



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

SAS-OD-RD

September 23, 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-2024-00127

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-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

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).

Wetland ID	JD or Non-JD	Section 404/Section 10
A	JD	Section 404
AA	JD	Section 404
AB	JD	Section 404
AC/I/J	JD	Section 404
B	Non-JD	N/a
C	Non-JD	N/a
D	JD	Section 404
E/F/G	JD	Section 404
H	Non-JD	N/a
K	Non-JD	N/a
L	Non-JD	N/a
M/N	JD	Section 404
O	JD	Section 404
P	JD	Section 404
Q	Non-JD	N/a
R/S/T	JD	Section 404
V/W	JD	Section 404
X	JD	Section 404
Y	JD	Section 404
Z	JD	Section 404
Water Body ID	JD or Non-JD	Section 404/Section 10
Stream 1	JD	Section 404
Stream 2	JD	Section 404
Stream 3	Non-JD	N/a
Stream 4, 5 and 28	Non-JD	N/a
Stream 6	Non-JD	N/a
Stream 7	JD	Section 404
Stream 8	JD	Section 404
Stream 9	JD	Section 404
Stream 10	JD	Section 404
Stream 11	JD	Section 404
Stream 12	Non-JD	N/a
Stream 13	JD	Section 404

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Stream 14	Non-JD	N/a
Stream 15	JD	Section 404
Stream 16	Non-JD	N/a
Stream 17	JD	Section 404
Stream 18	Non-JD	N/a
Stream 19	JD	Section 404
Stream 20	JD	Section 404
Stream 21	JD	Section 404
Stream 22	JD	Section 404
Stream 23	JD	Section 404
Stream 24	Non-JD	N/a
Stream 25	Non-JD	N/a
Stream 26	JD	Section 404
Stream 27	JD	Section 404
Open Water D	JD	Section 404
Open Water U	JD	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. __, 143 S. Ct. 1322 (2023)
- e. 2008 Rapanos Guidance
- f. Joint Decision Memo for LRB-2023-00451, dated 9/2/2024
- g. Joint Decision Memo for MVS-2023-00288, dated 2/16/2024

3. REVIEW AREA.

- A. Project Area Size (in acres): 857.15
- B. Center Coordinates of the Project Site (in decimal degrees)

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Latitude: 32.613508, Longitude: -82.395753

C. Nearest City or Town: Swainsboro

D. County: Emanuel

E. State: Georgia

F. Any additional, relevant site-specific information: The site has been managed for timber historically. The most recent timber harvest has been between October 2022 and November 2023 based on the review of historical imagery from Google Earth.

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 Little Ochoopee River, which is a TNW, is approximately 1.15 miles to the west of the project 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)).

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

Jurisdictional tributaries: Streams 8, 21, 23, 26 and 27 are relatively permanent water (RPW) and are unnamed tributaries to the Yam Grandy Creek (Stream 20), an RPW. Yam Grandy Creek is a tributary to the Little Ochoopee River, a traditionally navigable water (TNW).

Jurisdictional tributaries: Streams 1, 2, 7 and 9 are relatively permanent water (RPW) and are unnamed tributaries to the Little Ochoopee River, a traditionally navigable water (TNW).

Jurisdictional tributaries: Streams 10, 11, 13, 15, 17 and 19 are relatively permanent water (RPW) and are unnamed tributaries to the Rocky Creek, an RPW. Rocky Creek is a tributary to the Little Ochoopee River, a traditionally navigable water (TNW).

All the tributaries determined to be jurisdictional had an observed Ordinary High-Water Mark (OHWM), which was determined by the following physical

characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

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 and are contiguous or abutting (adjacent) to the tributary (see adjacency determinations below).

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.

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
Open Water D	3.83	The open water feature is an impoundment of stream 17. There is an outfall present that continues flow out of the impoundment to Stream 17. Stream 17 is an RPW, that flows into Rocky Creek (an RPW), that is a tributary to the Little Ohoopsee River, a TNW.	An OHWM was observed along the open water feature with the presence of water in the feature along with an abrupt change in vegetation and impression along the banks of the feature.

e. Tributaries (a)(5):

Name of Aquatic Resource	Size length in feet	Flow Regime and additional description of the tributary	Method for determining flow regime
Stream 1	406	Tributary is an RPW that is located at the southern boundary of the review area is abutted by Wetland T on both sides. Tributary is an UNT to the Ohoopsee River. The tributary flows north to south for 406 feet before it loses channelization and continues to flow through wetland T for 1,380 feet and crosses through a culvert under an existing logging road and is connected to Wetland R and continues flow through wetland R for 580 feet before continuing west outside of the review area. The wetland system continues 5,800 feet west where it flows into Little Ohoopsee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 2	793	Tributary is an RPW that is located at the southern boundary of the review area and is abutted by Wetland T on both sides. Tributary is an UNT to the Ohoopsee River. The tributary flows north to south for 793 feet before it loses channelization and continues to flow through wetland T for 1,270 feet and crosses through a culvert under an existing logging road and is connected to Wetland R and continues flow through wetland R for 580 feet before continuing west outside of the review area. The wetlands system continues 5,800 feet west where it flows into Little Ohoopsee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Stream 7	4203	Stream is an RPW that is located within the southern boundary of the review area abutted by Wetland Y on both sides. Stream is an UNT to the Ohoopee River. The stream flows east to west for 4,203 feet and continues to flow west outside of the review area. The stream flows for 450 feet and crosses under Old McLeod Bridge Road through a culvert and continues to flow for an additional 5,030 feet west where it flows into Little Ohoopee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 8	2283	Tributary is an RPW located at the southeastern corner of the review boundary and is abutted by Wetland P on both side. The tributary flows east to west for 2,283 feet where it exits the property to the south through a culvert under Old McLeod Road and continues to flow southwest for 400 feet before entering a system of 2 impoundments of the tributary. These impoundments are approximately for 1,000 feet in length and the impoundments outfall into the tributary and continues to flow for 420 feet where the tributary confluences with the Yam Grandy (RPW). See the flow regime flow description below for Stream 20 for Stream 8's flow path to the nearest TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 9	126	Stream is an RPW that is located within the southwestern boundary of the review area and is abutted by Wetland AA on both sides. Stream is an UNT to the Ohoopee River. The stream flows east to west for 126 feet and loses channelization and continues to flow within Wetland AA. Wetland AA continues for 64 feet and continues west outside of the review area. The wetland continues to flow for 5,700 feet where it flows into Little Ohoopee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 10	515	Stream is an RPW that is located along the western boundary of the review area and is abutted by Wetland N on both sides. Stream is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopee River, a TNW. The stream flows south to north for 515 feet and confluences with Stream 11. Stream 10's flow path follows Stream 11's flow path to the Little Ohoopee River, a TNW (see flow path below).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Stream 11	1611	Stream is an RPW that is located along the western boundary of the review area and is abutted by Wetland N on both sides. Stream is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopsee River, a TNW. The stream flows south to north for 1,611 feet before exiting the project review. The tributary continues outside the review area 215 feet where it confluences with Stream 13. The tributary then continues for 1,950 feet and confluences with Rocky Creek. Rocky Creek continues to flow for 8,400 feet and confluences with Little Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 13	2042	Stream 13 is a 2 nd order stream as a result of the 2 1 st order streams Stream 16 and 14 confluencing and creating stream 13. 205 feet of the 2042 feet reach is classified as being a non-RPW while the remaining 1,837 feet is classified as being a RPW. Thus a majority of Stream 13 is identified as being an RPW and the entire 2042 foot stream is jurisdictional. The tributary is located along the western boundary of the review area and is abutted by Wetland M on both sides. Stream is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopsee River, a TNW. The stream flows south to north for 2,042 feet within the review and continues for 740 feet outside the review area before it confluences with Stream 11 another RPW, that is an UNT Rocky Creek. From this confluence Stream 11 flows for 1,190 before it flows into an UNT to Rocky Creek, an RPW. The tributary then continues for 1,950 feet and confluences with Rocky Creek. Rocky Creek continues to flow for 8,400 feet and confluences with Little Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 15	312	Stream is an RPW that is located along the western boundary of the review area and is abutted by Wetland M on both sides. Stream is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopsee River, a TNW. The stream flows for 312 feet within the review area boundary and continues an additional 2,000 feet outside of the review area and confluences with Rocky Creek. Rocky Creek continues to flow for 8,400 feet and confluences with Little Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.

