



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
4751 BEST ROAD, SUITE 140  
COLLEGE PARK, GEORGIA 30337

CESAS – RDP

21 Nov 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651 (2023),<sup>1</sup>  
SAS-2006-00590

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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 in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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
SKB	Non-JD	N/A
SKBe	Non-JD	N/A
SKH	Non-JD	N/A
SKO	Non-JD	N/A
SRA	Non-JD	N/A
SRC	Non-JD	N/A
SRD	Non-JD	N/A
SSAi	Non-JD	N/A
SSBWe	Non-JD	N/A
SSBX	Non-JD	N/A
SSD	Non-JD	N/A
SSE	Non-JD	N/A
SSG	Non-JD	N/A
SSH	Non-JD	N/A
SSLa-1	Non-JD	N/A
SSLa-2	Non-JD	N/A
SSLb-1	Non-JD	N/A
SSLb-2	Non-JD	N/A
SSLc	Non-JD	N/A
SSLd-1	Non-JD	N/A
SSLd-2	Non-JD	N/A
SSLe	Non-JD	N/A
SSP	Non-JD	N/A
SSS	Non-JD	N/A
SST	Non-JD	N/A
SSU	Non-JD	N/A
SSV	Non-JD	N/A
SSYc	Non-JD	N/A
SSZ	Non-JD	N/A

## 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)

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3. REVIEW AREA.

- A. Project Are Size (in acres): 673-acres
- B. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 34.7371, Longitude: -84.4077
- C. Nearest City or Town: Ellijay
- D. County: Gilmer
- E. State: Georgia
- F. Other associated Jurisdictional Determinations (including outcomes)

Regulatory File No.	Type	Outcome
SAS-2006-00590	ARDR	Site Visit was conducted, and waters listed on the original submittal were modified to agreed water classifications. (Finalized 1/11/2024) 32 Wetlands and 107 non-wetland waters including, 16 perennial streams, 62 intermittent streams, and 29 ephemeral streams were reviewed during the ARDR review.

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:  
Coosawattee River is the nearest TNW which is approximately 8 miles southwest to the project review area.

B. Determination based on: This determination was made based on a review of desktop data resources listed in Section 9 of this memorandum and a field visit conducted on DATE (if applicable), 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/South Carolina, or Georgia/North Carolina, Georgia/Tennessee, Georgia/Alabama, or Georgia/Florida.

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

The streams SSP, SSLb-2, SSLa-2, SSLd-2, SSLe, SSLc, SSLd-1, SSLb-1, SSLa-1 are not relatively permanent waters (RPWs) and are unnamed tributaries to SSLi, an RPW. SSLi is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to

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the Coosawatte River, a traditionally navigable water (TNW). The streams listed above are tributaries to the Coosawatte, a navigable water of the United States. The Ordinary High Water Mark (OHWM) of the unnamed tributaries was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The stream SKOe is not a RPW and is an unnamed tributary to SKN, an RPW. SKN is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The stream SKOe is a tributary to the Coosawatte, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The streams SRA, SRC, and SRD are not RPWs and are unnamed tributaries to SRB, an RPW. SSRB is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The streams listed above are tributaries to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The streams SSD, SKB, and SKH are not RPWs and are unnamed tributaries to SKA, an RPW. SKA is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The streams listed above are tributaries to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The streams SSAe, SSE, SSG, SSH are not RPWs and are unnamed tributaries to SKGp, an RPW. SKGp is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The streams listed above are tributaries to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The stream SSZ is not a RPW and is an unnamed tributary to SSX, an RPW. SSX is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The stream SSZ is a tributary to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by

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

The stream SSS is not a RPW and is an unnamed tributary to SKBAi, an RPW. SKBAi is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The stream SSS is a tributary to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The streams SSV, SSU, SST, SKBe, and SSYc are not RPWs and are unnamed tributaries to SSYb, an RPW. SSYb is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The streams listed above are tributaries to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The stream SSBX is not a RPW and is an unnamed tributary to SSBY, an RPW. SSBY is a tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The stream SSBX is a tributary to the Coosawatte River, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

The stream SSBWe is not a RPW and is an unnamed tributary to Whitepath Creek, an RPW. Whitepath Creek flows to the Coosawatte River, a TNW. The stream SSS is a tributary to the Coosawatte, a navigable water of the United States. The OHWM of the unnamed tributary was indicated by the following physical characteristics: natural line impressed on the bank, shelving, absence of vegetation, scour, and bed and banks.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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

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<sup>5</sup> 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.

jurisdictional in accordance with Section 10.<sup>6</sup>

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- 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").<sup>7</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional

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<sup>6</sup> 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.

