



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
100 CANAL STREET
MOBILE, AL 36602-1901

South Mississippi Branch
Regulatory Division

15 OCTOBER 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-2025-00306-SMP, Greene County Board of Supervisors, 41-acre Review Site, McLain, Mississippi (MFR 1 of 1)²

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

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.

AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as 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).

Aquatic Resource Name	Location	Water Size	Type of Aquatic Resource	Geographic Authority
W1	31.11610°N, -88.84022°W	25.8 acres	A7. AJD WETLAND-WOTUS	Section 404
S1	31.11740°N, -88.83947°W	489 linear feet	B8. NON-WOTUS SWALES AND EROSIONAL FEATURES.	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).
- e. 2008 Rapanos Guidance.
3. REVIEW AREA. The approximately 41-acre review area is located west of U.S. Highway 98 and West Main Street; within Section 19, Township 2 North, Range 18 West; Latitude 31.11610° North and Longitude 88.84022° West; McLain, Greene County, Mississippi. The review area is bordered by a railroad track to the east,

undeveloped land to the north and west, and a residential development to the south. The parcel consists of 25.8 acres of forested wetlands located throughout the majority of the west half of the review area. An approximately 489-linear-foot erosional feature was identified near the eastern boundary of the review area.

There was a previous jurisdictional determination completed on this property in 2011 (SAM-2011-01384-SMZ). This determination found approximately 4 acres along the north/northwest portion of the site to be jurisdictional.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Leaf River, which is a traditionally navigable water (TNW) approximately 0.95 miles east of the review area. Leaf River is on the Mobile District's Section 10 Waters list and is therefore a TNW.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

W1 is a 25.8-acre forested wetland located throughout the majority of the west half of the review area. Based on a review of elevations, topographic maps, national hydrography data, and national wetland inventory data, this wetland appears to extend offsite to abut a linear feature (RPW) south of the review area. The RPW appears to flow east through culverts under the railroad track and W Main Street. The RPW continues flowing east of W Main Street, under a culvert at Highway 98. East of Highway 98 the RPW abuts McSwain Branch which flows directly to Leaf River, a TNW.

S1 is an approximately 489-linear-foot erosional swale located near the eastern boundary of the review area. This feature appears to have been constructed in uplands to aid in drainage on the site and has no apparent flowpath to the 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.

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

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.

W1 is an approximately 25.8-acre forested wetland that extends throughout the majority of the site. A review of similar elevations, vegetation, and soil types indicate that W1 extends offsite to the south of the review area where it abuts a stream feature. Direct access to the stream feature was limited during the August 8, 2025 site visit due to dense vegetation and the presence of unrestrained animals, however, the feature appears to be relatively permanent based on a review of historic Google Earth photography and topographic maps of the area. Topographic maps dating back to 2000 depict the stream feature to the south as an intermittent stream as well as evidence of flow through Google Earth imagery dating back to 2014. Because W1 abuts a TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment, it does have a continuous surface connection to a requisite water and therefore is jurisdictional.

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.

S1 is a 489-linear-foot erosional feature located in uplands on the eastern portion of the site. The swale originates at the eastern property boundary and extends southward through the uplands. During a site visit on August 8, 2025, the USACE project manager observed the entirety of S1. This shallow topographic feature conveys surface water runoff from adjacent uplands only during and immediately following precipitation events. At the time of the USACE site visit, the swale was dry, and no primary or secondary hydrologic indicators (e.g., water marks, sediment deposits, algal mats) were observed within its boundaries. The swale does not have an ordinary high-water mark nor is there any evidence of seasonal flow (no sediment deposits, scour marks, or signs of prolonged saturation). The swale is a discrete topographic feature that lacks a defined channel and an ordinary high-water mark, thereby meeting the (b)(8) swales and erosional features exclusion.

⁹ 51 FR 41217, November 13, 1986.

- 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). N/A.

