

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: [REDACTED]	File Number: SAM-2023-1071	Date: 07/22/2024
Attached is:		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:
Angela M. Rangel, Senior Project Manager
109 St. Joseph St.
Mobile, AL 36602
251-455-6785

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:
Krista Sabin, Regulatory Review Officer
60 Forsyth Street Southwest, Floor M9
Atlanta, Georgia 30303;
Krista.D.Sabin@usace.army.mil.

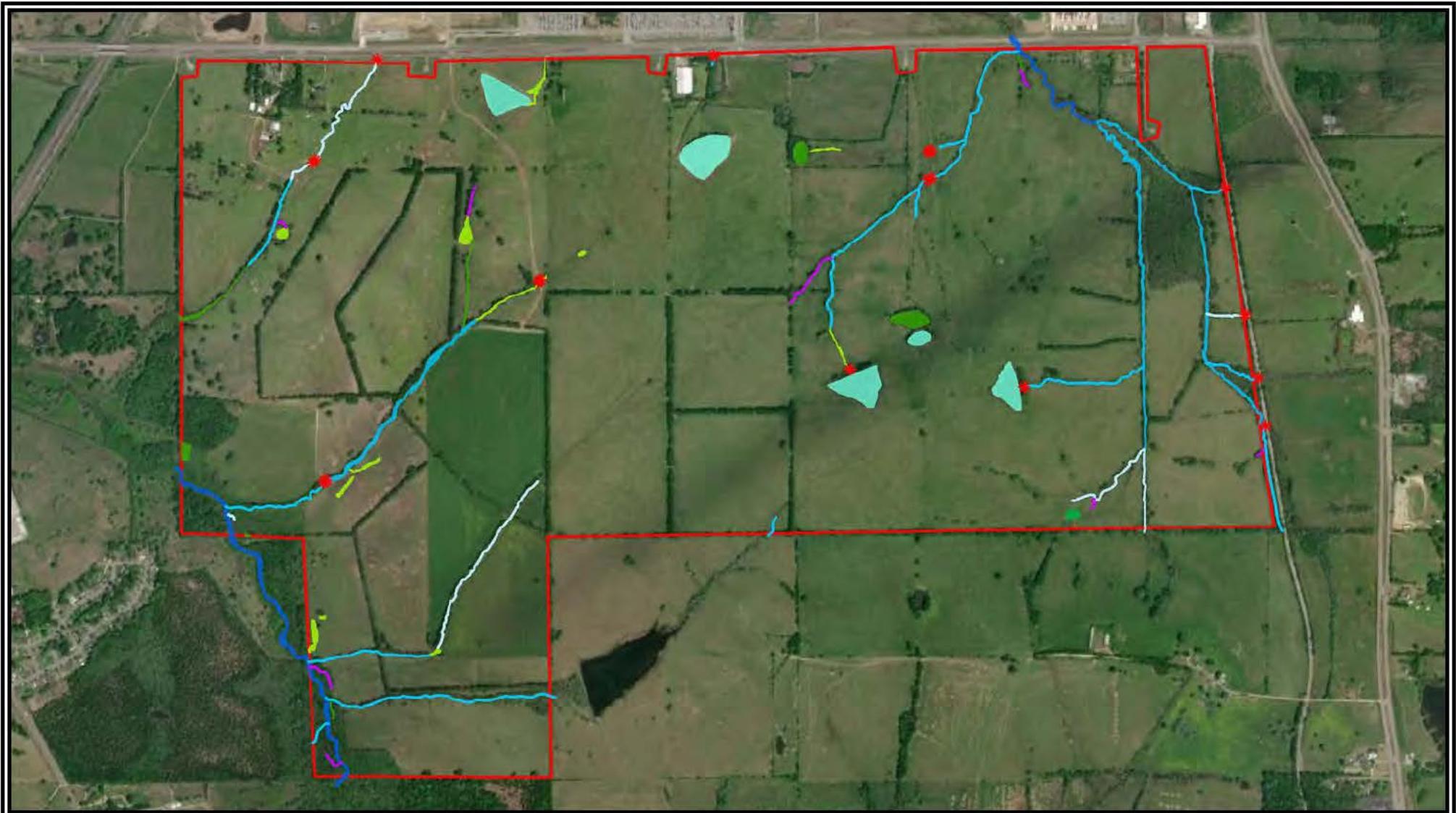
SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

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



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
 Due Diligence Site
 Montgomery, Montgomery County, Alabama

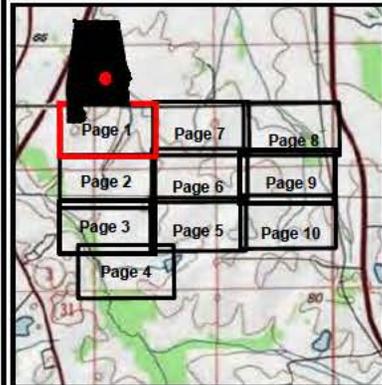
TITLE: **EXISTING CONDITIONS MAP
 (OVERVIEW)**

PROJ NO: 3828900

DATE: May 2024

FIGURE 6a

BARGE
Quality Assurance
 815 3rd Avenue South, Suite 700
 Nashville, TN 37210



Delineated Wetland

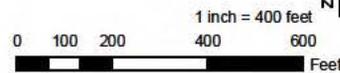
- PEM Wetland
- PFO Wetland
- Farm Pond

Delineated Waterbody

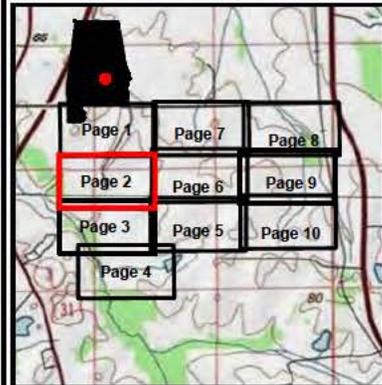
- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate Due Diligence Site Montgomery, Montgomery County, Alabama	
TITLE: EXISTING CONDITIONS MAP (DETAILED)	
PROJ NO: 3828900	FIGURE 6b-1
DATE: May 2024	
BARGE <small>QUALITY ASSURANCE</small> 815 3rd Avenue South, Suite 700 Nashville, TN 37210	



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

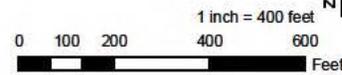
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

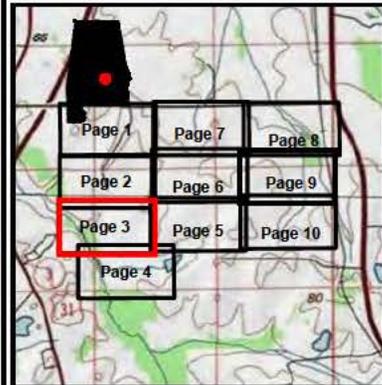
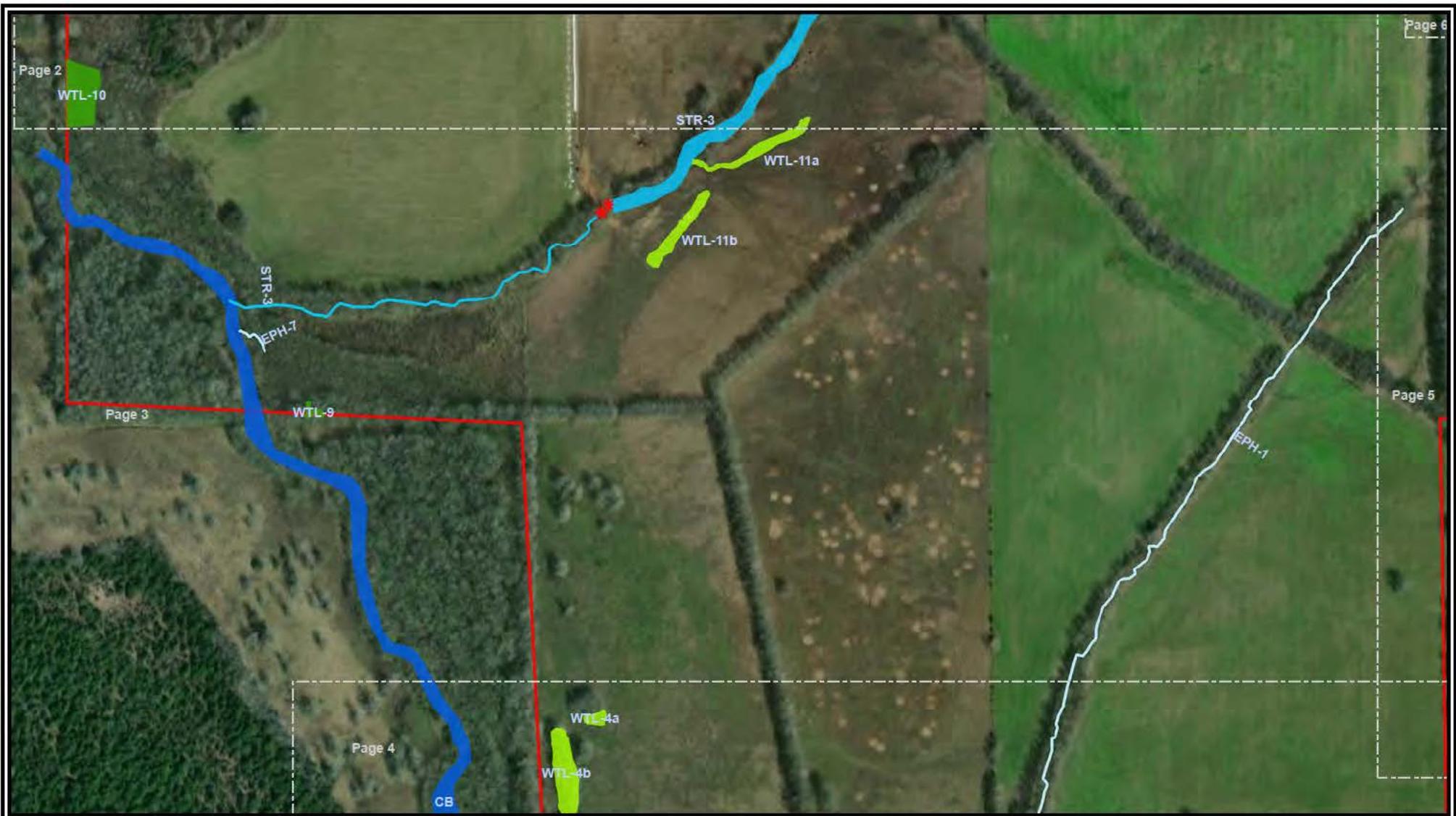
Potential Bat Roost Tree