<sup>7</sup> 51 FR 41217, November 13, 1986.

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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
- 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
SKB	0.004	Non-Relatively Permanent Water
SKBe	0.012	Non-Relatively Permanent Water
SKH	0.01	Non-Relatively Permanent Water
SKO	0.004	Non-Relatively Permanent Water
SRA	0.017	Non-Relatively Permanent Water
SRC	0.004	Non-Relatively Permanent Water
SRD	0.004	Non-Relatively Permanent Water
SSAi	0.102	Non-Relatively Permanent Water
SSBWe	0.007	Non-Relatively Permanent Water

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SSBX	0.009	Non-Relatively Permanent Water
SSD	0.020	Non-Relatively Permanent Water
SSE	0.027	Non-Relatively Permanent Water
SSG	0.007	Non-Relatively Permanent Water
SSH	0.010	Non-Relatively Permanent Water
SSLa-1	0.005	Non-Relatively Permanent Water
SSLa-2	0.004	Non-Relatively Permanent Water
SSLb-1	0.007	Non-Relatively Permanent Water
SSLb-2	0.006	Non-Relatively Permanent Water
SSLc	0.007	Non-Relatively Permanent Water
SSLd-1	0.009	Non-Relatively Permanent Water
SSLd-2	0.006	Non-Relatively Permanent Water
SSLe	0.008	Non-Relatively Permanent Water
SSP	0.041	Non-Relatively Permanent Water
SSS	0.005	Non-Relatively Permanent Water
SST	0.010	Non-Relatively Permanent Water
SSU	0.003	Non-Relatively Permanent Water
SSV	0.006	Non-Relatively Permanent Water
SSYc	0.004	Non-Relatively Permanent Water
SSZ	0.012	Non-Relatively Permanent Water

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. 1. Date of Office (desktop review): 17 June 2024 – CESAS - RDP
2. Date(s) of Field Review (if applicable): 10 Octo 2023 – CESAS - RDP
- 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 – Approved Jurisdictional Delineation Map”, Hodges, Harbin, Newberry & Tribble, Inc., Dated 8/12/2024
  - ☐ Aquatic Resources delineation prepared by the USACE:
  - ☐ Wetland field data sheets prepared by the Corps:
  - ☐ OHWM data sheets prepared by the USACE:
  - ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area:
  - ☒ Photographs: Prepared by Hodges, Harbin, Newberry & Tribble, Inc., reviewed by CESAS - RDP
  - ☐ Aerial Imagery:
  - ☐ LIDAR: Sources, Title, and Dates
  - ☒ USDA NRCS Soil Survey: “Figure 3: Soils Map” Hodges, Harbin, Newberry & Tribble, Inc., Dated 5/25/2023
  - ☒ USFWS NWI maps: “Figure 4: National Wetland Inventory Map” Hodges, Harbin, Newberry & Tribble, Inc., Dated 6/19/2023



