



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

CESAM-RD-N

August 26, 2025

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-2025-00156-CMS, MFR #1 of #1²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

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

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi 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	Latitude	Longitude	Waters_Size	Type Of Aquatic Resource	Geographic Authority
E001	33.96967	-88.7363	41 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E002	33.96272	-88.7455	503 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E003	33.95936	-88.744	3253 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E004	33.95979	-88.7322	884 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E005	33.95672	-88.7411	4571 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E006	33.98333	-88.7389	1173 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E007	33.98164	-88.7379	116 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E008	33.98092	-88.7375	53 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E009	33.98055	-88.7372	33 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E010	33.97972	-88.7367	53 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E011	33.97808	-88.7453	123 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E012	33.97809	-88.7451	270 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E013	33.97794	-88.7454	26 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E014	33.97683	-88.7532	357 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E015	33.97699	-88.7505	707 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E016	33.97667	-88.7339	86 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E017	33.97419	-88.733	142 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E018	33.9622	-88.7361	2167 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None

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E019	33.96098	-88.7442	1961 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E020	33.96137	-88.7355	642 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E021	33.96032	-88.7349	850 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E022	33.95768	-88.7409	485 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E023	33.95369	-88.7447	86 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E024	33.95295	-88.7413	27 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E025	33.95322	-88.7336	150 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E026	33.95195	-88.7352	127 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E027	33.95092	-88.7306	639 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E028	33.94817	-88.7333	1174 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E029	33.9486	-88.7311	765 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E030	33.94749	-88.7316	1370 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E031	33.94682	-88.7309	120 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E032	33.94627	-88.7337	129 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E033	33.94637	-88.7347	109 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E034	33.94522	-88.7358	79 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E035	33.94489	-88.736	153 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E036	33.94436	-88.7368	90 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E037	33.94437	-88.7333	576 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E038	33.94411	-88.7338	146 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
E039	33.94365	-88.738	230 FEET	NON-WOTUS-TRIB.NEGATIVE-A5	None
P001	33.9841	-88.7399	2.64 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
P002	33.98111	-88.7467	.08 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
P003	33.97896	-88.744	.04 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
P006	33.97243	-88.7484	1.13 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None

P007	33.96329	-88.746	1.29 ACRES	NON-WOTUS-LAKE.POND.NEGATIVE-A5	None
P008	33.9579	-88.731	3.58 ACRES	NON-WOTUS-LAKE.POND.NEGATIVE-A5	None
P009	33.95372	-88.7303	.04 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
P010	33.95306	-88.7329	.04 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
P011	33.94395	-88.7304	6.11 ACRES	NON-JD - PREAMBLE - ART.LAKE.POND	None
W001	33.98108	-88.7377	.07 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
W002	33.98079	-88.7377	.08 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
W003	33.97942	-88.7367	.03 ACRES	NON-WOTUS-TWETL.NEGATIVE-A7	None
W005	33.97679	-88.7341	.06 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
W006	33.97529	-88.7335	1.32 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
W007	33.97423	-88.736	.21 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None
W010	33.96927	-88.737	1.3 ACRES	NON-WOTUS-WETL.NEGATIVE-A7	None

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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area includes the features identified in the table in Section 1 above located within a 1709-acre tract in Okolona, Chickasaw County, Mississippi. The property is centered at latitude 33.975308, longitude -88.743928. There are other aquatic resources on the site that will be evaluated under a preliminary jurisdictional determination. The site has primarily been utilized for agriculture with most of the land in row crops.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Tennessee-Tombigbee waterway located approximately 17 miles southeast of the review area. The Tennessee-Tombigbee River is on the Section 10 waters list. Section 10 waters are a subset of TNWs; therefore, the Tennessee-Tombigbee River is a TNW.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The aquatic resources exit the review area along the eastern property boundary. The aquatic resources in the northern portion of the review area flow into Jolly Creek, which meanders 1.6 miles and intersects with Little Creek and flows 3.7 miles to intersect Mattubby Creek, which meanders 14 miles to the Tennessee-Tombigbee River. The aquatic resources in the southern section of the review area flow east into Little Creek, which flows 1.5 miles east to intersect with Jolly Creek and then takes the flowpath to the TNW described in the previous paragraph.

P001, P002, P003, P006, P009, P010, P011, W001, W002, W003, W005, W006, W007 and W010 do not flow to a TNW, interstate water or territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme

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.