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate Due Diligence Site Montgomery, Montgomery County, Alabama	
TITLE: EXISTING CONDITIONS MAP (DETAILED)	
PROJ NO: 3828900	FIGURE 6b-2
DATE: May 2024	
BARGE <small>Quality Engineering</small> 615 3rd Avenue South, Suite 700 Nashville, TN 37210	



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

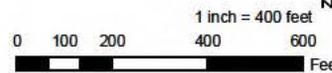
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

Potential Bat Roost Tree

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
Source Data: Barge Field Survey (September 2023)



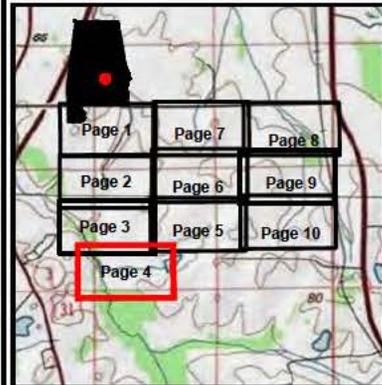
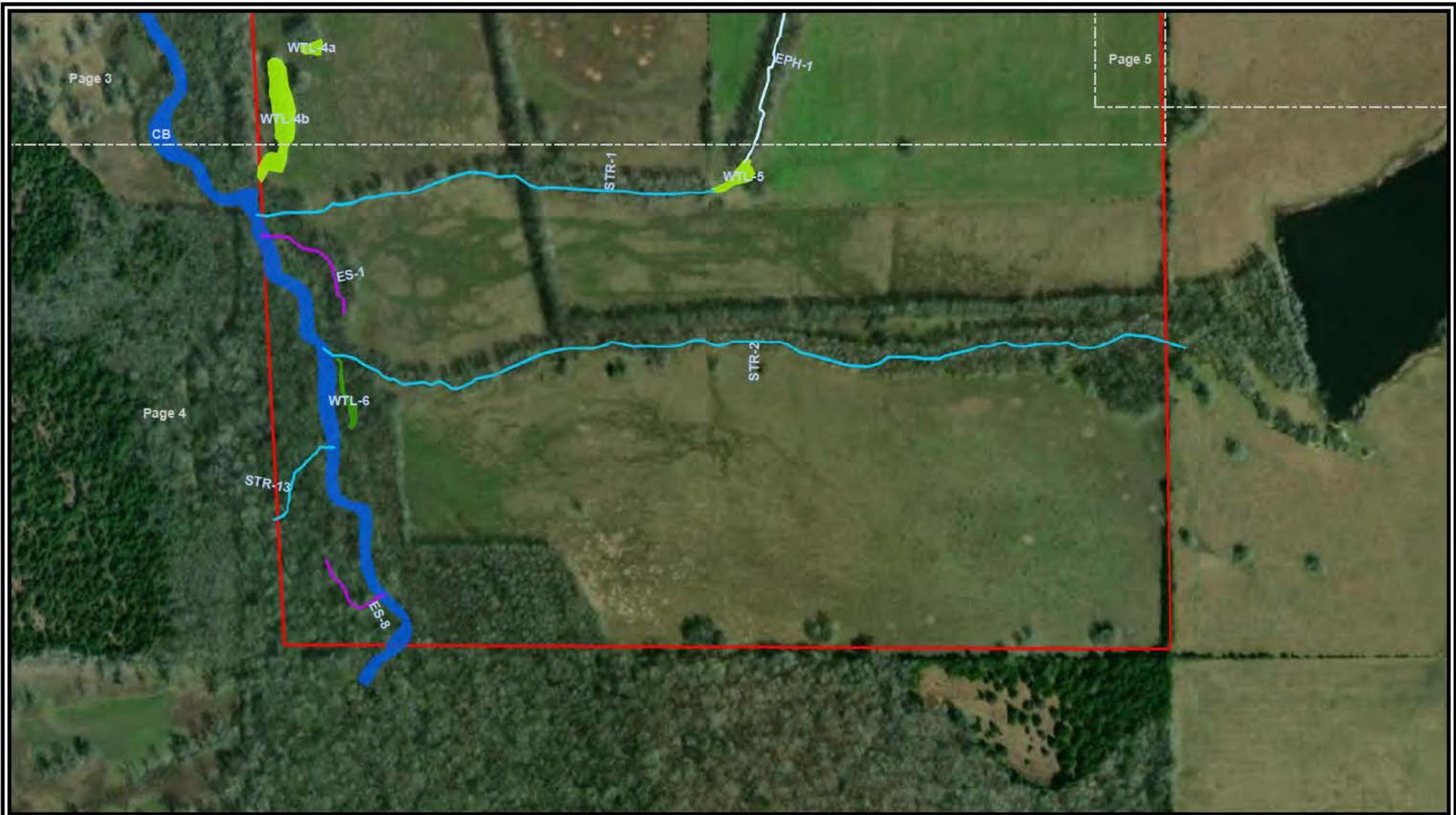
PROJECT: Project Slate
Due Diligence Site
Montgomery, Montgomery County, Alabama

TITLE: **EXISTING CONDITIONS MAP
(DETAILED)**

PROJ NO: 3828900
DATE: May 2024

FIGURE 6b-3

BARGE
615 3rd Avenue South, Suite 700
Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

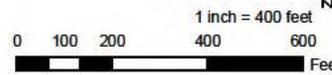
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

- Potential Bat Roost Tree

- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
Source Data: Barge Field Survey (September 2023)



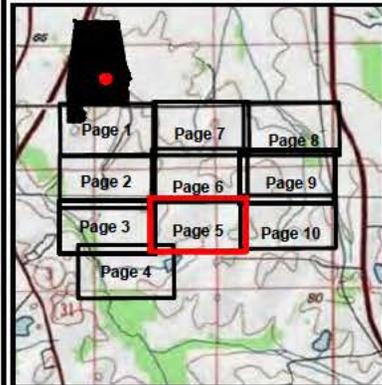
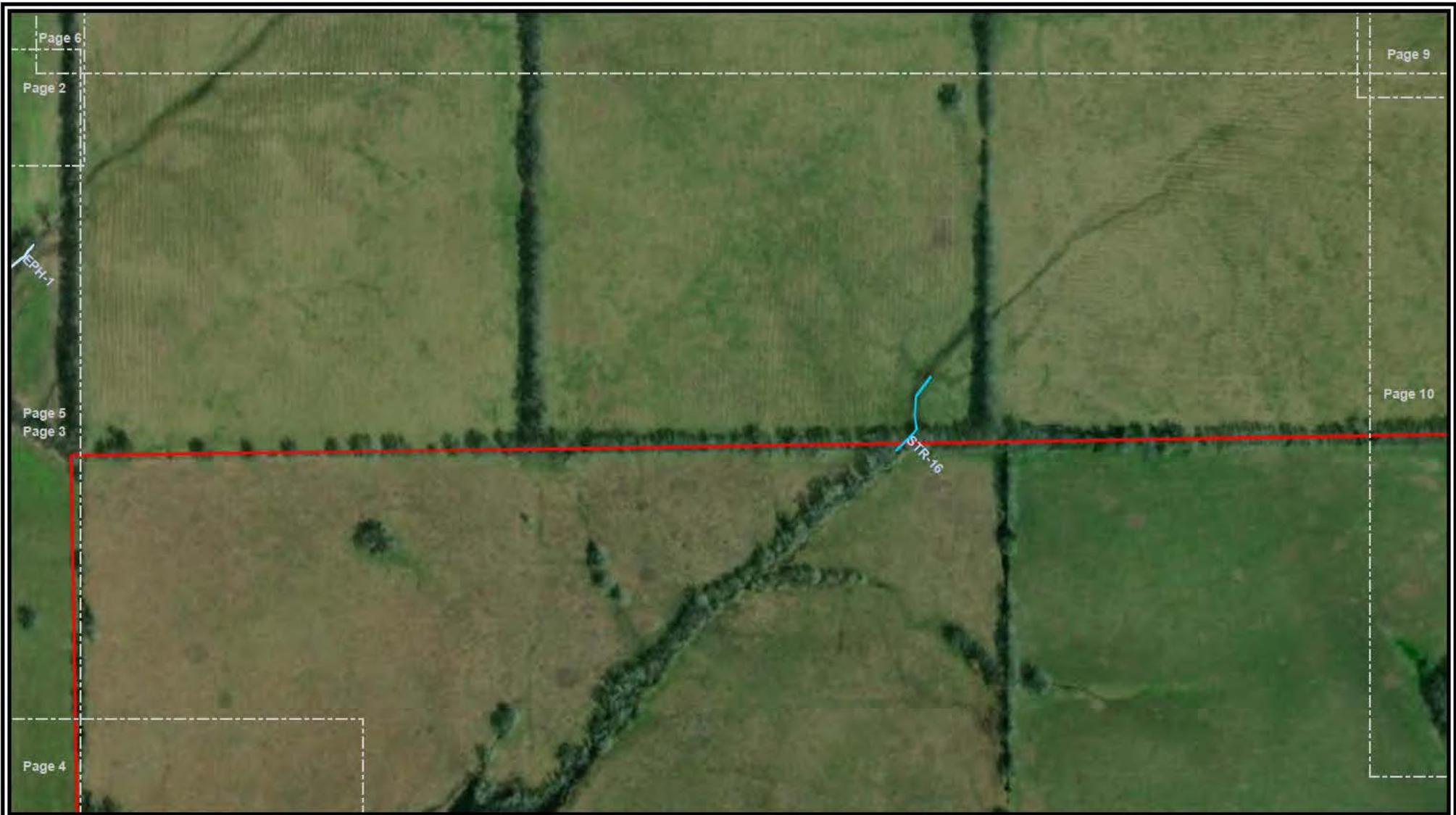
PROJECT: Project Slate
Due Diligence Site
Montgomery, Montgomery County, Alabama

