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

CESAM-RD-N 17 September 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-2025-00606-SNR; 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 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 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).

Aquatic Resource	Cowardin Class	Linear Feet	Acreage	Latitude	Longitude	Geographic Authority
S1	R6	542	0.02	33.259532	-87.298199	Non-Jurisdictional
S3	R6	82	0.004	33.256387	-87.305763	Non-Jurisdictional
S4	R4	164	0.02	33.255847	-87.306959	Non-Jurisdictional
S13	R6	50	0.003	33.256202	-87.302605	Non-Jurisdictional
S14	R6	463	0.04	33.256962	-87.301462	Non-Jurisdictional
S17	R4	1,076	0.17	33.251529	-87.298098	Non-Jurisdictional
S18	R4	308	0.03	33.253487	-87.294278	Non-Jurisdictional
S19	R4	202	0.02	33.253487	-87.293596	Non-Jurisdictional
S20	R4	121	0.02	33.253406	-87.293323	Non-Jurisdictional
S25	R6	48	0.04	33.247123	-87.303610	Non-Jurisdictional
S26	R6	515	0.04	33.248649	-87.298946	Non-Jurisdictional
S28	R6	564	0.05	33.248649	-87.300255	Non-Jurisdictional
S29	R6	87	0.01	33.246728	-87.300434	Non-Jurisdictional
S31	R6	107	0.01	33.244930	-87.300402	Non-Jurisdictional
S32	R6	177	0.01	33.242326	-87.297873	Non-Jurisdictional
S34	R6	292	0.03	33.241388	-87.301335	Non-Jurisdictional
D1	Ditch	841	n/a	33.259037	-87.304357	Non-Jurisdictional
W1	PEM	n/a	0.30	33.259460	-87.298467	Non-Jurisdictional
W3	PFO	n/a	0.05	33.255312	-87.307156	Non-Jurisdictional
W9	PEM	n/a	2.07	33.253356	-87.295026	Non-Jurisdictional
W10	PFO	n/a	0.18	33.253020	-87.293132	Non-Jurisdictional
W14	PFO	n/a	0.05	33.247309	-87.299182	Non-Jurisdictional
P3	PUB	n/a	0.38	33.256154	-87.306994	Non-Jurisdictional
P8	PUB	n/a	0.64	33.251063	-87.299465	Non-Jurisdictional
P9	PUB	n/a	2.88	33.253964	-87.294691	Non-Jurisdictional
P11	PUB	n/a	0.21	33.248829	-87.298705	Non-Jurisdictional
P12	PUB	n/a	0.31	33.241739	-87.301478	Non-Jurisdictional
P13	PUB	n/a	0.39	33.249676	-87.297070	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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. This AJD review area only includes ephemeral streams S1, S3, S13, S14, S25, S26, S28, S29, S31, S32, S34; ditch D1; intermittent streams S4, S17, S18, S19, S20; wetlands W1, W3, W9, W10, W14; and open surface waters P3, P8, P9, P11, P12, and P13 within a 544-acre parcel of land. The parcel is centered near Latitude 33.253052, Longitude -87.300174 in Brookwood, Tuscaloosa County, Alabama. A preliminary jurisdictional determination will be conducted on perennial streams S6, S8, S9, S10, S24, S30; intermittent streams S2, S5, S7, S11, S12, S15, S16, S21, S22, S23, S27, S33; wetlands W2, W4, W5, W6, W7, W8, W11, W12, W13, W15; and open surface waters P1, P2, P4, P5, P6, P7, and P10 within the 544-acre parcel and these resources will not be evaluated as part of this AJD.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Black Warrior River, which is located approximately 7.3 miles to the west of the center of the review area. This was determined by reviewing the Section 10 layers in the National Regulatory Viewer. The Black Warrior River is on the Mobile District's Section 10 waterway list and is therefore a TNW.[6]

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

   S1 is a non-RPW that flows southeast within the property boundary for approximately 542 linear feet before flowing into P1; P1 then flows into W2 before flowing into S2, an intermittent stream; S2 flows northeast for approximately 251 linear feet, and exiting the property boundary; the tributary flows into an open water feature that flows into Jimy Creek, a perennial stream; Jimy Creek flows south for approximately 0.94 mile before converging with North Fork Hurricane Creek, a

[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.

perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.76 miles before converging with Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S3 is a non-RPW that flows north within the property boundary for approximately 82 linear feet before flowing into P2; P2 then flows southwest, through a culvert, into a perennial stream located outside of the property boundary; the tributary then flows southwest for approximately 1.33 miles before converging with another perennial stream; that tributary then flows south for approximately 0.93 mile before converging with North Fork Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 1.17 miles before converging with Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S4 is a RPW that flows south within the property boundary for approximately 164 linear feet before flowing into W3; W3 is separated from downstream waters by a large spoil berm and does not have any outflow; therefore, S4 does not have a flow path to a TNW, interstate water or territorial seas.