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. Site visit, August 8, 2025.
- b. Office evaluation, September 8, 2025.
- c. USACE National Regulatory Viewer (NRV) LiDAR Elevations and Hillshade, NHD Maps and DEM data from the NRV, Soil Maps from the USDA Web Soil Survey, Google Earth Imagery, and topographic maps from USGS TopoView.
- d. Wetland delineation report and associated data sheets prepared by FC&E Engineering, LLC on October 24, 2024.
- e. Antecedent Precipitation Tool (APT) data from site visit on August 8, 2025.

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10. OTHER SUPPORTING INFORMATION.

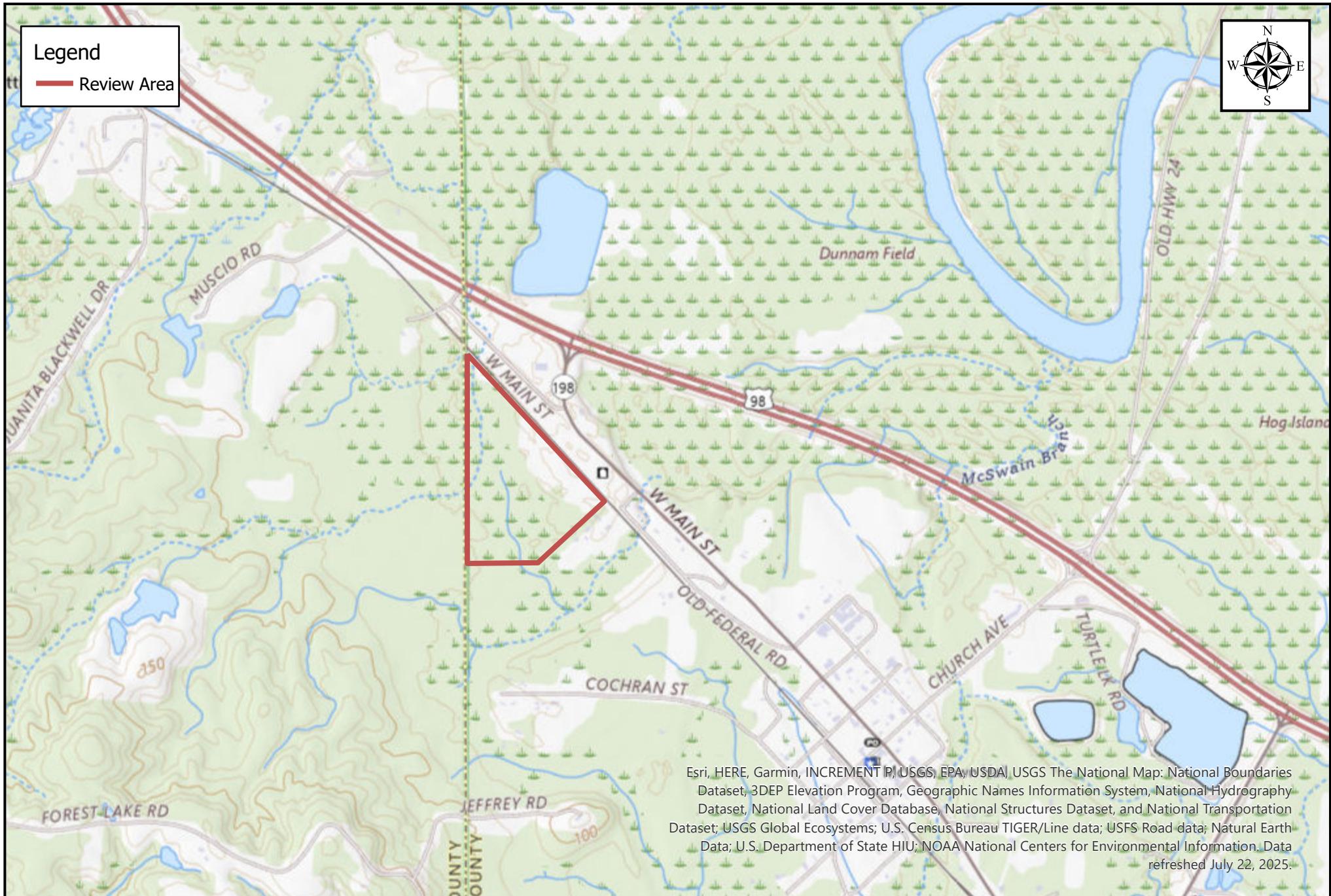
- a. "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of 'Continuous Surface Connection' Under the Definition of 'Waters of the United States' Under the Clean Water Act", March 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.