Stream 17	1423	The tributary is an RPW that is located along the western boundary of the review area and is abutted by Wetland E on both sides and is a continuation of the outfall from Open Water D. The tributary is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopsee River, a TNW. The stream flows for 1,423 feet within the review area boundary and continues an additional 100 feet outside of the review area and confluences with Stream 19. Stream 19 continues for 1,900 feet and confluences with a UNT to Rocky Creek. This UNT continues for 5,000 feet where it confluences with Rocky Creek, which is a tributary to Little Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 19	1872	The tributary is an RPW that is located along the western boundary of the review area and is abutted by Wetland F on both sides. The tributary is an UNT to the Rocky Creek, an RPW, that is a tributary to the Little Ohoopsee River, a TNW. The stream flows for 1,872 feet within the review area boundary and continues an additional 5,166 feet outside of the review area and confluences with a UNT to Rocky Creek. This UNT continues for 5,000 feet where it confluences with Rocky Creek, which is a tributary to Little Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 20	12889	The stream is an RPW and is known as Yam Grandy Creek. The stream flows north to south for 12,889 feet through the eastern boundary of the review area. The stream continues to flow south outside of the review area for 14.74 miles before it flows into the Ohoopsee River, a TNW.	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: observed substantial perennial flow within a defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 21	66	The tributary is an RPW and is a tributary to Stream 20 (Yam Grandy Creek). The tributary flows north to southwest for a total of 66 feet where it confluences with Stream 20. It follows the aforementioned flow path of Stream 20 to the Little Ohoopsee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Stream 22 Stream 23	112 110	Streams 22 and 23 are the same tributary to Stream 20 (Yam Grandy Creek). The stream is an RPW that is abutted by Wetland A on both sides of the stream and flows for a total of 311 feet where it confluences with Stream 20. It follows the aforementioned flow path of Stream 20 to the Little Ohoopee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: observed flow within a defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.
Stream 26 Stream 27	1321 1003	Streams 26 and 27 are the same tributary to Stream 20 (Yam Grandy Creek). The stream is an RPW that flows east to west for 1,321 feet before flowing through a culvert under an existing access and continues for 1,003 feet where it confluences with Stream 20. It follows the aforementioned flow path of Stream 20 to the Little Ohoopee River (a TNW).	During site visit the Corps observed evidence of an Ordinary High-Water Mark that were defined by the following characteristics: flowing water was observed within defined bed and bank, absence of vegetation and natural line impressed along the bank along with flow during site visit during normal precipitation conditions.

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

g. Adjacent wetlands (a)(7):

Name of Aquatic Resource	Size (in acres)	Contiguous with or abutting? If so, list water	Describe continuous surface connection
A	192.74	Yes, Stream 20 (Yam Grandy Creek, (RPW))	Wetland abuts and is contiguous with Stream 20 (Yam Grandy Creek) that is an RPW, tributary to the Little Ohoopee River (a TNW). See Stream 20 agency flow path.
AA	0.99	Yes, Unnamed Tributary to Little Ohoopee River (RPW)	Wetland AA is located on the western boundary of the review area. The wetland continues offsite to the west where abuts and is contiguous with an UNT to Little Ohoopee River. The UNT continues to flow for 3,459 feet before flowing through a culvert under McCleod Bridge Road and continues to flow for an additional 2,058 feet. Perennial flow was observed at the culvert crossing to show the UNT was an RPW.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

AB	32.14	Yes, Unnamed Tributary to Little Ohoopee River (RPW)	Wetland AB abuts and is contiguous with Stream 9, an RPW, that continues to flow through Wetland AA. Wetland AA continues offsite where it abuts and is contiguous with an UNT to Little Ohoopee River. Please see Wetland AA for continuation of flowpath to the Little Ohoopee River (TNW).
D	3.77	Yes, impoundment Open Water D (RPW)	Wetland D abuts and is contiguous with Open Water D, an impoundment of Stream 17, an RPW. Wetland D's flow path follows Stream 17's flowpath to the Little Ohoopee River, a TNW, refer to Section 5.e above.
E F G	1.74 4.46 0.68	Yes Stream 17, an UNT to Rocky Creek (RPW)	<p>After review of LiDAR, aerial imagery and contours Wetland E, F and G are part of the same wetland system and function together as one large wetland. These wetlands are located in the northwest quadrant of the review boundary. All three wetlands are identified and delineated within the review area but continue offsite outside of the review area.</p> <p>Wetland F abuts and is contiguous with Stream 19. Stream 19 is an RPW that is an UNT to Rocky Creek and flows northeast to southwest.</p> <p>Wetland E abuts and is contiguous with Stream 17, an RPW that flows east to west and continues west outside of the review area for 100 feet before confluenting with Stream 19.</p> <p>Wetland G is located to the south of wetland E and continues offsite for 785 feet before it abuts and is contiguous with Stream 19.</p> <p>This wetland system is contiguous and abuts Stream 19 and Stream 17 and have a defined flowpath to the Little Ohoopee River, a TNW, refer to Section 5.e above for the flowpath outlined in Stream 19.</p>

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

AC I J	0.20 0.93 42.16	Yes, Unnamed Tributary to Rocky Creek (RPW)	Wetland AC, I and J all function as one large wetland system. Wetland boundaries were confirmed onsite within the review area and wetlands were observed to continue offsite outside of the review area. Review of aerial imagery, lidar and contours show the wetlands continue offsite outside of the review area and are part of one large wetland system that abuts an RPW, UNT to Rocky Creek. The tributary can be seen on aerial imagery and flows east to west for 5,000 feet where it confluent with Rocky Creek, an RPW, that is a tributary to the Little Ohoopee River, a TNW.
M N	11.69 7.93	Yes, Streams 11 and 13 (both are RPWs)	<p>Wetlands M and N are connected and function as one wetland system. Both wetlands were delineated within the review area and abut RPWs and continue from south to north where they connect offsite outside of the review area.</p> <p>Wetland M abuts and is contiguous with Stream 13. Stream 13 is an RPW, that flows south to north within the review area for 2,042 feet and then continues outside the review for 1,980 feet before flowing into an UNT to Rocky Creek, an RPW. This UNT to Rocky Creek then flows for 2,300 feet before confluent with Rocky Creek, an RPW that is a tributary to the Little Ohoopee River.</p> <p>Wetland N abuts and contiguous with Stream 11, an RPW. Stream 11 flows north to south within the review area for 1,611 feet and continues outside the review area for 250 feet before flowing into the aforementioned Stream 13.</p>

O	0.62	Yes, UNT to Yam Grandy Creek (RPW)	<p>Wetland O is located on the eastern boundary of the review area. The wetland flows east through a 316-foot culvert under U.S. Highway 1 where it continues to flow east for 1,500 feet and confluences with an UNT to Yam Grandy Creek.</p> <p>The UNT flows south for 1,909 feet before entering an impoundment of the UNT. The impoundment outfalls into the UNT and flows for 2,000 feet before entering another impoundment.</p> <p>This large impoundment is on an UNT to Yam Grandy Creek that flows east to west. The impoundment outfalls into this UNT and crossing under U.S. Highway 1 through a 320-foot culvert and flows for 5,600 feet before confluencing with Yam Grandy Creek, a tributary to the Little Ohoopsee River, a TNW.</p>
P	8.87	Yes, Stream 8 (RPW)	<p>The wetland is located in the southeast quadrant of the review area. It abuts and is contiguous with Stream 8, an RPW, that flows east to west for 2,283 feet before continuing outside of the review area. The tributary leaves the review area flowing through a 35-foot culvert under Robin Road. Once the tributary flows out of the culvert it continues to flow for 300 feet and enters two impoundments that outfall and continue the tributary's flow for 240 feet before flowing into Yam Grandy Creek (Stream 20), a RPW that is a tributary to the Little Ohoopsee River. Please refer to section 5.e. for the description of the flowpath of the Yam Grandy to the Little Ohoopsee River.</p>
R S T	3.32 2.11 43.22	Yes, an UNT to the Little Ohoopsee River (RPW)	<p>Wetlands R, S and T are all functioning together as one wetland system. The Wetland Delineation Map shows Wetland T and R being separated by a road. These wetlands are connected via a 15-foot culvert and functioning as one wetland. Wetland S is also shown to be separated from Wetland R by a road and are connected by a culvert and functioning as one wetland. This large wetland system continues outside of the area to the west where it abuts an UNT to Little Ohoopsee River, an RPW. This tributary flows east to west for 5,600 feet and confluences with the Little Ohoopsee River, a TNW.</p>

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

V W	0.26 0.82	No	Wetlands V and W are connected through a culvert under Robin Road and function as one larger wetland system. Wetland V is located to the north of Robin Road and continues to flow south under Robin Road and continues into Wetland W. Wetland W then continues it to flow southeast where it connects to a CSC (Ephemeral Stream 6). Ephemeral Stream 6 lacked relatively permanent flow thus not being a jurisdictional tributary. However, it does qualify as a CSC as it is a discrete feature that provides a connection during high flow events from Wetland W. Stream 6 continues southeast for 204 feet where it connects to Wetland X. Wetland X is a jurisdictional wetland that continues outside the review area and abuts an UNT to Little Ohoopsee River, RPW that flows for 1,000 feet and continues through a 50-foot culvert under old McLeod Road. The tributary continues for 400 feet where it confluent with another UNT to the Little Ohoopsee River, RPW. This tributary flows east to west for 4,600 feet and confluent with the Little Ohoopsee River, a TNW
X	0.15	Yes, an UNT to the Little Ohoopsee River (RPW)	Wetland X is a jurisdictional wetland that continues outside the review area and abuts an UNT to Little Ohoopsee River, RPW that flows for 1,000 feet and continues through a 50-foot culvert under old McLeod Road. The tributary continues for 400 feet where it confluent with another UNT to the Little Ohoopsee River, RPW. This tributary flows east to west for 4,600 feet and confluent with the Little Ohoopsee River, a TNW
Y	34.98	Yes Stream 7 (RPW)	Wetland Y abuts and is contiguous with Stream 7, an RPW. Stream 7 and Wetland Y flows east to west and continues outside the review for 210 feet before flowing through a 55-foot culvert under Old McLeod Road and continues for an additional 210 feet before confluent with an UNT to the Little Ohoopsee River. This tributary flows east to west for 4,859 feet and confluent with the Little Ohoopsee River, a TNW.

