



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAS DISTRICT
PIEDMONT BRANCH
4751 BEST ROAD SUITE 140
COLLEGE PARK GA 30337

CESAS-RDP

MARCH 5, 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 SAS-2011-01038 Walker County Business Park, 1 of 1²

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

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

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

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

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

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

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Georgia 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.

| Name of Aquatic Resource | JD or non-JD | Section 404/Section 10 |
|--------------------------|--------------------|------------------------|
| 2025 Pond 3 | Non-Jurisdictional | N/A |
| WA | Jurisdictional | Section 404 |
| WC | Jurisdictional | Section 404 |
| 2025 Pond 1 | Non-Jurisdictional | N/A |
| 2025 Pond 7 | Non-Jurisdictional | N/A |
| 2025 Pond 8 | Jurisdictional | Section 404 |
| WE | Jurisdictional | Section 404 |
| 2025 Pond 2 | Non-Jurisdictional | N/A |
| 2025 Pond 4 | Non-Jurisdictional | N/A |
| 2025 Pond 6 | Non-Jurisdictional | N/A |
| S1 | Jurisdictional | Section 404 |
| S7 | Non-Jurisdictional | N/A |
| WB | Jurisdictional | Section 404 |
| S5 | Jurisdictional | Section 404 |
| S6 | Jurisdictional | Section 404 |
| S9 | Non-Jurisdictional | Section 404 |
| S3R1 | Non-Jurisdictional | Section 404 |
| S3R2 | Jurisdictional | Section 404 |
| WH | Jurisdictional | Section 404 |
| WJ | Jurisdictional | Section 404 |
| WD | Jurisdictional | Section 404 |

| | | |
|-------------|--------------------|-------------|
| 2025 Pond 5 | Jurisdictional | Section 404 |
| S8 | Non-Jurisdictional | N/A |
| WF | Jurisdictional | Section 404 |
| S4 | Jurisdictional | Section 404 |
| WG | Jurisdictional | Section 404 |
| WI | Jurisdictional | Section 404 |
| S2 | Jurisdictional | Section 404 |
| S3 | Jurisdictional | Section 404 |

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.

- a. Project Area Size (in acres): 504-acre
- b. Location Description: The project review area is located west of US Highway 27, and approximately 1.7 miles north of Georgia Highway 136.
- c. Latitude: 34.777830, Longitude: 34.777830
- d. Nearest City or Town: LaFayette
- e. County: Walker
- f. State: Georgia
- g. Other associated Jurisdictional Determinations (including outcomes):

| Action ID | Type | Outcome |
|--|---------------------------|--|
| SAS-2011-01038 ORM Action ID: 8697101 | NWP 39/ NWP 33/ AJD | Six ponds were determined to be non-jurisdictional (isolated waters); three streams, one impoundment, and four wetlands were determined to be jurisdictional under the Rapanos AJD |

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

Name of nearest downstream TNW, Territorial Sea or interstate water: Coosa River, which is a TNW and an interstate water, located approximately 38-river miles downstream of the project area.

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

Streams S1-S6, and S3R2 were determined to be relatively permanent waters (RPW) that have a direct surface connection to Town Creek, a tributary of the Chattooga River, an RPW. The Chattooga River flows through Walker and Chattooga Counties before forming the confluence with the interstate water, Coosa River, at Weiss Lake located in Alabama. The Coosa River is a traditionally navigable water (TNW).

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷

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

⁶ 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.

⁷ 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. Traditional Navigable Waters (TNWs (a)(1): N/A

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

d. Impoundments (a)(4):

Pond 5 was observed within the western portion of the site with S3R1 identified downstream of the OCS. Based on the geomorphic position and location of Pond 5, this feature has a direct surface connection to a downstream rpw.

Pond 8 was observed within the southwestern portion of the site and drained into S1 (Town Creek) and WC. Based on the geomorphic position and location of Pond 8, this feature has a direct surface connection to a downstream rpw.

e. Tributaries (a)(5):

S1 (Town Creek) is a named perennial that begins in the south-central portion of the property and flows northeast for approximately 1,544 feet and continues off property to the east. According to the applicant's submitted information this feature displayed wretched vegetation with defined bed and bank and scored a 36 on the NCDWQ data sheet.

