



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

SAS-2017-00166

March 31, 2025

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, 143 S.
Ct. 1322 (2023), SAS-2017-00166

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.¹ 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.² For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),³ 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 Georgia due to litigation.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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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1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

| Name of Aquatic Resource | JD or Non-JD | Section 404/Section 10 |
|--------------------------|--------------|------------------------|
| T1 | Non-JD | N/A |
| T2 | Non-JD | N/A |
| T3 | Non-JD | N/A |
| T4 | JD | 404 |
| T5 | JD | 404 |
| T6 | Non-JD | N/A |
| T7 | JD | 404 |
| T8 | JD | 404 |
| T9 | JD | 404 |
| T10 | JD | 404 |
| T11 | JD | 404 |
| T12 | JD | 404 |
| T13 | JD | 404 |
| T14 | Non-JD | N/A |
| T15 | Non-JD | N/A |
| T16 | JD | 404 |
| T17 | Non-JD | N/A |
| T18 | JD | 404 |
| T19 | JD | 404 |
| T20 | Non-JD | N/A |
| T21 | Non-JD | N/A |
| T22 | JD | 404 |
| T23 | Non-JD | N/A |
| ES1.1 | Non-JD | N/A |
| ES1.2 | Non-JD | N/A |
| ES1.3 | Non-JD | N/A |
| ES1.4 | Non-JD | N/A |
| ES2 | Non-JD | N/A |
| ES3 | Non-JD | N/A |
| W1 | JD | 404 |
| W2 | JD | 404 |
| W3 | JD | 404 |
| W4 | JD | 404 |
| W5 | JD | 404 |

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2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA ("Poole Mountain Central"):

- a. ~359 acres
- b. Latitude: 34.056, Longitude: -83.8592
- c. Northwest of Auburn
- d. Gwinnett County
- e. Georgia
- f. Aerial imagery (since 1955) indicates that the property has remained forested and undisturbed.

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

- A. The Middle Oconee River is the nearest TNW to which the subject aquatic resources in the review area connect. It is located approximately 85,000 linear feet (~30 linear kilometers) east of the 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 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 occurrences of boating traffic on the identified water.

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

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T0 flows eastward and merges with T3, which flows southeastward. T1 forms at the confluence of T0 and T3, and flows eastward and splits into two channels (a northeasterly-flowing reach (T1-ESa) and an easterly-flowing reach (T1-ESb)). The T1-ESa merges with the southeasterly-flowing T2, forming the southeasterly-flowing T4. Further downstream, the upper reach of T4 merges with T1-ESb. T4 continues to flow generally eastward and exits the property, where it is understood to merge with an offsite of T5, forming T9.

T5 flows north-northeastward and exits the property. It is understood to merge with T4, forming T9.

T6 and T7 flow relatively parallel southeastward until they merge to form T8. T8 flows southeastward and exits the property. After exiting the property, T8 is understood to enter T9.

After forming at the offsite confluence of T4 and T5, T9 is understood to flow eastward until it enters the property. It then flows generally northeastward until it exits the property. T9 is understood to continue to flow northeastward for approximately 200 feet until it enters Little Mulberry River.

W5 drains northwestward and into the northwesterly-flowing T12. T11 flows northwestward and merges with T12, forming T10. T10 flows generally northward and enters T9. Located at the confluence of T9 and T10, W4 drains generally northeastward into both tributaries.

Despite not having a continuous ordinary high water mark (OHWM), the following waters flow southeastward towards T13, and are understood to have flows that primarily convey laterally/subsurface at the breaks in continuous OHWM: ES 1.1, ES 1.2, ES 1.3, and ES 1.4.

T13 flows generally northeastward and enters T9. Located at the confluence of T13 and T9, W3 drains generally northeastward into both tributaries. W2 drains generally northward into T9.

ES2 flows eastward until losing form as its waters are conveyed laterally/subsurface. The southeasterly-flowing T14 and southerly-flowing T15 merge to form T16. T16 flows generally southeastward and into T9.

ES3 flows eastward towards T18 but loses OHWM as its flows are primarily conveyed laterally/subsurface.

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The easterly flowing T18 and north-northwestward-flowing T20 merge and form T19. T19 flows eastward and enters T9. T21 flows northward and into T9. W1 drains generally northeastward, into T9 and outside of the review area.

T23 flows northwestward and exits the property. It is understood to continue flowing northwestward for approximately 700 feet until it enters Little Mulberry River.