TITLE: **EXISTING CONDITIONS MAP
(DETAILED)**

PROJ NO: 3828900
DATE: May 2024

FIGURE 6b-4

BARGE
QUALITY ASSURANCE
615 3rd Avenue South, Suite 700
Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

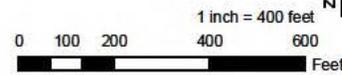
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

Potential Bat Roost Tree

- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
Due Diligence Site
Montgomery, Montgomery County, Alabama

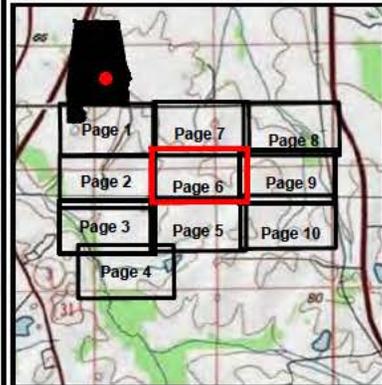
TITLE: **EXISTING CONDITIONS MAP
(DETAILED)**

PROJ NO: 3828900

DATE: May 2024

FIGURE 6b-5

BARGE
QUALITY ASSURANCE
615 3rd Avenue South, Suite 700
Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

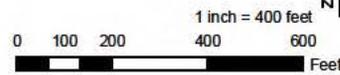
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

Potential Bat Roost Tree

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
 Due Diligence Site
 Montgomery, Montgomery County, Alabama

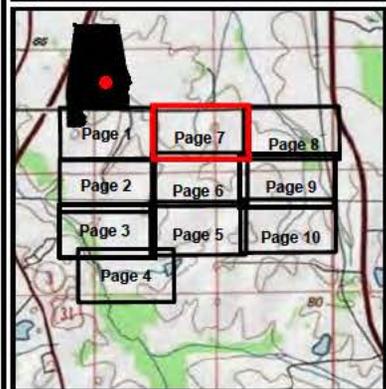
TITLE: **EXISTING CONDITIONS MAP
 (DETAILED)**

PROJ NO: 3828900

DATE: May 2024

FIGURE 6b-6

BARGE
 815 3rd Avenue South, Suite 700
 Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

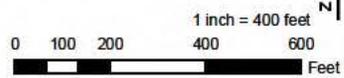
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

Potential Bat Roost Tree

- Potential Bat Roost Tree
- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
 Due Diligence Site
 Montgomery, Montgomery County, Alabama

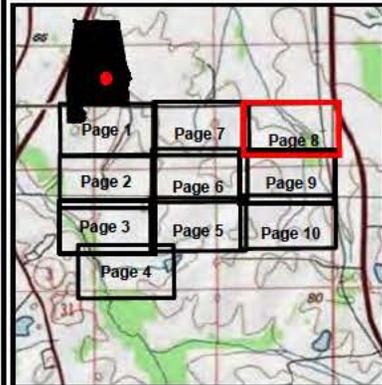
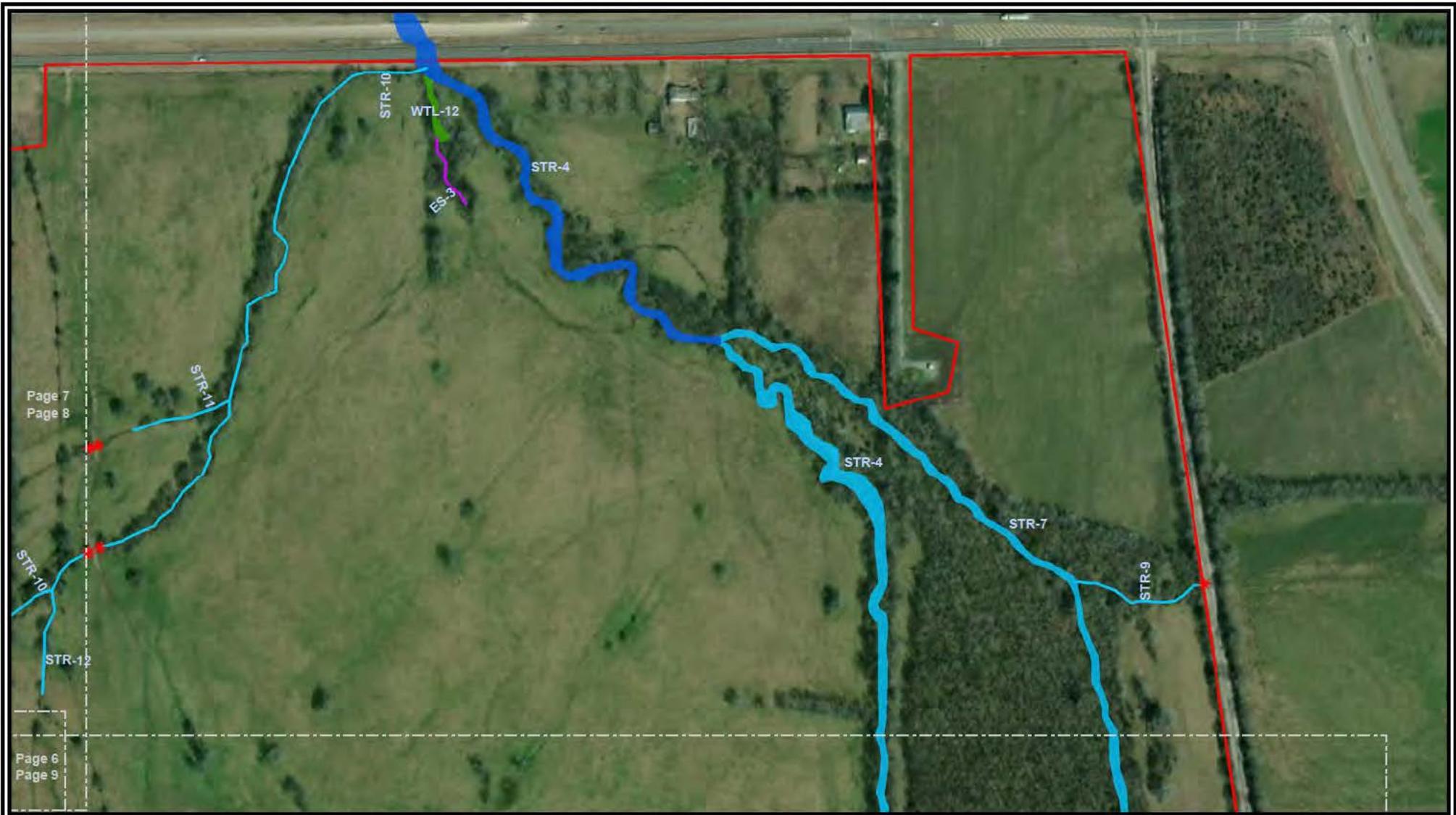
TITLE: **EXISTING CONDITIONS MAP
 (DETAILED)**

PROJ NO: 3828900

DATE: May 2024

FIGURE 6b-7

BARGE
 Quality Assurance
 815 3rd Avenue South, Suite 700
 Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

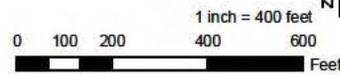
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

- Potential Bat Roost Tree

- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
 Due Diligence Site
 Montgomery, Montgomery County, Alabama