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

The preamble to the 1986 regulations states the following waters are generally not considered waters of the U.S.: Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

P001 is a 2.6-acre farm pond that appears to have been created in uplands because it is situated in Kipling silt loam, which is not a hydric soil according to the NRCS. P001 is surrounded by uplands and has no features flowing into it or

⁹ 51 FR 41217, November 13, 1986.

flowing out through a pipe or overflow structure. Because P001 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P002 is a 0.08-acre farm pond that appears to have been created in uplands because it is situated in Kipling silt loam, which is not a hydric soil according to the NRCS. P002 is surrounded by uplands, but is in close proximity to Mattubby Creek, and has no features flowing into it or flowing out through a pipe or overflow structure. Because P002 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P003 is a 0.04-acre farm pond that appears to have been created in uplands because it is situated in Kipling silt loam, which is not a hydric soil according to the NRCS. P003 is surrounded by uplands, but is in close proximity to Mattubby Creek, and has no features flowing into it or flowing out through a pipe or overflow structure. Because P003 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P006 is a 1.13-acre farm pond that appears to have been created in uplands because it is situated in Kipling silt loam, which is not a hydric soil according to the NRCS. P006 is surrounded by uplands and has no features flowing into it or flowing out through a pipe or overflow structure. Because P006 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P009 is a 0.04-acre farm pond that appears to have been created in uplands because it is situated in Okolona silty clay soils, which is not a hydric soil according to the NRCS. P009 is surrounded by uplands and has no features flowing into it or flowing out through a pipe or overflow structure. Because P009 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P010 is a 0.04-acre farm pond that appears to have been created in uplands because it is situated in Catalpa silty clay soils, which is not a hydric soil according to the NRCS. P010 is surrounded by uplands and has no features flowing into it or flowing out through a pipe or overflow structure. Because P010 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

P011 is a 6.11-acre farm pond that appears to have been created in uplands because it is situated in Brooksville silty clay soils and Okolona silt clay soils, which are not hydric soils according to the NRCS. P011 is surrounded by

uplands and has no features flowing into it or flowing out through a pipe or overflow structure. Because P011 was created in uplands, likely for irrigation purposes associated with the agriculture activity at the site, it is not jurisdictional.

- 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).

E001, E002, E003, E004, E005, E006, E007, E008, E009, E010, E011, E012, E013, E014, E015, E016, E017, E018, E019, E020, E021, E022, E023, E024, E025, E026, E027, E028, E029, E030, E031, E032, E033, E034, E035, E036, E037, E038, and E039 appear to have non-relatively permanent flow based on observations of a lack of water in the features after rain events, some of which were over an inch of rain, weak bed and bank structures, and a lack of hydric

soils in the channels. For these reasons, these resources were determined to be non-relatively permanent and are not jurisdictional.

P007 is a 1.29-acre pond that was created at the headwaters of a non-relatively permanent stream identified as E002. Because P007 was created in a non-relatively permanent stream that is non-jurisdictional, P007 is not a jurisdictional impoundment.

P008 is a 3.58-acre pond that was created in a non-relatively permanent stream identified as E004. Because P008 was created in a non-relatively permanent stream that is non-jurisdictional, P008 is not a jurisdictional impoundment.

W001 is a 0.07-acre forested wetland that is situated in a depression and is surrounded by uplands. W001 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

W002 is a 0.08-acre forested wetland that is situated in a depression and is surrounded by uplands. W002 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

W003 is a 0.03-acre forested wetland that is situated in a depression and is surrounded by uplands. W003 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

W005 is a 0.06-acre forested wetland that is situated in a depression and is surrounded by uplands. W005 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

W006 is a 1.32-acre forested wetland that is situated in a depression and is surrounded by uplands. W006 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