Z	24.4	Yes, Little Ohoopsee River (RPW)	Wetland Z abuts and is contiguous with Ephemeral Stream 12, which lacked relatively permanent flow. Both Wetland Z and Stream 12 continue west outside of the review area. Review of aerial imagery shows Wetland Z and Stream 12 continues through a powerline easement for 208 feet and then continues for 6,360 feet where the wetland and stream abut and confluence respectively to the Little Ohoopsee River (TNW).
Open Water U	3.06	No	Open Water U is manmade pond that has an outfall that flows directly into Wetland AB. Wetland AB is a jurisdictional wetland that has an uninterrupted flow path to the Little Ohoopsee River (TNW). See adjacency determination for Wetland AB for flow path to Little Ohoopsee River for Open Water U.

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**
- 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**

⁷ 51 FR 41217, November 13, 1986.

- 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 Aquatic Resource	Size (in acres)	Description of why Aquatic Resource is non-jurisdictional
B	1.79	Wetland B is a depressional wetland and is surrounding by higher elevation uplands. There is no discrete feature that would constitute a CSC to connect the wetland to a requisite water, thus the wetland is Non -Jurisdictional.
C	0.28	Wetland C is a depressional wetland and is surrounding by higher elevation uplands. There is no discrete feature that would constitute a CSC to connect the wetland to a requisite water, thus the wetland is non-jurisdictional.
H	0.92	Wetland H is connected to Ephemeral Stream 24. Stream 24 was field verified in lacking relatively permanent flow. The feature continues southwest where it loses channelization at a logging access and sheet flows over the area. Stream 24 does not have a continuous connection to JD Wetland J, thus severing the continuous connection needed to consider Wetland H Jurisdictional.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

K	0.36	Wetland K is connected to Ephemeral Stream 25. Stream 25 was field verified in lacking an OHWM and not being considered an aquatic resource and only flows during response to storm events. The feature continues northwest where it loses channelization and sheet flows through uplands between this feature and Wetland AC. Stream 25 does not have a continuous connection to JD Wetland AC, thus severing the continuous connection needed to consider Wetland K Jurisdictional.
L	0.23	Wetland L is a depressional wetland and is surrounding by higher elevation uplands. There is no discrete feature that would constitute a CSC to connect the wetland to a requisite water, thus the wetland is non-jurisdictional.
Q	0.71	Wetland Q is a depressional wetland and is surrounding by higher elevation uplands. There is no discrete feature that would constitute a CSC to connect the wetland to a requisite water, thus the wetland is non-jurisdictional.
Name of Aquatic Resource	Size (in Linear Feet)	Description of why Aquatic Resource is non-jurisdictional
Stream 3	300	Stream 3 is a relic overflow channel from intermittent stream 2. The stream begins at Stream 2 and continues for 300 feet before it abuts and dissipates into Wetland T. The channel was an eroded channel that showed evidence of scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was vegetation observed growing in some areas of the "stream bed". Due to not having relatively permanent flow this is not a jurisdictional tributary.

Stream 4 Stream 5 Stream 28	558 1971 65	Channel 28 is a first order stream that that is a Non-RPW and begins within the review area and flows 65 feet before exiting the review area for 259 feet and reentering the review area as Stream 5 (as depicted on the Wetland Delineation Maps). Stream 5 (also stream 28) flows for 1971 feet before it confluences into Stream 4 (an RPW). Stream 4 is also part of the same first order stream and is classified as an RPW that is located at the southern boundary of the review area abutted by Wetland T on both sides. The tributary flows north to south for 558 feet before it loses channelization in wetland T. Both non-RPW channels were an eroded channel that showed evidence or scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow within the stream channel. There was non-hydrophytic vegetation observed growing in some areas of the "stream bed". Due to Stream's 4, 5 and 28 all being the same stream order they were assessed as one representative reach totaling 2,594. Since 78% of this reach is identified as a non-RPW the entire reach is a non-RPW and thus non-Jurisdictional.
Stream 6	204	Stream 6 begins at the southern border of Wetland W and flows south for 204 feet and abuts directly into Wetland X. The channel was an eroded channel that showed evidence or scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was non-hydrophytic vegetation observed growing in some areas of the "stream bed". Due to not having relatively permanent flow this is not a jurisdictional tributary.
Stream 12	1847	Channel 12 is abutted by Wetland Z and flows 1,847 feet east to west before exiting the review area. Channel was an eroded channel that showed evidence or scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was non-hydrophytic vegetation observed growing in some areas of the "stream bed". Due to not having relatively permanent flow this is not a jurisdictional tributary.

SAS-OD-RD

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2024-00127

Stream 14	498	Stream 14 is abutted by Wetland M and flows 498 feet north before confluencing with Stream 16. The channel was an eroded channel that showed evidence of scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was non-hydrophytic vegetation observed growing in some areas of the "stream bed". Due to not having relatively permanent flow this is not a jurisdictional tributary.
Stream 16	531	Stream 16 is abutted by wetland M and flows for 531 feet before it confluences with Stream 14 creating Stream 13. The channel was an eroded channel that showed evidence of scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was vegetation observed growing in some areas of the "stream bed". Due to not having relatively permanent flow this is not a jurisdictional tributary.
Stream 18	385	Stream 18 is a dry channel surrounded by wetlandsThe channel flows for 385 feet within Wetland J and loses channelization as it continues through Wetland J. Channel was an eroded channel that showed evidence of scour along banks indicating high energy flows in response to rain events. There is no evidence of relatively permanent flow with the stream channel. Due to not having relatively permanent flow this is not a jurisdictional tributary.

Stream 24	201	Stream 24 is a dry channel that begins at Wetland H and “flows” southwest where it loses channelization and sheet flows over an existing access road. Channel was an eroded channel that showed evidence or scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. There was vegetation observed growing in some areas of the “stream bed”. Due to not having relatively permanent flow this is not a jurisdictional tributary.
Stream 25	255	Stream 25 begins on the northern edge of Wetland K and flows 255 feet before loses channelization and sheet flows over uplands. The channel was an eroded channel that showed evidence or scour along banks indicating high energy flows in response to rain events. There is little to no sediment sorting and no evidence of relatively permanent flow with the stream channel. The stream bed consisted of dry dirt with leaf litter and pines needles throughout the stream bed. Due to not having relatively permanent flow this is not a jurisdictional tributary.

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): April 2024, September 2024
2. Date(s) of Field Review (if applicable): 05/22/2024
- 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 1 Location Map dated 6/24/2024; Figures 6 – 10 Wetland Delineation Map, dated 7/1/2024
 - ☒ Aerial Imagery: Google Earth Images, dated 1999, 2005, 2022, 2024
 - ☒ LIDAR: Lidar maps were generated in ARCGIS Pro and the data was downloaded from <https://coast.noaa.gov/>. Maps using this data include: Hillshade-Lidar-Contours of Northern Portion of Review Area, Hillshade-Lidar-Contours of Southern Portion of Review Area, Lidar Map, Hillshade-Lidar Map
 - ☒ USDA NRCS Soil Survey: NRCS WebsoilSurvey dated 9/18/2024

