



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
4751 BEST ROAD
COLLEGE PARK, GEORGIA 30337

CESAS-RDP

2 July 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-2024-00226 (Ansley Golf Club at Settindown Creek, Cherokee County)

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. SUMMARY OF CONCLUSIONS.

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.

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- 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
Pond 1	Non-JD	N/A
Pond 2	JD	Section 404
Pond 3	Non-JD	NA
Pond 4	JD	Section 404
Pond 5	JD	Section 404
Pond 6	JD	Section 404
Irrigation Reservoir	Non-JD	N/A
Little River	JD	Section 404
S1	JD	Section 404
Wetland A	JD	Section 404
Wetland B	Non-JD	NA
Wetland C	Non-JD	NA
Wetland D	JD	Section 404
Wetland E	JD	Section 404
Wetland F	Non-JD	NA
Wetland G	JD	Section 404
Wetland H	JD	Section 404
Drainage Swale	Non-JD	NA

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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- A. Project Area Size (in acres): 173 acres**
- B. Center Coordinates of the Project Site (in decimal degrees)**
Latitude: 34.105244 Longitude: -84.421388
- C. Nearest City or Town: Roswell**

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D. County: Cherokee County

E. State: Georgia

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

A. Name of nearest downstream TNW, Territorial Sea or interstate water: The Coosa River, which is a TNW and an interstate water.

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. For interstate waters, based on a review several maps listed in Section 9 of this memorandum, the identified water is shown as an aquatic feature and crossing the interstate boundary of Georgia/Alabama.

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

Aquatic resources identified above that have a direct surface connection to Little River, a relatively permanent water (RPW). Little River is tributary to Allatoona Lake, and impoundment of the Etowah River, an RPW. The Etowah River flows to the Coosa River, a TNW.

The Ordinary High-Water Mark (OHWM) of Stream 1 was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks. The delineated jurisdictional 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 and are contiguous with the Stream 1.

A site visit was conducted on June 21, 2024, to determine potential direct surface connections from Wetland G to Rocky Creek. Wetland G only appeared to be connected to Rocky Creek by a non-relatively permanent

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water, identified as Drainage Swale, that meets the characteristics of having an OHWM. This feature scored a 16.5 on the NC Stream Identification form Version 4.11 on June 21, 2024, approximately 3.5-feet in width, 950 linear feet long, and appears to be a swale used to "remove water from the course" with managed flows from the golf course as described by the golf course superintendent. The majority of the ditch feature is outside of project area boundary. Additionally, the unnamed water treatment plant service road has culverted this feature.

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 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]

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.

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d. Impoundments (a)(4):

Name of Aquatic Resource	Size (in acres)	Rationale, including written Description of Lateral Limits or reference to an attached map showing the lateral limits	Method for determining lateral limits
Pond 2	0.85 acre	See attached delineation map entitled "Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This Pond is connected to Little River via a series of linear wetland features.	OHWL indicators and observed flow during site visit during, Historic aerials, limits identified by bulkhead locations.
Pond 4	1.57 acre	See attached delineation map entitled " Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This Pond is connected to Little River via a series of linear wetland features.	OHWL indicators and observed flow during site visit during, Historic aerials, limits identified by bulkhead locations.
Pond 5	1.16 acre	See attached delineation map entitled " Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This Pond is connected to Little River via a series of linear wetland features.	OHWL indicators and observed flow during site visit during, Historic aerials, limits identified by bulkhead locations.
Pond 6	0.61-acre	See attached delineation map entitled " Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This Pond is connected to Little River via a series of linear wetland features.	OHWL indicators and observed flow during site visit during, Historic aerials, limits identified by bulkhead locations.

e. Tributaries (a)(5):

Name of Aquatic Resource	Size (in acres)	Flow Regime and additional description of the tributary	Method for determining flow regime
S1	223 linear feet (0.23-acre)	See attached delineation map entitled " Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This intermittent stream directly flows Little River via a series of linear wetland features.	observed flow during site visit during, APT shows during time of delineation normal climatic precipitation conditions, SE SDAM, NCDWR stream identification form
Little River	2500 linear Feet 2.0 acres	See attached delineation map entitled " Figure 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View". This stream directly flows Little River via a series of linear wetland features.	observed flow during site visit during, APT shows during time of delineation normal climatic precipitation conditions, SE SDAM, NCDWR stream identification form