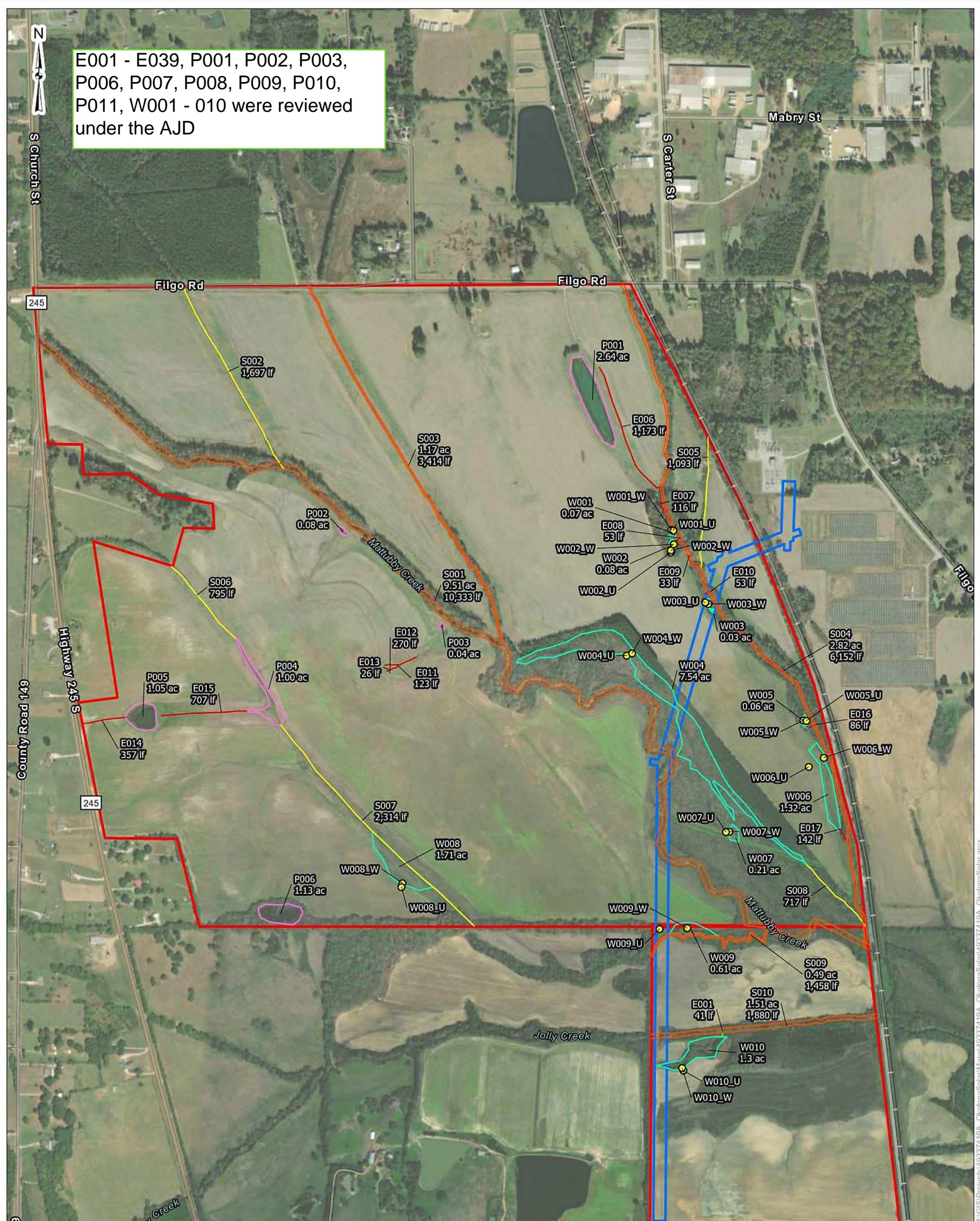
W007 is a 0.07-acre forested wetland that is situated in a depression and is surrounded by uplands. W007 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not jurisdictional.

W010 is a 1.3-acre forested wetland that is situated in a depression and is surrounded by uplands. W010 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment (aka requisite waters) and therefore lacks a continuous surface connection to a requisite water and is not 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. Terracon's revised Natural Resource Analysis report dated July 31, 2025.
 - b. National Regulatory Viewer – NHD, NWI, USGS topo, aerial accessed on various dates in July and August 2025.
 - c. NRCS websoil survey:
<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
 - d. Shapefiles provided by Terracon.
10. OTHER SUPPORTING INFORMATION.

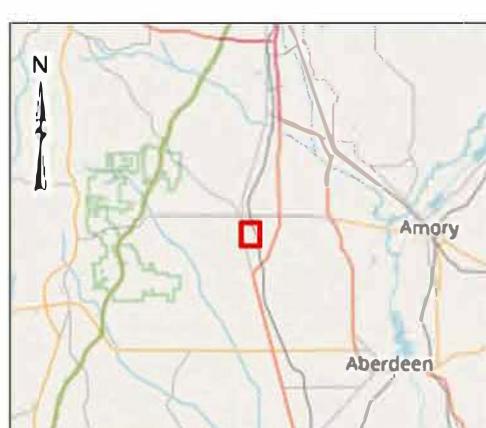
“Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of ‘Continuous Surface Connection’ Under the Definition of ‘Waters of the United States’ Under the Clean Water Act”, March 12, 2025.