Legend

Review Area



SAM-2025-00306-SMP Topo Map

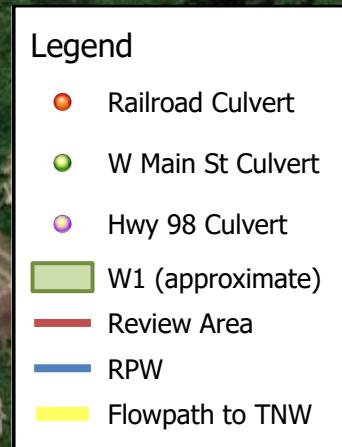
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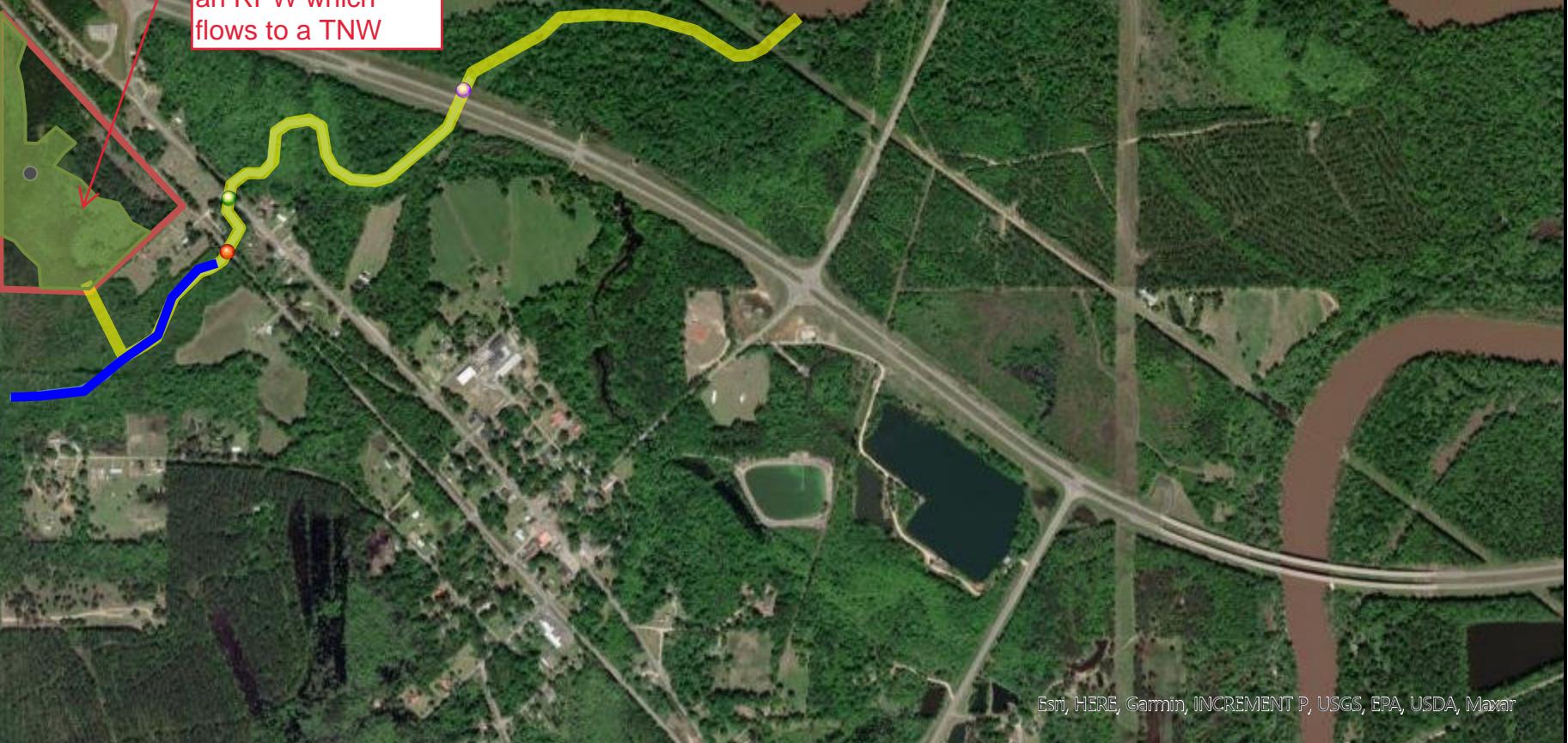
Map Created by: Sarah Piesco

