



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

CESAM-RD-N

16 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-2025-00495-MH9 (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).
 - i. S-5, non-jurisdictional, non-relatively permanent waters.
 - ii. S-7, non-jurisdictional, non-relatively permanent waters.
 - iii. S-9, non-jurisdictional, erosional feature
 - iv. S-10, non-jurisdictional, non-relatively permanent waters.
 - v. S-11, non-jurisdictional, non-relatively permanent waters.
 - vi. S-14, non-jurisdictional, non-relatively permanent waters.
 - vii. P-1, non-jurisdictional, preamble waters.
 - viii. P-3, non-jurisdictional, preamble waters.
 - ix. W-1, non-jurisdictional wetland without a continuous surface connection to a requisite water.
 - x. W-2, non-jurisdictional wetland without a continuous surface connection to a requisite water.
 - xi. W-3, non-jurisdictional wetland without a continuous surface connection to a requisite 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area for this AJD is limited to the features identified as S-5, S-7, S-9, S-10, S-11, S-14, P-1, P-3, W-1, W-2, and W-3 within an approximately 72.32-acre parcel of forested areas located near Starkville, Oktibbeha County, Mississippi. The center coordinates are Latitude 33.365136, Longitude -88.767330 and is located in the Noxubee 8-digit hydrologic unit code (HUC 03160108). The attached figures depict the review area. Features S-1, S-3, S-4, S-6, and P-2 are being reviewed under a PJD.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED⁶. Noxubee River, approximately 5.3 miles south of the review area, is the nearest TNW to which the aquatic resources are connected. The Noxubee River is on the Mobile District's Section 10 waters list and is therefore a TNW. The Noxubee River becomes Section 10 at river mile 26.

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

S-5 flows south from the western-central portion of the property boundary for approximately 122 linear feet then converges with S-4 (not part of the AJD review area). S-4 flows east, then south, then southeast for approximately 165 linear feet, and converges with S-3 (Shaw Creek; not part of the AJD review area). S-3 flows generally south, then west for approximately 267 linear feet then exits the western property boundary. S-3/Shaw Creek continues its south by southwest flow path for approximately 5.6 miles and then converges with the Noxubee River. The Noxubee River becomes a TNW at river mile 26.03, which is the beginning of the Section 10 designation.

S-7 is located in the southwest portion of the property boundary that drains P-3. S-7 flows for approximately 130.47 linear feet until the channel diffuses into W-3 and sheetflows to S-4, which converges with Shaw Creek in the review area, which flows 5.6 miles after exiting the review area to converge with the Noxubee River.

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.

S-9 is an erosional feature located in the north-central portion of the project boundary. S-9 receives drainage from W-2 to the north, which then drains into S-3, to the south. S-3/Shaw Creek flows generally southwest for approximately 1,704.6 linear feet then exits the property boundary. Shaw Creek continues its flow path as described above.

S-10 is located in the north-central portion of the property boundary and flows for approximately 101.14 linear feet into S-4. S-4 flows for approximately 1,222.8 linear feet and converges with S-3 (Shaw Creek). S-3/Shaw Creek flows generally south, then west for approximately 267 linear feet then exits the western property boundary. Shaw Creek continues its flow path as described above.

S-11 is located in the central portion of the property boundary that flows northwest for approximately 642.6 linear feet until its convergence with S-4, which flows for approximately 1,222.8 linear feet and converges with S-3 (Shaw Creek). S-3/Shaw Creek flows generally south, then west for approximately 267 linear feet then exits the western property boundary. Shaw Creek continues its flow path as described above.

S-14 is located in the northeast corner of the property boundary. S-14 flows for approximately 179.7 linear feet in the review area. S-14 does not have a flow path to a TNW, interstate water or territorial seas.

P-1 is a pond that is located in the west-central portion of the property boundary. P-1 does not have an outlet and does not have a flow path to a TNW, interstate water or territorial seas.

P-3 is a pond that is located in the southwest portion of the property boundary. P-3 abuts W-1 and drains into S-7. S-7 flows for approximately 130.47 linear feet until the channel diffuses into a low-lying wet area (W-3). Water sheetflows to S-4, which converges with Shaw Creek, which flows 5.6 miles after exiting the property to converge with the Noxubee River.

W-1 is approximately 0.27 acre and is located in the southwest portion of the project boundary and abuts P-3 and S-7. S-7 flows for approximately 130.47 linear feet until the channel diffuses into W-3. Water sheetflows to S-4, which converges with Shaw Creek, which flows 5.6 miles after exiting the property to converge with the Noxubee River.