S13 is a non-RPW that flows northwest within the property boundary for approximately 50 linear feet before converging with S14, a ephemeral stream, and creating a second order stream identified as S12, an intermittent stream; S12 then flows southwest for approximately 208 linear feet before converging with another first order intermittent stream, S11, before flowing through a culvert beneath an old logging road and into S9, a perennial stream; S9 flows southwest for approximately 1,215 linear feet, through W4 and then P4 and then continuing into S6, a perennial stream; S6 flows south for approximately 583 linear feet before converging with S7, an intermittent stream; the tributary then flows into S8, a perennial stream; S8 flows southwest within the property boundary for approximately 241 linear feet before exiting the property boundary and continuing to flow southwest for approximately 0.15 mile, through a culvert beneath Brookwood Parkway, before converging with an intermittent stream, the stream then flows south for approximately 0.43 mile before flowing into another perennial stream that flows south for approximately 0.93 mile before converging with North Fork Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 1.17 miles before converging with Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S14 is a non-RPW that flows southwest within the property boundary for approximately 463 linear feet before converging with S13, an ephemeral stream, and

creating a second order stream identified as S12. The flowpath then continues to the TNW in accordance with the description for S13 above.

S17 is a RPW that flows east within the property boundary for approximately 1,076 linear feet before flowing into W9 and then into P9; P9 and W9 then flow southeast through S18, an intermittent stream, and S19, an intermittent stream; S18 flows southeast for approximately 308 linear feet and S19 flows southeast for approximately 202 linear feet before converging with S18 and creating S20, an intermittent stream; S20 flows southeast for approximately 121 linear feet before converging with W10; W10 is separated from downstream waters by a large spoil berm and does not have any outflow; therefore, S17 does not have a flow path to a TNW, interstate water or territorial seas.

S18 is a RPW that flows southeast within the property boundary for approximately 308 linear feet before converging with S19, an intermittent stream and creating S20, an intermittent stream; S20 flows southeast for approximately 121 linear feet before converging with W10; W10 is separated from downstream waters by a large spoil berm and does not have any outflow; therefore, S18 does not have a flow path to a TNW, interstate water or territorial seas.

S19 is a RPW that flows southeast within the property boundary for approximately 202 linear feet before converging with S18, an intermittent stream and creating S20, an intermittent stream; S20 flows southeast for approximately 121 linear feet before converging with W10; W10 is separated from downstream waters by a large spoil berm and does not have any outflow; therefore, S19 does not have a flow path to a TNW, interstate water or territorial seas.

S20 is a RPW that flows southeast within the property boundary for approximately 121 linear feet before converging with W10; W10 is separated from downstream waters by a large spoil berm and does not have any outflow; therefore, S20 does not have a flow path to a TNW, interstate water or territorial seas.

S25 is a non-RPW that flows west within the property boundary for approximately 48 linear feet before exiting the property boundary and continuing to flow west for approximately 0.15 mile, through a culvert beneath Brookwood Parkway, before converging with an intermittent stream; that stream flows southwest for approximately 0.28 mile before converging with another intermittent stream; that stream flows south for approximately 0.34 mile before flowing into a perennial stream; that perennial stream flows south for approximately 0.93 mile before converging with North Fork Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 1.17 miles before

converging with Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S26 is a non-RPW that flows south within the property boundary for approximately 515 linear feet before flowing into W14; W14 does not have any outflow due to being separated from downstream flow by an old logging access road that does not have a culvert or pipe beneath it to allow for continued flow; therefore, S26 does not have a flow path to a TNW, interstate water or territorial seas.