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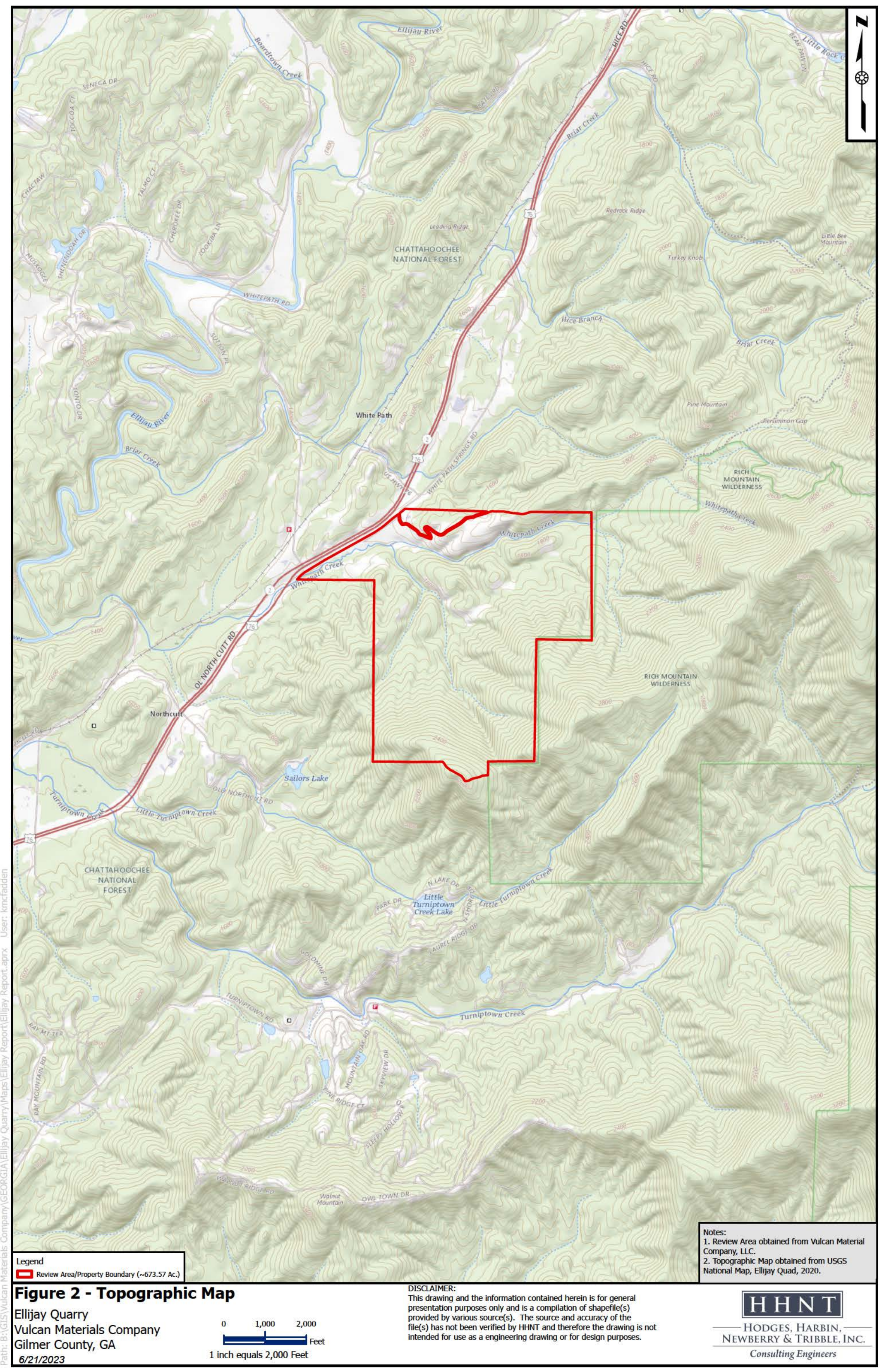
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- ☐ USGS topographic maps:
- ☐ USGS NHD data/maps:
- ☐ Section 10 resources used:
- ☒ NCDWR stream identification forms: Prepared by Hodges, Harbin, Newberry & Tribble, Inc., reviewed by CESAS - RDP
- ☐ Antecedent Precipitation Tool Analysis:
- ☐ Other sources of Information:

10. OTHER SUPPORTING INFORMATION. Ephemeral streams were reviewed utilizing the Strahler Method for stream order. All ephemeral streams were first order streams and therefore the entire reach reviewed was non-RPW.

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  
Review Area/Property Boundary (~673.57 Ac.)