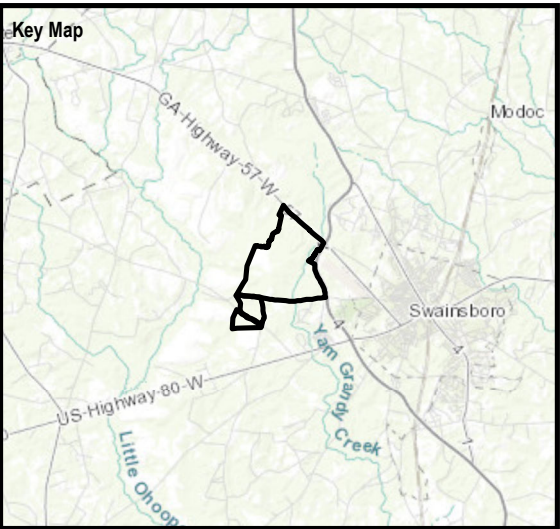
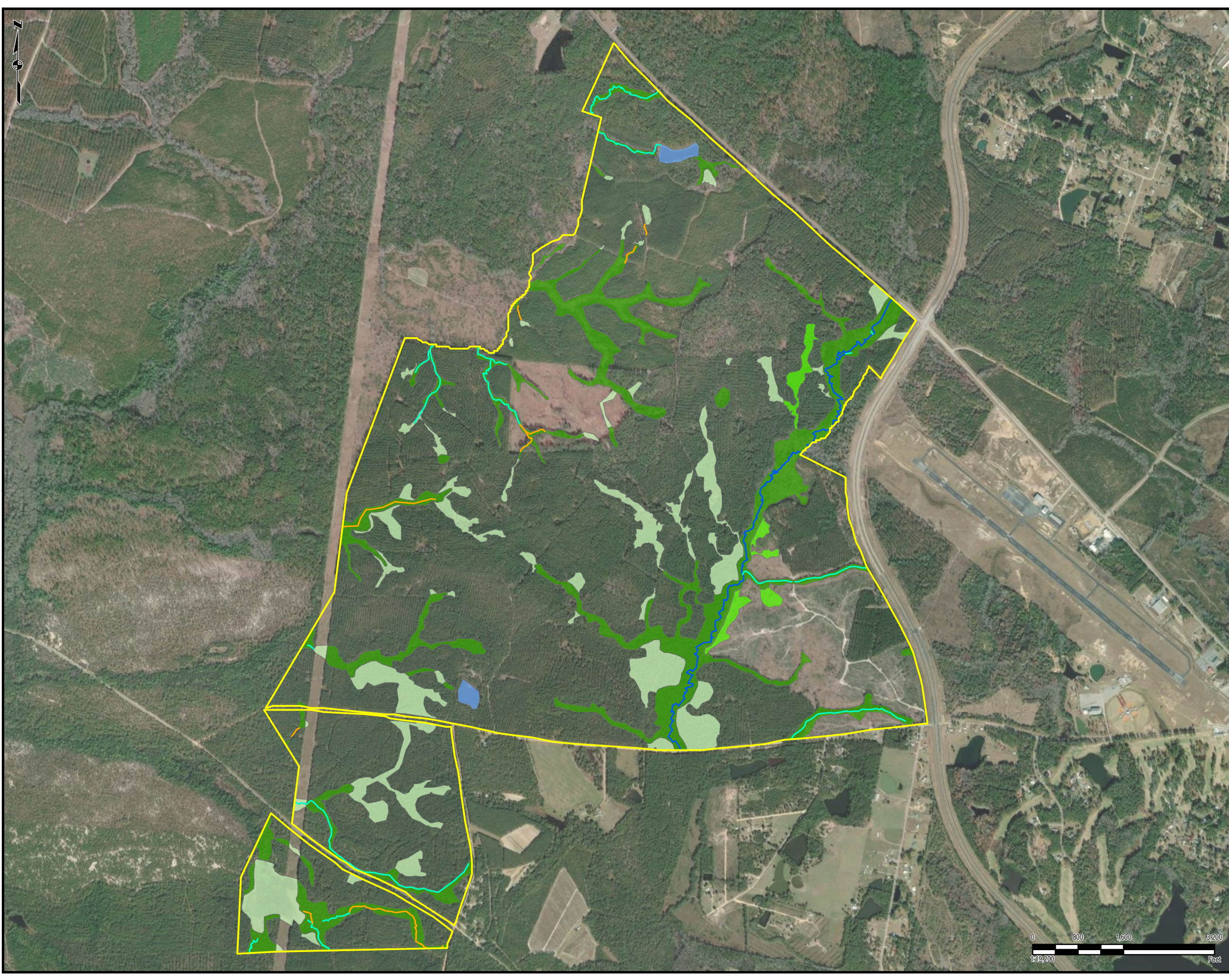
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- ☒ USFWS NWI and USGS NHD maps: Figure 4 NWI and NHD Map dated 6/26/2024 provided by applicant and NHD Map prepared by the Corps; NHD Mapping Showing Distance to TNW
- ☒ USGS topographic maps: Figure 2 USGS Topographic Map dated 6/25/2024
- ☒ Section 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.



- Legend**
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 - Palustrine Emergent Wetland (± 154.27 ac)
 - Palustrine Shrub Wetland (± 16.03 ac)
 - Palustrine Forested Wetland (± 252.20 ac)
 - Open Water (± 6.88 ac)

Source(s):
- PROJECT BOUNDARY PROVIDED BY NEXTERA, 3/2024
- WETLANDS DELINEATION BY ERM, 10/2022 AND REFRESHED BY ERM, 6/2024
- SERVICE LAYER CREDITS: SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), (C) OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY
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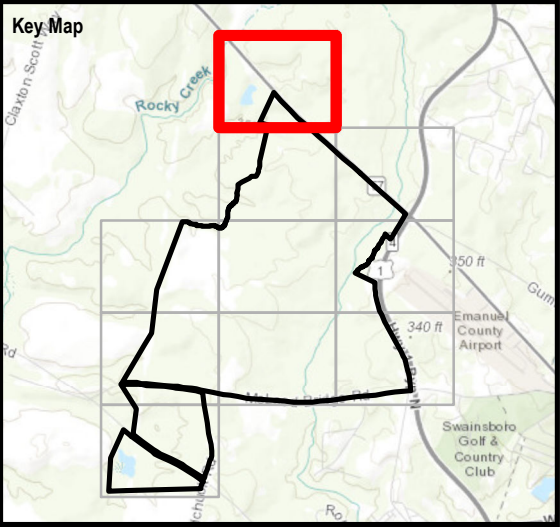
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Figure 6: Wetland Delineation Map

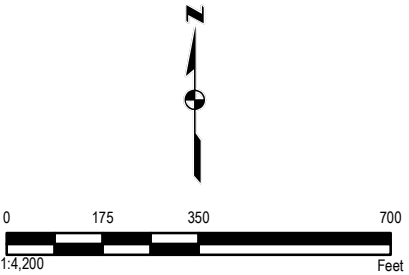
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Reviewed By	JF
Approved By	JF
Project No.	0657189

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- Legend**
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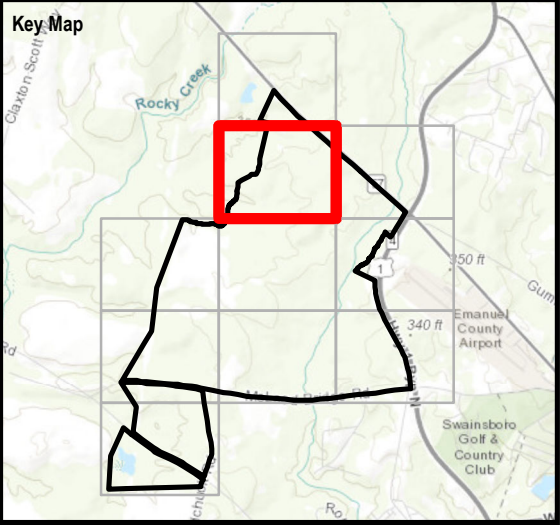
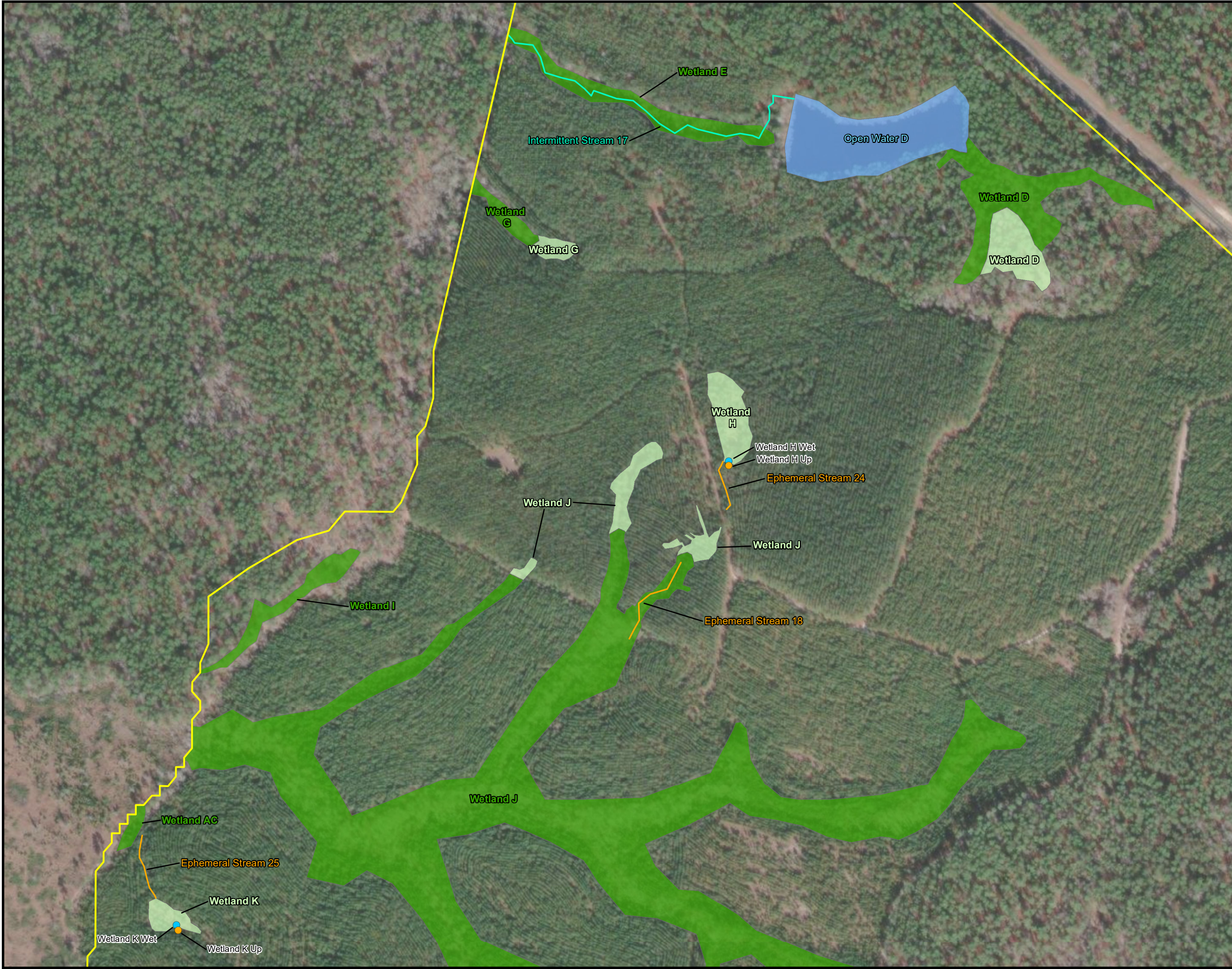
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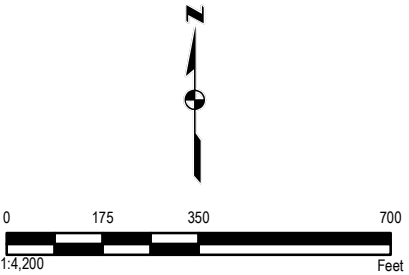
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Figure 6-1: Wetland Delineation Map