S28 is a non-RPW that flows south within the property boundary for approximately 564 linear feet before converging with S29, an ephemeral stream, and creating S30, a perennial stream; S30 flows south for approximately 3,717 linear feet within the property boundary before exiting the boundary and continuing to flow for approximately 0.05 mile before flowing into North Fork Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.42 miles before flowing into Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S29 is a non-RPW that flows east within the property boundary for approximately 87 linear feet before converging with S28, an ephemeral stream, and creating S30, a perennial stream. The flowpath to the TNW then continues in accordance with the flowpath description for S28 above.

S31 is a non-RPW that flows east within the property boundary for approximately 107 linear feet before flowing into S30, a perennial stream; S30 continues flowing south for approximately 0.56 mile before flowing into North Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.42 miles before flowing into Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

S32 is a non-RPW that flows east within the property boundary for approximately 177 linear feet before flowing into S30, a perennial stream. The flowpath to the TNW continues to accordance with the description for S31 above.

S34 is a non-RPW that flows south within the property boundary for approximately 292 linear feet before continuing to flow outside of the boundary; the stream continues to flow for approximately 0.50 mile before flowing into North Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.42 miles before flowing into Hurricane Creek, a perennial stream;

Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

D1 is a non-RPW drainage feature that flows northwest within the property boundary for approximately 841 linear feet before continuing to flow outside of the boundary; the drainage feature then flows north for approximately 200 linear feet into an old logging or mining staging area and ends as sheet flow. There is no flow path for this drainage feature to a TNW, interstate water, or territorial seas.

W1 is a non-jurisdictional wetland within the property boundary that flows southeast through S1, a non-RPW, for approximately 542 linear feet before flowing into P1; P1 flows into W2; W2 then flows through S2, an intermittent stream, for 251 linear feet before continuing to flow outside the boundary; the tributary continues to flow northeast for approximately 0.18 mile into an open water feature that flows into Jimy Creek, a perennial stream; Jimy Creek flows south for approximately 0.94 mile before converging with North Fork Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.76 miles before converging with Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

W3 is a non-jurisdictional wetland within the property boundary that receives flow from S4, a non-jurisdictional RPW, that receives flow from P3; W3 does not have any outflow due to a large spoil berm that does not allow for flow outside of the wetland; W3 does not have a flowpath to a TNW, interstate water or territorial seas.

W9 is a non-jurisdictional wetland within the property boundary that receives flow from S17, a non-jurisdictional RPW; W9 surrounds the boundary of P9 and flows southeast through S18, a non-jurisdictional RPW, for approximately 308 linear feet, then approximately 121 linear feet of S20, a non-jurisdictional RPW, before flowing into W10; W10 does not have an outflow due to a large spoil berm that does not allow for flow outside of the wetland; W9 does not have a flowpath to a TNW, interstate water or territorial seas.

W10 is a non-jurisdictional wetland within the property boundary that receives flow from S20, a non-jurisdictional RPW; W10 does not have an outflow due to a large spoil berm that does not allow for flow outside of the wetland; W10 does not have a flowpath to a TNW, interstate water or territorial seas.

W14 is a non-jurisdictional wetland within the property boundary the receives flow from S26, a non-RPW, which receives flow from P11; W14 does not have any outflow due to a previously constructed road that does not have a culvert, pipe, or

opening to allow that allows for water flow; W14 does not have a flowpath to a TNW, interstate water or territorial seas.

P3 is an open water pond within the property boundary that flows south through S4, a non-jurisdictional RPW, and then into W3, a non-jurisdictional wetland; W3 has no outflow due to a large spoil berm that was created from prior mining activities; P3 does not have a flowpath to a TNW, interstate water or territorial seas.

P8 is an open water pond within the property boundary that is surrounded by uplands and has no outflow; P8 does not have a flowpath to a TNW, interstate water or territorial seas.

P9 is an open water pond within the property boundary that is surrounded by W9, a non-jurisdictional wetland; W9 flows southeast through S18, a non-jurisdictional RPW, for approximately 308 linear feet, then approximately 121 linear feet of S20, a non-jurisdictional RPW, before flowing into W10; W10 does not have an outflow due to a large spoil berm that does not allow for flow outside of the wetland; P9 does not have a flowpath to a TNW, interstate water or territorial seas.

P11 is an open water pond within the property boundary that flows south through S26, a non-RPW; S26 flows south into W14, a non-jurisdictional wetland that does not have an outflow due to a previously constructed road that does not have a culvert, pipe, or opening to allow that allows for water flow; P11 does not have a flowpath to a TNW, interstate water or territorial seas.