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.



0 400 800 1,600
Feet

DATA SOURCES:
ESRI - Basemaps

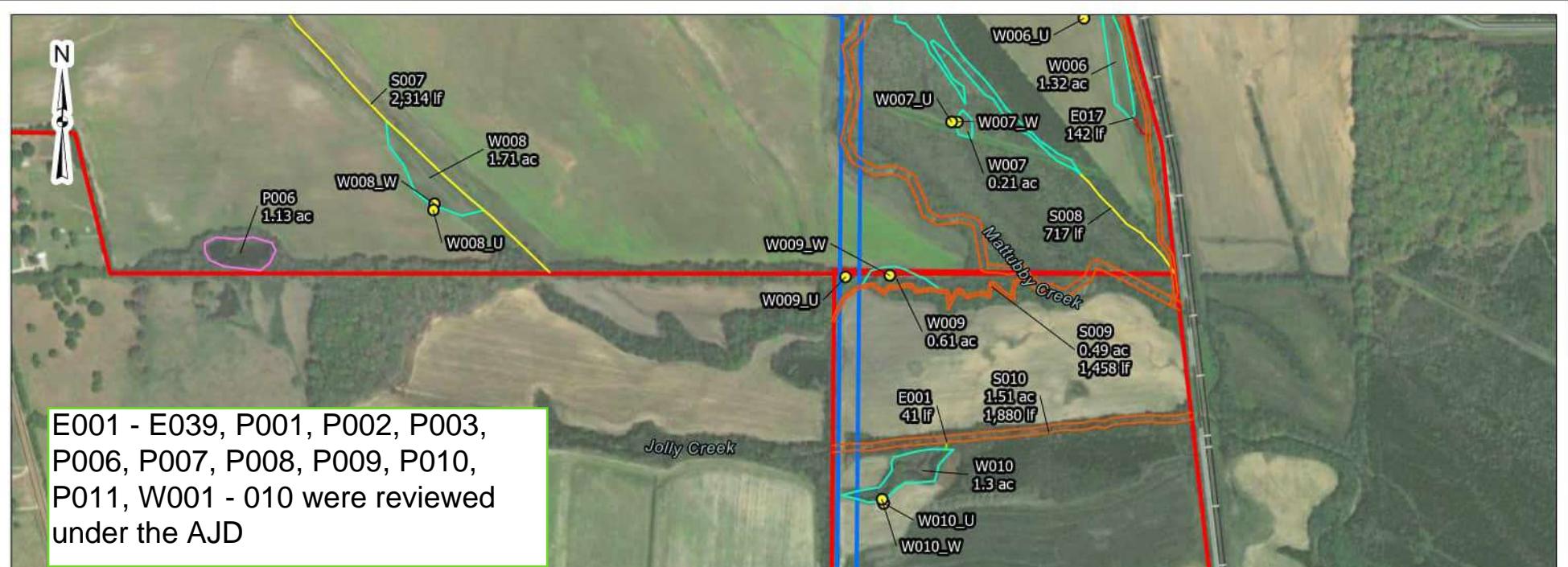


Project No.: 49237419A
Date: Feb 2025
Drawn By: PJS
Reviewed By: HMD

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All Waters Delineation Map
Proposed Okolona Solar Farm
Okolona Solar, LLC
Chickasaw County, Mississippi