S2 is an unnamed perennial stream that begins at the eastern boundary of Wetland F (WF), and flows approximately 346 feet, and ends at the western boundary of Wetland E (WE). According to the applicant's submitted information this feature displayed a base flow and wretched vegetation and scored a 31.5 on the NCDWQ data sheet.

S3R2 is an unnamed perennial stream that begins at a seep at the end of S3R1. This feature flows east for approximately 370 feet and conflues with S1 (Town Creek) along the southeastern portion of the review area.

According to the applicant's submitted information this feature displayed a base flow and wretched vegetation and scored a 32.5 on the NCDWQ data sheet.

S4 is an unnamed perennial stream that begins at the property boundary south of the Audia Manufacturing plant. This stream flows southeast for approximately 639 feet and confluences with S1 (Town Creek). According to the applicant's submitted information this feature displayed a base flow and wretched vegetation and scored a 35 on the NCDWQ data sheet.

S5 is an unnamed feature that begins at the southern terminus of Wetland J (WJ) and extends approximately 337 feet to the northern portion of Wetland I (WI). According to this information provided base flow was not observed, however, hydric soils and wretched vegetation were observed, and this feature scored a 24 on the NCDWQ data sheet indicating this as an intermittent stream.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

WA is a palustrine forested (PFO)/palustrine emergent (PEM) located within the southwestern portion of the property. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included surface water, a high-water table, saturation near the surface, crayfish burrows, and geomorphic position. Dominant vegetation was comprised of soft rush (*Juncus effusus*). Soils within the wetland possessed prominent redox concentrations indicative of hydric soils and a depleted matrix (NRCS Hydric Soil Indicators F3 and F6).

WB is a PFO located within the southwestern forested portion of the property, just east of a residential development. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators for this feature included saturation near the surface, surface soil cracks, drainage patterns, and geomorphic position. Dominant vegetation was comprised of green ash (*Fraxinus pennsylvanica*), sweetgum (*Liquidambar styraciflua*), trumpet vine (*Campsis radicans*), and creeping jenny (*Lysimachia nummularia*). Soils

within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WC is a PEM located along the southeastern edge of Pond 8 and is located within a low-lying area that receives hydrology from Pond 8 during overflow after precipitation events. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included drainage patterns and geomorphic position. Dominant vegetation was comprised of soft rush. Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WD is a PEM located within a geomorphic low area north of S1 (Town Creek). According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included water-stained leaves, drainage patterns, crayfish burrows, and geomorphic position. Dominant vegetation was comprised of soft rush. Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WE is a PEM located downstream of S2 where the bed and bank are no longer discernable. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included drainage patterns and geomorphic position. Dominant vegetation was comprised of soft rush. Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WF is located upland of S2 and south of S1 (Town Creek). According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included drainage patterns and geomorphic position. Dominant vegetation was comprised of soft rush. Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WG is a PFO located within the eastern forested portion of the site. S4 flows north to south along the western boundary of WG. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included saturation near the surface, drainage patterns, and geomorphic position. Dominant vegetation was comprised of red maple (*Acer rubrum*), sweetgum, false nettle (*Boehmeria*

cylindrica), and shallow sedge (*Carex lurida*). Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WH is a PEM located within the western forested portion of the site. WG is located within a topographic low point south of S3R1. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included water-stained leaves, sparsely vegetated concave surface, drainage patterns, and geomorphic position. Dominant vegetation was comprised of Japanese stiltgrass (*Microstegium vimineum*) and pale smartweed (*Persicaria lapathifolia*). Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WI is a PEM located within the northeastern portion of the site. WI is located south of WJ and S5, and north of the Audia Manufacturing plant. A culvert was observed at the southern boundary of WI conveying flow below the plant. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included saturation near the surface and geomorphic position. Dominant vegetation was comprised of soft rush. Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

WJ is a PEM located within the northeastern portion of the site, positioned north of WI and S5. According to the applicant's submitted information, this feature met all of the wetland criterion indicators including hydrology, dominant vegetation, and soils. Wetland hydrology indicators included geomorphic position and the facultative (FAC)-neutral test. Dominant vegetation was comprised of pale smartweed and Frank's sedge (*Carex frankii*). Soils within the wetland possessed a depleted matrix (NRCS Hydric Soil Indicator F3).

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").⁸ 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.