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Approved By	JF	
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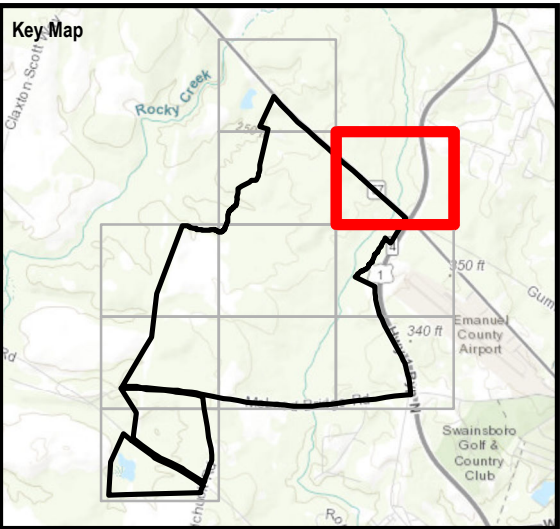
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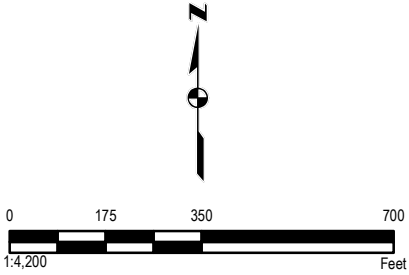
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Figure 6-2: Wetland Delineation Map

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Reviewed By	JF
Approved By	JF
Project No.	0657189
Revision No.	0
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Figure 6-3: Wetland Delineation Map

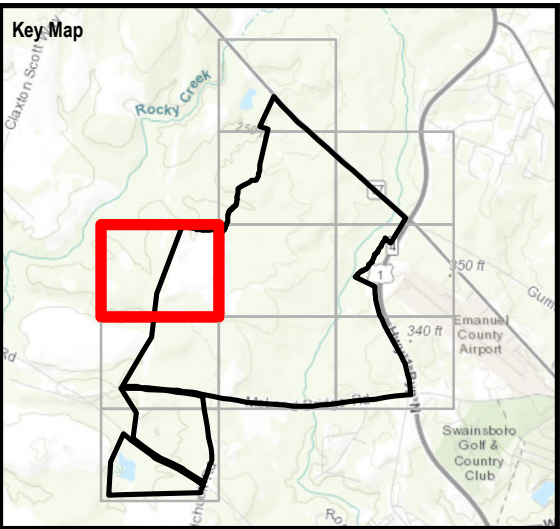
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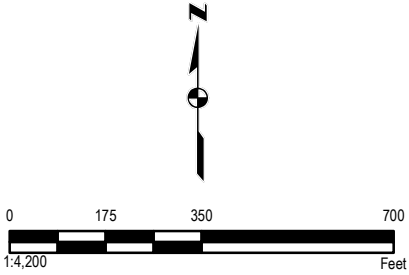
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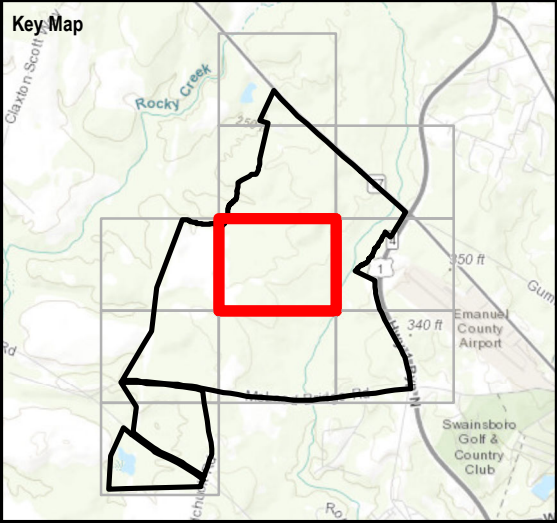
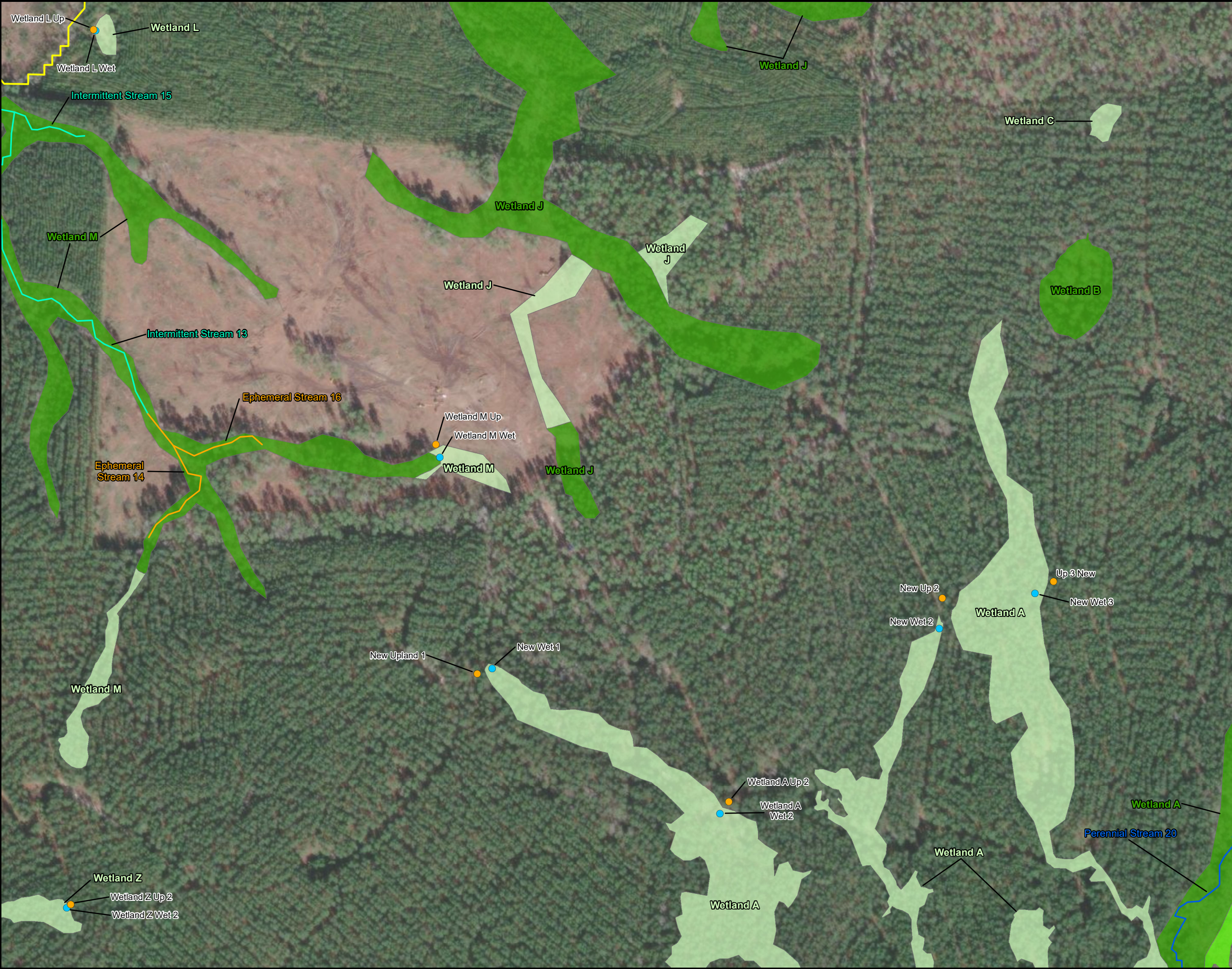
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Figure 6-4: Wetland Delineation Map