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

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g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
WA	0.35	Yes, Pond 2	This wetland feature receives hydrology from Pond 2, which is connected to Little River via a series of linear wetland features.
WD	0.67	Yes, stream 1	This wetland feature is contained to the lateral limits as maintained by the golf course, and directly flows into stream 1 which flows into Little River.
WE	0.15	Yes, Pond 5	This wetland feature is contained to the lateral limits as maintained by the golf course, receives hydrology from Pond 2, and flows into Pond 5, which is connected to Little River via stream 1.
WH	0.12	Yes, Pond 4	This wetland feature is located along the lacustrine fringe of and receives hydrology from Pond 4, which is connected to Little River via features off-site.
WG	1.55	Yes, Drainage Swale	Wetland G only appeared to be connected to Rocky Creek by a non-relatively permanent water, identified as Drainage Swale, that meets the characteristics of having an OHWM. This feature scored a 16.5 on the NC Stream Identification form Version 4.11 on June 21, 2024, is approximately 3-feet wide and 950-feet long before flowing into Rocky Creek via a culvert.

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.

Name of excluded feature	Size (in acres)	Specific exclusion a-e
Pond 1	0.2-acre	This pond was constructed as an artificial pond created by excavating or diking dry land to collect and retain water and which are used exclusively for aesthetic purposes, as verified by historic aerial imagery.
Pond 3	0.21-acre	This pond was constructed as an artificial pond created by excavating or diking dry land to collect and retain water and which are used exclusively for aesthetic purposes, as verified by historic aerial imagery.
Irrigation Reservoir	5.12 acres	This pond was constructed as an irrigation pond created by excavating or diking dry land to collect and retain water and which are used exclusively for aesthetic purposes, and may revert to uplands, as verified by historic aerial imagery.

⁷ 51 FR 41217, November 13, 1986.

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- 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]
- 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
WB	0.3	Depressional wetland lacks a continuous surface connection to water of the US. Based on desktop review and available resources, the feature does not have a direct surface connection to any RPW.
WC	0.19	Slope wetland lacks a continuous surface connection to water of the US. Based on desktop review and available resources, the feature does not have a direct surface connection to any RPW.
WF	0.17	Slope wetland lacks a continuous surface connection to water of the US. Based on desktop review and available resources, the feature does not have a direct surface connection to any RPW.

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Drainage Swale	950-linear feet (0.06-acres)	This feature scored a 16.5 on the NC Stream Identification form Version 4.11 on June 21, 2024, approximately 3.5-feet in width, 950 linear feet long. This is a non-RPW feature.
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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 6, 2024-June 10, 2024
- 2. Date(s) of Field Review (if applicable): Consultant Field Visit conducted on November 7-8, 2023
PM conducted site visit on June 21, 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 6: Ansley Golf Club- Settindown Creek Course, Site Waters Full View, received on March 6, 2024 and updated on June 21, 2024
 - Photographs:** Photolog, submitted by consultant Photograph No. 1-6. Supplemental photolog taken by PM dated June 21, 2024
 - Aerial Imagery:** Maxar, Global Enhanced GEOINT Delivery: Digital Earth Globe Tiled Aerial Imagery, date accessed June 10, 2024.
 - LIDAR:** National Regulatory Viewer (NRV), LiDAR with Hillshade layers, date accessed June 7, 2024.
 - USGS topographic maps:** USGS Website, Map Locator, NRV USGS topographic basemap date accessed April 19, 2024.
 - USGS NHD data/maps:** National Regulatory Viewer (NRV), NHD layer, data accessed June 7, 2024.
 - Antecedent Precipitation Tool Analysis:** SAS-2024-00029 APT document of November 7, 2023, accessed on June 10, 2024, APT document of June 21, 2024, accessed July 2, 2024
 - Other sources of information:** U.S. Drought Monitor, Fulton County, date accessed March 13, 2024; USGS StreamStats WIM Tool date accessed June 10, 2024, National Regulatory Viewer (NRV), FEMA data layers, date accessed June 10, 2024.