Figure 2 - Topographic Map

Ellijay Quarry  
Vulcan Materials Company  
Gilmer County, GA  
6/21/2023

0 1,000 2,000  
Feet  
1 inch equals 2,000 Feet

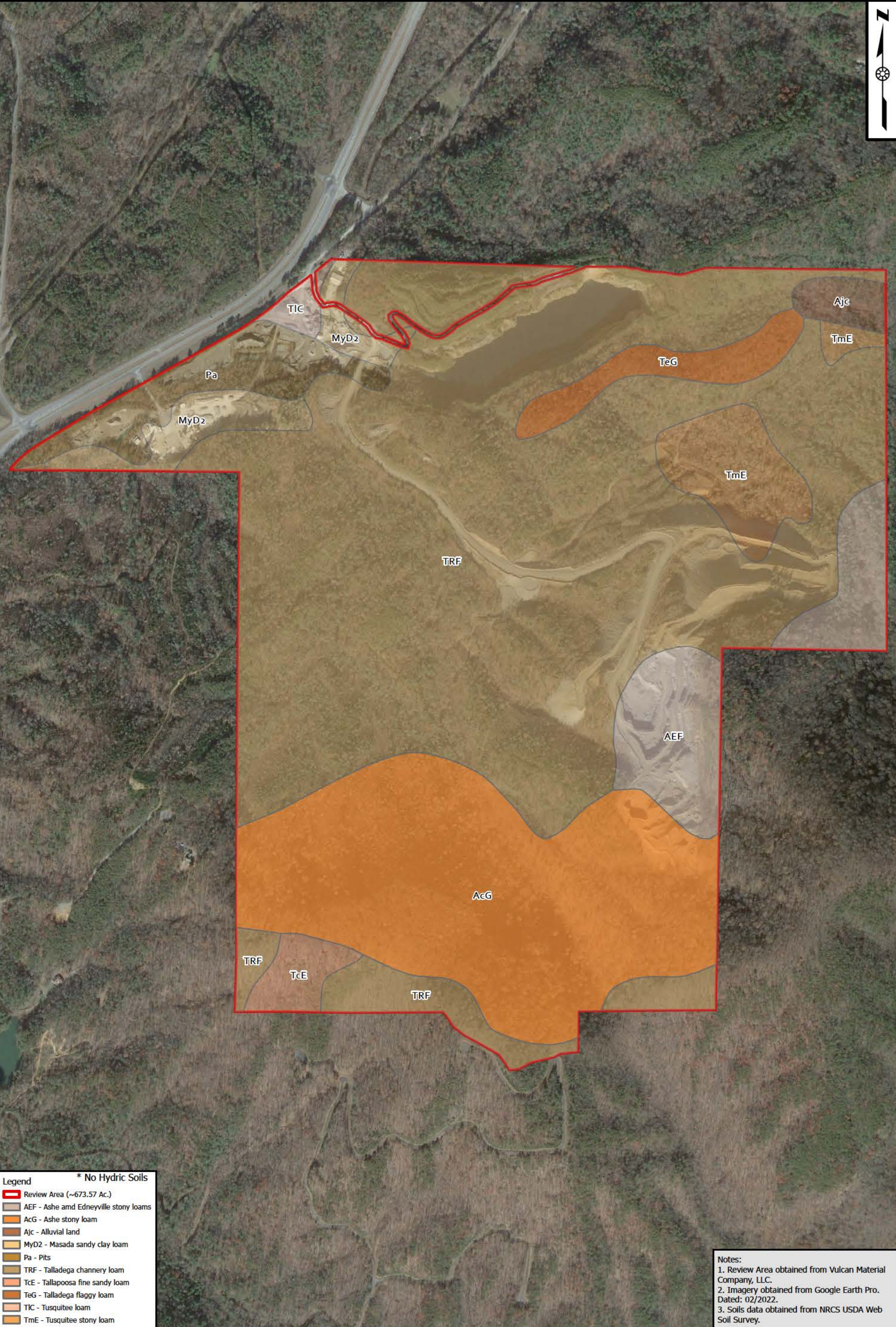
DISCLAIMER:  
This drawing and the information contained herein is for general presentation purposes only and is a compilation of shapefile(s) provided by various source(s). The source and accuracy of the file(s) has not been verified by HHNT and therefore the drawing is not intended for use as a engineering drawing or for design purposes.