From the offsite point of confluence between T9 and Little Mulberry River, Little Mulberry River is understood to flow generally westward for approximately 10 kilometers (~33,000 feet) and enters the Mulberry River. The Mulberry River flows generally southeastward for approximately 28 kilometers (~92,000 feet) and enters the Middle Oconee River, the nearest TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁴: 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. 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

⁴ 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.

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d. Impoundments (a)(4): N/A

e. Tributaries (a)(5):

| Name of Aquatic Resource | Size (linear feet) | Flow Regime and additional description of the tributary | Method for determining flow regime |
|--------------------------|--------------------|--|--|
| T4 | 1,087 | Intermittent (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T5 | 282 | Perennial; See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T7 | 257 | Perennial (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits |
| T8 | 1,108 | Perennial; See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T9 | 5,439 | Perennial (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T10 | 753 | Intermittent; See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T11 | 169 | Intermittent; See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T12 | 165 | Intermittent; See further explanation below table. | Observed flow during multiple site visits |
| T13 | 766 | Intermittent (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T16 | 609 | Intermittent (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T18 | 61 | Intermittent (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits |
| T19 | 539 | Intermittent (based on relevant reach); See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |
| T22 | 560 | Perennial; See further explanation below table. | Observed flow during multiple site visits; NC DWQ stream identification form |

T4: The subject water is an easterly-flowing tributary of T9, located in the southwestern portion of the review area. It begins at the confluence of two onsite Stream Order 1 tributaries (T1 and T3). The subject water was assessed during all three (3) site visits (occurring in March 2024, October 2024, and January 2025). T4 has multiple distinct segments. It's upper two (2) segments are two distinct ephemeral channels that are divided by a 43-foot-long area in the flowpath that lacks discernible ordinary high water mark (OHWM) indicators. The indicators were assumed to be difficult to observe due to a cluster of debris and sediment that accumulated due to a fallen length of barbwire.

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Despite the break in discernible OHWM, a flowpath leading towards the delineable segment was observable. The next 89-foot ephemeral segment of T4 is distinguished further by a downstream split into two additional ephemeral channels. The channels wrap around a raised, wooded area in the landscape. The northeasterly-flowing channel (T4-ESa) was observed to be more mature/well defined in the landscape than the longer, shallower channel (T4-ESb). Both lead into a segment that maintains intermittent flows, which is also fed by T2. Downstream of this intermittent segment, there are two final onsite segments (an ephemeral and an intermittent, respectively) that were evaluated using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The 140-foot upper reach (at data point ES12) received a score of 11, concluding an ephemeral flow regime. The 313-foot lower reach (at data point IS6) received a score of 22.5, concluding an intermittent flow regime. Based on LiDAR imagery, T4's relevant reach (assumed to be at least intermittent) is understood to continue offsite for approximately 250 feet before it enters T9. The relevant reach of the tributary is predominantly (68%) intermittent, indicating that it primarily flows seasonally. Therefore, it is a relatively permanent tributary of the Middle Oconee River (a TNW), and meets the definition of an (a)(5) water.

T5: The subject water is a northerly-flowing tributary of T9, that enters and exists a southwestern portion of the review area. The subject water was assessed during the initial site visit/delineation in March 2024. T5 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point PS3), received a score of 36, concluding a perennial flow regime. Based on LiDAR imagery, T5's relevant reach (assumed to be perennial) is understood to continue offsite for approximately 150 feet before it enters T9. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T5 meets the definition of an (a)(5) water.

T7: The subject water is southeasterly-flowing tributary of T8, located in the central portion of the review area. It was assessed during the March 2024 and October 2024 site visits/delineations. T5 was observed to have three flow regimes: 61 linear feet of ephemeral channel, 40 feet of intermittent channel, and 156 linear feet of perennial channel. The relevant reach was observed to be predominantly (76.3%) relatively permanent (15.6% intermittent and 60.7% perennial). Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T7 meets the definition of an (a)(5) water.

T8: The subject water is a southeasterly-flowing tributary of T9, located in the central portion of the review area. It was assessed during the March 2024 and October 2024 site visits/delineations. T8 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point IS5), received a score of 25, concluding an intermittent flow regime. Based on LiDAR imagery, T8's relevant reach

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(assumed to be at least intermittent) is understood to continue offsite for approximately 250 feet before it enters T9. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T8 meets the definition of an (a)(5) water.

T9: The subject water is a northeasterly-flowing tributary of Little Mulberry Creek, enters the southern central portion of the review area and traverses to the northeastern portion of the review area. It was assessed during the March 2024 and January 2025 site visits/delineations. T9 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point PS2), received a score of 41.5, concluding a perennial flow regime. Based on LiDAR imagery, T9's relevant reach (assumed to also be perennial) is understood to continue offsite for approximately 150 feet before it enters Little Mulberry River. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T9 meets the definition of an (a)(5) water.