P12 is an open water pond within the property boundary that flows south through S34, a non-RPW; S34 flows within the boundary for approximately 292 linear feet before exiting the boundary and continuing to flow south for approximately 0.50 mile before flowing into North Hurricane Creek, a perennial stream; North Fork Hurricane Creek then flows southwest for approximately 2.42 miles before flowing into Hurricane Creek, a perennial stream; Hurricane Creek continues flowing west for approximately 24.8 miles into the Black Warrior River, a TNW.

P13 is an open water pond within the property boundary that is surrounded by uplands and has no outflow; P13 does not have a flowpath to a TNW, interstate water or territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

[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.

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.

   D1 is an 841-linear-foot ditch located in the northern portion of the larger 544-acre parcel of land. D1 was excavated wholly in uplands, drains only uplands, and does not carry a relatively permanent flow of water; therefore, D1 is not a tributary. In accordance with the *Rapanos* guidance, D1 is non-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 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*.

   P8 is a 0.64-acre pit dug in uplands that was created during historic, pre-SMCRA coal mining operations.

   P13 is a 0.39-acre pit dug in uplands that was created during historic, pre-SMCRA coal mining operations.

[9] 51 FR 41217, November 13, 1986.

Pursuant to the preamble to the Final 33 CFR Part 328 (51 FR 41206 November 13, 1986) these types of waters are not considered to be waters of the U.S. See preamble 328.3 Definitions (e), which states the Corps generally does not consider the following water to be waters of the U.S. : "Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the U.S. (see 33 CFR 328.3(a))." These features are depicted on the attached figures. The operation is abandoned; therefore, further evaluation is required to determine if the abandoned pits are waters of the U.S. P8 and P13 doe not meet any of the jurisdictional categories of waters of the U.S., nor do they meet the criteria to be generally non-jurisdictional under the pre-2015 regime and the preamble to the 1986 regulations; therefore, the ponds will be reviewed pursuant to paragraph (a)(3) of 33 CFR 328.3 or "other" waters under the pre-2015 regulations (Memorandum on Evaluating Jurisdiction for LRL-2023-00466, February 7, 2024). P8 and P13 do not support a link to interstate or foreign commerce. They are not known to support interstate or foreign commerce. They are not known to support a link to foreign commerce or known to be used by interstate or foreign travelers for recreation or other purposes. Additionally, P8 and P13 do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce or used for industrial purposes by industries in interstate commerce. For all of these reasons, P8 and P13 do not meet the definition of waters of the U.S. as defined by 33 CFR Part 328.3(a) and are not jurisdictional under the Clean Water Act.

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).

S1 is a 542-linear-foot non-relatively permanent stream located in the northeast corner of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 15.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by

the agent, and the stream exhibiting non-relatively permanent flow, S1 is non-jurisdictional.

S3 is an 82-linear-foot non-relatively permanent stream located northwest portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 13.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S3 is non-jurisdictional.

S4 is a 164-linear-foot intermittent stream located in the northwest portion of the larger 544-acre parcel of land. S4 flows into W3, a wetland, that is separated from downstream aquatic resources by a large spoil berm that was created during prior coal mining operations. W3 has no outflow. S4 has no flow path to a TNW, interstate water, or territorial seas. Therefore, S4 is non-jurisdictional.

S13 is a 50-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 17.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S13 is non-jurisdictional.

S14 is a 463-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 13, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North

Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S14 is non-jurisdictional.

S17 is a 1,076-linear-foot intermittent stream located in the east central portion of the larger 544-acre parcel of land. S17 flows east through W9, a wetland, then through P9, an open water pond, then flowing through S18 and S19, both intermittent streams, then through S20, an intermittent stream, before flowing into W10, a wetland. W10 is separated from down stream aquatic resources by a large spoil berm that was created during historic, pre-SMCRA coal mining operations. W10 has no outflow. S17 has no flow path to a TNW, interstate water, or territorial seas. Therefore, S17 is non-jurisdictional.

