



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 WEST OGLETHORPE AVENUE
SAVANNAH GEORGIA 31401

SAS-OD-RC

April 22, 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SAS-2024-00092

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Georgia due to litigation.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

SAS-OD-RC

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- A. Name of nearest downstream TNW, Territorial Sea or interstate water: The nearest TNW is Crooker River which is approximately 0.20 mile south of the AJD project review area.
- B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum, a review of the SAS Section 10 list (for a water body that is navigable-in-fact under federal law for any purpose (such as Section 10, RHA), that water body categorically qualifies as a Section 404 "traditional navigable water" subject to CWA jurisdiction under 33 CFR 328.3(a)(1)), and documented (include in AR) occurrences of boating traffic on the identified water.

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

The wetlands meet the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and the Eastern Mountains and Piedmont Regional Supplement. All wetlands within the AJD review area do not have a continuous surface connection and thus no flowpath has been documented.

- 6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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

⁵ 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.

⁶ 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.

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”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/a
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/a
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/a

⁷ 51 FR 41217, November 13, 1986.

- 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).

Name of excluded feature	Size (in acres)	Type of resource generally not jurisdictional
WL 2000	0.735	Wetland is a depressional wetland and is surrounded by uplands. After review of lidar and contours the wetland is surrounded by uplands. Kinlaw Road is located to the east of the wetland and based off roadside google imagery there is no culvert present. There is no roadside ditch that would connect the wetland to additional waters. Based on lidar and elevations the wetland looks to be lower in elevation and captures surface flow from higher elevations to the north and south. The Wetland lacks a discrete feature that would constitute a continuous surface connection to water of the US
WL 2100	1.692	Wetland is a depressional feature that is surrounded by uplands. The wetland is separated from a pond to the southwest by higher elevations as evident from lidar and contour elevations. There is no evidence of a discrete feature that would constitute a continuous surface connection to a jurisdictional water.
WL 2200	0.132	Wetland is a depressional wetland and is surrounded by uplands. After review of lidar and contours the wetland is surrounded by uplands. Kinlaw Road is located to the east of the wetland and based off roadside google imagery there is no culvert present. There is no roadside ditch that would connect the wetland to additional waters. Based on lidar and elevations the wetland looks to be lower in elevation and captures surface flow from higher elevations to the north and south. The Wetland lacks a discrete feature that would constitute a continuous surface connection to water of the US
WL 2300	0.266	Wetland is a depressional feature that is surrounded by uplands. Review of lidar and contour elevations shows that this wetland is a closed depressional feature with higher elevations

SAS-OD-RC

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		surrounding the wetland. There is no evidence of a discrete feature that would constitute a continuous surface connection to a jurisdictional water.
WL 2400	0.266	Wetland is a depressional feature that is surrounded by uplands. Review of lidar and contour elevations shows that this wetland is a closed depressional feature with higher elevations surrounding the wetland. There is no evidence of a discrete feature that would constitute a continuous surface connection to a jurisdictional 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.