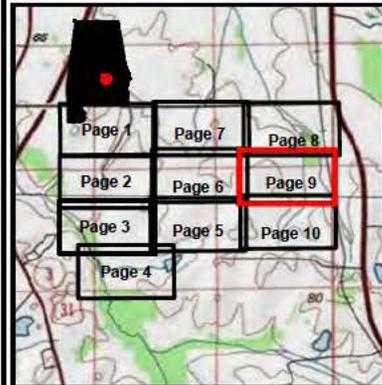
TITLE: **EXISTING CONDITIONS MAP
 (DETAILED)**

PROJ NO: 3828900

DATE: May 2024

FIGURE 6b-8

BARGE
 815 3rd Avenue South, Suite 700
 Nashville, TN 37210



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

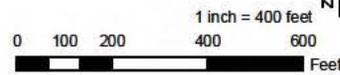
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

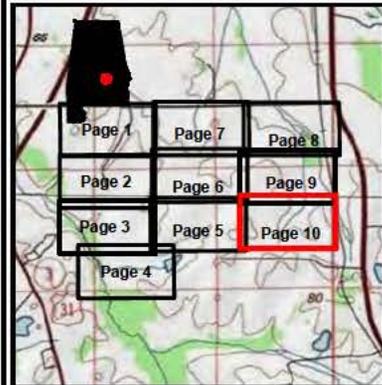
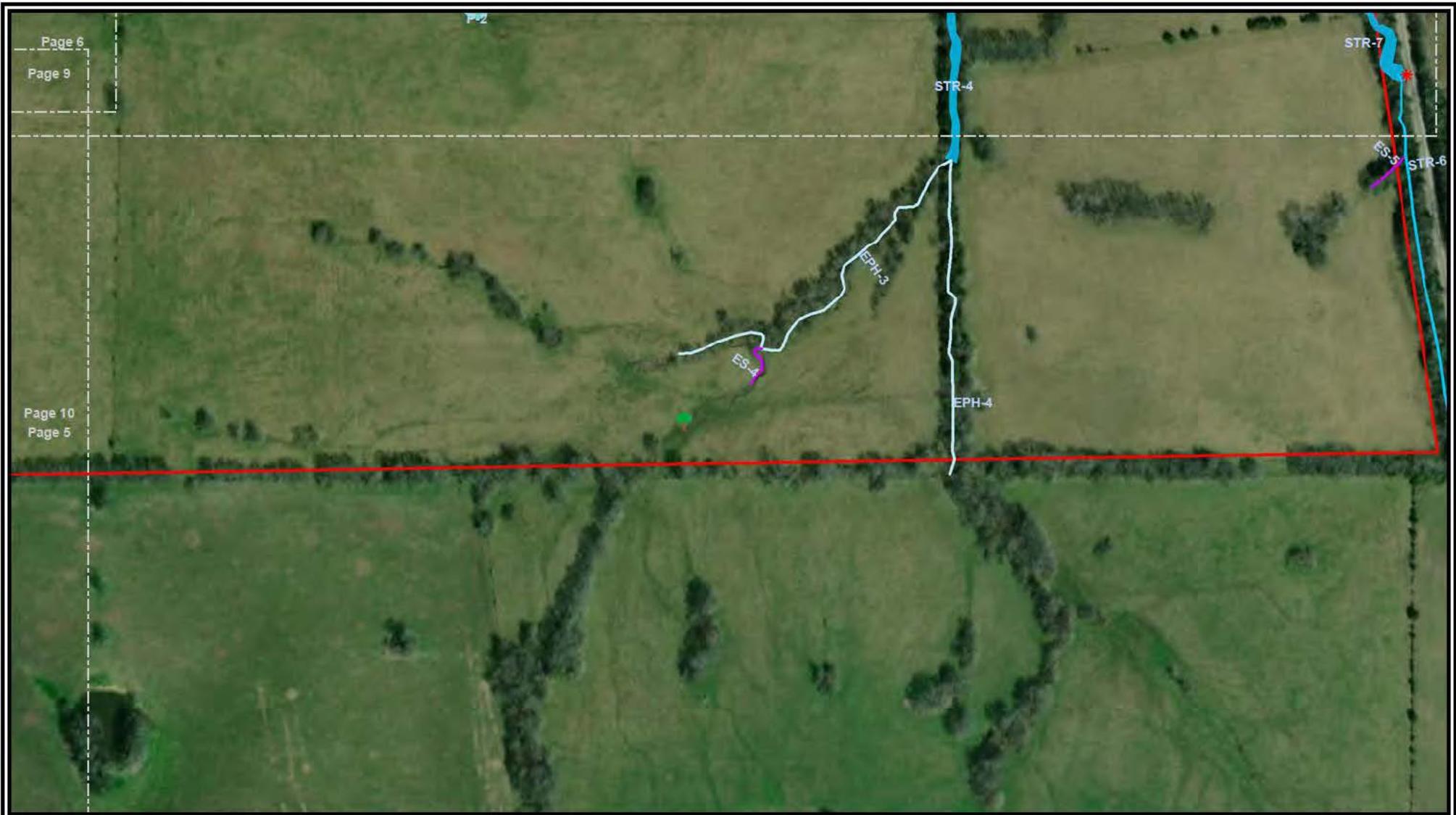
- Potential Bat Roost Tree

- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate Due Diligence Site Montgomery, Montgomery County, Alabama	
TITLE: EXISTING CONDITIONS MAP (DETAILED)	
PROJ NO: 3828900	FIGURE 6b-9
DATE: May 2024	
BARGE <small>Quality Assurance</small> 815 3rd Avenue South, Suite 700 Nashville, TN 37210	



Delineated Wetland

- PEM Wetland
- PFO Wetland
- Farm Pond

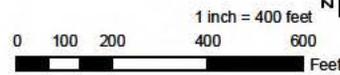
Delineated Waterbody

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Erosional Swale

Potential Bat Roost Tree

- Culvert Location
- Project Study Area

Basemap: ESRI World Imagery
 Source Data: Barge Field Survey (September 2023)



PROJECT: Project Slate
 Due Diligence Site
 Montgomery, Montgomery County, Alabama

TITLE: **EXISTING CONDITIONS MAP
 (DETAILED)**

PROJ NO: 3828900
 DATE: May 2024

FIGURE 6b-10

BARGE
Building Solutions
 815 3rd Avenue South, Suite 700
 Nashville, TN 37210



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

CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #1 of 7²

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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-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).

Waters_Name	Resource Type	Lat/Long	Linear Feet	Acres	Geographic Authority
EPH-2	non-RPW	32.277217, - 86.338030	1,824		Non- Jurisdictional
STR-14	RPW	32.2757, - 86.3391	1,064		Section 404
ES-2	non-RPW	32.272226, - 86.341244	155		Non- Jurisdictional
WTL-7	PEM	32.272046, - 86.341339	-----	0.27	Section 404
WTL-8	PFO	32.269541, - 86.344396	-----	0.38	Section 404

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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
- f. 1987 U.S. Army Corp of Engineers 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-2023-01071-AMR

3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Alabama River and it is 11.83 stream/river miles northwest of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.
In the northwestern corner section of the review area, EPH-2, a non-RPW, flows southwest for 1,824 LF into STR-14, an (RPW). STR-14 flows southwest for 1,064 LF into and abuts WTL-8. WTL-8 is a 0.38-acre forested wetland and flows southwest into an un-named RPW at the northwestern boundary. This RPW flows off-site southwest 0.29 miles into Caney Branch, an RPW, which then flows northwest for 5.53 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

In the northwestern corner section of the review area, WTL-7 is an emergent 0.27-acre wetland that abuts ES-2, a non-RPW. ES-2 flows 155 LF west into STR-14, an RPW. STR-14 flows 540 LF southwest into and abuts WTL-8 maintaining CSC with this 0.38-acre forested wetland. WTL-8 flows southwest into and abuts (has CSC) an un-named RPW off-site at the west boundary. The un-named stream flows 0.29 miles southwest into Caney Branch, an RPW, which then flows northwest 5.53 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

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

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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

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 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): STR-14, is 1,064 linear feet (LF) located in the northwest corner section of the review area. It flows at least seasonally and exhibits hydric soils, and therefore is an RPW. STR-14 is recorded on the National Hydrography Dataset (NHD), the USGS Topographic map, seen clearly in the LIDAR, and seen in recent aerials.

f. The territorial seas (a)(6): N/A.

g. Adjacent wetlands (a)(7):

WTL-7 is a 0.27-acre emergent wetland in the northwest corner section of the review area. WTL-7 abuts ES-2, a non-RPW which provides a continuous surface connection (CSC) from WTL-7 to STR-14 (RPW). ES-2 flows 155 LF west into STR-14, a jurisdictional RPW.

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.

WTL-8 is a 0.38-acre forested wetland that abuts and therefore has a CSC an intermittent stream (RPW) at the western review area boundary. It then continues to flow southwest off-site. This off-site stream flows southwest for 0.29 miles and enters Caney Branch, a Jurisdictional RPW.

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 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.

⁹ 51 FR 41217, November 13, 1986.

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- 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).

EPH-2 does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the northwest corner section of the review area.

ES-2 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the northwest corner section of the review area.

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
 - b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
 - c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
 - d. Google Earth aerials, 2019, 2020, 2021, 2022, 2023, 2024
 - e. Approved Jurisdictional Determination Package, by Barge Design Solutions, November 2023
10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024
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, ALBAMA, 35216

CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #2 of 7²

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.

