear section of the project area. W-30 does not have continuous surface connection to RPW (P3), an un-named tributary to Caney Branch. W-30 is physically separated from P3 by uplands. E-13 does not exhibit flow or standing water at least seasonally, and is therefore a non-jurisdictional non-RPW.
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. The USACE staff conducted a site visit on May 30, 2023.
- b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, and recent aerials, and review of the applicant’s wetland datasheets.
- c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.
- d. NRV, NHD May 12-28, 2023.
10. OTHER SUPPORTING INFORMATION. National Wetlands Inventory via NRV.
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

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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.



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

CESAM-RD-N

January 17, 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),<sup>1</sup> **SAM-2023-00216-AMR, MFR #6 of 6**<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

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

Water ID	Latitude	Longitude	Class	Acres	Length	Geographic Authority
1. W-31	32.2701874	-86.3742142	PFO1	0.02	-	Non-Jurisdictional
2. W-32	32.2696075	-86.3745728	PFO1	0.02	-	Non-Jurisdictional
3. E-14	32.2698669	-86.3744965	R6	0.002	28.6	Non-Jurisdictional

W = Wetland E = Non-RPW

## 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. Wetland Delineation Report, April 19, 2023 by Volkert, Inc.
  - f. 1987 USACE Wetland Delineation Manual
  - g. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region
3. REVIEW AREA. The review area is 295 acres located at latitude 32.299, Longitude -86.3577, Montgomery, Montgomery County, Alabama.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Alabama River is the nearest TNW. It is recorded in the Corps database as a TNW.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. TNWs (a)(1): N/A

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

- 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”).<sup>9</sup> 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 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

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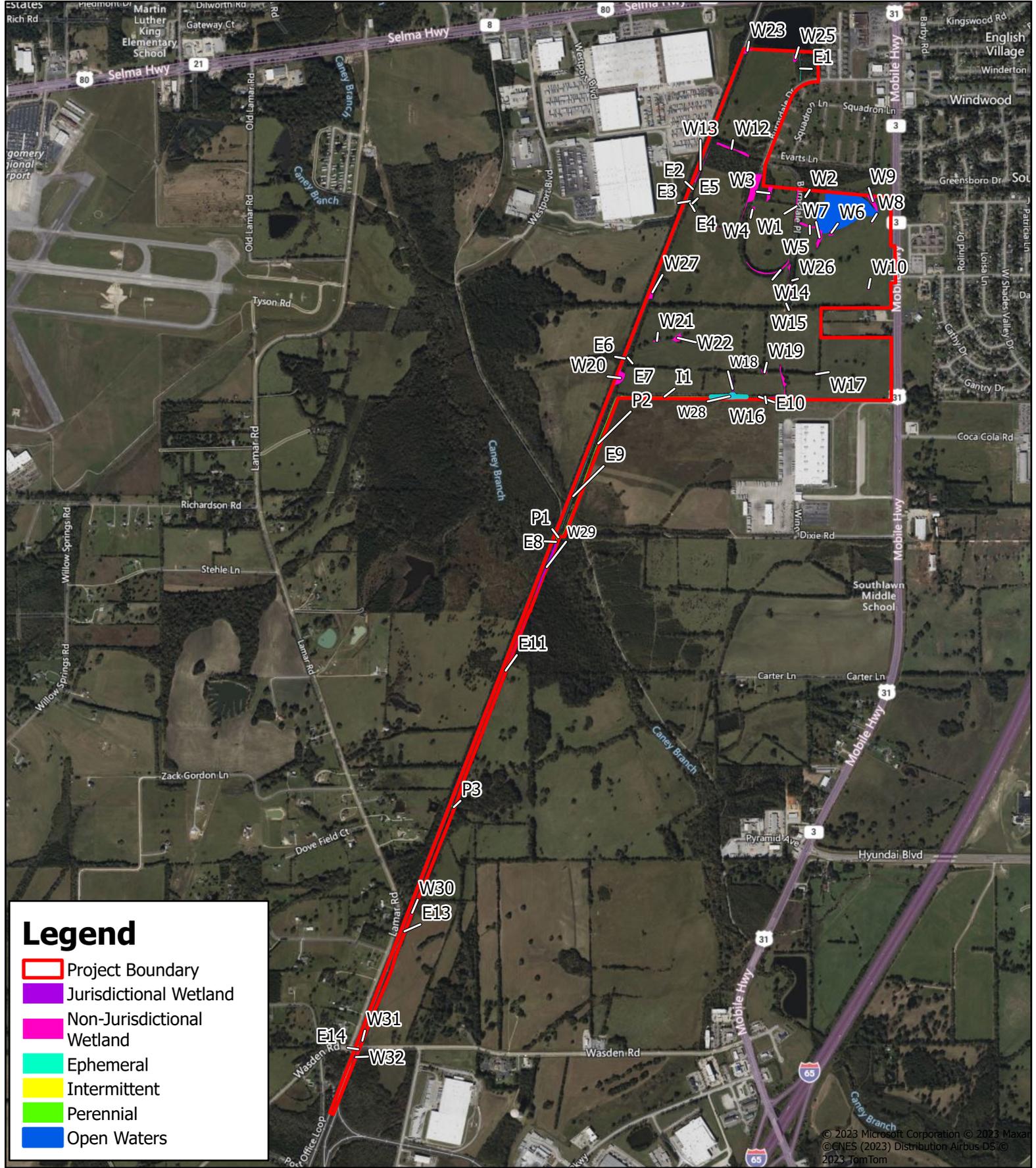
<sup>9</sup> 51 FR 41217, November 13, 1986.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-00216-AMR

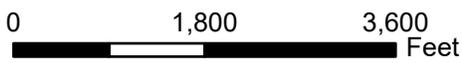
based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. N/A.