⁸ 51 FR 41217, November 13, 1986.

Ponds 1, 2, 3, 4, and 7 were observed to be isolated farm ponds located within the site boundary. According to the applicant's submitted information, these features did not display or contain any inlet or outlet structures that would provide a direct surface connection from these ponds to downstream rpws.

- 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.

Pond 6 was identified as a former stormwater retention pond constructed to support the Audia Manufacturing Plant construction activities. This feature was measured to be approximately 0.33-acre in size.

- 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).

S3R1 was identified as originating at the outfall of Pond 5 located along the west-central portion of the property. S3R1 extends southeast for approximately 3,779 feet before transitioning into perennial stream S3R2. According to this information provided, S3R1 was observed to be dry and at times lacked a defined bed or bank. Base flow, wested vegetation, and other OHWM indicators were not observed within S3R2, and this feature scored a 14.25 on the NCDWQ data sheet indicating this as a non-rpw ephemeral stream.

S6 was identified as originating at the northern terminus of Wetland B within the southwest portion of the property. S6 extends northeast for approximately 195 feet and confluences with the western boundary of Wetland A (WA). According to this information provided, S6 was dry and base flow and wested vegetation were not observed and this feature scored a 16.5 on the NCDWQ data sheet indicating this as a non-rpw ephemeral stream.

S7 was identified as originating within the south-central forested portion of the property. S7 extends southeast for approximately 307 feet before converging with S3R1. According to this information provided, S6 was dry and base flow and wested vegetation were not observed and this feature scored a 12 on the NCDWQ data sheet indicating this as a non-rpw ephemeral stream.

S8 was identified as originating within the central forested portion of the property. S8 extends southeast for approximately 78 feet before converging with S3R1. According to this information provided, S6 was dry and base flow and wested vegetation were not observed and this feature scored a 16.5 on the NCDWQ data sheet indicating this as a non-rpw ephemeral stream.

S9 was identified as originating within the northwestern portion of the property. S9 extends northeast for approximately 494 feet and continues off property to the north. According to this information provided, S6 was dry and base flow and wested vegetation were not observed and this feature scored a 13.5 on the NCDWQ data sheet indicating this as a non-rpw ephemeral stream.

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): February 25, 2025.