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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).

Waters_Name	Waters_Name	Resource Type	Lat/Long	Length	Acres	Geographic Authority
	STR-3	RPW	32.267032, -86.337133	3,824		Section 404
	ES-9	Non-RPW	32.273478, -86.334589	336		Non-Jurisdictional
WTL-2	WTL-2a	PEM	32.272004, -86.334922		0.56	Section 404
	WTL-2b	PFO	32.270215, -86.334848		0.4	Section 404
WTL-3	WTL-3a	PEM	32.270720, -86.332176		0.06	Section 404
	WTL-3b	PEM	32.270167, -86.333339		0.28	Section 404
	WTL-10	PFO	32.265520, -86.344714		0.36	Section 404
	WTL-11a	PEM	32.265138, -86.338335		0.19	Section 404
	WTL-11b	PEM	32.264478, -86.339111		0.18	Non-Jurisdictional
	WTL-16	PEM	32.271470, -86.330858		0.07	Non-Jurisdictional
	EPH-7	Non-RPW	32.263490, -86.342997	113		Non-Jurisdictional
	WTL-9	PFO	32.263016, -86.342563	0.03		Non-Jurisdictional

*WTL 2a and WTL 2b are one wetland (WTL2). They are mapped into two different types of wetlands, PEM and PFO.

*WTL 3a and WTL 3b are one wetland (WTL3) but is bisected by a culvert which maintains CSC.

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

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- 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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
 - f. 1987 U.S. Army Corp of Engineers Wetland Delineation Manual
 - g. "Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436"; USEPA and OASACW joint policy memorandum, December 19, 2023
3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW in the Alabama River and it is 11.83 stream/river miles northwest of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

ES-9, a non-RPW, flows 336 LF south into WTL-2 (WTL-2a and WTL2b), an emergent and forested wetland. WTL-2 flows south into STR-3. STR-3, an RPW, then flows southwest for 2,300 LF to a culvert where it maintains flow to the downstream reach of STR-3 and continues to flow southwest 1,176 LF into Caney Branch. The flow from Caney Branch (an RPW) is 1,200 LF northwest to the west boundary. From the west boundary Caney Branch flows off-site northwest for 5.93

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.

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miles into Catoma Creek, an RPW. Catoma Creek flows northwest 8.1 miles into Alabama River, a TNW.

WTL-3 is comprised of WTL-3a and WTL-3b which abuts STR-3, an RPW. STR-3 then flows southwest for 2,472 LF to a culvert where it maintains flow to the downstream reach of STR-3 and continues to flow southwest 1,176 LF into Caney Branch. The flow from Caney Branch (an RPW) is 1,200 LF northwest to the west boundary. From the west boundary Caney Branch flows northwest off-site for 5.93 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles northwest into Alabama River, a TNW.

WTL-11a, 0.19-acre wetland, flows southwest and abuts STR-3, an RPW, which flows southwest 273 LF into a culvert where it maintains flow to the downstream reach of STR-3 and continues to flow southwest 1,176 LF into Caney Branch. The flow from Caney Branch (an RPW) is 1,200 LF northwest to the west boundary. From the west boundary Caney Branch flows northwest off-site for 5.93 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles northwest into Alabama River, a TNW..

WTL-10, 0.36-acre is a forested wetland located on the west boundary of the review area and abuts Caney Branch off-site. From the west boundary Caney Branch flows northwest off-site for 5.93 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles northwest into Alabama River, a TNW.

EPH-7 is a non-RPW that flows 113 LF west into Caney Branch, an RPW. The flow from Caney Branch (an RPW) is 1,300 LF northwest to the west boundary. Caney Branch flows northwest offsite for 5.93 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles northwest into Alabama River, a TNW.

WTL-9 does not have a flow path to a TNW, interstate water or territorial seas.

WTL-11b does not have a flow path to a TNW, interstate water or territorial seas.

WTL-16 does not have a flow path 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

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.

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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 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): STR-3 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the eastern section of the review area. It flows 3,824 linear feet (LF) southwest into Caney Branch (CB), a jurisdictional RPW. STR-3 is recorded on the National Hydrography Dataset (NHD), the USGS Topographic map, seen clearly in the LIDAR, and seen in recent aerials. A culvert is located 2,472 LF from the upper end of this reach and maintains flow with the downstream portion of STR-3.

f. The territorial seas (a)(6): N/A.

g. Adjacent wetlands (a)(7):

WTL-2a (0.56 ac) and WTL- 2b (0.40 ac) make up one wetland (WTL-2) and is located on the west side of the review area. They are mapped as 2a emergent

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.

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and 2b forested wetlands, but it is one contiguous wetland. This wetland flows south and abuts (has a continuous surface connection (CSC) with) STR -3, a jurisdictional RPW.

WTL- 3a (0.06 ac) and WTL-3b (0.28 ac) make up one emergent wetland (WTL-3) and is located on the west side of the review area. This wetland is bisected by a dirt farm road with a 20-foot-long culvert which maintains the hydrologic connection between the upgradient and downgradient wetland. The upgradient and downgradient portion of WTL-3 exhibits similar vegetation and hydrology characteristics. This wetland flows southwest and abuts (has CSC with) STR-3, a jurisdictional RPW.

WTL-10 is a 0.36 ac. forested wetland located on the west boundary of the review area. WTL-10 extends outside of the review area and abuts (has a CSC with) Caney Branch (RPW) outside of the review area.

WTL-11a is a 0.19 ac. emergent wetland located on the west side of the review area. It flows southwest and maintains CSC (abuts) with STR-3, a jurisdictional RPW.

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 the review area and describe how it was determined to be a waste treatment system. N/A.

⁹ 51 FR 41217, November 13, 1986.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

- 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).

ES-9 is an ephemeral feature, 336 feet long, that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the western section of the review area.

EPH-7 is an ephemeral stream, 113 feet long, that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southwest section of the review area.

WTL-9 is a 0.03-acre forested depressional wetland that is surrounded by uplands, with no CSC to waters of the U.S. It is located in the southwest section of the review area.

WTL-11b is a 0.18-acre emergent depressional wetland that is surrounded by uplands, with no CSC to waters of the U.S. It is located in the southwest section of the review area.

WTL-16 is a 0.7- acre emergent depressional wetland that is surrounded by uplands, with no CSC to waters of the U.S. It is located in the mid-section of the review area.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
 - b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
 - c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
 - d. Google Earth aerials, 2019, 2020, 2021, 2022, 2023, 2024
 - e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023

10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024

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
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CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #3 of 7²

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.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-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).

Waters_Name	Resource Type	Lat/Long	Length	Acres	Geographic Authority
WTL-4a	PEM	32.260592, -86.339883		0.04	Non-Jurisdictional
WTL-4b	PEM	32.260049, -86.340135		0.43	Section 404
EPH-1	non-RPW	32.264682, -86.332359	2,237		Non-Jurisdictional
WTL-5	PEM	32.259604, -86.335840		0.1	Section 404
STR-1	RPW	32.259473, -86.336125	1,355		Section 404
ES-1	non-RPW	"32.258489, -86.339571	386		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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
- f. 1987 U.S. Army Corp of Engineers Wetland Delineation Manual

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW in the Alabama River and it is 11.83 stream/river miles northwest of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

EPH-1 flows 2,237 (linear feet) LF southwest into WTL-5, an emergent wetland. WTL-5 flows west into and abuts STR-1, an RPW. STR-1 flows west 1,355 LF into Caney Branch (CB) along the west boundary. From the west boundary, Caney Branch flows off-site northwest for 6.34 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

WTL-4b is an emergent wetland located on the southwest boundary of the review area. It abuts Caney Branch (CB) at the west boundary. From the west boundary, Caney Branch flows off-site northwest for 6.34 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

ES-1 flows 386 LF northwest into Caney Branch (CB) at the west boundary. Caney Branch flows off-site northwest for 6.34 miles into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

WTL-4a does not have a flow path 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

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.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

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 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): STR-1 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the southwestern corner section of the review area. It flows 1,355 linear feet LF west into Caney Branch (CB), a jurisdictional RPW. STR-1 is seen clearly in the LIDAR and seen in recent aerials.

f. The territorial seas (a)(6): N/A.

g. Adjacent wetlands (a)(7):

WTL-5 is an emergent wetland located on the southwest section of the review area. It has a CSC to STR-1, an RPW, because it abuts STR-1.

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.

WTL-4b is an emergent wetland located on the southwest boundary of the review area. It abuts Caney Branch (CB) maintaining CSC. Caney Branch is a jurisdictional RPW (identified in MFR #4 of #7).

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 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

⁹ 51 FR 41217, November 13, 1986.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

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).

ES-1 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southwest corner section of the review area.

EPH-1 is an ephemeral stream that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southwest corner section of the review area.

WTL-4a is an 0.04-acre emergent depressional wetland in the southwest corner section that is surrounded by uplands with no continuous surface connection to waters of the U.S.

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
 - b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
 - c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
 - d. Google Earth aeriels, 2019, 2020, 2021, 2022, 2023, 2024
 - e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023
10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024
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, ALBAMA, 35216

CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #4 of 7²

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.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-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).