- 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).  
Wetland W-31(0.02 ac), W-32 (0.02) and non-RPW E-14 (28 LF), are located at the terminal end of the southern linear section of the project area. W-31 and W-31 and are separated physically from RPWs or TNWs by uplands, thereby lacking a continuous surface connection to an RPW or TNW. E-14 does not exhibit standing or flowing water at least seasonally and is therefore a non-jurisdictional non-RPW.
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. The USACE staff conducted a site visit on May 30, 2023.
    - b. Data used to make determinations included on-site inspection of soils, hydrology and vegetation utilizing the 1987 USACE Wetland Delineation manual, USGS topographic maps, and recent aerials, and review of the applicant’s wetland datasheets.
    - c. National Regulatory Viewer (NRV) May-12-29, 2023, LIDAR.
    - d. NRV, NHD May 12-28, 2023.
  10. OTHER SUPPORTING INFORMATION. National Wetlands Inventory via NRV.
  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**

- Project Boundary
- Jurisdictional Wetland
- Non-Jurisdictional Wetland
- Ephemeral
- Intermittent
- Perennial
- Open Waters



1 inch = 1,800 feet

Note: This map is not intended for construction.



**Figure 3: Aerial Imagery Overview  
Alabama State Port Authority  
Intermodal Container Transfer Facility  
Montgomery, Alabama**



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2023 TomTom



**Legend**

Data Sheet Points

- Dry
- Wet

Project Boundary

- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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Map 1

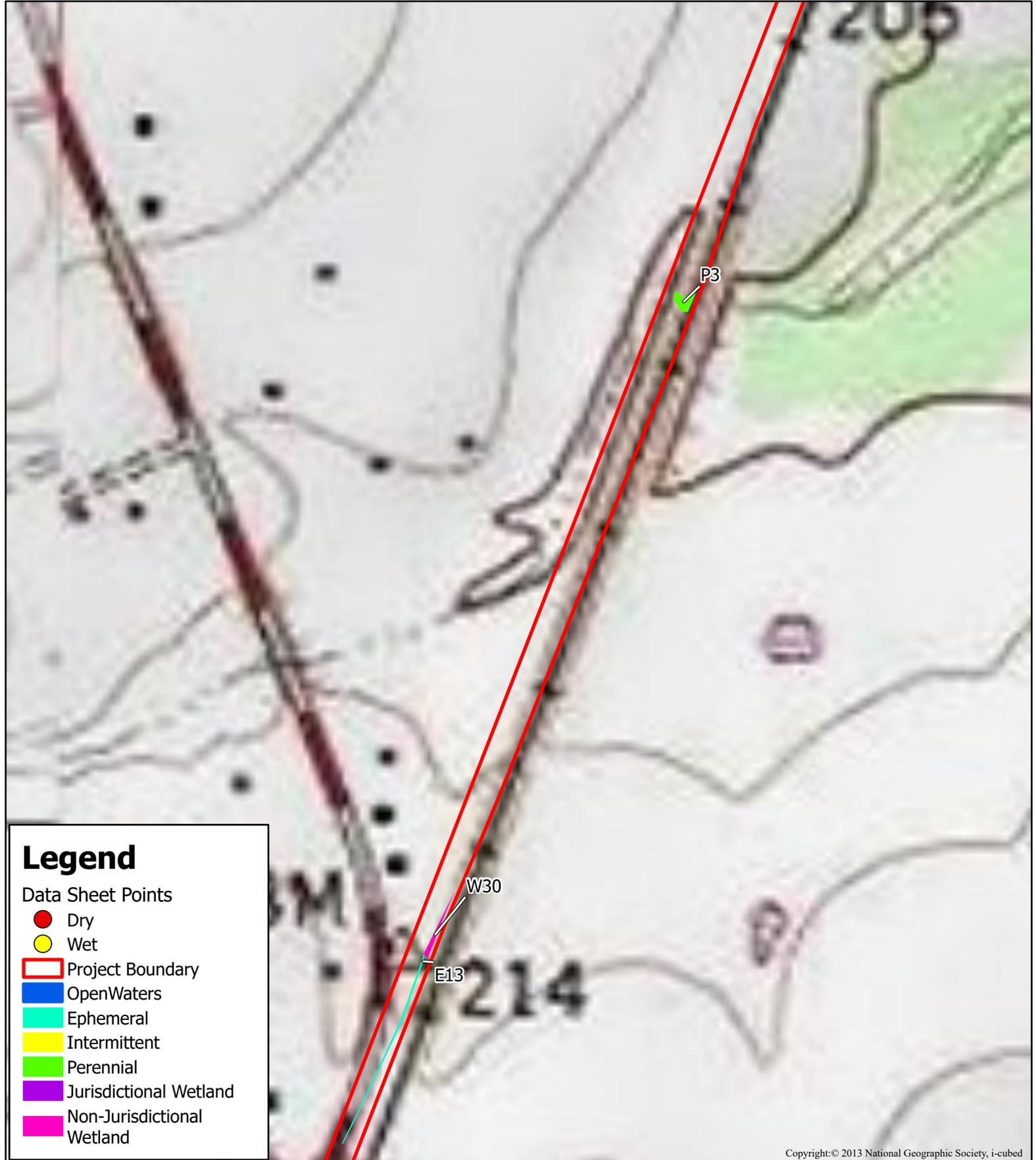


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 1 of 10



**Legend**

Data Sheet Points

- Dry
- Wet

Project Boundary

- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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Map 2