W-2 is approximately 0.15 acre and is located in the north-central portion of the project boundary. W-2 drains into S-9, which flows south for approximately 68.6 linear feet, then flows into S-3. S-3 flows southwest for approximately 2,147.77 linear

feet then exits the property boundary. Shaw Creek continues its flow path to the Noxubee River as described above.

W-3 is approximately 0.003 acre and is located in the southwest portion of the project boundary. W-3 receives drainage from S-7. Water sheetflows to S-4, which converges with Shaw Creek, which flows 5.6 miles after exiting the property to converge with the Noxubee River.

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

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.

- 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.

In accordance with the preamble to the 1986 regulations, the agencies generally do not consider the following waters to be the 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.

P-1 is a 1.13-acre pond centered at Latitude 33.364853, Longitude -88.765088. P-1 was created in uplands for the purpose of a stock pond and is surrounded by uplands. The USDA soil survey indicates the soil type in this area is Savannah fine sandy loam, which are not hydric soils. Therefore, P-1 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.

S-9 is a 68.6-foot-long erosional feature and is centered at Latitude 33.366221, Longitude -88.767998. Observations made during the July 14, 2025 site inspection revealed S-9 lacks an ordinary high water mark (OHWM), exhibits infrequent flow, and has severely eroded banks with exposed tree roots, all of which led to the conclusion it is an erosional feature. The *Rapanos* guidance says erosional features are not jurisdictional; therefore, S-9 is not jurisdictional.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within

⁹ 51 FR 41217, November 13, 1986.

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).

S-5 is centered at Latitude 33.36457, Longitude -88.770049 in the southwestern portion of the subject property. S-5 is approximately 122.07 linear feet in length. S-5 was determined to be non-jurisdictional based on observations during a site visit on July 14, 2025 that provided evidence that the tributary is a non-relatively permanent water lacking year-round flow or seasonal flow and only flowing during and immediately after precipitation events; sinuosity was lacking, and baseflow was not observed. Additionally, the streambed was littered with leaves and small woody debris, indicative of non-relatively permanent flow in response to precipitation events.

S-7 is centered at Latitude 33.363918, Longitude -88.769081 in the southwestern portion of the subject property. S-7 is approximately 130.5 linear feet in length. S-7 was determined to be non-jurisdictional based on observations during a site visit on July 14, 2025 that provided evidence that the tributary is a non-relatively permanent water lacking year-round flow or seasonal flow and only flowing during and immediately after precipitation events; continuous bed and bank was lacking, and baseflow was not observed.

S-10 is centered at Latitude 33.365723, Longitude -88.767515 in the central portion of the subject property. S-10 is approximately 101.14 linear feet in length. S-10 was determined to be non-jurisdictional based on observations during a site

visit on July 14, 2025 that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after precipitation events; continuous bed and bank was lacking, and baseflow was not observed.

S-11 is centered at Latitude 33.365036, Longitude -88.767065 in the central portion of the subject property. S-11 is approximately 642.6 linear feet in length. S-11 was determined to be non-jurisdictional based on observations during a site visit on July 14, 2025, that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after precipitation events; baseflow was not observed and trumpet creeper (*Campsis radicans*) (FAC) was observed rooted within the streambed, which was otherwise devoid of vegetation.

S-14 is centered Latitude 33.365036, Longitude -88.767065 in the northeast portion of the subject property. S-14 is approximately 179.73 linear feet in length. S-14 was determined to be non-jurisdictional based on review of on-site photographs and wetland delineation data forms provided by the agent that provided evidence that the tributary is a non-relatively permanent water lacking year-round flow or seasonal flow and only flowing during and immediately after rain events.

P-3 is a 0.29-acre pond, which appears to have been created by damming S-7, a non-relatively permanent stream. Because P-3 was created in a non-relatively permanent stream, P-3 is not a jurisdictional impoundment.

W-1 is a 0.28-acre forested wetland. W-1 is located adjacent to P-3 and is centered at Latitude 33.363577, Longitude -88.768957. W-1 was determined to be non-jurisdictional because it does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby lacking a continuous surface connection to a requisite water.

W-2 is a 0.121-acre forested wetland. W-2 is located in the northcentral portion of the subject property and abuts S-9 (erosional feature), and is centered at Latitude 33.366620, Longitude -88.768022. W-2 was determined to be non-jurisdictional because it does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby lacking a continuous surface connection to a requisite water.

W-3 is a 0.003-acre forested wetland. W-3 is located in the southwest portion of the subject property, abuts S-7 (non-relatively permanent) and is centered at Latitude 33.366620, Longitude -88.768022. W-3 was determined to be non-jurisdictional because it does not abut a TNW, territorial seas, interstate water,

relatively permanent tributary or jurisdictional impoundment, thereby lacking a continuous surface connection to a requisite water.