S18 is a 308-linear-foot intermittent stream located in the east central portion of the larger 544-acre parcel of land. S18 flows south into S20, an intermittent stream, which then flows into W10, a wetland. W10 is separated from down stream aquatic resources by a large spoil berm that was created during historic, pre-SMCRA coal mining operations. W10 has no outflow. S18 has no flow path to a TNW, interstate water, or territorial seas. Therefore, S18 is non-jurisdictional.

S19 is a 202-linear-foot intermittent stream located in the east central portion of the larger 544-acre parcel of land. S19 flows south into S20, an intermittent stream, which then flows into W10, a wetland. W10 is separated from down stream aquatic resources by a large spoil berm that was created during historic, pre-SMCRA coal mining operations. W10 has no outflow. S19 has no flow path to a TNW, interstate water, or territorial seas. Therefore, S19 is non-jurisdictional.

S20 is a 121-linear-foot intermittent stream located in the east central portion of the larger 544-acre parcel of land. S20 flows south into W10, a wetland. W10 is separated from down stream aquatic resources by a large spoil berm that was created during historic, pre-SMCRA coal mining operations. W10 has no outflow. S20 has no flow path to a TNW, interstate water, or territorial seas. Therefore, S20 is non-jurisdictional.

S25 is a 48-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 12.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North

Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S25 is non-jurisdictional.

S26 is a 515-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 14.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S26 is non-jurisdictional.

S28 is a 564-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 15.5 which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S28 is non-jurisdictional.

S29 is an 87-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 15, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S29 is non-jurisdictional.

S31 is a 107-linear-foot non-relatively permanent stream located in the southern portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and*

Perennial Streams and Their Origins, Version 4.11 (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 15.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S31 is non-jurisdictional.

S32 is a 177-linear-foot non-relatively permanent stream located in the southern portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 15, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S32 is non-jurisdictional.

S34 is a 292-linear-foot non-relatively permanent stream located in the northcentral portion of the larger 544-acre parcel of land. The agent used the *North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11* (North Carolina method), to assist with the determination of stream flow regime. The resulting score was 17.5, which indicates ephemeral or non-relatively permanent flow, and the results showed that the stream was observed to have weak continuity of channel bed and banks, weak sinuosity, and lack of soil-based evidence of a high-water table. Based on descriptions by the agent, North Carolina method forms performed by the agent, and the stream exhibiting non-relatively permanent flow, S34 is non-jurisdictional.

W1 is a 0.30-acre forested wetland located in the northeast portion of the larger 544-acre parcel of land. W1 abuts a non-relatively permanent tributary, S1. W1 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby not having a continuous surface connection to those waters and is therefore not jurisdictional.

W3 is a 0.05-acre forested wetland located in the northwest portion of the larger 544-acre parcel of land. W3 that receives flow from S4, a relatively permanent water. W3 has no outflow due to a large spoil berm that was constructed during

historic, pre-SMCRA coal mining operations. W3 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby not having a continuous surface connection to those waters and is therefore not jurisdictional.

W9 is a 2.07-acre forested wetland that surrounds P9, an open water pond, in the east central portion of the larger 544-acre parcel of land. W9 receives flow from S17, a relatively permanent water, and drains through S18 and S19, both relatively permanent waters, then through S20, a relatively permanent water, before flowing into W10, a wetland. W10 has no outflow due to a large spoil berm that was constructed during historic, pre-SMCRA coal mining operations. W9 does not have a continuous surface connection to a TNW, territorial seas, or interstate water and is therefore not jurisdictional.

W10 is a 0.18-acre forested wetland located in the east central portion of the larger 544-acre parcel of land. W10 receives flow from S20, a relatively permanent water. W10 has no outflow due to a large spoil berm that was constructed during historic, pre-SMCRA coal mining operations. W10 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby not having a continuous surface connection to those waters and is therefore not jurisdictional.

W14 is a 0.05-acre forested wetland located in the south portion of the larger 544-acre parcel of land. W14 receives flow from S26, a non-relatively permanent water. W14 has no outflow due to a large spoil berm that was constructed during historic, pre-SMCRA coal mining operations. W14 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby not having a continuous surface connection to those waters and is therefore not jurisdictional.