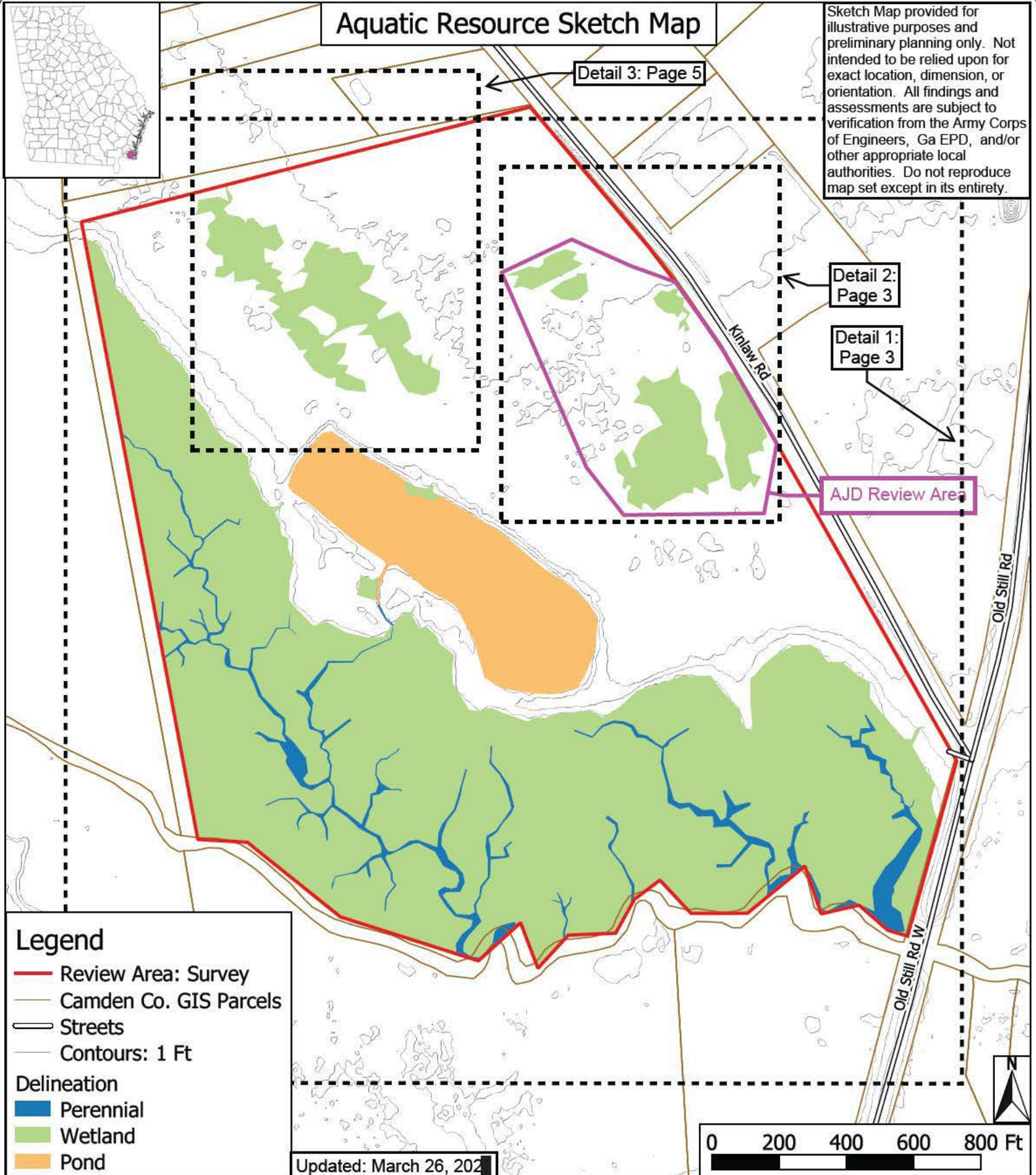
- a. 1. Date of Office (desktop review): March/April 2024
2. Date(s) of Field Review (if applicable): N/a
- b. Data sources used to support this determination (included in the administrative record).
 - Aquatic Resources delineation submitted by, or on behalf of, the requestor: Delineation package of Water of the United States, January 26, 2024
 - Aquatic Resource Sketch Map provided by applicant dated 2/5/2024 pages 1-5
 - Photographs: Part of the aforementioned Delineation Package
 - Aerial Imagery: Google Imagery from years 2016, 2020 and 2023
 - LIDAR: Lidar information acquired from NOAA. Maps: Transparent Lidar, Lidar and Transparent Lidar with Hillshade
 - USDA NRCS Soil Survey: provided by applicant Web Soil Survey Figure 13a-13c March 22, 2023
 - USFWS NWI maps: NWI Figure 11 March 22, 2023
 - USGS topographic maps: provided by applicant USGS Topographic Map Figure 6 March 22, 2023
 - USGS NHD data/maps: NHD Map/Distance to TNW
 - Section 10 resources used: SAS Section 10 List

10. OTHER SUPPORTING INFORMATION.

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.

Aquatic Resource Sketch Map

Sketch Map provided for illustrative purposes and preliminary planning only. Not intended to be relied upon for exact location, dimension, or orientation. All findings and assessments are subject to verification from the Army Corps of Engineers, Ga EPD, and/or other appropriate local authorities. Do not reproduce map set except in its entirety.