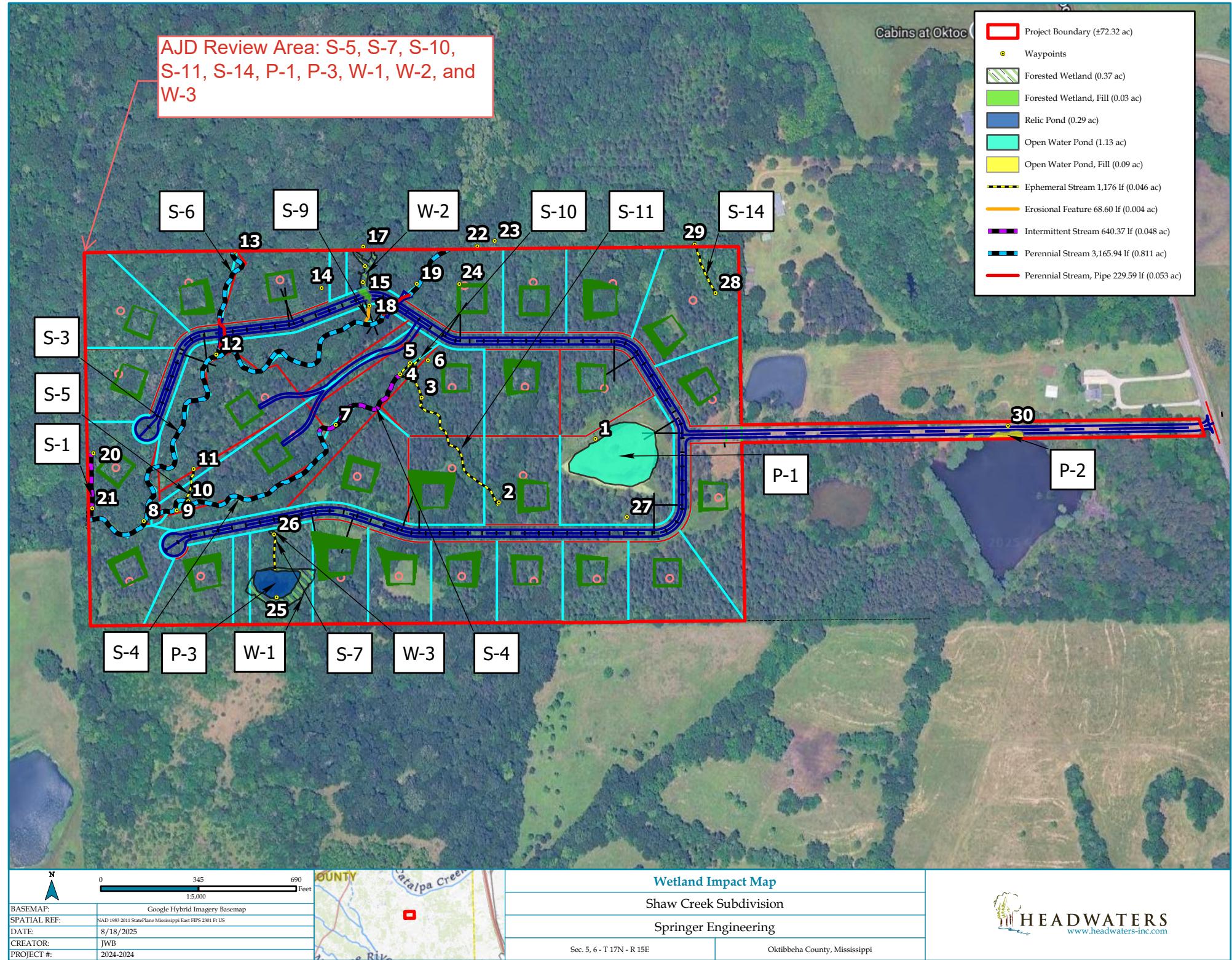
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Site visit was conducted with a Mobile District project manager and the consultant (Headwaters, Inc.) on July 14, 2025. In office evaluation using desktop resources was completed on September 11, 2025.
 - b. Figures 1-5 of Attachment A “Project Maps and Drawings”; Attachment B” Wetland Delineation Information” and in Headwater, Inc.’s request for Nationwide Permit 29 and Jurisdictional Determination, June 24, 2025.
 - c. Headwaters, Inc.’s Revised Aquatic Resource Maps, August 14, 2025.
 - d. National Regulatory Viewer – USGS Topo map, National Hydrology Dataset, USFWS Wetlands Map, NRCS Soil Web Map, and aerial imagery, accessed July 2025 and September 11, 2025.
 - e. Natural Resources Conservation Service Web Soil Survey, available at <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>; accessed September 11, 2025.
 - f. Environmental Protection Agency Waters GeoViewer 2.0, available at <https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=074cfede236341b6a1e03779c2bd0692>; accessed July 17, 2025.
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.
 - b. ‘Training: 2025 Continuous Surface Connection Guidance’; Office of the Assistant Secretary of the Army and United States Environmental Protection Agency (April 29, 2025)