T10: The subject water is a northwesterly-flowing tributary of T9, located in the southeastern portion of the review area. It begins at the confluence of two onsite Stream Order 1 tributaries (T11 and T12). It was assessed during the March 2024 site visit/delineation. T10 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point IS4), received a score of 25, concluding an intermittent flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T10 meets the definition of an (a)(5) water.

T11: The subject water is a northwesterly-flowing tributary of T10, located in the southeastern portion of the review area. It was assessed during the March 2024 site visit/delineation. T10 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point IS7), received a score of 24, concluding an intermittent flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T11 meets the definition of an (a)(5) water.

T12: The subject water is a westerly-flowing tributary of T10, located in the southeastern portion of the review area. It was assessed during the March 2024 site visit/delineation. T12 was observed to have a single intermittent flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T12 meets the definition of an (a)(5) water.

T13: The subject water is a northeasterly-flowing tributary of T9, located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. T13 was observed to have two flow regimes. The first 131 linear feet were observed to be ephemeral, lacking water in the channel. The second reach (635 linear feet in length) was further assessed using the scoring system

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of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point IS3), received a score of 25.5, concluding an intermittent flow regime. The relevant reach was observed to be predominantly (82.9%) relatively permanent. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T13 meets the definition of an (a)(5) water.

T16: The subject water is a southeasterly-flowing tributary of T9, located in the eastern portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. T16 was observed to have two flow regimes in three segments. The first 205-linear-foot segment was observed to be intermittent. The second and third reaches (102 linear feet and linear 302 feet, respectively), were further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed 102-linear-foot segment (data point ES7), received a score of 13.5, concluding an ephemeral flow regime. The assessed 302-linear-foot segment (data point IS7), received a score of 24, concluding an intermittent flow regime. The relevant reach was observed to be predominantly (83.3%) relatively permanent. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T16 meets the definition of an (a)(5) water.

T18: The subject water is an easterly-flowing tributary of T19, located in the northeastern portion of the review area. It begins following an ephemeral channel that loses observable ordinary high water mark indicators. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. T19 was observed to have a single intermittent flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T18 meets the definition of an (a)(5) water.

T19: The subject water is an easterly-flowing tributary of T9, located in the northeastern portion of the review area. It begins at the confluence of two onsite Stream Order 1 tributaries (T18 and T20). It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. T19 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point IS1), received a score of 26, concluding an intermittent flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T19 meets the definition of an (a)(5) water.

T22: The subject water is an easterly-flowing tributary of T9, located in the northeastern portion of the review area. It was assessed during the March 2024 site visit/delineation. T22 was observed to have a single flow regime. It was further assessed using the scoring system of the NC DWQ Stream Identification Form Version 4.11. The assessed reach of the tributary (data point PS1), received a score of 41, concluding a perennial

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flow regime. Therefore, as a relatively permanent tributary of the Middle Oconee River (a TNW), T22 meets the definition of an (a)(5) water.

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 |
|--------------------------|-----------------|--|--|
| W1 | 4.58 | Yes | The wetland boundary abuts two (2) RPWs (T9 and T22) |
| W2 | 0.037 | Yes | The wetland boundary abuts an RPW (T9) |
| W3 | 0.72 | Yes | The wetland boundary abuts two (2) RPWs (T9 and T13) |
| W4 | 2.1 | Yes | The wetland boundary abuts two (2) RPWs (T9 and T10) |
| W5 | 0.005 | Yes | The wetland boundary abuts an RPW (T12) |

W1: The subject water is located in the northeastern portion of the review area. It abuts two relatively permanent tributaries of the Middle Oconee River (T9 and T22). Therefore, W1 meets the definition of an (a)(7) water.

W2: The subject water is located in the eastern portion of the review area. It abuts a relatively permanent tributary of the Middle Oconee River (T9). Therefore, W2 meets the definition of an (a)(7) water.

W3: The subject water is located in the central portion of the review area. It abuts two relatively permanent tributaries of the Middle Oconee River (T9 and T13). Therefore, W3 meets the definition of an (a)(7) water.

W4: The subject water is located in the northeastern portion of the review area. It abuts two relatively permanent tributaries of the Middle Oconee River (T9 and T10). Therefore, W4 meets the definition of an (a)(7) water.