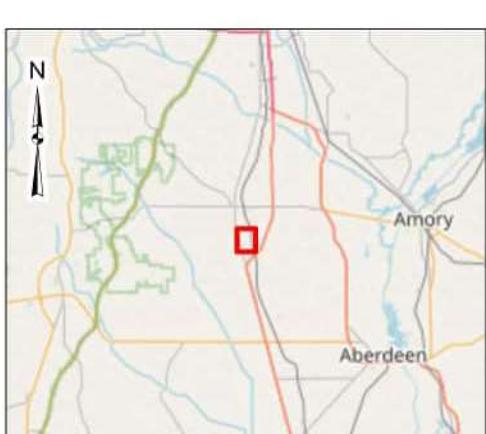
Exhibit



0 400 800 1,600
Feet

■ Study Area
■ Proposed T-Line Location
● Data Point
■ Pond
■ Wetland

Stream Type
— Perennial
— Intermittent
— Ephemeral
— WWC

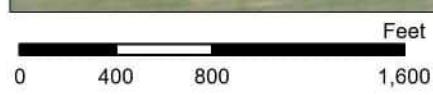
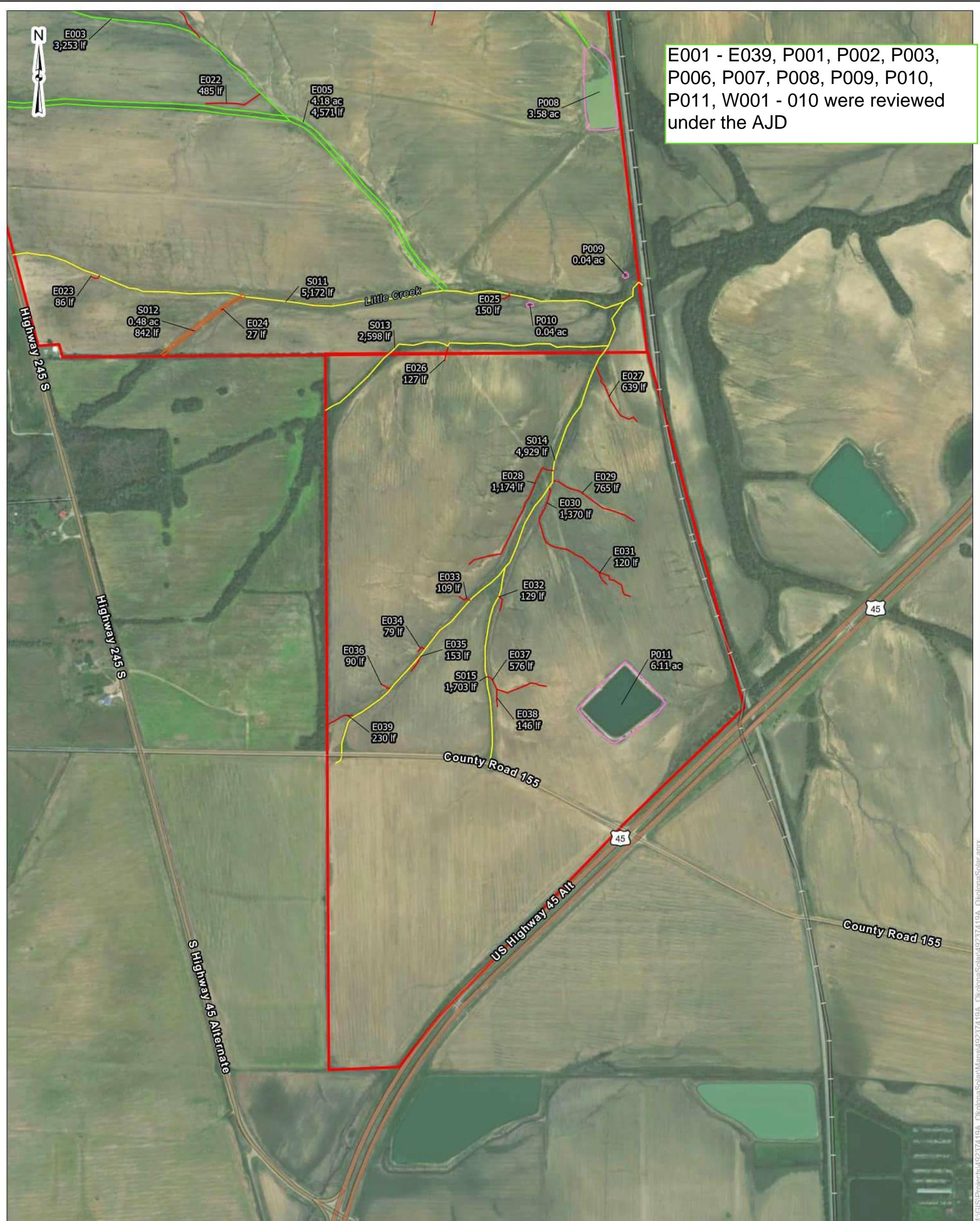


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Date: Jan 2025
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All Waters Delineation Map
Proposed Okolona Solar Farm
Okolona Solar, LLC
Chickasaw County, Mississippi

Exhibit



DATA SOURCES:
ESRI - Basemaps

- Study Area
- Proposed T-Line Location
- Data Point
- Pond
- Wetland

Stream Type

- Perennial
- Intermittent
- Ephemeral
- WWC



Project No.:	49237419A
Date:	Dec 2024
Drawn By:	PJS
Reviewed By:	HMD

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Exhibit