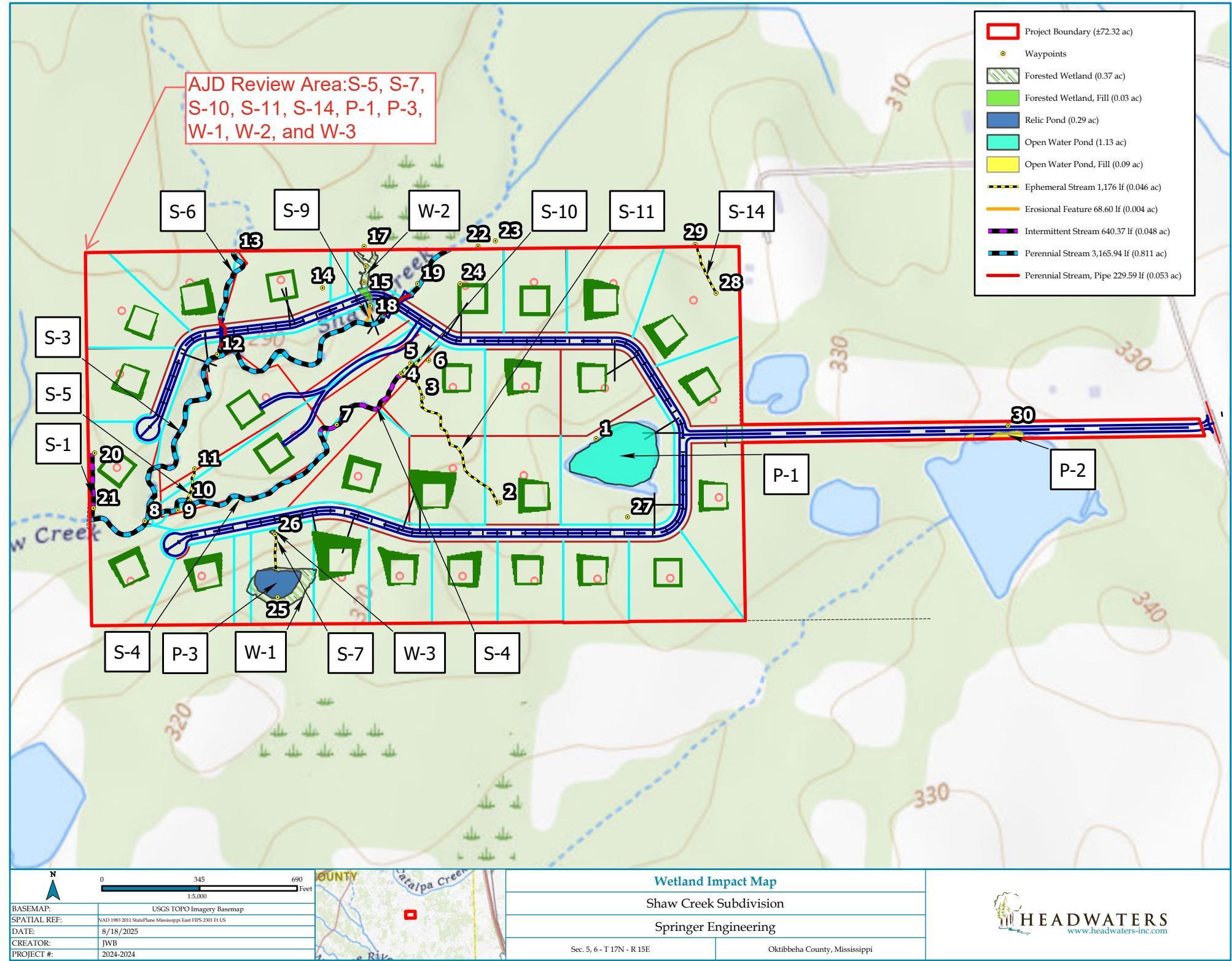
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement