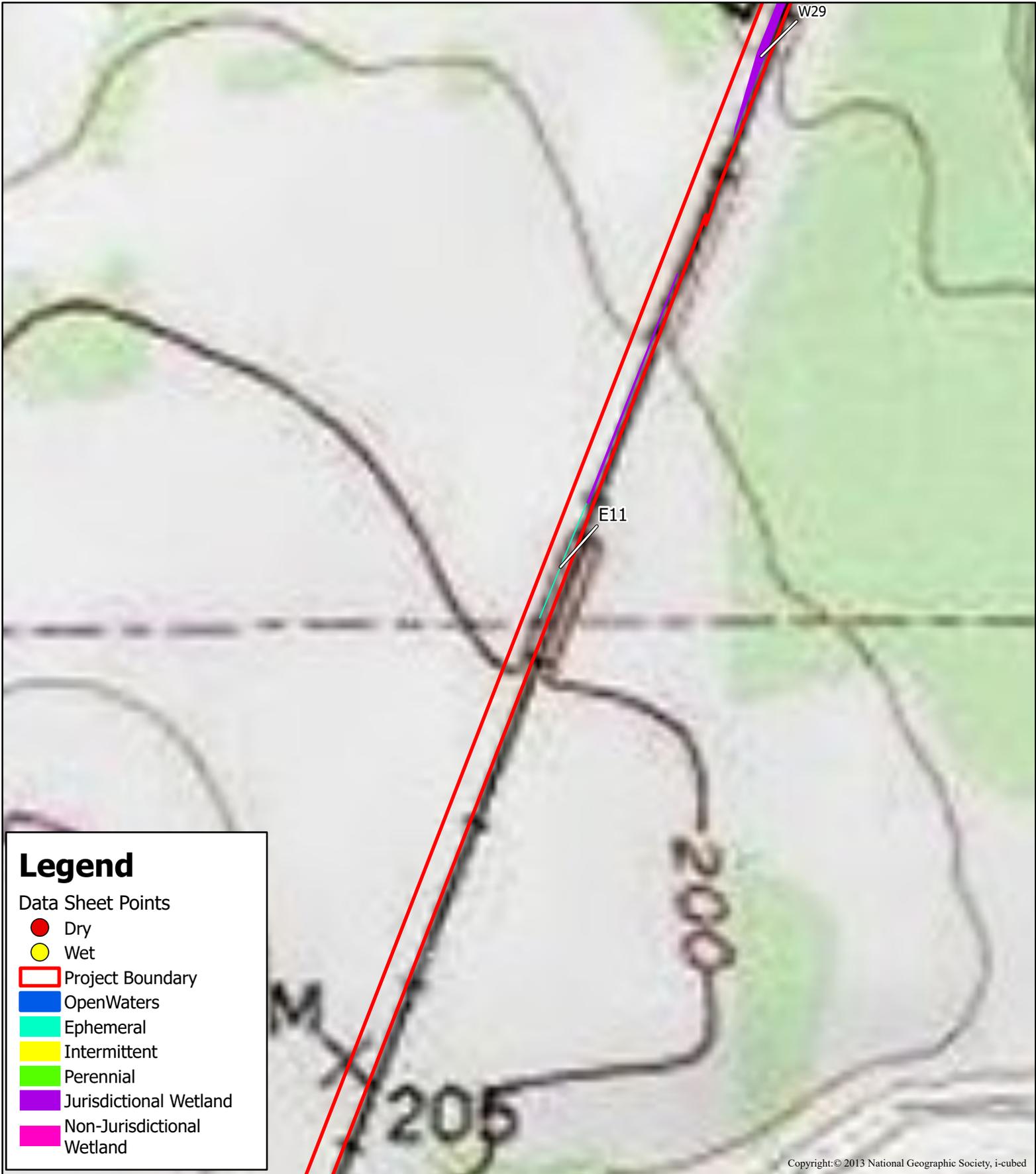


1 inch = 300 feet

Note: This map is not intended for construction.



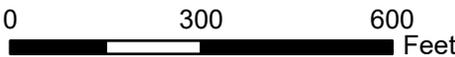
**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 2 of 10



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Map 3

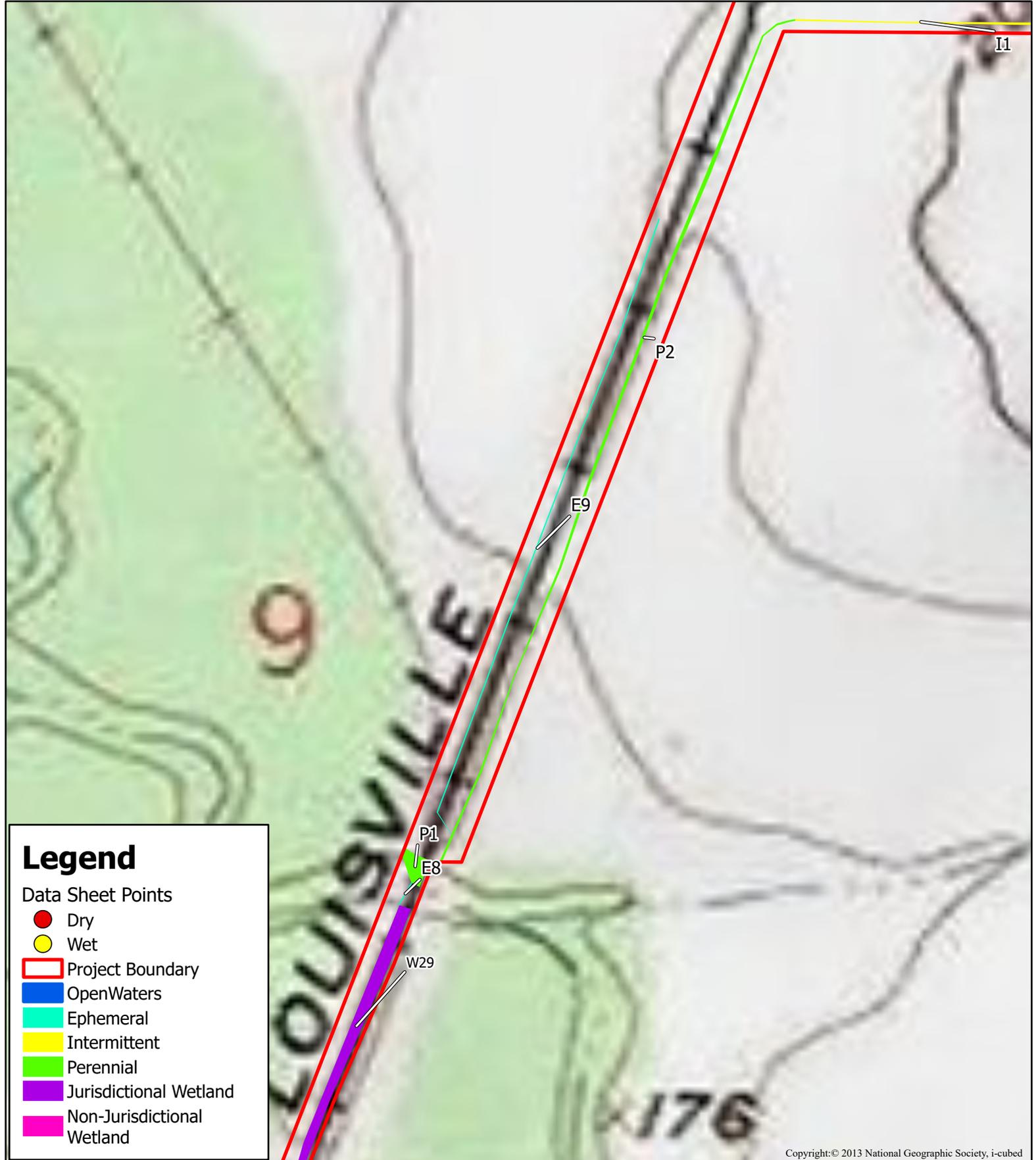


1 inch = 300 feet

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**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 3 of 10