Notes:  
1. Review Area obtained from Vulcan Material Company, LLC.  
2. Topographic Map obtained from USGS National Map, Ellijay Quad, 2020.

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HODGES, HARBIN,  
NEWBERRY & TRIBBLE, INC.  
Consulting Engineers





Legend

Review Area (~673.57 Ac.)

AEF - Ashe amd Edneyville stony loams

AcG - Ashe stony loam

Ajc - Alluvial land

MyD2 - Masada sandy clay loam

Pa - Pits

TRF - Talladega channery loam

TcE - Tallapoosa fine sandy loam

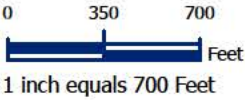
TeG - Talladega flaggy loam

TIC - Tusquitee loam

TmE - Tusquitee stony loam

\* No Hydric Soils

**Figure 3 - Soils Map**  
Ellijay Quarry  
Vulcan Materials Company  
Gilmer County, GA  
5/25/2023



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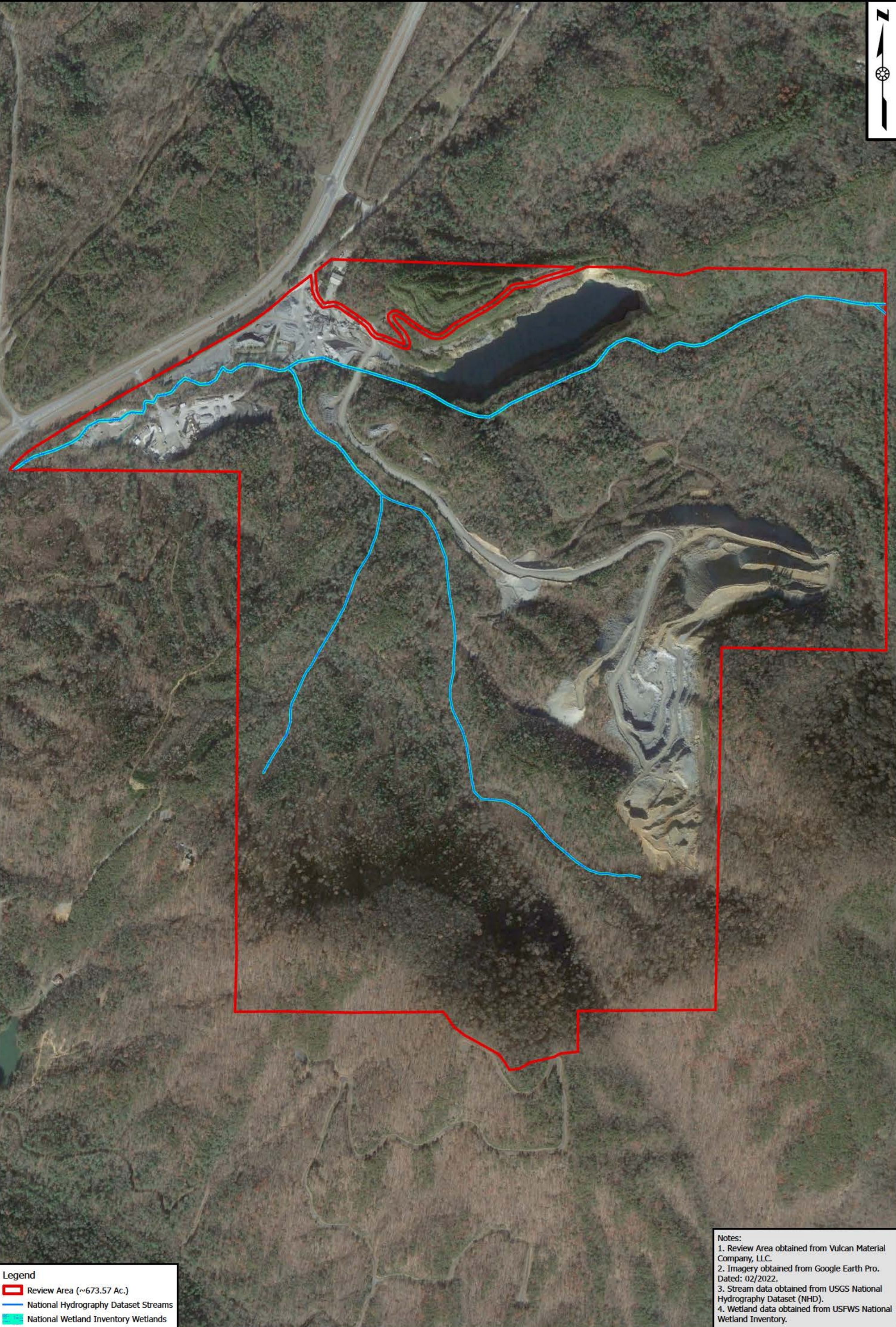
- Notes:
- 1. Review Area obtained from Vulcan Material Company, LLC.
  - 2. Imagery obtained from Google Earth Pro. Dated: 02/2022.
  - 3. Soils data obtained from NRCS USDA Web Soil Survey.