Waters_Name	Resource Type	Lat/Long	Length	Acres	Geographic Authority
STR-2	RPW	32.258240, -86.331709	2,619		Section 404
WTL-6	PFO	32.257738, -86.339488	-----	0.06	Section 404
STR-13	RPW	32.256856, -86.340211	308	-----	Section 404
ES-8	non-RPW	32.256531, -86.339733	259	-----	Non-Jurisdictional
STR-16	RPW	32.2635, -86.3241	225	-----	Section 404
CB	RPW	32.255776, -86.339160	4,440	-----	Section 404

CB = Caney Branch

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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)

- f. 1987 U.S. Army Corps of Engineers Wetland Delineation Manual
3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Alabama River and it is 11.83 stream/river miles northwest of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.
STR-16 is an RPW located in the south-mid section of the review area and flows 225 linear feet (LF) southwest to the south review area boundary. The stream continues to flow southwest off-site for 3,035 LF into STR-2 on-site. STR-2, an RPW, flows 2,619 LF west into Caney Branch (CB), an RPW. Caney Branch flows 6.45 miles northwest into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

WTL-6 is a forested wetland located on the southwest corner section of the review area. It abuts STR-2, an RPW. STR-2 flows 100 LF west into Caney Branch (CB), an RPW. Caney Branch flows 6.45 miles northwest into Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

Caney Branch (CB), an RPW, flows from south to northwest approximately 4,440 LF in the review area. From where it exits the review area (southwest boundary), Caney Branch flows northwest for 6.45 miles into the Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

STR-13 flows 308 LF northeast into Caney Branch (CB), an RPW. Caney Branch flows northwest for 6.49 miles into the Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

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.

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ES-8 flows 259 LF southeast into Caney Branch, an RPW. Caney Branch flows northwest for 6.52 miles into the Catoma Creek, an RPW. Catoma Creek flows northwest for 8.1 miles into Alabama River, a TNW.

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 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):

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.

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STR-16 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the south-mid-section of the review area. STR-16 is a jurisdictional RPW. STR-16 is recorded on the NHD, USGS topographic map, soils survey, seen clearly in LIDAR and in recent aerials.

STR-2 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the southwestern corner section of the review area. STR-2 is recorded on the NHD, and USGS topographic map, and seen clearly in the LIDAR and in recent aerials.

STR-13 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the southwest corner section of the review area. STR-13 is seen clearly in LIDAR and is downstream from impounded waters that are off-site.

CB (Caney Branch) exhibits hydric soils, standing and flowing water year-round and therefore is an RPW. It is located in the southwestern corner and western section of the review area. Caney Branch is a perennial stream recorded on USGS topographic maps, NHD and Soils survey. It is also seen clearly in aerials and LIDAR.

- f. The territorial seas (a)(6): N/A.
- g. Adjacent wetlands (a)(7):

WTL-6 is a forested wetland located on the southwest corner section of the review area. It has a continuous surface connection (CSC) to STR-2 (RPW) because it abuts STR-2.

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

⁹ 51 FR 41217, November 13, 1986.

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

ES-8 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southeastern corner section of the review area.

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-AMR

- b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
- c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
- d. Google Earth aerials, 2019, 2020, 2021, 2022, 2023, 2024
- e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023

10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024

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, ALBAMA, 35216

CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #5 of 7²

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.

CESAM-RD-N

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-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).

Waters_Name	Waters_Name	Resource Type	Lat/Long	Length	Acres	Geographic Authority
	P-3	PUB	32.267578, -86.321024	-----	3.27	Section 404
	WTL-14	PEM	32.268088, -86.321463	0.17		Section 404
	STR-10	RPW	32.269353, -86.322103	4,087		Section 404
	ES-6	Non-RPW	32.270035, -86.323540	724		Non-Jurisdictional
	STR-12	RPW	32.272600, -86.319116	304		Section 404
	STR-11	RPW	32.274699, -86.318279	293		Section 404
	WTL-13	PFO	32.269515, -86.318958	---	1.18	Non-Jurisdictional
	P-5	PUB	32.268963, -86.319010	---	0.67	Preamble Water
WTL-15	WTL-15a	PFO	32.274491, -86.323176	---	0.71	Non-Jurisdictional
	WTL-15b	PEM	32.274609, -86.322199	---	0.11	Non-Jurisdictional

*WTL-15 is one wetland comprised of WTL-15a and WTL-15b – They were mapped according to habitat type

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).

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2023-01071-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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
 - f. 1987 U.S. Army Corps of Engineers Wetland Delineation Manual
3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Alabama River, and it is 16.2 stream/river miles north of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The flow is north from the northeast corner of the review area.

P-3 is a 3.27-acre pond that flows into WTL-14 via culvert. WTL-14 flows north into and abuts STR-10. STR-10, an RPW, flows northeast for 4,087 LF into the perennial section of STR-4, an RPW. STR-4 flows for about 20 LF north then enters a culvert where flow is maintained under Hyundai Blvd (off-site) to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

ES-6 flows 724 LF northeast into STR-10 (RPW), which flows is northeast for 3,387 LF into the perennial section of STR-4, an RPW. STR-4 flows for about 20 LF north then enters a culvert where flow is maintained under Hyundai Blvd (off-site) to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0

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.

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miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

STR-11, an RPW, is located in the northeast section of the review area. It flows 293 LF northeast into STR-10, an RPW. From the intersection of STR-11 and STR-10, the flow is 1,200 LF northeast into STR-4. STR-4, an RPW, flows for about 20 LF north then enters a culvert where flow is maintained under Hyundai Blvd (off-site) to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

STR-12, an RPW, flows 304 LF north into STR-10, an RPW. From the intersection of STR-12 and STR-10 the flow is 3,127 LF northeast into STR-4. STR-4, an RPW, flows for about 20 LF north then enters a culvert where flow is maintained under Hyundai Blvd (off-site) to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

WTL-13 does not have a flow path to a TNW, interstate water or territorial seas.

WTL-15a does not have a flow path to a TNW, interstate water or territorial seas.

WTL-15b does not have a flow path to a TNW, interstate water or territorial seas.

P-5 does not have a flow path 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

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.

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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.

Impoundments (a)(4): P-3 is 3.27-acre pond excavated in a wetland as indicated by a 1975 aerial. A culvert in the dam allows for water to continue to flow downstream.

- d. Tributaries (a)(5):

STR-10 exhibits hydric soils, standing and flowing water at least seasonally and is therefore an RPW. STR-10 is recorded on the NHD, and USGS topographic map, and seen clearly in the LIDAR and in recent aerials. Approximately 2,020 LF from the upstream end of STR-10 is a culvert which maintains flow with the downstream section of STR-10.

STR-11 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is seen in LIDAR and recent aerials and is located in the northeast corner section of the review area.

STR-12 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the northeast corner section of the review area. It is seen in LIDAR and recent aerials.

- e. The territorial seas (a)(6): N/A.
- f. Adjacent wetlands (a)(7):

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WTL-14 is an emergent wetland located on the mid-section of the review area. It abuts STR-10, an RPW, thereby having continuous surface connection to STR-10.

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.

P-5 is a 0.67- acre pond created in uplands and is in close proximity to wetland (WTL-13), located in the north mid-section of the review area. P-5 is an artificial pond created by excavating dry land to collect and retain water for purposes of stock watering.

- 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

⁹ 51 FR 41217, November 13, 1986.

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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).

ES-6 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the northeast corner section of the review area.

W-13 is a 1.18-acres frosted wetland located in the mid-east section of the review area. W-13 is surrounded by uplands and does not have a continuous surface connection to jurisdictional downstream waters.

WTL-15 is comprised WTL-15a, a 0.71-acre forested wetland, and WTL-15b, a 0.11-acre emergent wetland which are part of a pasture. WTL-15 was observed as a wetland with depressional PFO (WTL-15a) and drainageway PEM (WTL-15b) sections in the north-central portion of the review area. The depressional section of WTL-15 (WTL-15a) receives upland pasture runoff from the adjacent cattle pasture and drains into the drainageway section of WTL-15 (WTL-15b) through a seep in the berm wall. The drainageway wetland eventually dissipates to overland sheet flow within a pasture, isolating the wetland from other features. Therefore, there are no CSCs to downstream jurisdictional waters.

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
 - b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
 - c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
 - d. Google Earth aeriels, 2019, 2020, 2021, 2022, 2023, 2024

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e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023

10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024

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, ALBAMA, 35216

CESAM-RD-N

July 22, 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-2023-01071-AMR, MFR #6 of 7²

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.

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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).