### Legend

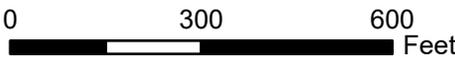
Data Sheet Points

- Dry
- Wet

Project Boundary

- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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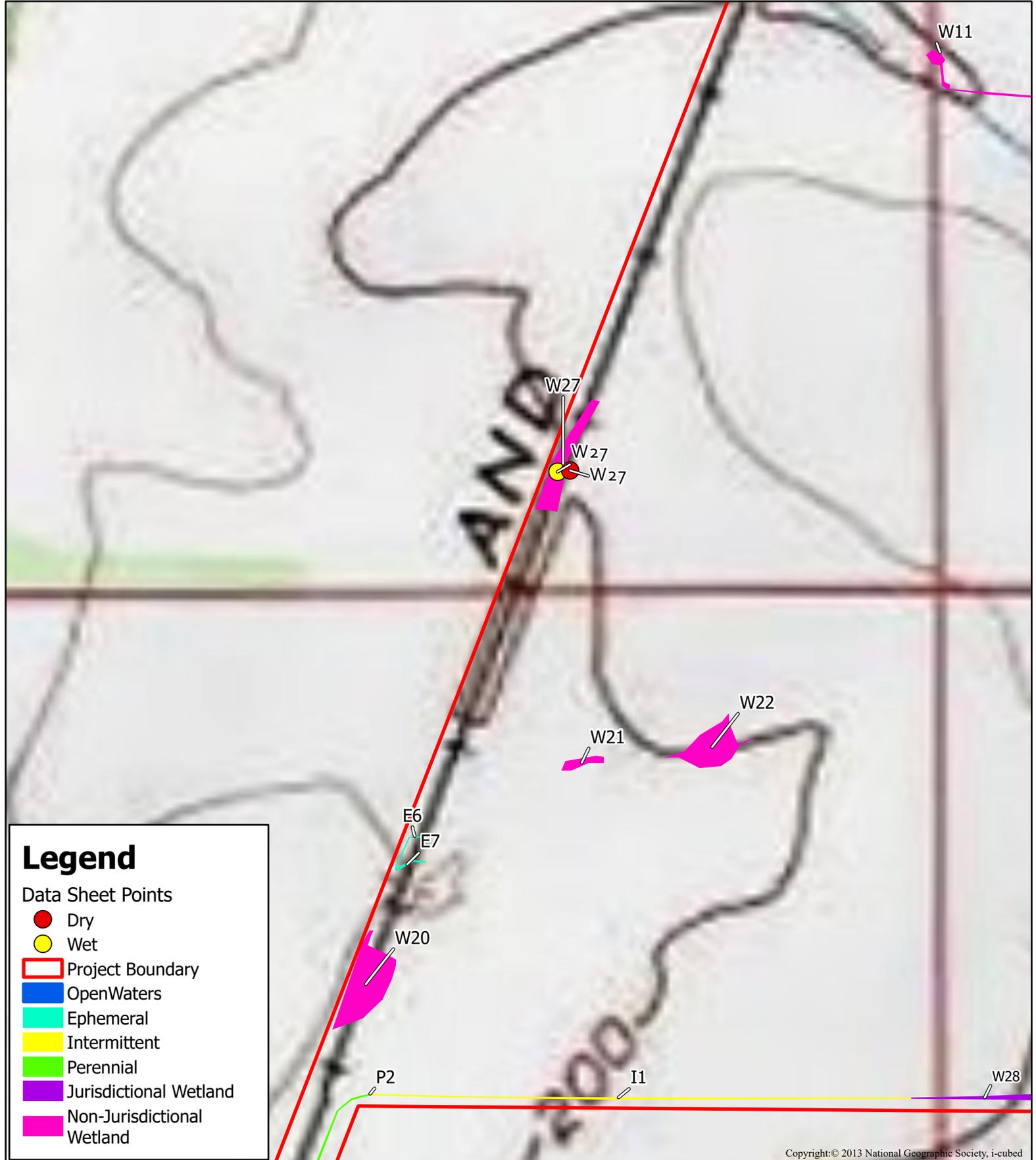


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 4 of 10



### Legend

Data Sheet Points

- Dry
- Wet

Wetland Types

- Project Boundary
- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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1 inch = 300 feet