2. Date(s) of Field Review (if applicable): Agent conducted field visit on June 12-13, 2024.

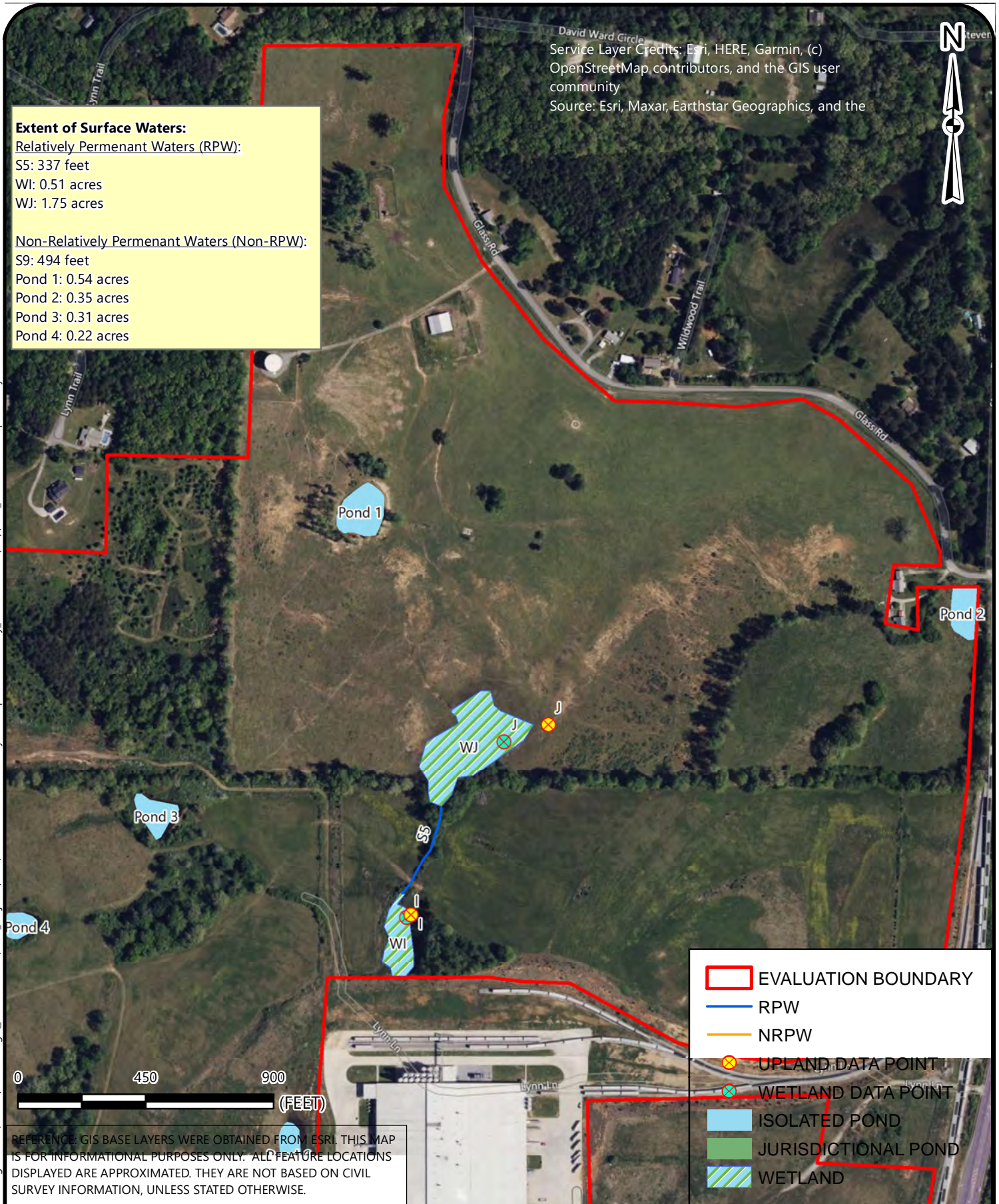
b. Data sources used to support this determination (included in the administrative record).

- ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: "Figure 5a-c: Potentially Jurisdictional Waters Map, Walker County Industrial Park, Walker County", dated June 24, 2024
- ☒ Photographs: Photo record from June 13, 2024, site visit, Photographs No 1-39.
- ☒ Aerial Imagery: Maxar, Global Enhanced GEOINT Delivery: Digital Earth Globe Tiled Aerial Imagery, date accessed February 25, 2025.
- ☒ LIDAR: National Regulatory Viewer (NRV), LiDAR with Hillshade layers, date accessed February 25, 2025.
- ☒ USGS topographic maps: USGS Website, Map Locator, NRV USGS topographic basemap date accessed February 25, 2025.
- ☒ USGS NHD data/maps: National Regulatory Viewer (NRV), NHD layer, data accessed February 25, 2025.
- ☒ Antecedent Precipitation Tool Analysis: Walker County Industrial Park APT results from June 13, 2024, completed February 25, 2025.
- ☒ Other sources of Information: U.S. Drought Monitor, Walker County, date accessed February 25, 2025, USGS StreamStats. WIM Tool date accessed February 25, 2025, National Regulatory Viewer (NRV), FEMA data layers, date accessed February 25, 2025.

10. OTHER SUPPORTING INFORMATION. N/A

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.

Drawing Path: R:\GIS\RA\Chattanooga\GIS PROJECTS\2024_Projects\IDW\23810306 Walker County Development Authority Industrial Park (GA)\FIG5_IDWATERS.mxd plotted by Karikennel 07-02-2024