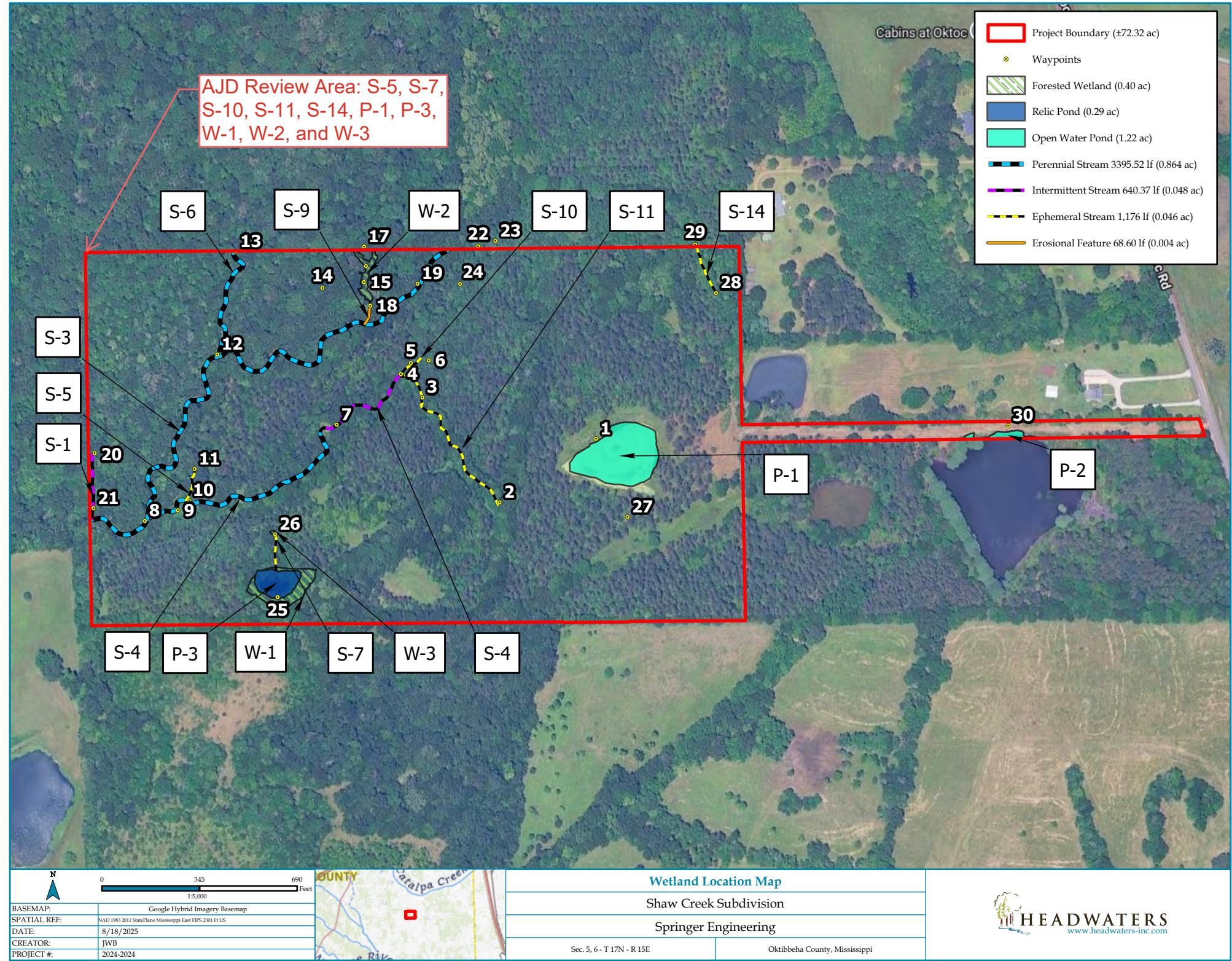
CESAM-RD-N

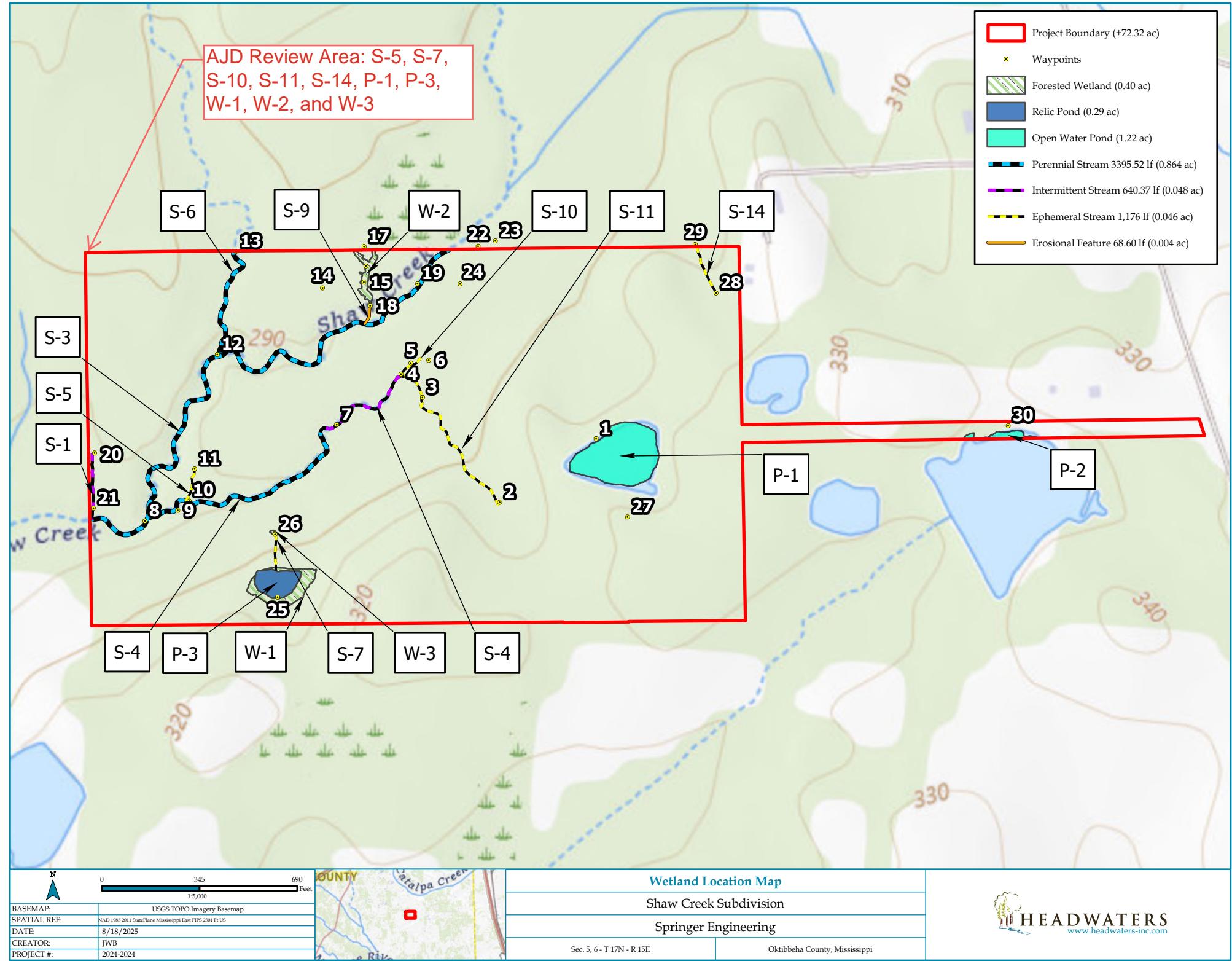
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2025-00495-MH9

additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

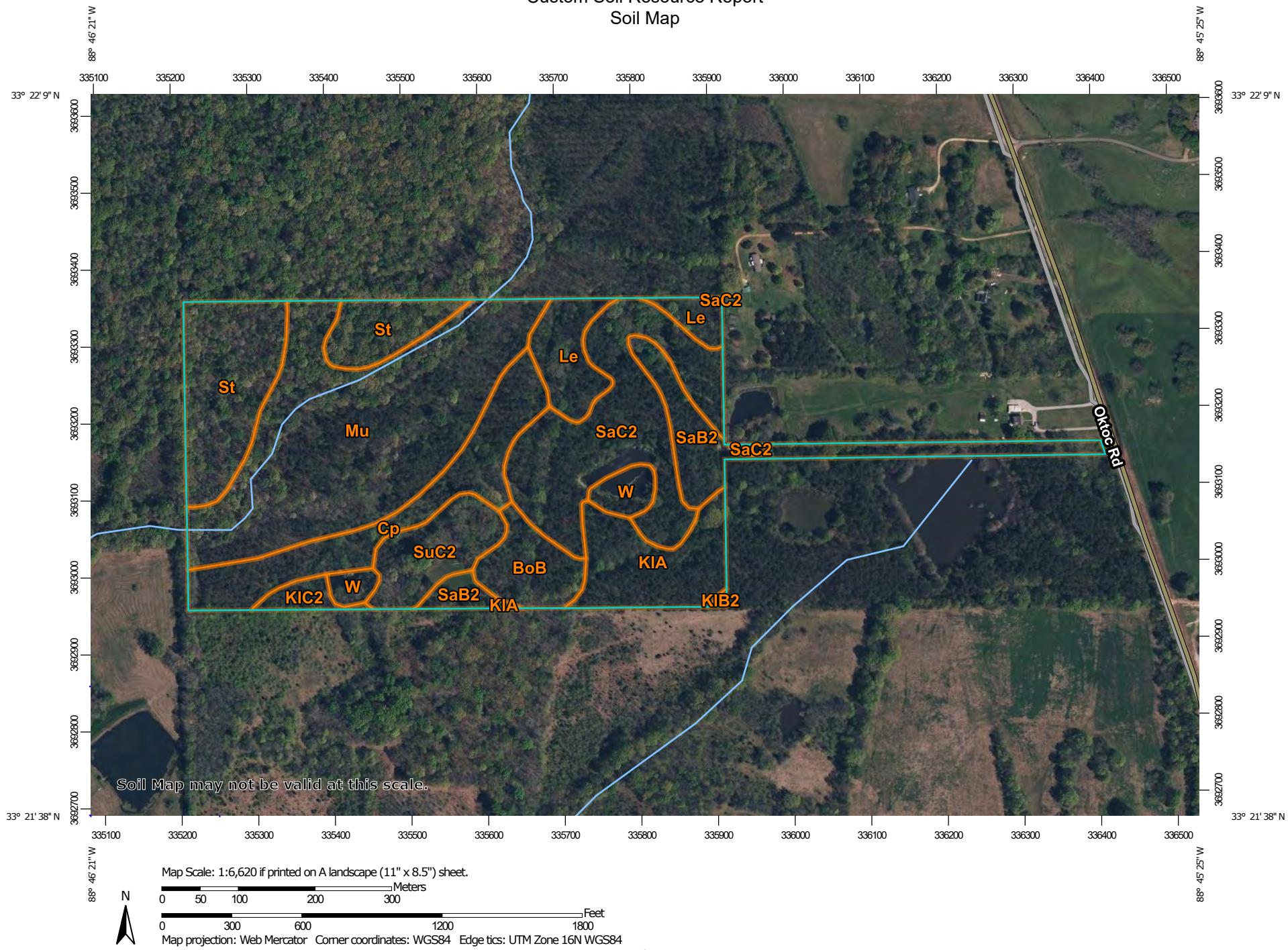








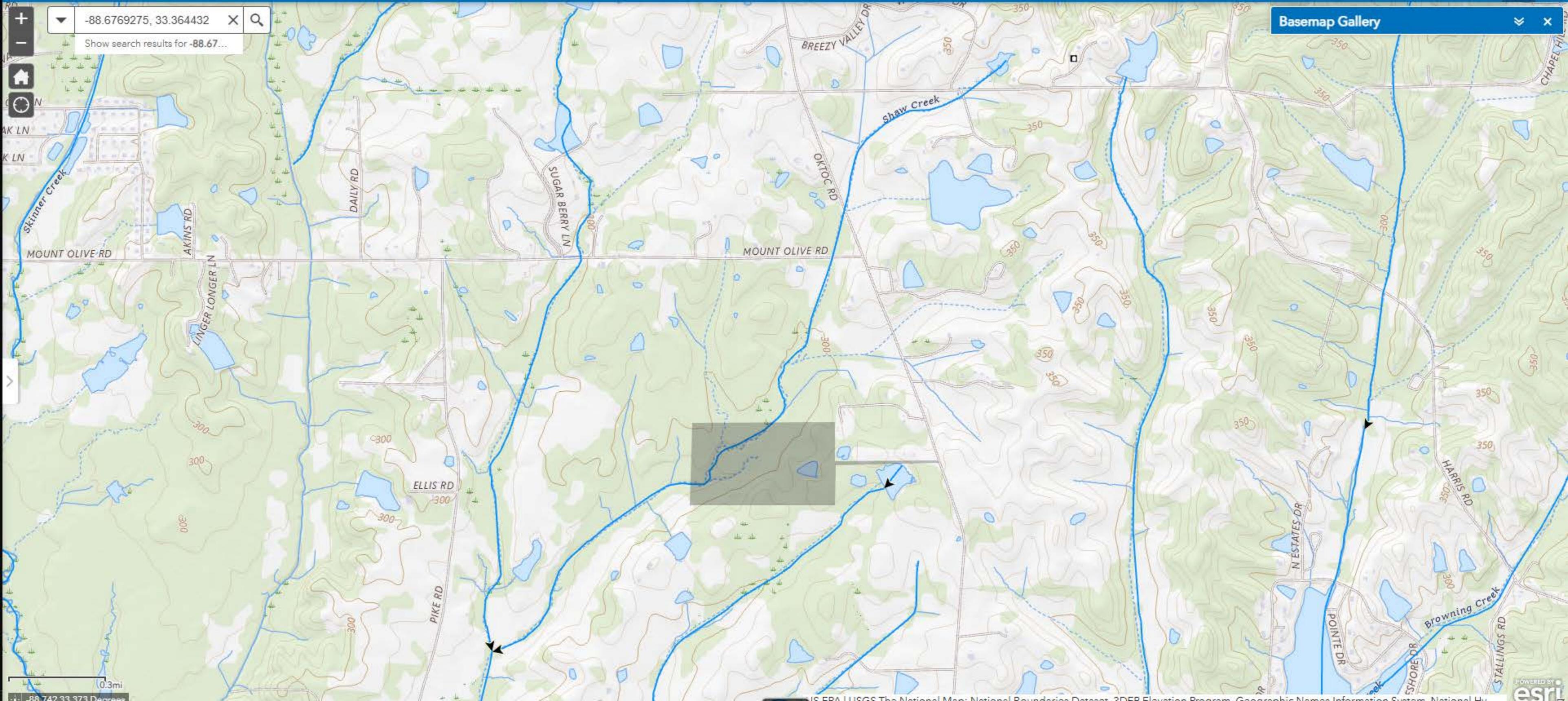
Custom Soil Resource Report Soil Map



-88.6769275, 33.364432

Show search results for -88.67...

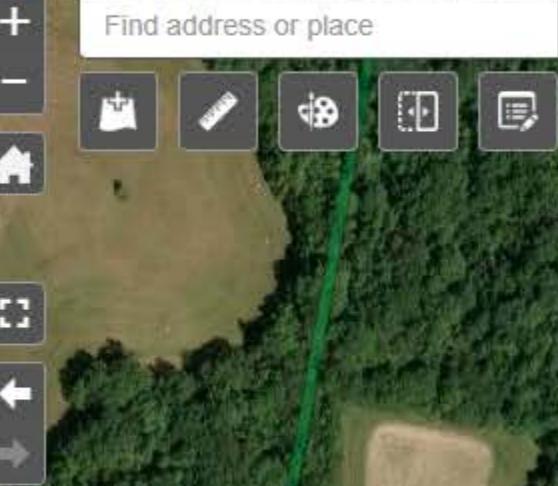
Basemap Gallery







Find address or place



Basemap Gallery



300ft

33.368502 -88.756096 Degrees

RGL 16-01: TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review		Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
			area (acreage, if applicable)	(linear feet, if applicable)		
S-1	33.364559	-88.771192	0.0108260	235.781800	Intermittent Stream	Section 404
S-3	33.365493	-88.769322	0.7395880	2147.765000	Perennial Stream	Section 404
S-4	33.364538	-88.76941	0.0751300	818.160500	Perennial Stream	Section 404
S-4	33.365329	-88.768069	0.0371530	404.591300	Intermittent Stream	Section 404