W5: The subject water is located in the eastern portion of the review area. It abuts a relatively permanent tributary of the Middle Oconee River (T12). Therefore, W5 meets the definition of an (a)(7) water.

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

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to as “preamble waters”).⁵ 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
- 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 | Type of resource generally not jurisdictional |
|--------------------------|-----------------|---|
| T1 | 413 linear feet | Tributary that is a non-relatively permanent water. |
| T2 | 36 linear feet | Tributary that is a non-relatively permanent water (based on relevant reach). |
| T3 | 44 linear feet | Tributary that is a non-relatively permanent water. |
| T6 | 375 linear feet | Tributary that is a non-relatively permanent water. |
| T14 | 88 linear feet | Tributary that is a non-relatively permanent water. |
| T15 | 57 linear feet | Tributary that is a non-relatively permanent water. |

⁵ 51 FR 41217, November 13, 1986.

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| | | |
|-------|-----------------|---|
| T17 | 27 linear feet | Tributary that is a non-relatively permanent water. |
| T20 | 64 linear feet | Tributary that is a non-relatively permanent water. |
| T21 | 157 linear feet | Tributary that is a non-relatively permanent water. |
| T23 | 210 linear feet | Tributary that is a non-relatively permanent water. |
| ES1.1 | 83 linear feet | Tributary that is a non-relatively permanent water. |
| ES1.2 | 55 linear feet | Tributary that is a non-relatively permanent water. |
| ES1.3 | 69 linear feet | Tributary that is a non-relatively permanent water. |
| ES1.4 | 40 linear feet | Tributary that is a non-relatively permanent water. |
| ES2 | 43 linear feet | Tributary that is a non-relatively permanent water. |
| ES3 | 77 linear feet | Tributary that is a non-relatively permanent water. |

T1: The subject water is a first order, easterly flowing tributary of T4, located in the southwestern portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel during the most recent site visit. However, consistent OHWM indicators were observed, including: a non-vegetated channel; changes in the character of soil from the channel bed and the surrounding uplands; washed away leaf litter and debris; and the presence of piles of litter and debris. T1 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T2: The subject water is a first order, southeasterly flowing tributary of T4, located in the southwestern portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in the upper 21 linear feet. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. Water was present in the remaining 15 feet of channel. It is understood that this downstream segment has an intermittent flow regime. Its flows feed into the upper, intermittent segment of T4, following the confluence of T4-ESa. The relevant reach was observed to be predominantly (58.3%) relatively non-relatively permanent. Therefore, it does not meet the definition of an (a)(5) water.

T3: The subject water is a first order, southeasterly flowing tributary of T4, located in the southwestern portion of the review area. It was identified during the January 2025 site visit/delineation. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. T1 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T6: The subject water is a first order, southeasterly flowing tributary of T8, located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel during the most recent site visit. However, consistent OHWM indicators were observed, including: a non-vegetated channel; changes in the character of soil

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from the channel bed and the surrounding uplands; and washed away leaf litter and debris. T6 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T14: The subject water is a first order, southeasterly flowing tributary of T16, located in the eastern portion of the review area. It is also located downgradient of a historic impoundment, which is currently entirely composed of uplands. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; changes in the character of soil from the channel bed and the surrounding uplands; and washed away leaf litter and debris. T1 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T15: The subject water is a first order, southerly flowing tributary of T16, located in the eastern portion of the review area. It is also located downgradient of a historic impoundment, which is currently entirely composed of uplands. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; changes in the character of soil from the channel bed and the surrounding uplands; and washed away leaf litter and debris. T15 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T17: The subject water is a first order, northwesterly flowing tributary of T9, located in the northeastern portion of the review area. It was assessed during the March 2024 site visit/delineation. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. T17 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T20: The subject water is a first order, northwesterly flowing tributary of T19, located in the northeastern portion of the review area. It was assessed during the March 2024 and October 2024 site visits/delineations. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. T17 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T21: The subject water is a first order, northerly flowing tributary of T19, located in the northeastern portion of the review area. It was assessed during the March 2024,

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October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. T21 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

T23: The subject water is a first order, northwesterly flowing tributary. It flows offsite before entering another water and is understood to ultimately drain into the Little Mulberry River, located approximately 700 feet northwest of the review area's boundary. It was assessed during the March 2024 site visit/delineation. No water was present in any length of the channel. However, consistent OHWM indicators were observed, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. T23 is understood to have an ephemeral flow regime, only flowing in response to precipitation events. Therefore, it does not meet the definition of an (a)(5) water.