Legend

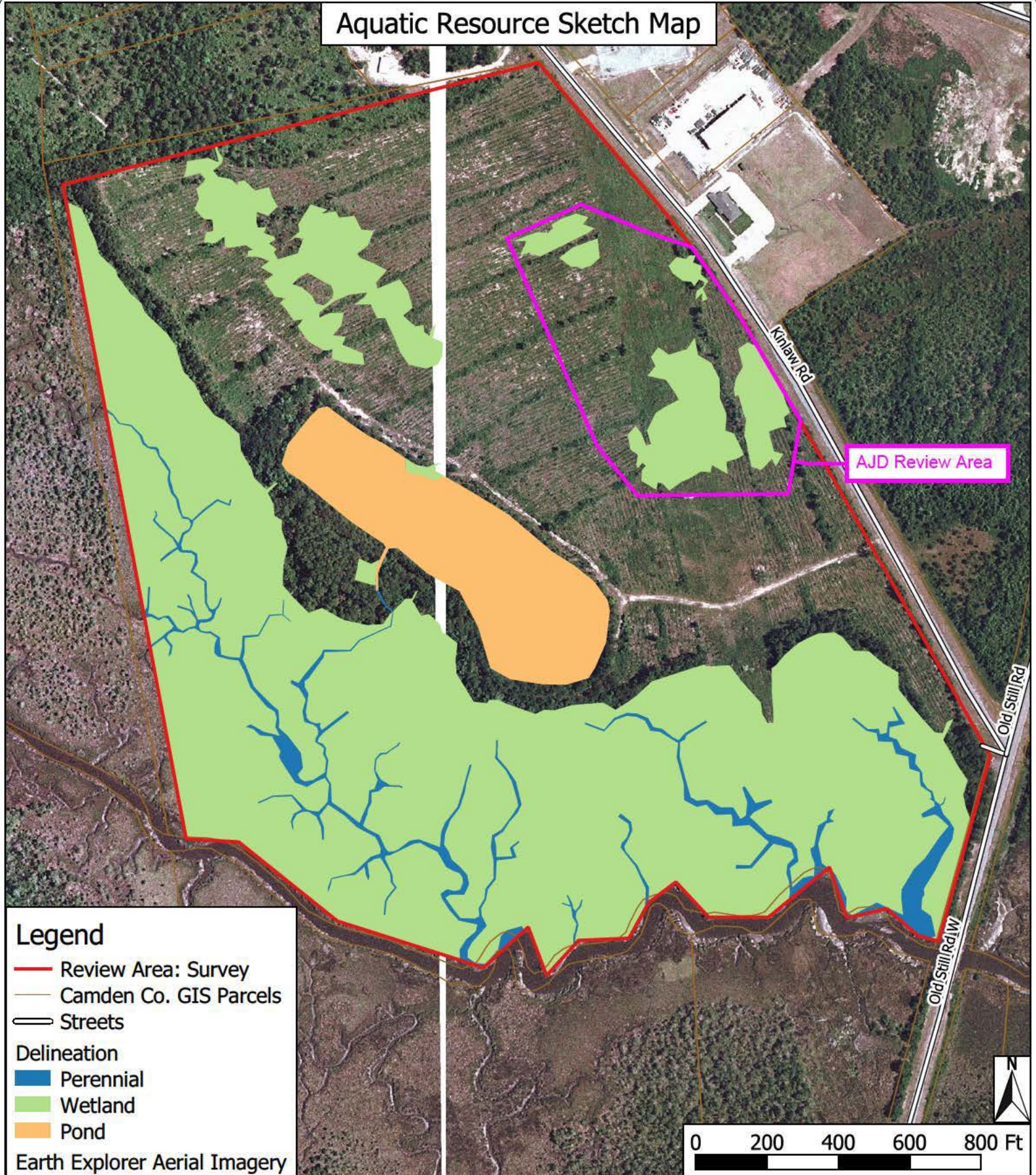
- Review Area: Survey
- Camden Co. GIS Parcels
- Streets
- Contours: 1 Ft
- Delineation**
- Perennial
- Wetland
- Pond

Updated: March 26, 2024

Project Name: Project Mermaid
Location: 2050 Kinlaw Road Woodbine, GA 31565
For: [Redacted]
Coordinates: 30.832909, -81.679754

Drawn By: JTS
Checked By: MRM
Date: Feb. 05, 2024

Aquatic Resource Sketch Map



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Earth Explorer Aerial Imagery