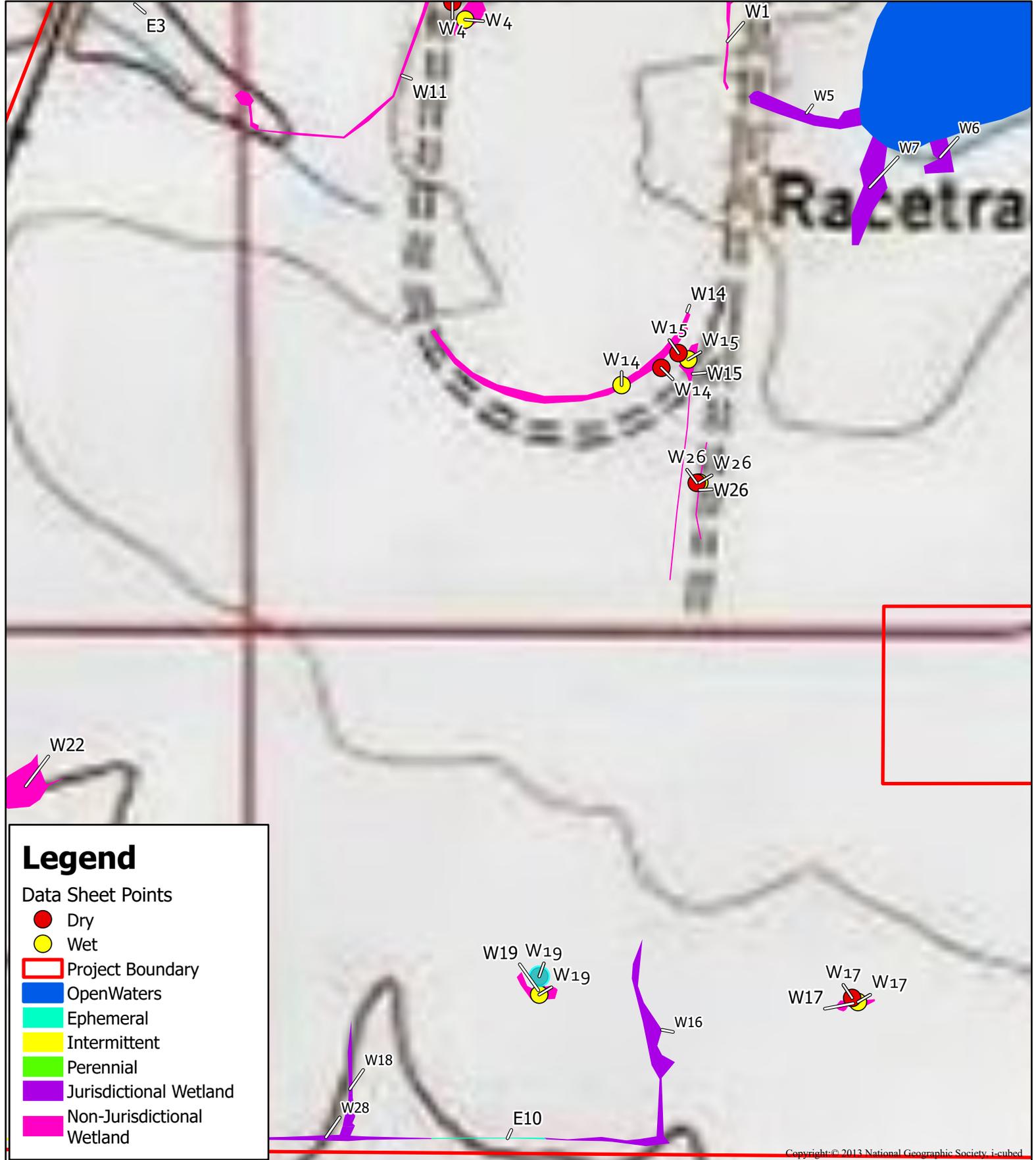
Note: This map is not intended for construction.



# VOLKERT

Map 5

**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 5 of 10



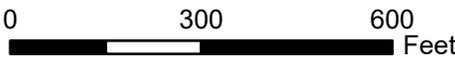
### Legend

Data Sheet Points

- Dry
- Wet

- Project Boundary
- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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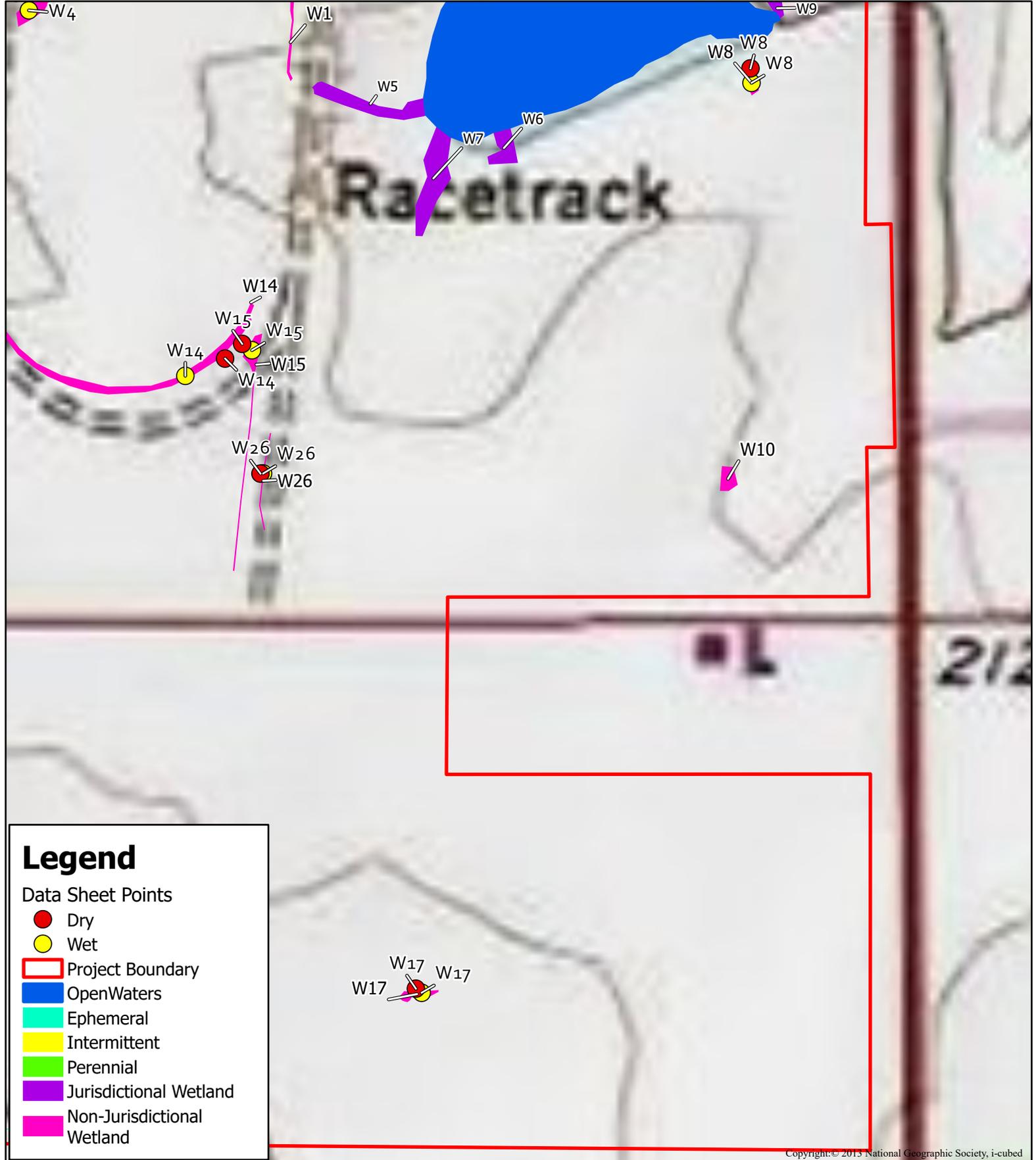