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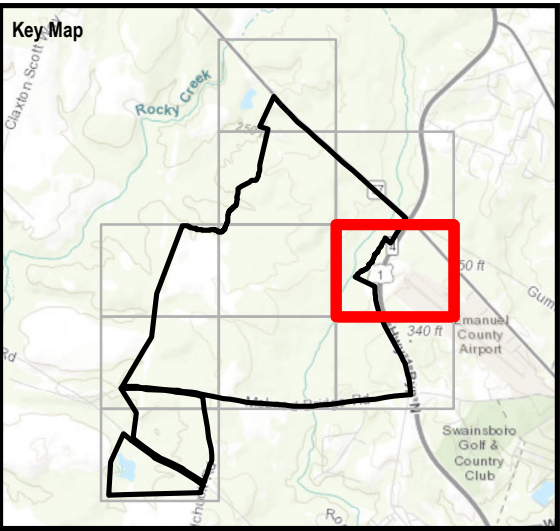
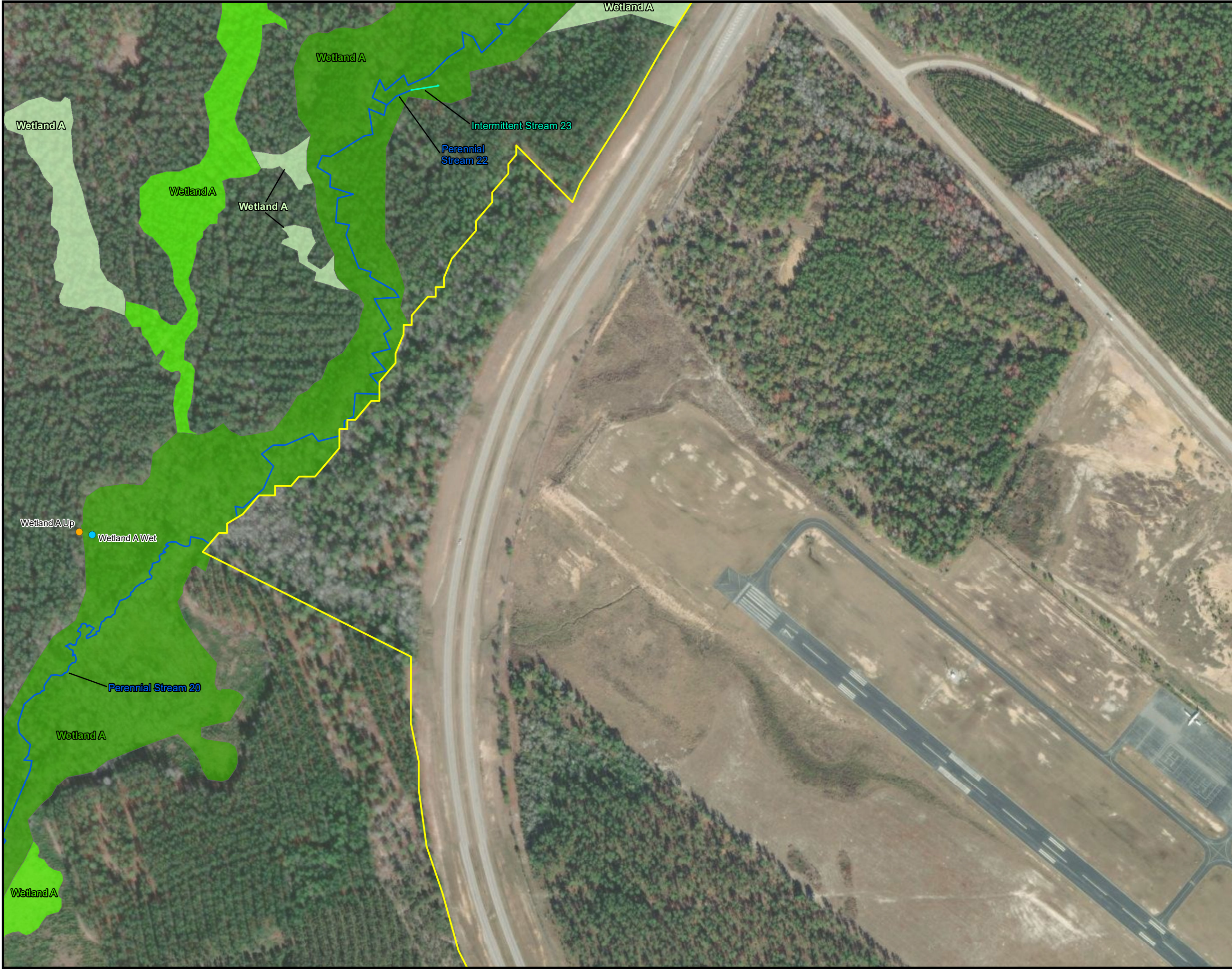


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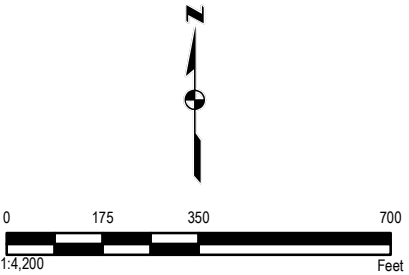
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Figure 6-5: Wetland Delineation Map

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Approved By	JF	
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Figure 6-6: Wetland Delineation Map

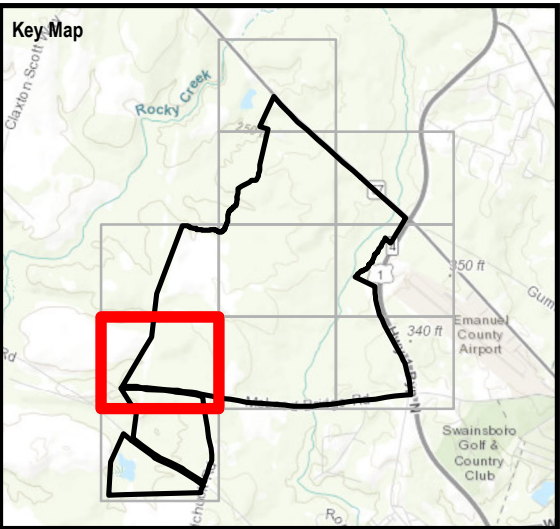
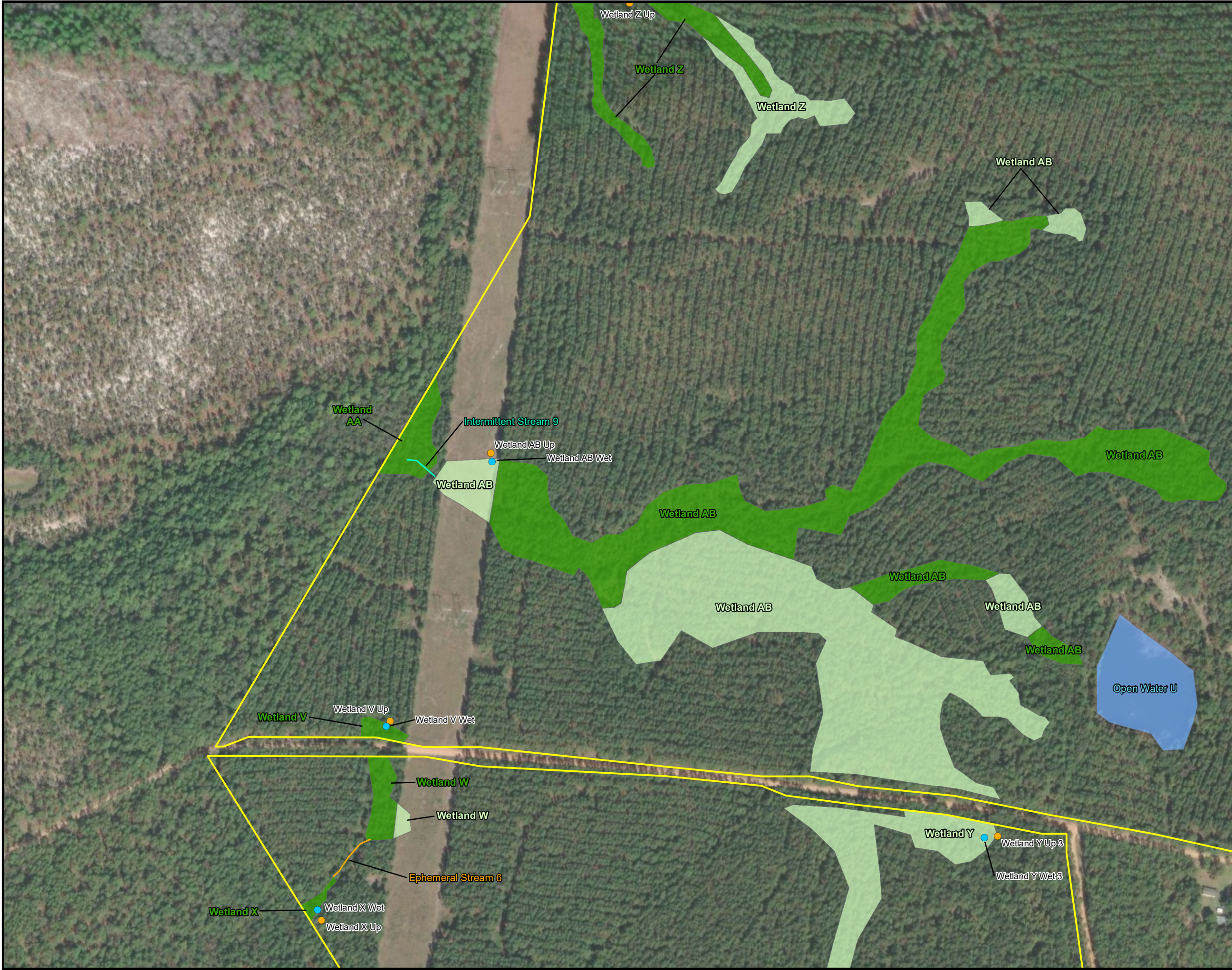
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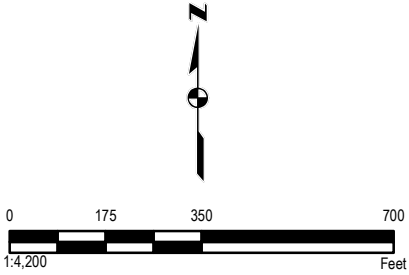
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 - Palustrine Emergent Wetland (± 154.27 ac)
 - Palustrine Shrub Wetland (± 16.03 ac)
 - Palustrine Forested Wetland (± 252.20 ac)
 - Open Water (± 6.88 ac)