P3 is a 0.38-acre man-made pond/pit located in the northwest portion of the larger 544-acre parcel of land. P3 appears to have been created during historic, pre-SMCRA coal mining operations at the headwaters of a relatively permanent tributary, S4. S4 exits on the south side of the pond and flows into W3, a wetland. W3 does not have any outflow and is separated from downstream waters by a large spoil berm; therefore, not exhibiting a continuous surface connection to a requisite water. Although P3 does flow through a relatively permanent water, the relatively permanent water flows into a wetland where the flow has been severed by a large spoil berm. Therefore, P3 does not have a connection to a TNW, territorial seas, or interstate water and is considered non-jurisdictional.

P9 is a 2.88-acre man-made pond/pit located in the northeast portion of the larger 544-acre parcel of land. P9 appears to have been created within a relatively permanent tributary during historic, pre-SMCRA coal mining operations. S17 flows into the west side of W9, which is a wetland that encompasses P9. P9 then drains through two relatively permanent tributaries, S18 and S19, then through another relatively permanent tributary, S20, before reaching W10, a wetland. W10 does not have any outflow and is separated from downstream resources by a large spoil berm; therefore, not exhibiting a continuous surface connection to a requisite water. Although P9 does flow through multiple relatively permanent waters, the relatively permanent waters flow into a wetland that does not have a continuous surface connection to a TNW, territorial seas, or interstate water. Therefore, P9 does not have a connection to a TNW, territorial seas, or interstate water and is considered non-jurisdictional.

P11 is a 0.21-acre man-made pond/pit located in the east portion of the larger 544-acre parcel of land. P11 appears to have been created at the headwaters of a non-relatively permanent tributary, S26, during historic, pre-SMCRA coal mining operations. P11 was created in a non-jurisdictional tributary and is therefore not jurisdictional.

P12 is a 0.31-acre man-made pond/pit located in the southwest portion of the larger 544-acre parcel of land. P12 appears to have been created at the headwaters of a non-relatively permanent tributary, S34, during historic, pre-SMCRA coal mining operations. P12 was created in a non-jurisdictional tributary and is therefore 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. Office evaluation conducted utilizing desktop resources.

   b. Delineation report provided by the Agent, Wilbanks Engineering & Environmental Solutions, LLC, performed June 2025.

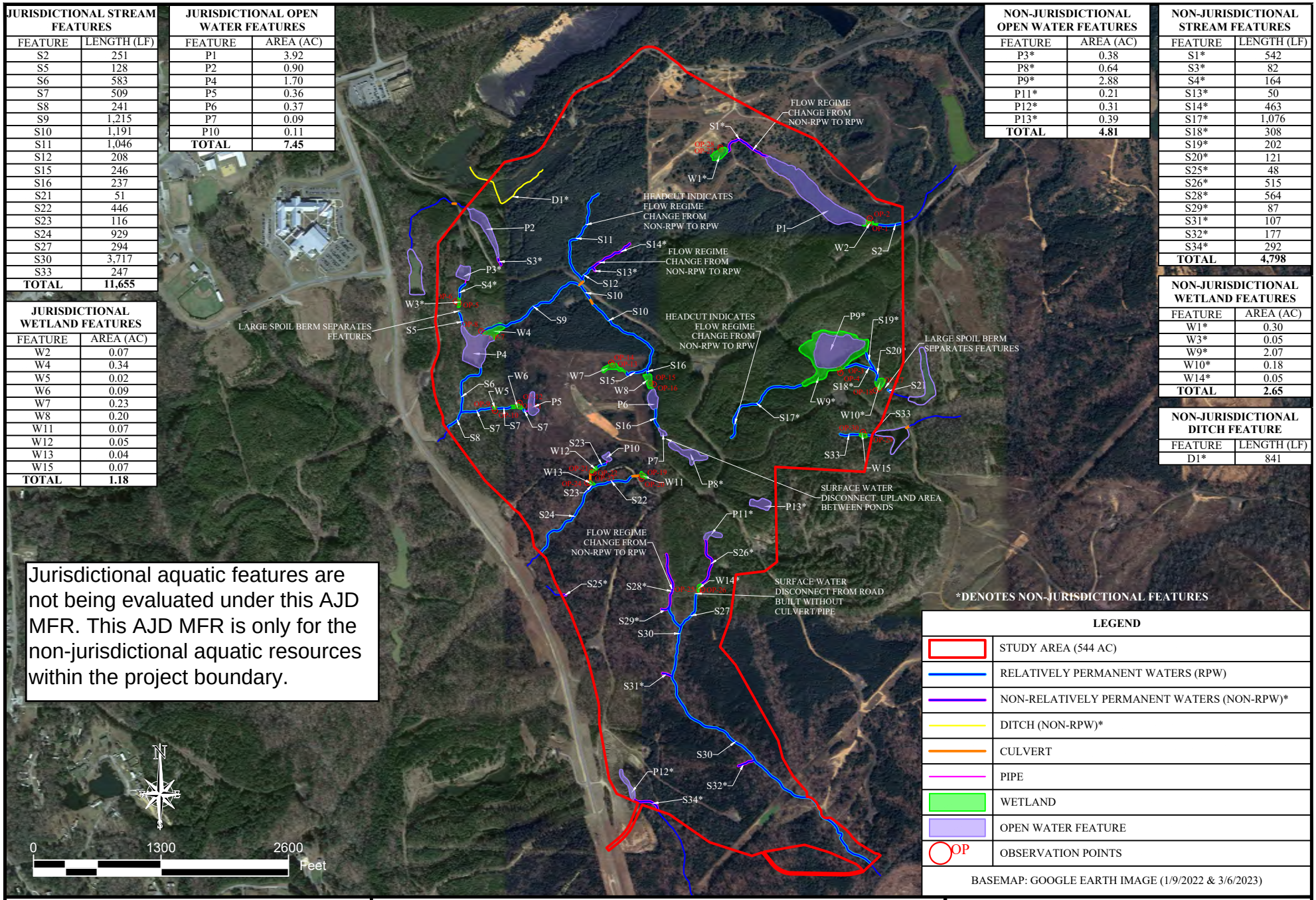
   c. National Regulatory Viewer – USGS Topo map, Digital Elevation Model, Hillshade, National Hydrology Dataset, USFWS Wetlands Map, NRCS Soil Web Map, and aerial imagery, accessed August and September 2025.