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 6 of 10



### Legend

Data Sheet Points

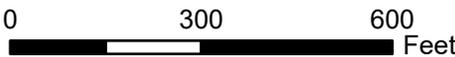
- Dry
- Wet

- Project Boundary
- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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Map 7

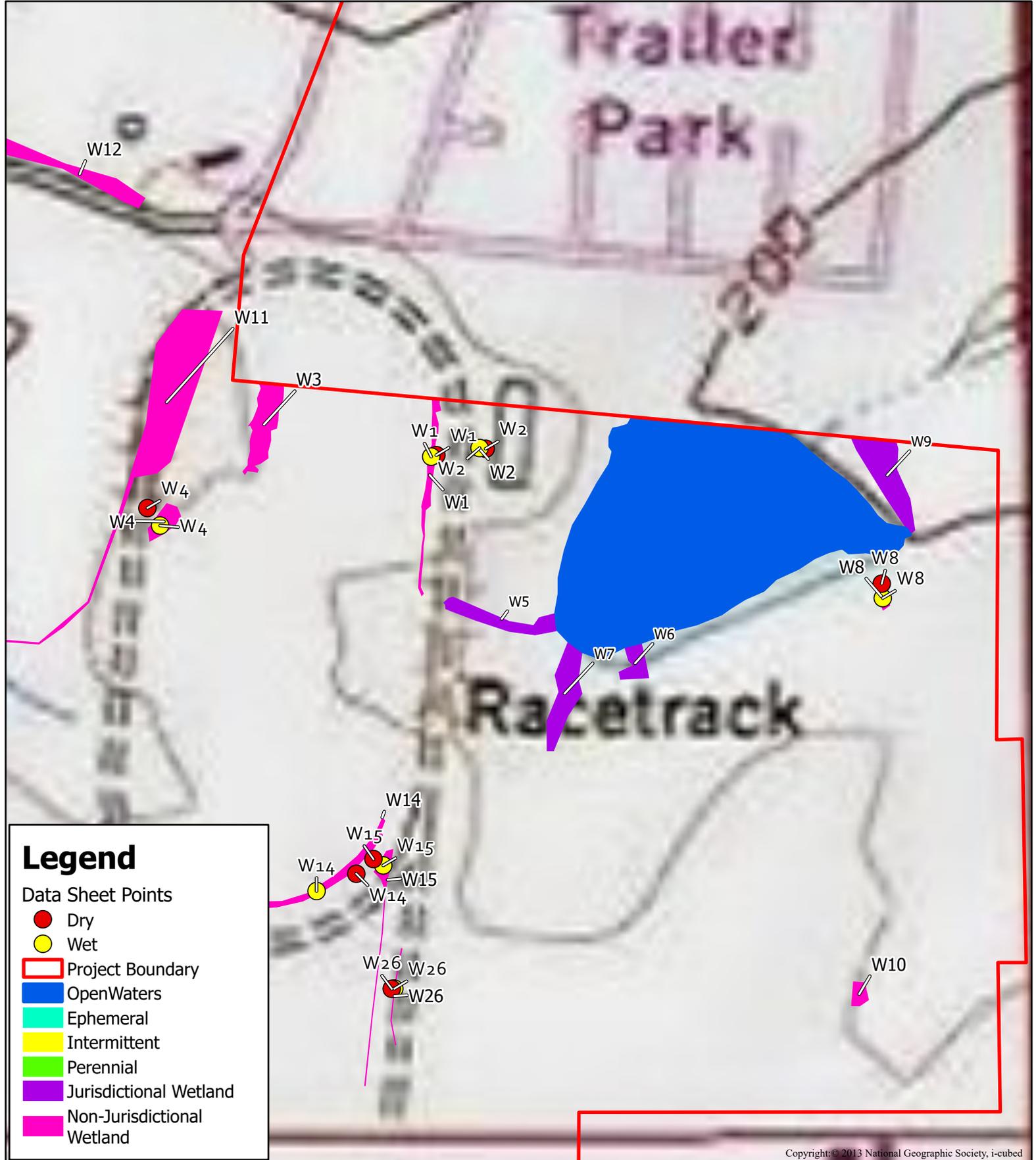


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 7 of 10



### Legend

Data Sheet Points

- Dry
- Wet

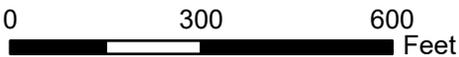
Project Boundary

- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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Map 8