Waters_ Name	Resource Type	Lat/Long	LF	Ac	Geographic Authority
STR-4	RPW	32.265740, -86.311065	4,064	---	Section 404
STR-4	RPW	32.275424, -86.312805	1,627	---	Section 404
STR-5	RPW	32.267571, -86.315253	1,422	---	Section 404
P-2	PUB	32.267451, -86.315867	---	2.15	Section 404
EPH-3	Non-RPW	32.264183, -86.313603	1,156	---	Non-Jurisdictional
EPH-4	Non-RPW	32.263267, -86.311065	921	---	Non-Jurisdictional
ES-4	Non-RPW	32.263944, -86.312932	140	---	Non-Jurisdictional
STR-7	RPW	32.266433, -86.306850	4,285	---	Section 404
STR-9	RPW	32.273512, -86.308291	405	---	Section 404
EPH-5	Non-RPW	32.269751, -86.307583	433	---	Non-Jurisdictional
STR-8	RPW	32.267852, -86.307122	657	---	Section 404
STR-6	RPW	32.263312, -86.306230	1,170	---	Section 404
ES-5	Non-RPW	32.265550, -86.307128	134	--	Non-Jurisdictional
WTL-12	PFO	32.277302, -86.315483	---	0.09	Section 404
ES-3	Non-RPW	32.276511, -86.315186	221	---	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)

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- d. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)
 - e. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
 - f. 1987 U.S. Army Corp of Engineers Wetland Delineation Manual
3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Alabama River and it is 16.2 stream/river miles north of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

ES-4, a non-RPW, flows 140 LF north into EPH-3, a non-RPW. EPH-3 flows 856 LF northeast into STR-4 (intermittent). STR-4, an RPW, flows 4,064 LF north into the perennial section of STR- 4. STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

P-2, is a 2.5 acre pond that flows into STR-5 via culvert maintaining flow to STR-5, an RPW. STR-5 flows 1,422 LF east into STR-4 (intermittent section). STR-4, an RPW, flows 2,780 LF north into the perennial section of STR- 4. STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

EPH-4 is a non-RPW and flows 921 LF north into STR-4 intermittent section. STR-4, an RPW, flows 4,064 LF north into the perennial section of STR- 4. STR-4 flows

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.

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1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

WTL-12 is a forested wetland located on the northeast corner section of the review area. WTL-12 flows north into and abuts STR-4 (perennial section), maintaining continuous surface connection (CSC). STR-4 flows north for 20 LF into a culvert under Hyundai Blvd (off-site) maintaining flow to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

ES-3, a non-RPW, flows 221 LF north into WTL-12, a forested wetland. WTL-12 flows north into STR-4 (RPW). STR-4 flows north for 20 LF into a culvert under Hyundai Blvd (off-site) maintaining flow to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

STR-6, an RPW, flows 1,170 LF north into STR-7, an RPW. STR-7 flows 4,285 LF northwest into STR-4 (perennial section). STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

STR-8, an RPW, flows 657 LF northwest into STR-7, an RPW. From where STR-8 intersects STR-7, the STR-7 flows 3,100 LF northwest into STR-4 (perennial section). STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

STR-9, an RPW, flows 408 LF west into STR-7, an RPW. From where STR-8 intersect STR-7, the STR-7 flows 1,280 LF northwest into STR-4 (perennial section). STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

ES-5 is a non-RPW, and flows 134 LF northeast into STR-6, an RPW. STR-6 flows 1,170 LF north into STR-7, an RPW. STR-7 flows 4,285 LF northwest into STR-4

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(perennial section). STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) maintaining flow to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW..

EPH-5 is a non-RPW and flows 433 LF west into STR-7, an RPW. From where STR-5 intersects STR-7, the STR-7 flows 2,580 LF northwest into STR-4 (perennial section). STR-4 flows 1,627 LF north, then enters a culvert under Hyundai Blvd (off-site) maintaining flow to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles into Alabama River, a TNW.

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 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.

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.

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c. Other Waters (a)(3): N/A.

d. Impoundments (a)(4): P-2 is 2.15-acre pond excavated in an intermittent stream STR-5 as indicated by a 1958 aerial. The pond maintains flow via culvert to STR-5, a jurisdictional RPW.

e. Tributaries (a)(5):

STR- 4 (intermittent section) and exhibits hydric soils, standing and flowing water at least seasonally and is therefore an RPW. It is located in the northeast corner section of the review area. STR-4 is recorded in the USGS topographic map, National Hydrography Dataset (NHD), soils survey, and seen in LIDAR and recent aerials.

STR- 4 (perennial section) and exhibits hydric soils, standing and flowing water year-round and is therefore an RPW. It is located in the northeast corner section of the review area. STR-4 is recorded in the USGS topographic map, NHD, soils survey, and seen in LIDAR and recent aerials.

STR-5 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the mid-east section of the review area. STR-5 is clearly seen in LIDAR and recent aerials.

STR-6 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the mid-east and southeast section of the review area. STR-6 recorded on the NHD, and USGS topographic map, and seen clearly in the LIDAR and in recent aerials.

STR-7 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the northeast, Mid-east and southeast section of the review area. STR-7 recorded on the NHD, and USGS topographic map, and seen clearly in the LIDAR and in recent aerials.

STR-8 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the mid-east section of the review area.

STR-9 exhibits hydric soils, standing and flowing water at least seasonally and therefore is an RPW. It is located in the northeast section of the review area.

f. The territorial seas (a)(6): N/A.

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g. Adjacent wetlands (a)(7):

WTL-12 is a forested wetland located on the northeast corner section of the review area. It abuts STR-4 perennial section which is a jurisdictional RPW. STR-4 flows north for 20 LF into a culvert under Hyundai Blvd (off-site) where flow is maintained to the un-named stream north of Hyundai Blvd. This un-named RPW flows north for 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast for 13.2 miles 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”).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 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.

⁹ 51 FR 41217, November 13, 1986.

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- 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).

ES-3 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the northeast corner section of the review area. ES-3 flows 221 LF north into WTL-12, a jurisdictional wetland.

EPH-3 is an ephemeral stream that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southeast corner section of the review area. EPH-3 flows 1,156 LF northeast into STR-4 intermittent section, which is a jurisdictional RPW.

ES-4 is an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southeast corner section of the review area. ES-4 flows 140 LF north into EPH-3 which is a non-jurisdictional non-RPW.

EPH-4 is an ephemeral stream that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southeast corner section of the review area. EPH-4 flows 921 LF north into STR-4 intermittent section, which is a jurisdictional RPW.

ES-5 an ephemeral feature that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the southeast corner section of the review area. ES-5 flows 134 LF northeast into STR-6 which is a jurisdictional RPW.

EPH-5 an ephemeral stream that does not exhibit standing or flowing water at least seasonally and therefore is a non-RPW. It is located in the mideast section of the review area. EPH-5 flows 433 LF west into STR-7 which is a jurisdictional 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.

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- a. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
- b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
- c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
- d. Google Earth aeriels, 2019, 2020, 2021, 2022, 2023, 2024
- e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023

10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024

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, ALBAMA, 35216

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July 22, 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-2023-01071-AMR, MFR #7 of 7²

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.

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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).

Waters_Name	Resource Type	Lat/Long	LF	Acres	Geographic Authority
P-4	PUB	32.274384, -86.326515	---	4.07	Preamble Water
STR-15	RPW	32.277271, -86.326260	111	---	Section 404
WTL-1	PEM	32.276324, -86.332499	---	0.31	Non-Jurisdictional
P-1	PUB	32.276134, -86.333735	---	2.82	Preamble Water

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. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)
- f. 1987 U.S. Army Corp of Engineers Wetland Delineation Manual

3. REVIEW AREA. The site is comprised 1,519 acres of farmland located south of Hyundai Boulevard at 32.270360, -86.326190, Montgomery County, Alabama.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW in the Alabama River and it is 16.2 stream/river miles north of the site. This was determined after reviewing the National Regulatory Viewer (NRV) layer for Section 10 navigable waters.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

STR-15, an RPW, flows north 111 linear feet (LF) to a culvert under Hyundai Boulevard which maintains flow (off-site) to a stormwater pipe for 1,200 linear feet (LF) northeast to an intermittent ditch (a relocated RPW), and then flows east 1,300 feet into an un-named stream (also a relocated RPW). This un-named RPW flows north for approximately 3.0 miles into Catoma Creek, an RPW. Catoma Creek flows northeast 13.2 miles into the Alabama River, a TNW.

WTL-1 does not have a flow path to a TNW, interstate water or territorial seas.

P-1 does not have a flow path to a TNW, interstate water or territorial seas.

P-4 does not have a flow path 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

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.

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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): STR-15 is 111 LF located on the north boundary in the north-mid section of the review area. It is considered an RPW due to the presence of standing water and flowing water at least seasonally, being recorded on National Hydrography Dataset (NHD), USGS topographic map, Soils survey, clearly seen in LIDAR and recent aerials. STR-15 flows 111 LF north into a culvert that goes under Hyundai Boulevard into a stormwater system that runs 1,200 feet northeast to an intermittent ditch (relocated RPW) that flows east 1,300 feet into an un-named RPW (also a relocated RPW) which flows north for approximately 3.0 miles into Catoma Creek, 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").⁹ Include size of the aquatic resource or feature within

⁹ 51 FR 41217, November 13, 1986.

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the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

P-1 is a 2.82-acre pond that was created in uplands for stock watering. P-1 seeps and/or overflows into WTL-1, however, there are no continuous surface connections (CSCs) to downstream jurisdictional waters. P-1 and WTL-1 as a whole are surrounded by uplands.

P-4 is a 4.07-acre pond that was created in uplands for stock watering. P-4 is surrounded by uplands and has no flow to downstream jurisdictional waters.

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

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WTL-1 is a 0.31- acre drainageway emergent wetland within a hay field in the northwestern portion of the project study area. The wetland receives overflow runoff or seepage below berm wall from P-1 and ends at the roadside ditch along Hyundai Boulevard where no CSC was found to downstream jurisdictional waters. Therefore, this wetland is non-jurisdictional.