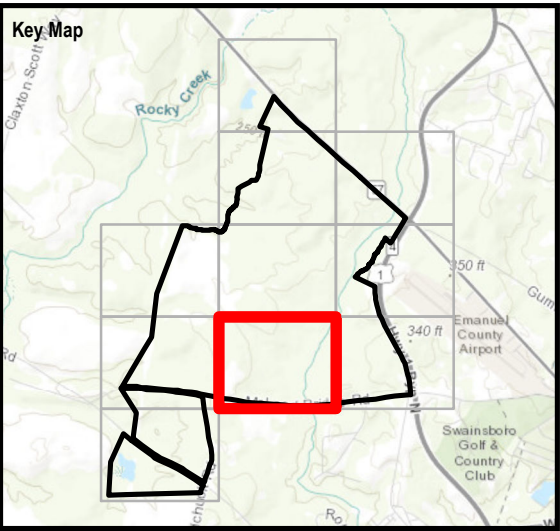
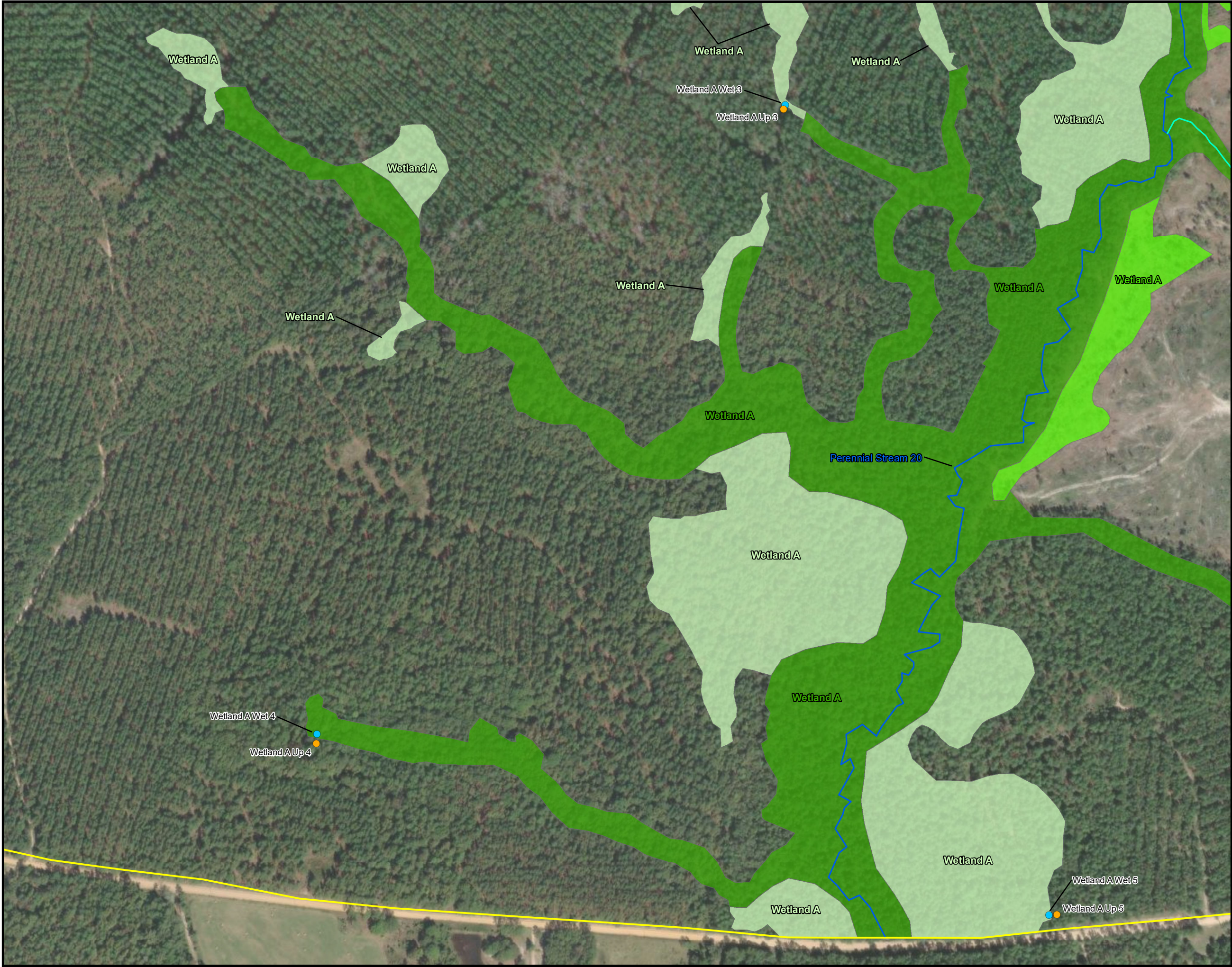


Source(s):
- PROJECT BOUNDARY PROVIDED BY NEXTERA, 3/2024
- WETLANDS DELINEATION BY ERM, 10/2022 AND REFRESHED BY ERM, 6/2024
- SERVICE LAYER CREDITS: SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), (C) OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY
SOURCE: ESRI, MAXAR, EARTHSTAR GEOGRAPHICS, AND THE GIS USER COMMUNITY

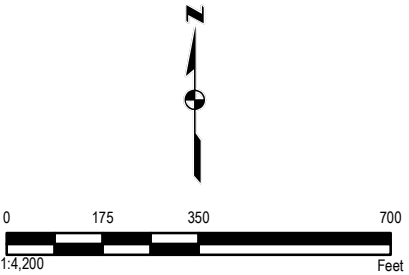
Client
NextEra
Emanuel County, GA
Project
Shortleaf Solar
Title

Figure 6-7: Wetland Delineation Map

Date	7/1/2024	
Prepared By	CH	
Reviewed By	JF	
Approved By	JF	
Project No.	0657189	
Revision No.	0	Control
		B006b



- Legend**
- Project Boundary
 - Upland Data Point
 - Wetland Data Point
 - Ephemeral Stream ($\pm 6,262.84$ linear ft)
 - Intermittent Stream ($\pm 18,653.05$ linear ft)
 - Perennial Stream ($\pm 13,001.33$ linear ft)
 - Palustrine Emergent Wetland (± 154.27 ac)
 - Palustrine Shrub Wetland (± 16.03 ac)
 - Palustrine Forested Wetland (± 252.20 ac)
 - Open Water (± 6.88 ac)



Source(s):
- PROJECT BOUNDARY PROVIDED BY NEXTERA, 3/2024
- WETLANDS DELINEATION BY ERM, 10/2022 AND REFRESHED BY ERM, 6/2024
- SERVICE LAYER CREDITS: SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), (C) OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY
SOURCE: ESRI, MAXAR, EARTHSTAR GEOGRAPHICS, AND THE GIS USER COMMUNITY