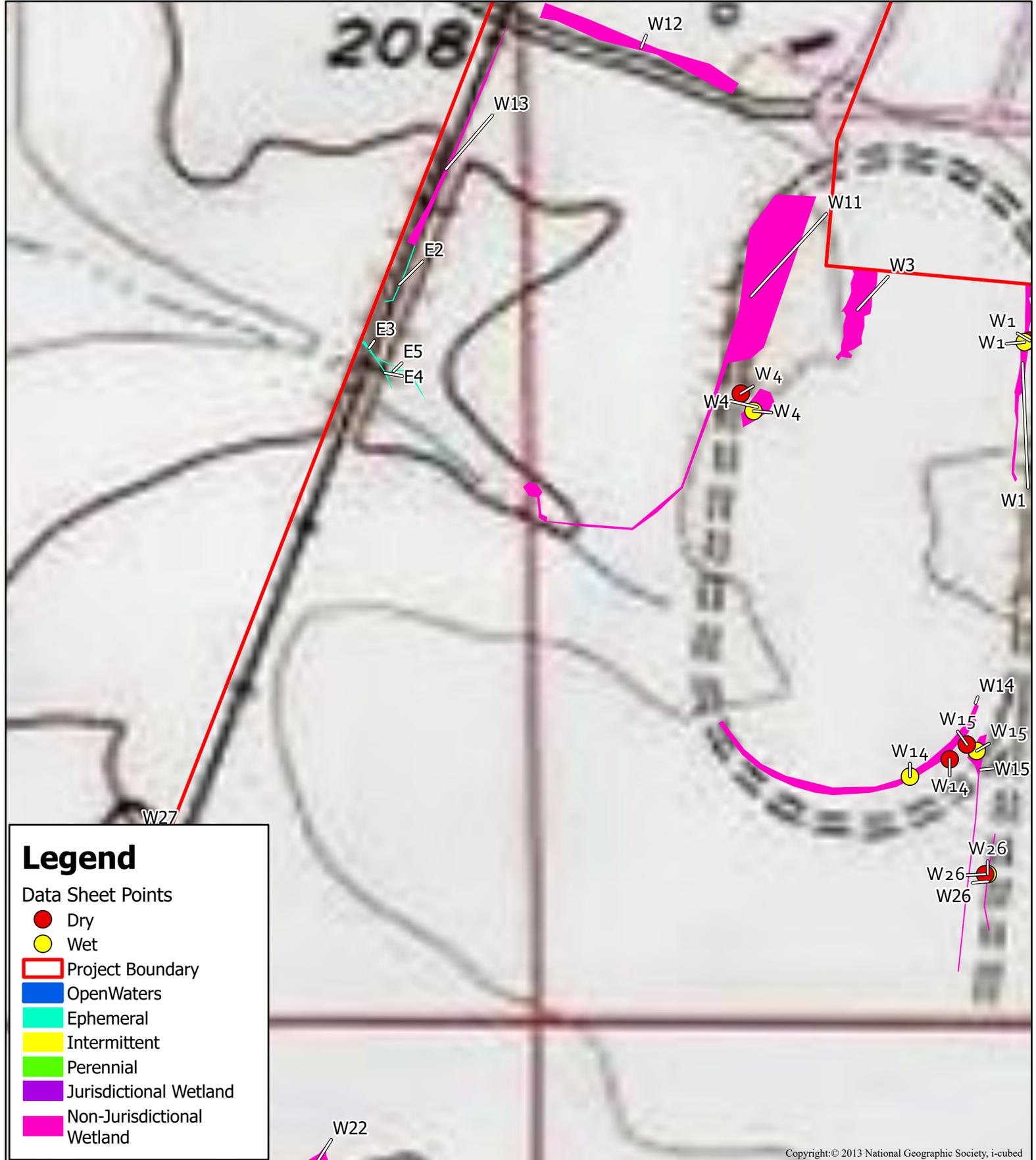


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 8 of 10



### Legend

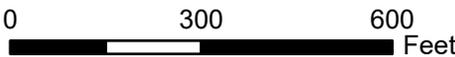
Data Sheet Points

- Dry
- Wet
- Project Boundary
- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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Map 9