ES1.1: The subject water is an easterly flowing channel located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel. OHWM indicators were discernible for 83-feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. Following the observable OHWM indicators, the subject channel lost form, becoming a 46-foot flattened flowpath that was only discernible from the surrounding uplands by cleared leaf litter. It is understood that flows from precipitation events would be conveyed solely via sheet flow in this area. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES1.1 does not meet the definition of an (a)(5) water.

ES1.2: The subject water is a southeasterly flowing channel located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the channel. OHWM indicators were discernible for 55 feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands. Following the observable OHWM indicators, the subject channel lost form in a 9-foot area where a tree is located in the center of the flowpath. The area was also characterized by significant moss growth. Waters are understood to convey laterally/subsurface in this area. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES1.2 does not meet the definition of an (a)(5) water.

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ES1.3: The subject water is a southeasterly flowing channel located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. The channel begins at a headcut located downgradient of aforementioned tree in ES1.2's flowpath. No water was present in any length of the ES1.3's channel. OHWM indicators were discernible for 69 feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands; and washed away leaf litter and debris. Following the observable OHWM indicators, the subject channel lost form in a flattened 76-foot-long area/flowpath characterized by wood debris and vegetation. Waters from precipitation events are understood to either convey laterally/subsurface or convey via sheet flow. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES1.3 does not meet the definition of an (a)(5) water.

ES1.4: The subject water is a southeasterly flowing channel located in the central portion of the review area. It was assessed during the March 2024, October 2024, and January 2025 site visits/delineations. No water was present in any length of the ES1.4's channel. OHWM indicators were discernible for 40 feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; and changes in the character of soil from the channel bed and the surrounding uplands; and washed away leaf litter and debris. Following the observable OHWM indicators, the subject channel lost form in a flattened 120-foot-long area/flowpath characterized by wood debris and vegetation. Waters from precipitation events are understood to either convey laterally/subsurface or convey via sheet flow. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES1.4 does not meet the definition of an (a)(5) water.

ES2: The subject water is an easterly flowing channel located in the northeastern portion of the review area. It is located upgradient of a historic impoundment, which is currently entirely composed of uplands. It was assessed during the March 2024 and October 2024 site visits/delineations. No water was present in any length of the channel. OHWM indicators were discernible for 43 feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; changes in the character of soil from the channel bed and the surrounding uplands; and washed away leaf litter and debris. Downgradient of the discernible OHWM indicators, waters from precipitation events are understood to either convey laterally/subsurface or convey via sheet flow. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES2 does not meet the definition of an (a)(5) water.

ES3: The subject water is a northeasterly flowing channel located in the northeastern portion of the review area. It was assessed during the March 2024 and October 2024

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site visits/delineations. No water was present in any length of the channel. OHWM indicators were discernible for 77 feet before the delineable boundary fades into the surrounding uplands, including: a non-vegetated channel; changes in the character of soil from the channel bed and the surrounding uplands; ; and washed away leaf litter and debris. Following the observable OHWM indicators, the subject channel lost form in a 37-foot area where a cluster of trees are located in the center of the flowpath. Waters are understood to covey laterally/subsurface in this area. Due to its lack of consistent OHWM (delineable connection to downstream waters), and a relatively permanent presence of water, ES3 does not meet the definition of an (a)(5) 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. Office (desktop) determination: September 2024 - March 2025 (CESAS-RDP)
- b. Field determination(s): March 21-25, 2024 (Agent); October 17, 2024 (Agent); and January 31, 2025 (CESAS-RDP and Agent)
- c. Data sources used to support this determination (included in the administrative record).
 - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Exhibits 1-7: *Aerial Photo w/ Aquatic Resource Locations*, as prepared by the Agent and dated 2/14/2025.
 - ☐ Aquatic Resources delineation prepared by the USACE: Title and Date
 - ☒ Wetland field data sheets
 - ☐ OHWM data sheets prepared by the USACE: Title and Date
 - ☐ Previous JDs (AJD or PJD) addressing the same (or portions of the same) review area: ORM Numbers and Dates
 - ☒ Photographs: Agent photolog, dated 4/24/2024; Agent photolog, dated 10/24/2024; and Corps photolog, photos taken 1/31/2025, dated 2/3/2025
 - ☒ Aerial Imagery: Exhibit 4: *Aerial Photograph*, as prepared by the Agent and dated 4/24/2024.
 - ☒ LIDAR: LIDAR (3DEP DEM and 3DEP Hillshade) and 2-foot contour imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RDP from 2/2025.
 - ☒ USDA NRCS Soil Survey: Exhibit 5: *USDA Soils Survey Map*, prepared by Agent, and dated 4/24/2024; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 3/2025.
 - ☒ USFWS NWI maps: Exhibit 7: *USFWS NWI Map*, prepared by Agent, and dated 4/24/2024.
 - ☒ USGS topographic maps: Exhibit 2: *USGS Quadrangle Map*, prepared by Agent, and dated 4/24/2024.