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. February 8, 2024 field site visit, and February 21, May 14, 2025 office evaluation(s) were conducted.
 - b. National Regulatory Reviewer (NRV) LIDAR, National Hydrography Dataset (NHD), February 2, February 6, 2024, May 13 and May 14, 2024.
 - c. NRV, USGS Topo, Soils survey, February 2 and 22, May 13, and May 14, 2024.
 - d. Google Earth aerials, 2019, 2020, 2021, 2022, 2023, 2024
 - e. Approved Jurisdictional Determination Package, by Dotier LLC, November 2023
10. OTHER SUPPORTING INFORMATION. Google Earth Street View 2024
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.

Table 1 - Summary Wetlands and Ponds

Waters_Name	Resource Type	Latitude, Longitude	Acreage	Map Page	MFR	Geographic Authority
WTL-1	PEM	32.276324, - 86.332499	0.31	6b-1 & 6b- 7	MFR 7	Non- Jurisdictional
WTL-2a	PEM	32.272004, - 86.334922	0.56	6b-1	MFR 2	Section 404
WTL-2b	PFO	32.270215, - 86.334848	0.4	6b-1 & 6b- 2	MFR 2	Section 404
WTL-3a	PEM	32.270720, - 86.332176	0.06	6b-2 & 6b- 6	MFR 2	Section 404
WTL-3b	PEM	32.270167, - 86.333339	0.28	6b-2	MFR 2	Section 404
WTL-4a	PEM	32.260592, - 86.339883	0.04	6b-3 & 6b- 4	MFR 3	Non- Jurisdictional
WTL-4b	PEM	32.260049, - 86.340135	0.43	6b-3 & 6b- 4	MFR 3	Section 404
WTL-5	PEM	32.259604, - 86.335840	0.1	6b-4	MFR 3	Section 404
WTL-6	PFO	32.257738, - 86.339488	0.06	6b-4	MFR 4	Section 404
WTL-7	PEM	32.272046, - 86.341339	0.27	6b-1	MFR 1	Section 404
WTL-8	PFO	32.269541, - 86.344396	0.38	6b-2	MFR 1	Section 404
WTL-9	PFO	32.263016, - 86.342563	0.03	6b-3	MFR 2	Non- Jurisdictional
WTL-10	PFO	32.265520, - 86.344714	0.36	6b-2 & 6b- 3	MFR 2	Section 404
WTL-11a	PEM	32.265138, - 86.338335	0.19	6b-2 & 6b- 3	MFR 2	Section 404
WTL-11b	PEM	32.264478, - 86.339111	0.18	6b-3	MFR 2	Non- Jurisdictional
WTL-12	PFO	32.277302, - 86.315483	0.09	6b-8	MFR 6	Section 404
WTL-13	PFO	32.269515, - 86.318958	1.18	6b-6 & 6b- 9	MFR 5	Non- Jurisdictional

Waters_Name	Resource Type	Latitude, Longitude	Acreage	Map Page	MFR	Geographic Authority
WTL-14	PEM	32.268088, - 86.321463	0.17	6b-6	MFR 5	Section 404
WTL-15a	PFO	32.274491, - 86.323176	0.71	6b-7	MFR 5	Non- Jurisdictional
WTL-15b	PEM	32.274609, - 86.322199	0.11	6b-7	MFR 5	Non- Jurisdictional
WTL-16	PEM	32.271470, - 86.330858	0.07	6b-6	MFR 2	Non- Jurisdictional
P-1	PUB	32.276134, - 86.333735	2.82	6b-1	MFR 7	Preamble Water
P-2	PUB	32.267451, - 86.315867	2.15	6b-9 & 6b- 10	MFR 6	Section 404
P-3	PUB	32.267578, - 86.321024	3.27	6b-6	MFR 5	Section 404
P-4	PUB	32.274384, - 86.326515	4.07	6b-7	MFR 7	Preamble Water
P-5	PUB	32.268963, - 86.319010	0.67	6b-9	MFR 5	Preamble Water

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
STR-1	RPW	Start: 32.259473, - 86.336125 End: 32.259279, - 86.340403	1355	6b-4	MFR 3	Section 404
STR-2	RPW	Start: 32.258240, - 86.331709 End: 32.258213, - 86.339762	2619	6b-4	MFR 4	Section 404
STR-3	RPW	Start: 32.269478, - 86.334544 End: 32.263896, - 86.343325	3824	6b-2 & 6b-3	MFR 2	Section 404
STR-4	RPW	Start: 32.265740, - 86.311065 End: 32.275424, - 86.312793	4064	6b-8, 6b-9, & 6b-10	MFR 6	Section 404
STR-4	RPW	Start: 32.275424, - 86.312805 End: 32.277726, - 86.315627	1627	6b-8	MFR 6	Section 404
STR-5	RPW	Start: 32.267571, - 86.315253 End: 32.268188, - 86.311128	1422	6b-9	MFR 6	Section 404

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
STR-6	RPW	Start: 32.263312, - 86.306230 End: 32.266418, - 86.306885	1170	6b-9 & 6b-10	MFR 6	Section 404
STR-7	RPW	Start: 32.266433, - 86.306850 End: 32.275430, - 86.312784	4285	6b-8, 6b-9, & 6b-10	MFR 6	Section 404
STR-8	RPW	Start: 32.267852, - 86.307122 End: 32.268313, - 86.308910	657	6b-9	MFR 6	Section 404
STR-9	RPW	Start: 32.273512, - 86.308291 End: 32.273527, - 86.309465	405	6b-8	MFR 6	Section 404
STR-10	RPW	Start: 32.269353, - 86.322103 End: 32.277587, - 86.315570	4087	6b-6, 6b-7, & 6b-8	MFR 5	Section 404
STR-11	RPW	Start: 32.274699, - 86.318279 End: 32.274936, - 86.317404	293	6b-8	MFR 5	Section 404

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
STR-12	RPW	Start: 32.272600, - 86.319116 End: 32.273417, - 86.319042	304	6b-7 & 6b-8	MFR 5	Section 404
STR-13	RPW	Start: 32.256856, - 86.340211 End: 32.257440, - 86.339676	308	6b-4	MFR 4	Section 404
STR-14	RPW	Start: 32.273651, - 86.341043 End: 32.271116, - 86.342528	1064	6b-1 & 6b-2	MFR 1	Section 404
STR-15	RPW	Start: 32.277116, - 86.326302 End: 32.277407, - 86.326253	111	6b-7	MFR 7	Section 404
STR-16	RPW	Start: 32.263664, - 86.323972 End: 32.263084, - 86.324278	249	6b-5	MFR 4	Section 404
Caney Branch (CB)	RPW	Start: 32.255776, - 86.339160 End: 32.265001, - 86.344971	4440	6b-3 & 6b-4	MFR 4	Section 404

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
EPH-1	Non-RPW	Start: 32.264682, - 86.332359 End: 32.259724, - 86.335831	2237	6b-3, 6b-4, & 6b-5	MFR 3	Non-Jurisdictional
EPH-2	Non-RPW	Start: 32.277217, - 86.338030 End: 32.273651, - 86.341043	1824	6b-1	MFR 1	Non-Jurisdictional
EPH-3	Non-RPW	Start: 32.264183, - 86.313603 End: 32.265734, - 86.311089	1156	6b-10	MFR 6	Non-Jurisdictional
EPH-4	Non-RPW	Start: 32.263267, - 86.311065 End: 32.265734, - 86.311067	921	6b-10	MFR 6	Non-Jurisdictional
EPH-5	Non-RPW	Start: 32.269751, - 86.307583 End: 32.269765, - 86.308908	433	6b-9	MFR 6	Non-Jurisdictional
EPH-7	Non-RPW	Start: 32.263490, - 86.342997 End: 32.263656, - 86.343222	113	6b-3	MFR 2	Non-Jurisdictional

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
ES-1	Non-RPW	Start: 32.258489, - 86.339571 End: 32.259116, - 86.340349	386	6b-4	MFR 3	Non-Jurisdictional
ES-2	Non-RPW	Start: 32.272226, - 86.341244 End: 32.272373, - 86.341610	155	6b-1	MFR 1	Non-Jurisdictional
ES-3	Non-RPW	Start: 32.276511, - 86.315186 End: 32.277020, - 86.315464	221	6b-8	MFR 6	Non-Jurisdictional
ES-4	Non-RPW	Start: 32.263944, - 86.312932 End: 32.264225, - 86.312838	140	6b-10	MFR 6	Non-Jurisdictional
ES-5	Non-RPW	Start: 32.265550, - 86.307128 End: 32.265785, - 86.306820	134	6b-10	MFR 6	Non-Jurisdictional
ES-6	Non-RPW	Start: 32.270035, - 86.323540 End: 32.271367, - 86.322081	724	6b-6	MFR 5	Non-Jurisdictional

Waters_Name	Resource Type	Latitude, Longitude	Linear Feet	Map Page	MFR	Geographic Authority
ES-8	Non-RPW	Start: 32.256531, - 86.339733 End: 32.256261, - 86.339204	259	6b-4	MFR 4	Non-Jurisdictional
ES-9	Non-RPW	Start: 32.273478, - 86.334589 End: 32.272603, - 86.334843	336	6b-1	MFR 2	Non-Jurisdictional