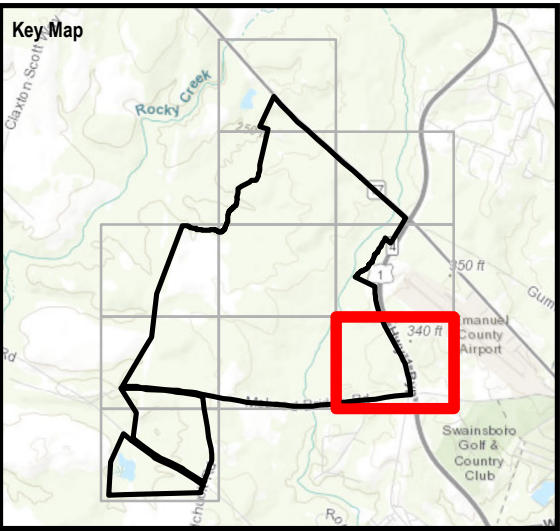
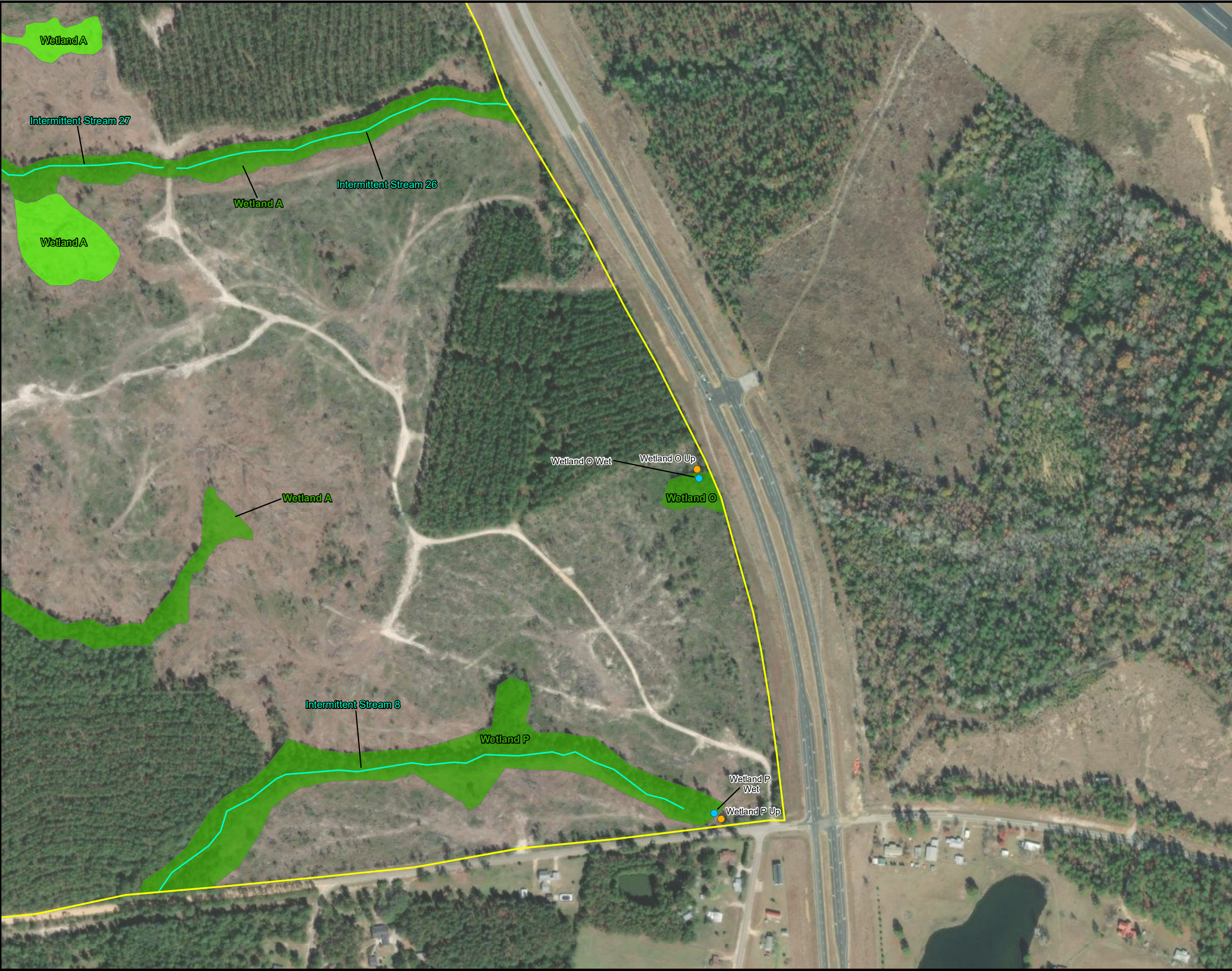
Client
NextEra
Emanuel County, GA

Project
Shortleaf Solar

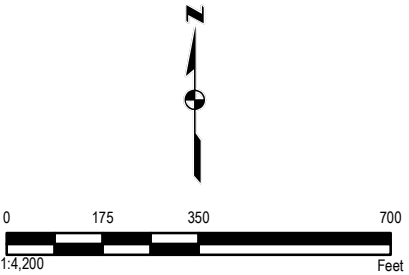
Title
Figure 6-8: Wetland Delineation Map

Date	7/1/2024
Prepared By	CH
Reviewed By	JF
Approved By	JF
Project No.	0657189

Revision No. 0 Control B006b



- Legend**
- Project Boundary
 - Upland Data Point
 - Wetland Data Point
 - Ephemeral Stream ($\pm 6,262.84$ linear ft)
 - Intermittent Stream ($\pm 18,653.05$ linear ft)
 - Perennial Stream ($\pm 13,001.33$ linear ft)
 - Palustrine Emergent Wetland (± 154.27 ac)
 - Palustrine Shrub Wetland (± 16.03 ac)
 - Palustrine Forested Wetland (± 252.20 ac)
 - Open Water (± 6.88 ac)



Source(s):
- PROJECT BOUNDARY PROVIDED BY NEXTERA, 3/2024
- WETLANDS DELINEATION BY ERM, 10/2022 AND REFRESHED BY ERM, 6/2024
- SERVICE LAYER CREDITS: SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), (C) OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY
SOURCE: ESRI, MAXAR, EARTHSTAR GEOGRAPHICS, AND THE GIS USER COMMUNITY

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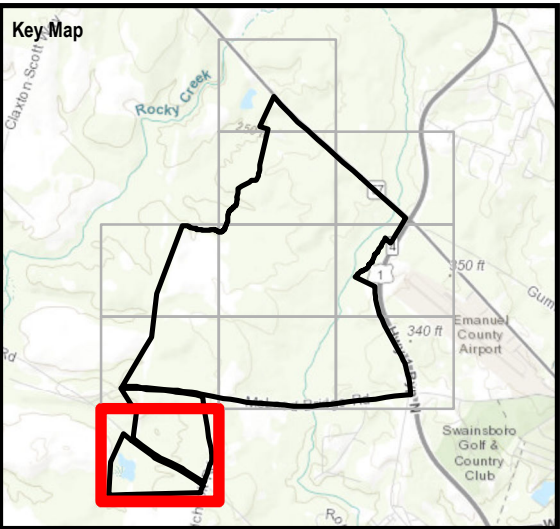
Figure 6-9: Wetland Delineation Map

Date	7/1/2024
Prepared By	CH
Reviewed By	JF
Approved By	JF
Project No.	0657189

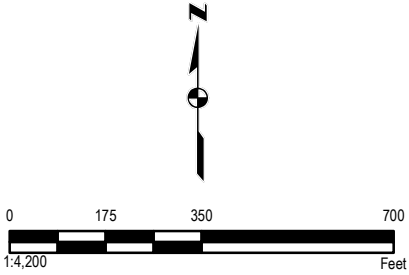
Revision No. 0

Control B006b





- Legend**
- Project Boundary
 - Upland Data Point
 - Wetland Data Point
 - Ephemeral Stream ($\pm 6,262.84$ linear ft)
 - Intermittent Stream ($\pm 18,653.05$ linear ft)
 - Perennial Stream ($\pm 13,001.33$ linear ft)
 - Palustrine Emergent Wetland (± 154.27 ac)
 - Palustrine Shrub Wetland (± 16.03 ac)
 - Palustrine Forested Wetland (± 252.20 ac)
 - Open Water (± 6.88 ac)



Source(s):
- PROJECT BOUNDARY PROVIDED BY NEXTERA, 3/2024
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SOURCE: ESRI, MAXAR, EARTHSTAR GEOGRAPHICS, AND THE GIS USER COMMUNITY

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Emanuel County, GA

Project
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Figure 6-10: Wetland Delineation Map

Date	7/1/2024
Prepared By	CH
Reviewed By	JF
Approved By	JF
Project No.	0657189
Revision No.	0
Control	B006b