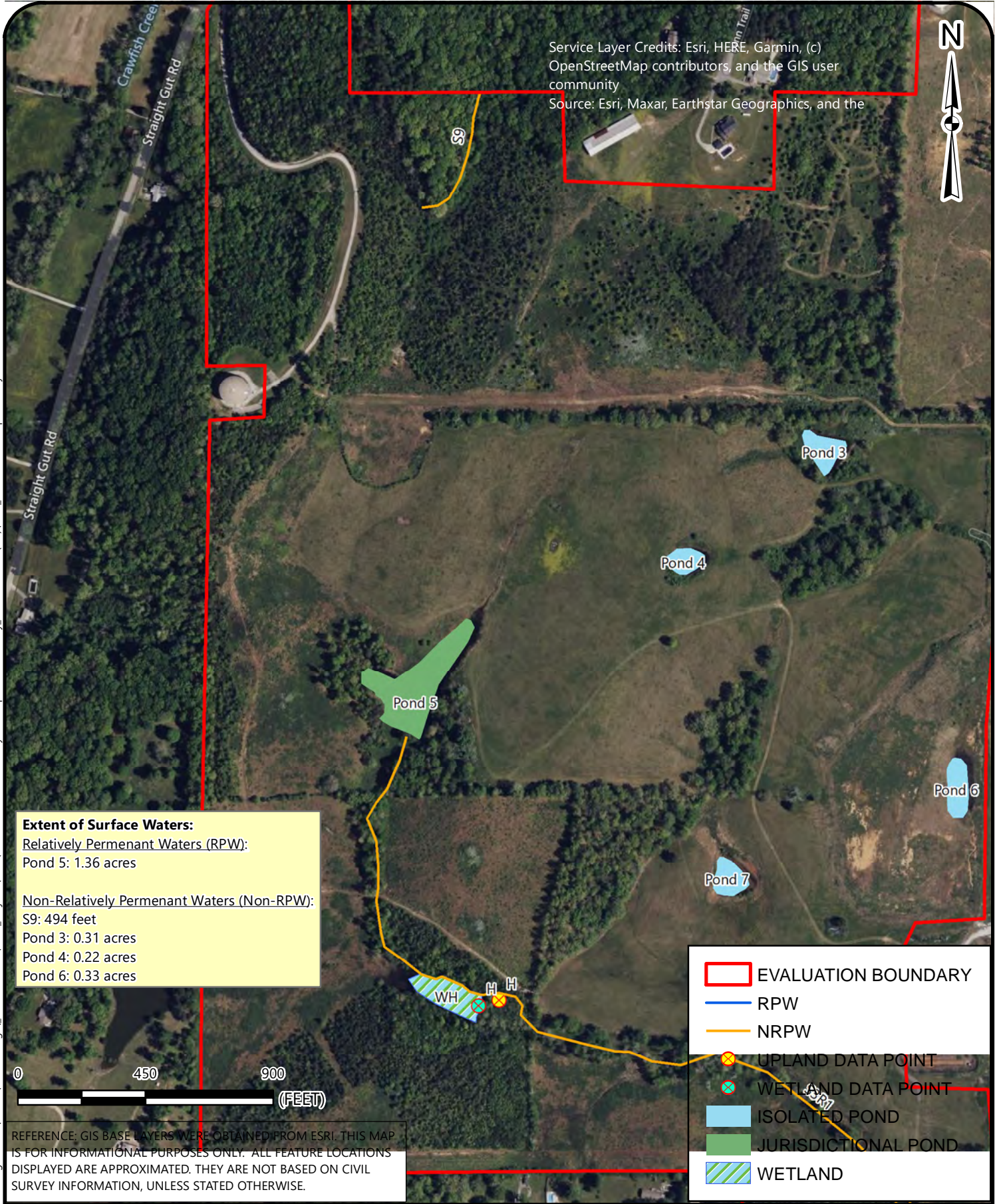
POTENTIALLY JURISDICTIONAL WATERS

WALKER COUNTY INDUSTRIAL PARK
LAFAYETTE, WALKER COUNTY, GEORGIA

SCALE:
1" = 450'
DATE:
7-2-2024
PROJECT NUMBER
23810306

FIGURE NO.
5a

Drawing Path: R:\GIS\Ref\Chattanooga\GIS PROJECTS\2024_Projects\IDW\23810306 Walker County Development Authority Industrial Park (GA)\FIG5_IDWATERS.mxd plotted by Karikennel 07-02-2024