   d. EPA Waters GeoViewer 2.0 Mapper, epa.maps.arcgis.com/apps/webappviewer/index.html

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. U.S. Environmental Protection Agency & Office of the Assistant Secretary of the Army (Civil Works), *Memorandum on Evaluating Jurisdiction for LRL-2023-00466* (February 7, 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.



JURISDICTIONAL STREAM FEATURES

FEATURE	LENGTH (LF)
S2	251
S5	128
S6	583
S7	509
S8	241
S9	1,215
S10	1,191
S11	1,046
S12	208
S15	246
S16	237
S21	51
S22	446
S23	116
S24	929
S27	294
S30	3,717
S33	247
TOTAL	**11,655**

JURISDICTIONAL WETLAND FEATURES

FEATURE	AREA (AC)
W2	0.07
W4	0.34
W5	0.02
W6	0.09
W7	0.23
W8	0.20
W11	0.07
W12	0.05
W13	0.04
W15	0.07
TOTAL	**1.18**

JURISDICTIONAL OPEN WATER FEATURES

FEATURE	AREA (AC)
P1	3.92
P2	0.90
P4	1.70
P5	0.36
P6	0.37
P7	0.09
P10	0.11
TOTAL	**7.45**

NON-JURISDICTIONAL OPEN WATER FEATURES

FEATURE	AREA (AC)
P3*	0.38
P8*	0.64
P9*	2.88
P11*	0.21
P12*	0.31
P13*	0.39
TOTAL	**4.81**

NON-JURISDICTIONAL STREAM FEATURES

FEATURE	LENGTH (LF)
S1*	542
S3*	82
S4*	164
S13*	50
S14*	463
S17*	1,076
S18*	308
S19*	202
S20*	121
S25*	48
S26*	515
S28*	564
S29*	87
S31*	107
S32*	177
S34*	292
TOTAL	**4,798**

NON-JURISDICTIONAL WETLAND FEATURES

FEATURE	AREA (AC)
W1*	0.30
W3*	0.05
W9*	2.07
W10*	0.18
W14*	0.05
TOTAL	**2.65**

NON-JURISDICTIONAL DITCH FEATURE

FEATURE	LENGTH (LF)
D1*	841

PERMIT NO: SAM-2025-NO-INITIALS	**JURISDICTIONAL DETERMINATION AERIAL MAP**	FIGURE 8
[redacted]	[redacted]	DATE: 7/18/2025
	TUSCALOOSA COUNTY, ALABAMA	[redacted]