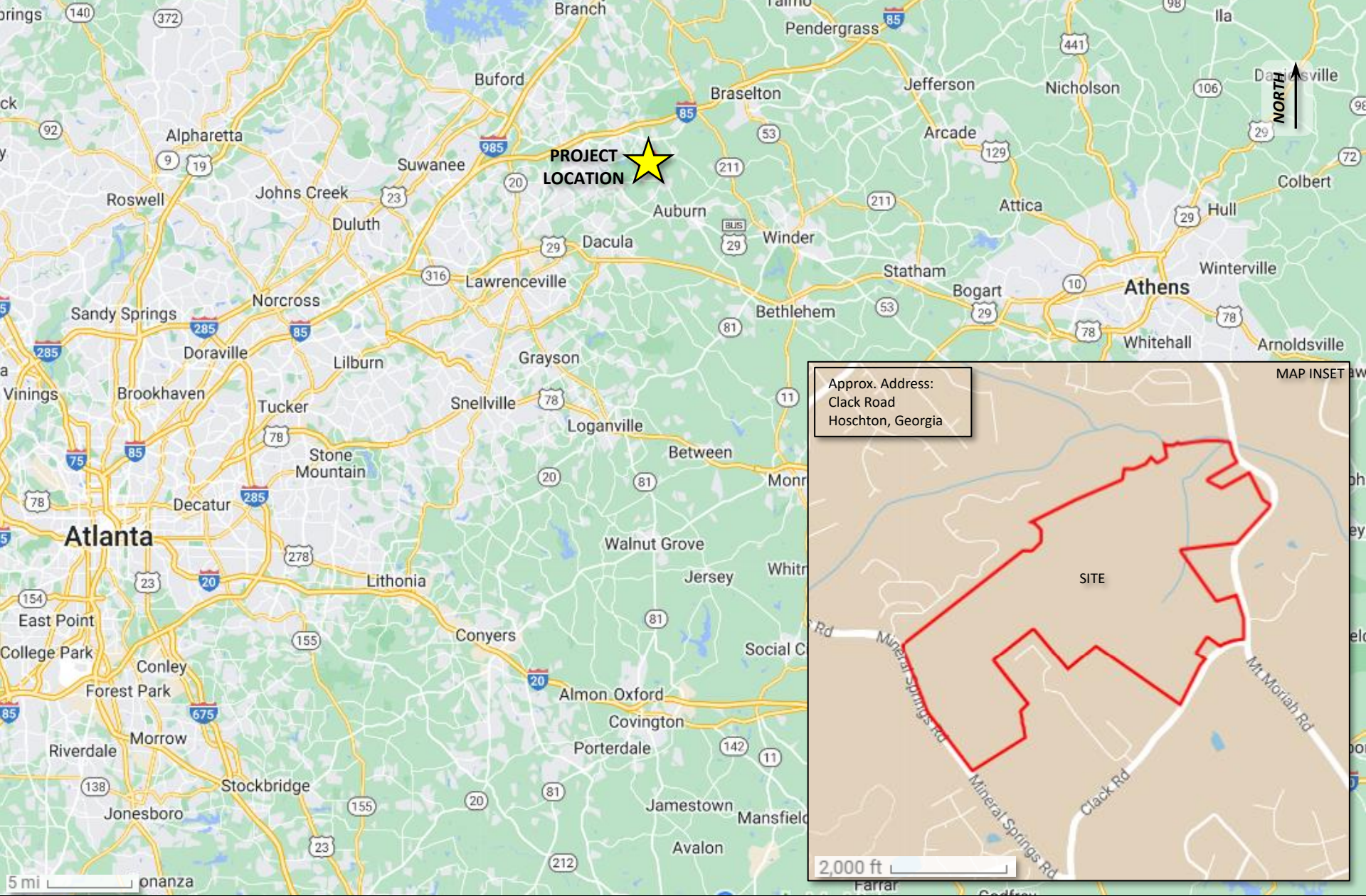
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- ☒ USGS NHD data/maps: NHD data retrieved from the NRV by CESAS-RDP in 3/2025.
- ☐ Section 10 resources used: Title and Dates
- ☒ NC DWQ stream identification forms
- ☐ Antecedent Precipitation Tool Analysis (List Date(s)):
- ☒ Other sources of Information: Exhibit 8: *USGS Stream Stats Map*, prepared by Agent, and dated 4/24/2024; USDM (Georgia) for 3/19/2024; and Exhibit 9: *FEMA Flood Hazard Map*, prepared by Agent, and dated 4/24/2024.