POTENTIALLY JURISDICTIONAL WATERS

WALKER COUNTY INDUSTRIAL PARK
LAFAYETTE, WALKER COUNTY, GEORGIA

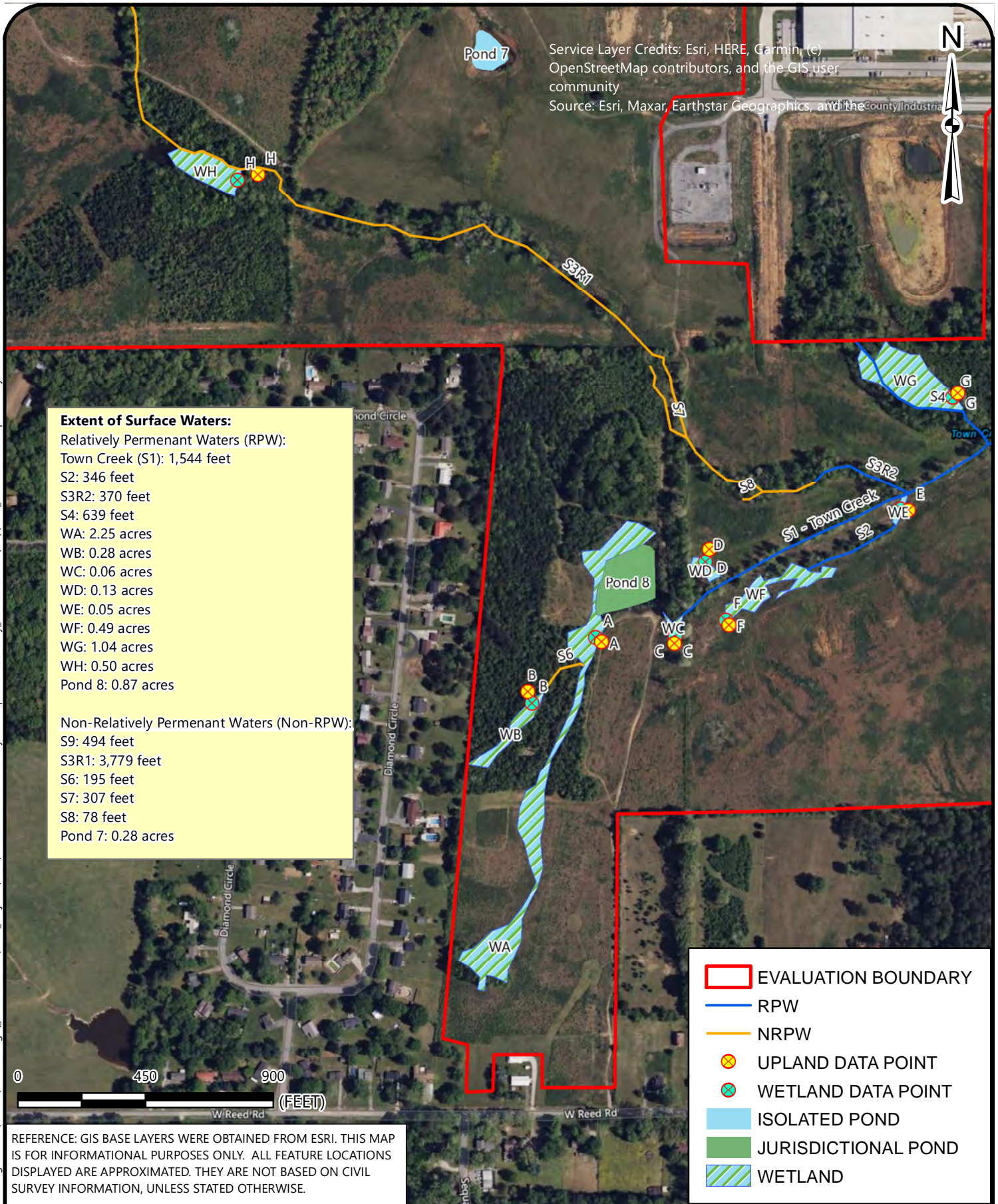
SCALE:
1" = 450'

DATE:
7-2-2024
PROJECT NUMBER
23810306

FIGURE NO.

5b

Drawing Path: R:\GIS\RA\Chattanooga\GIS PROJECTS\2024_Projects\IDW\23810306 Walker County Development Authority Industrial Park (GA)\FIG5_IDWATERS.mxd plotted by Karikennel 07-30-2024



POTENTIALLY JURISDICTIONAL WATERS

WALKER COUNTY INDUSTRIAL PARK
LAFAYETTE, WALKER COUNTY, GEORGIA

SCALE:
1" = 450'

DATE:
7-2-2024
PROJECT NUMBER
23810306

FIGURE NO.

5c