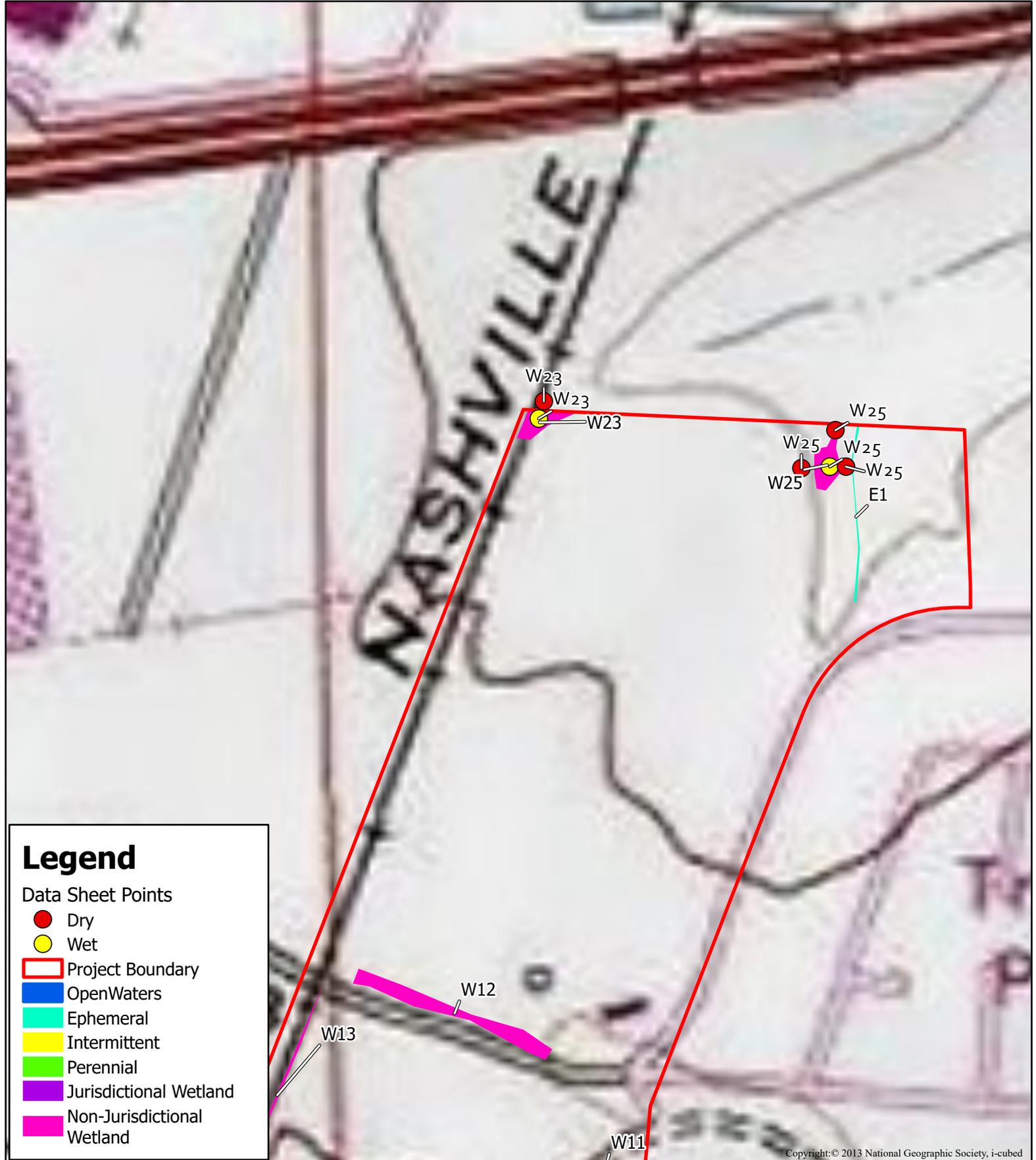


1 inch = 300 feet

Note: This map is not intended for construction.



**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
**Page 9 of 10**



### Legend

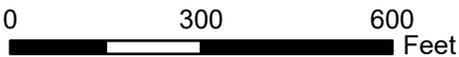
Data Sheet Points

- Dry
- Wet

Project Boundary

- Open Waters
- Ephemeral
- Intermittent
- Perennial
- Jurisdictional Wetland
- Non-Jurisdictional Wetland

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1 inch = 300 feet

Note: This map is not intended for construction.



**VOLKERT**

Map 10

**Data Collection Wetlands**  
**Alabama State Port Authority**  
**Intermodal Container Transfer Facility**  
**Montgomery, Alabama**  
 Page 10 of 10

Table 1 - Summary of Aquatic Resources in the Review Area

Map ID	Latitude	Longitude	Coward	Acres	Linear
<b>Jurisdictional Wetlands</b>					
W-5	32.3023872	-86.3537903	PEM1	0.20	N/A
W-6	32.3021011	-86.3527603	PEM1	0.09	N/A
W-7	32.3018990	-86.3533096	PEM1	0.27	N/A
W-9	32.3033409	-86.3508224	PEM1	0.32	N/A
W-16	32.2956238	-86.3550262	PFO1	0.27	N/A
W-18	32.2959595	-86.3572845	PFO1	0.06	N/A
W-28	32.2956467	-86.3574371	PFO1	0.10	N/A
W-29	32.2876282	-86.3663559	PFO1	0.50	N/A
		Total:		1.79	
<b>Non-Jurisdictional Wetlands</b>					
W-1	32.3034592	-86.3543396	PFO1	0.13	N/A
W-2	32.3035011	-86.3539734	PFO1	0.01	N/A
W-3	32.3036575	-86.3556366	PFO1	0.25	N/A
W-4	32.3030167	-86.3564072	PFO1	0.09	N/A
W-8	32.3025475	-86.3508606	PEM1	0.03	N/A
W-10	32.2999300	-86.3510200	PFO1	0.05	N/A
W-11	32.3037300	-86.3564682	PFO1	1.09	N/A
W-12	32.3053780	-86.3573303	PFO1	0.35	N/A
W-13	32.3045731	-86.3588181	PFO1	0.11	N/A
W-14	32.3005066	-86.3555374	PFO1	0.28	N/A
W-15	32.3007393	-86.3546753	PEM1	0.08	N/A
W-17	32.2965393	-86.3534012	PFO1	0.03	N/A
W-19	32.2966156	-86.3558350	PFO1	0.06	N/A
W-20	32.2963562	-86.3625031	PFO1	0.37	N/A
W-21	32.2978249	-86.3608475	PFO1	0.04	N/A
W-22	32.2979317	-86.3598404	PEM1	0.24	N/A
W-23	32.3092613	-86.3566818	PEM1	0.11	N/A
W-25	32.3089752	-86.3544693	PFO1	0.13	N/A
W-26	32.3001366	-86.3545761	PEM1	0.02	N/A
W-27	32.2997894	-86.3610001	PFO1	0.21	N/A
W-30	32.2756882	-86.3716888	PFO1	0.02	N/A
W-31	32.2701874	-86.3742142	PFO1	0.02	N/A
W-32	32.2696075	-86.3745728	PFO1	0.02	N/A
		Total:		3.72	
<b>Jurisdictional Streams</b>					
P-1	32.2900314	-86.36531067	R3UB	0.08	132.7
P-2	32.2945900	-86.36315155	R3UB	0.31	2214.
P-3	32.2794036	-86.37007141	R3UB	0.03	88.5
I-1	32.2956237	-86.36036682	R4UB	0.13	1295.
		Total:		0.55	3420.

Non-Jurisdictional Streams					
E-1	32.30863571	-86.35423279	R6	0.04	431.3
E-2	32.30381012	-86.35917664	R6	0.01	164.2
E-3	32.30329895	-86.35927582	R6	0.01	223.0
E-4	32.30324554	-86.35929871	R6	0.006	86.3
E-5	32.30324173	-86.35923767	R6	0.003	54.9
E-6	32.29722595	-86.36222839	R6	0.008	124.9
E-7	32.29715347	-86.36218262	R6	0.009	83.0
E-8	32.28988647	-86.36544800	R6	0.004	64.4
E-9	32.29233551	-86.36436462	R6	0.11	1578.
E-10	32.29564285	-86.35617828	R6	0.01	276.5
E-11	32.28491592	-86.36769867	R6	0.02	297.3
E-13	32.27473068	-86.37226868	R6	0.04	496.0
E-14	32.26986694	-86.37449646	R6	0.002	28.6
		Total:		0.28	3909.
Jurisdictional Open Waters					
OW-1	32.30298000	-86.35226000	L2UB	6.49	NA

W = Wetlands

OW = Lake

E = Non-RPW

P = RPW, perennial

I = RPW, intermittent