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Consulting Engineers





**Legend**

Review Area (~673.57 Ac.)

National Hydrography Dataset Streams

National Wetland Inventory Wetlands

**Notes:**

1. Review Area obtained from Vulcan Material Company, LLC.

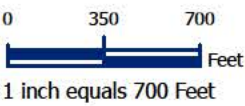
2. Imagery obtained from Google Earth Pro. Dated: 02/2022.

3. Stream data obtained from USGS National Hydrography Dataset (NHD).

4. Wetland data obtained from USFWS National Wetland Inventory.

**Figure 4 - National Wetland Inventory Map**

Ellijay Quarry  
Vulcan Materials Company  
Gilmer County, GA  
6/19/2023



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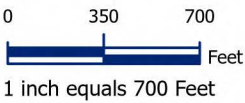


Table 1			Table 1 Cont		
Stream Type	Name	Acres	Stream Type	Name	Acres
Ephemeral	SSP	0.041	Ephemeral	SRC	0.004
Ephemeral	SKO	0.004	Ephemeral	SRD	0.004
Ephemeral	SSLa-1	0.005	Ephemeral	SSLd-1	0.009
Ephemeral	SSLb-1	0.007	Ephemeral	SSLa-2	0.004
Ephemeral	SSLc	0.007	Ephemeral	SSLb-2	0.006
Ephemeral	SSLe	0.008	Ephemeral	SSS	0.005
Ephemeral	SSLd-2	0.006	Ephemeral	SKBe	0.012
Ephemeral	SSD	0.020	Ephemeral	SST	0.010
Ephemeral	SKB	0.004	Ephemeral	SSU	0.003
Ephemeral	SSAi	0.102	Ephemeral	SSV	0.006
Ephemeral	SSE	0.027	Ephemeral	SSZ	0.012
Ephemeral	SKH	0.010	Ephemeral	SSBX	0.009
Ephemeral	SSH	0.013	Ephemeral	SSBWe	0.007
Ephemeral	SSG	0.007	Ephemeral	SSYc	0.004
Ephemeral	SRA	0.017		Total	0.373



**Figure 6 - Approved Jurisdictional Determination Map**

Ellijay Quarry  
Vulcan Materials Company  
Gilmer County, GA  
8/12/2024



DISCLAIMER:  
DEPICTED WATERS OF THE U.S. DELINEATION REMAINS AN OPINION OF HHNT UNTIL IT IS FORMALLY VERIFIED IN WRITING BY THE U.S. ARMY CORPS OF ENGINEERS VIA A FORMAL DETERMINATION LETTER.

**DELINEATED WETLANDS AND STREAMS  
HAVE BEEN APPROVED BY ACOE VIA ARDR APPROVAL  
LETTER DATED JANUARY 11, 2024 (SAS-2006-00590).**

HHNT

HODGES, HARBIN,  
NEWBERRY & TRIBBLE, INC.

Consulting Engineers