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Aquatic Resource Sketch Map

See Detail 3

WL 1000
Continued

See Detail 2

AJD Review Area

Wetland
WL 1100: ~ 0.077 Ac









Wetland
WL 1200: ~ 0.069 Ac

Impoundment
Pond 1:
~ 6.297 Ac

Wetland
WL 1000: ~
40.825 Ac

Perennial RPW
Tributaries to
Crooked River
10,117 LF, 2.797
Ac

Legend

- | | |
|--|---|
|  Review Area: Survey |  Delineation |
|  Camden Co. GIS Parcels |  Perennial |
|  Streets |  Wetland |
|  Contours: 1 Ft |  Pond |



Project Name: Project Mermaid

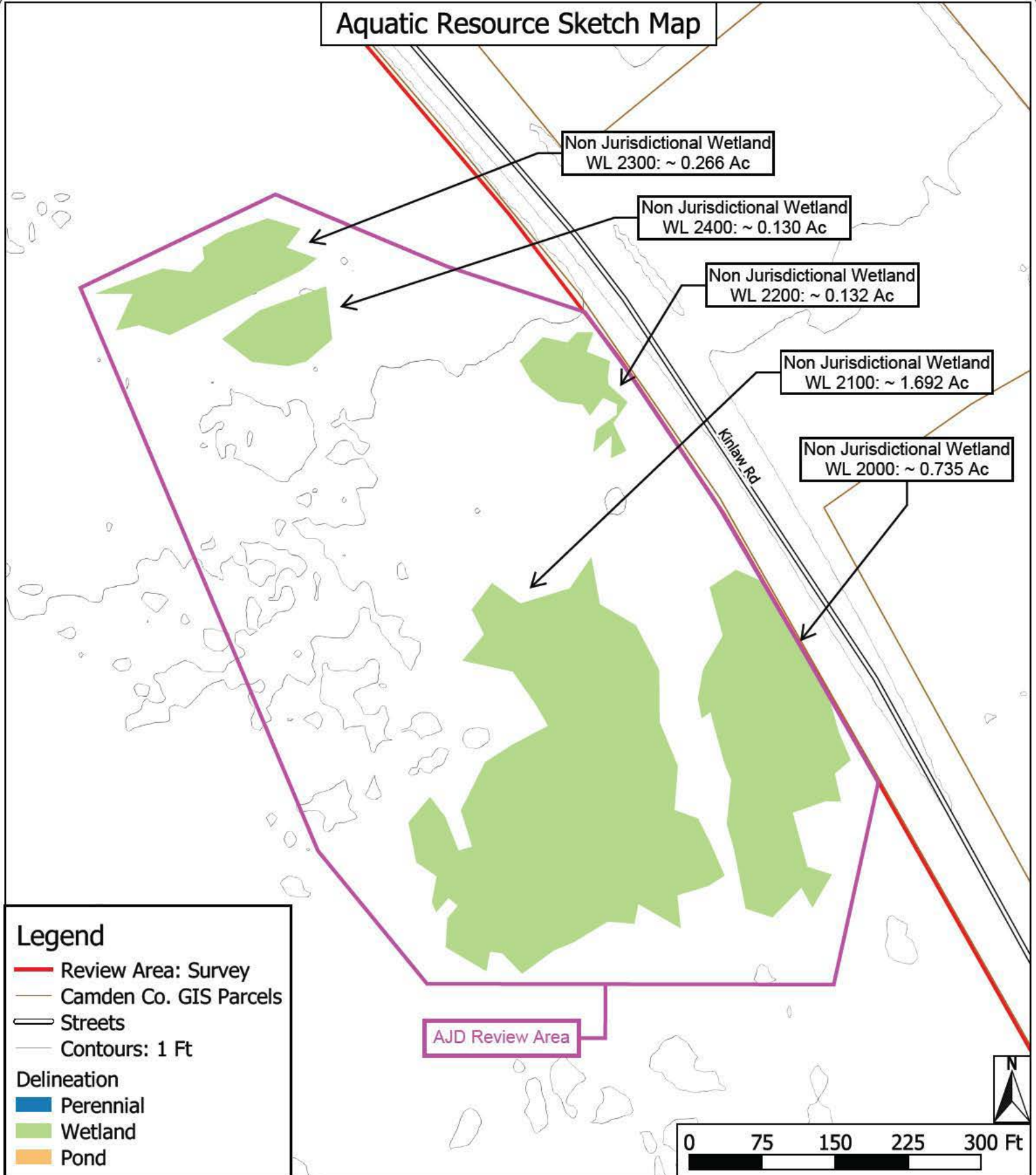
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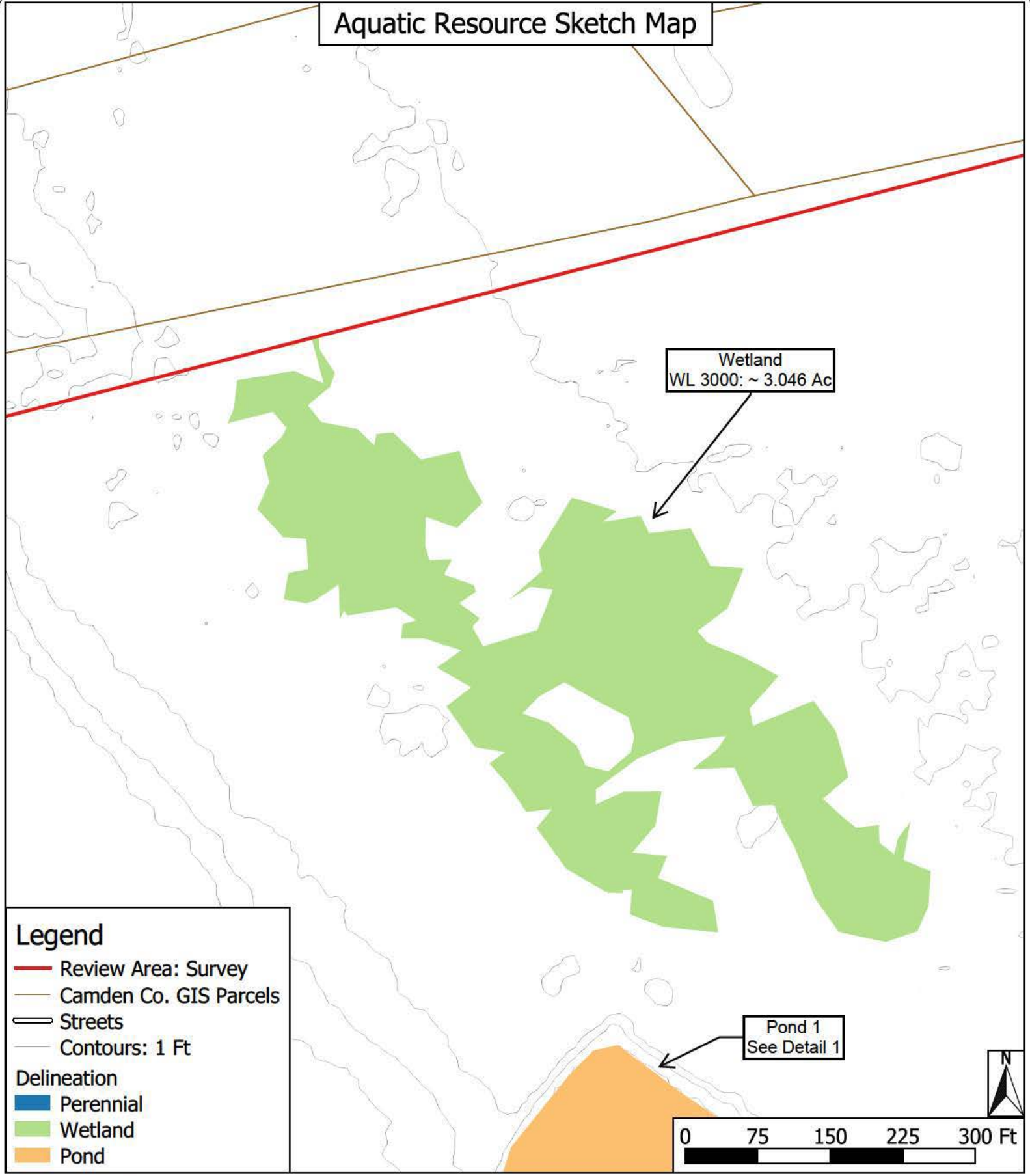
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Project Name: Project Mermaid

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For: QTR Kinlaw LLC Attn: Dan Lacz

Coordinates: 30.832909, -81.679754

Date: Feb. 05, 2024