S-5	33.36457	-88.770049	0.0084070	122.073400	Ephemeral Stream	Non Jurisdictional
S-6	33.366356	-88.769624	0.0493110	429.597800	Perennial Stream	Section 404
S-7	33.363918	-88.769081	0.0014980	130.471000	Ephemeral Stream	Non Jurisdictional
S-9	33.366221	-88.767998	0.0047240	68.596080	Erosional Feature	Section 404
S-10	33.365723	-88.767515	0.0023220	101.142300	Ephemeral Stream	Non Jurisdictional
S-11	33.365036	-88.767065	0.0295040	642.5975	Ephemeral Stream	Non Jurisdictional
S-14	33.366655	-88.7641	0.004126	179.7254	Ephemeral Stream	Non Jurisdictional
P-1	33.364853	-88.765088	1.131967		Open Water Pond	Non Jurisdictional
P-2	33.365047	-88.760651	0.088841		Open Water Pond	Section 404
P-3	33.363626	-88.769060	0.289299		Relic Pond	Non Jurisdictional
W-1	33.363577	-88.768957	0.275502		Forested Wetland	Non Jurisdictional
W-2	33.366620	-88.768022	0.121775		Forested Wetland	Non Jurisdictional
W-3	33.364115	-88.769109	0.003472		Forested Wetland	Non Jurisdictional