Date: 9/16/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



W1 extends offsite to the south to abut an RPW which flows to a TNW



Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Maxar



SAM-2025-00306-SMP W1 Flowpath

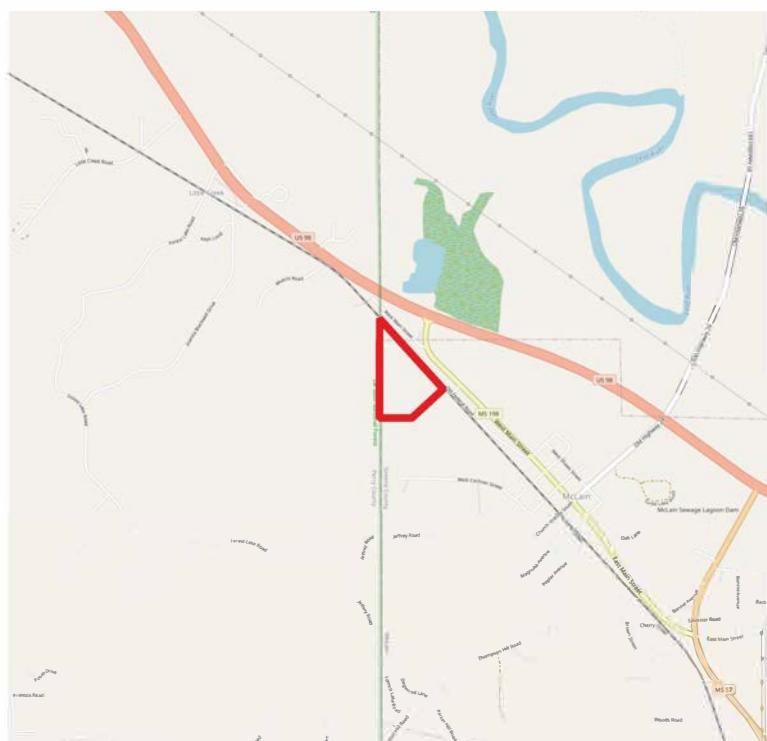
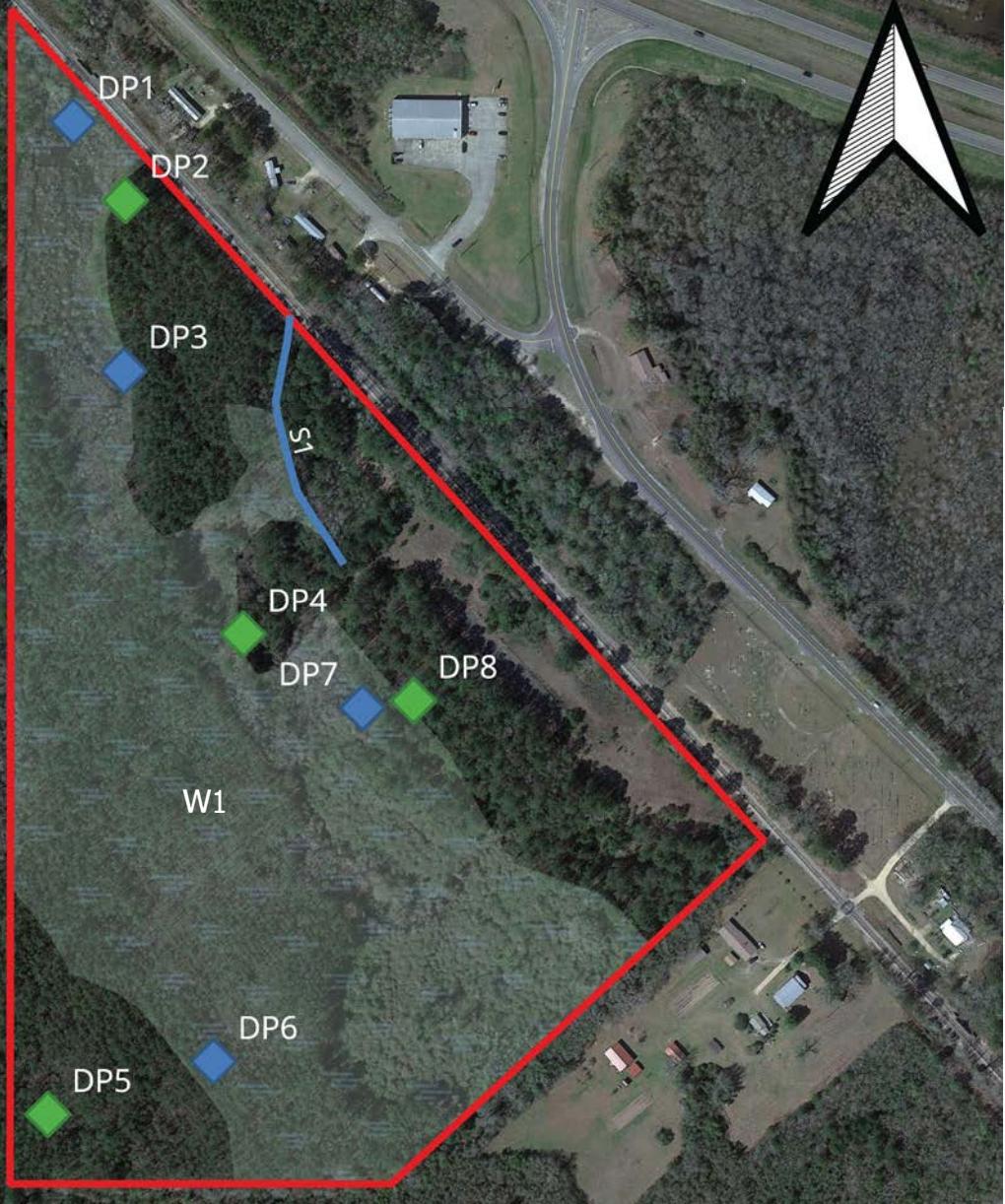
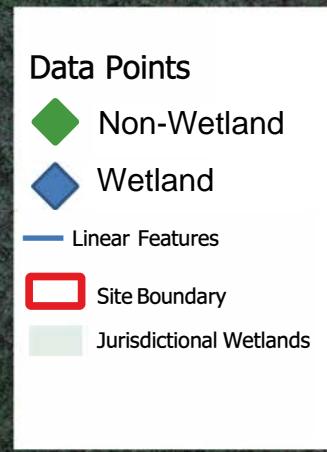
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Map Center: 88.823611°W 31.116307°N

Map Created by: Sarah M. Piesco

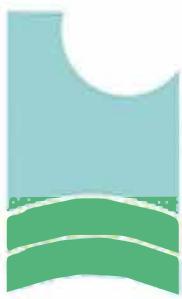
Date: 10/8/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



0 250 500 ft

Undeveloped Site
McClain, Greene County,
Mississippi
Topographic Map
9/30/2024



Water ■ Soils ■ Air ■ Compliance