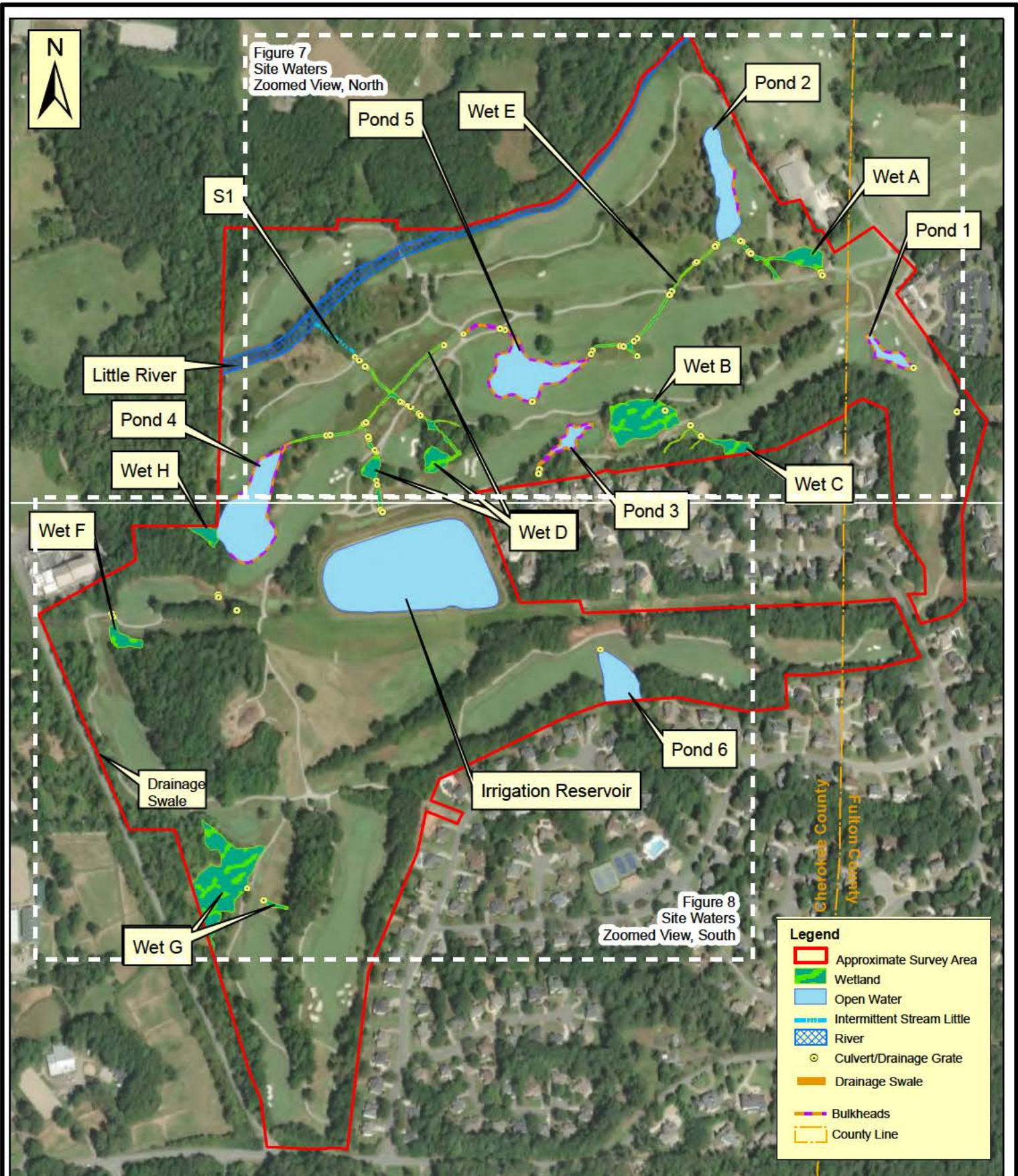
10. OTHER SUPPORTING INFORMATION. N/A

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

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



Base Map Source: ESRI Aerial Imagery Survey Date:
November 7-8, 2023, Updated June 21, 2024

1:6,500

0 325 650 1,300 Feet

**Anasley Golf Club -
Settindown Creek Course
City of Roswell and
Cherokee County, Georgia**

**Figure 6
Site Waters, Full View
Project No. 02-060523**