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



VICINITY MAP

PREPARED FOR:
ST. BOURKE DEVELOPMENT

DELINEATION OF AQUATIC RESOURCES

POOLE MOUNTAIN CENTRAL

SAS-2017-00166

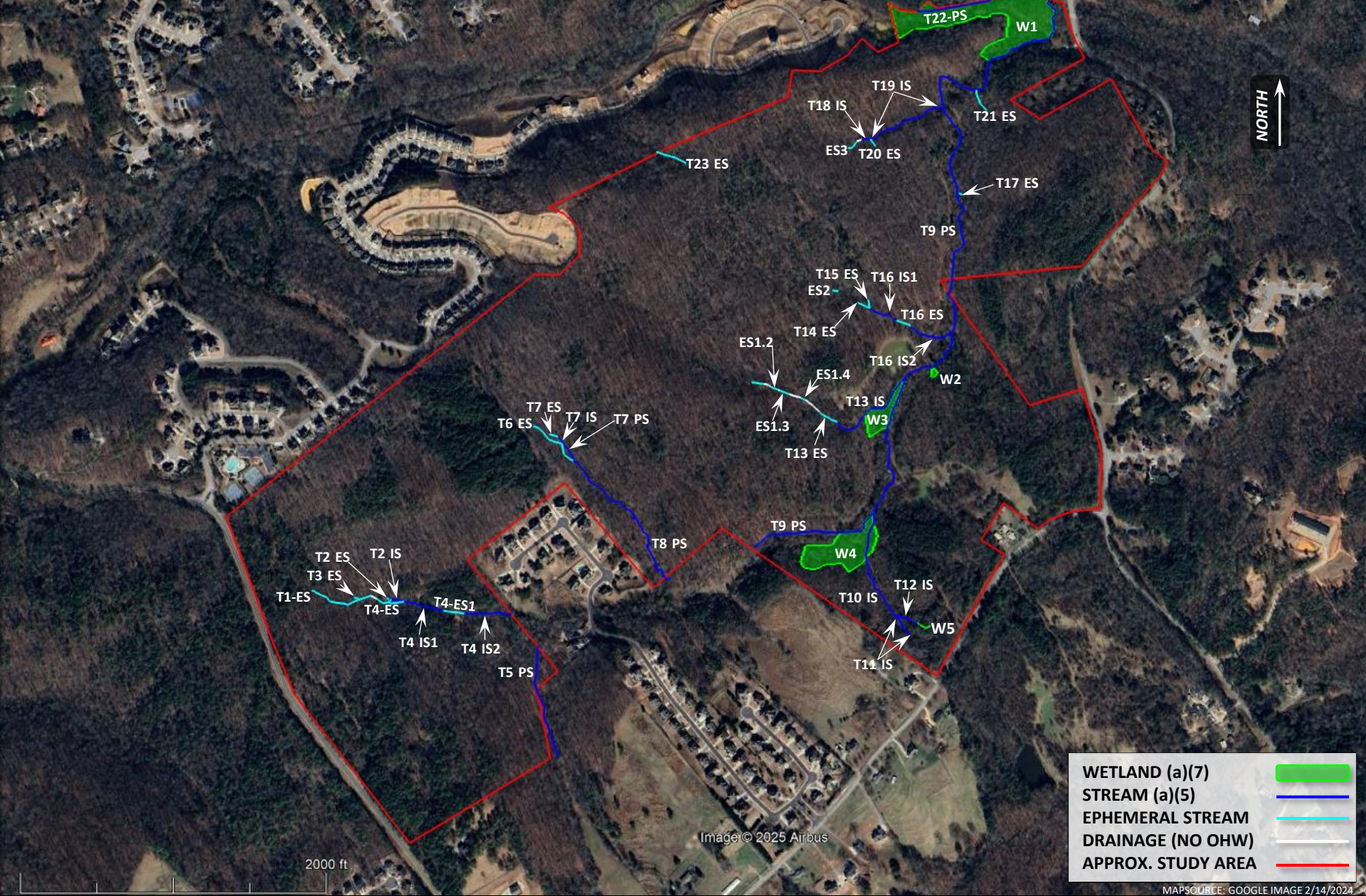
GWINNETT COUNTY, GEORGIA

EXHIBIT 1

PREPARED OCTOBER 24, 2024 BY:

NELSON ENVIRONMENTAL, INC.

www.NelsonEnvironmental.us PH:404/862-1665

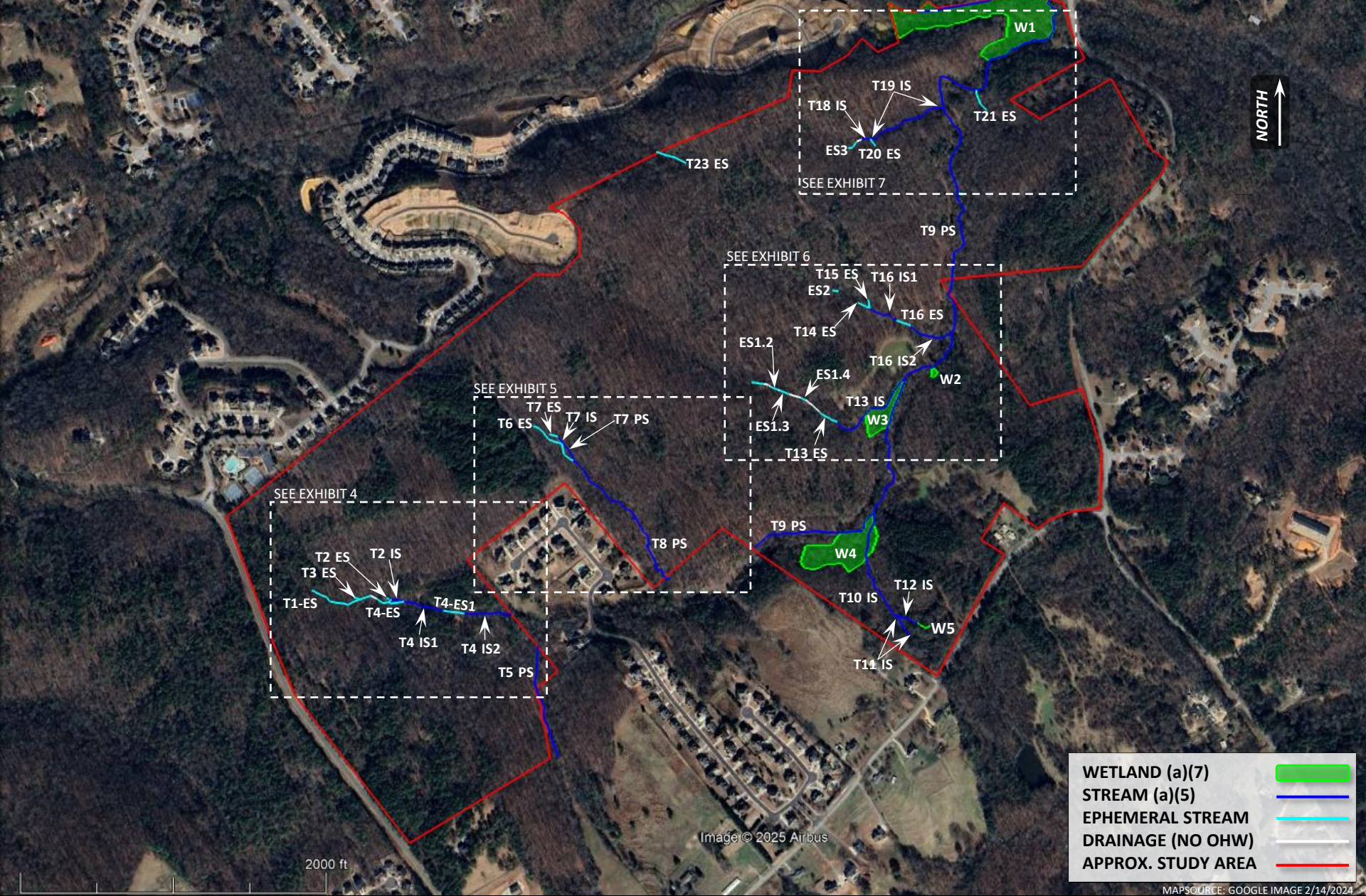


**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

PREPARED FOR:
ST. BOURKE DEVELOPMENT

**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

EXHIBIT 2
UPDATED FEBRUARY 14, 2025 BY:
NELSON ENVIRONMENTAL, INC.
www.NelsonEnvironmental.us PH:404/862-1665

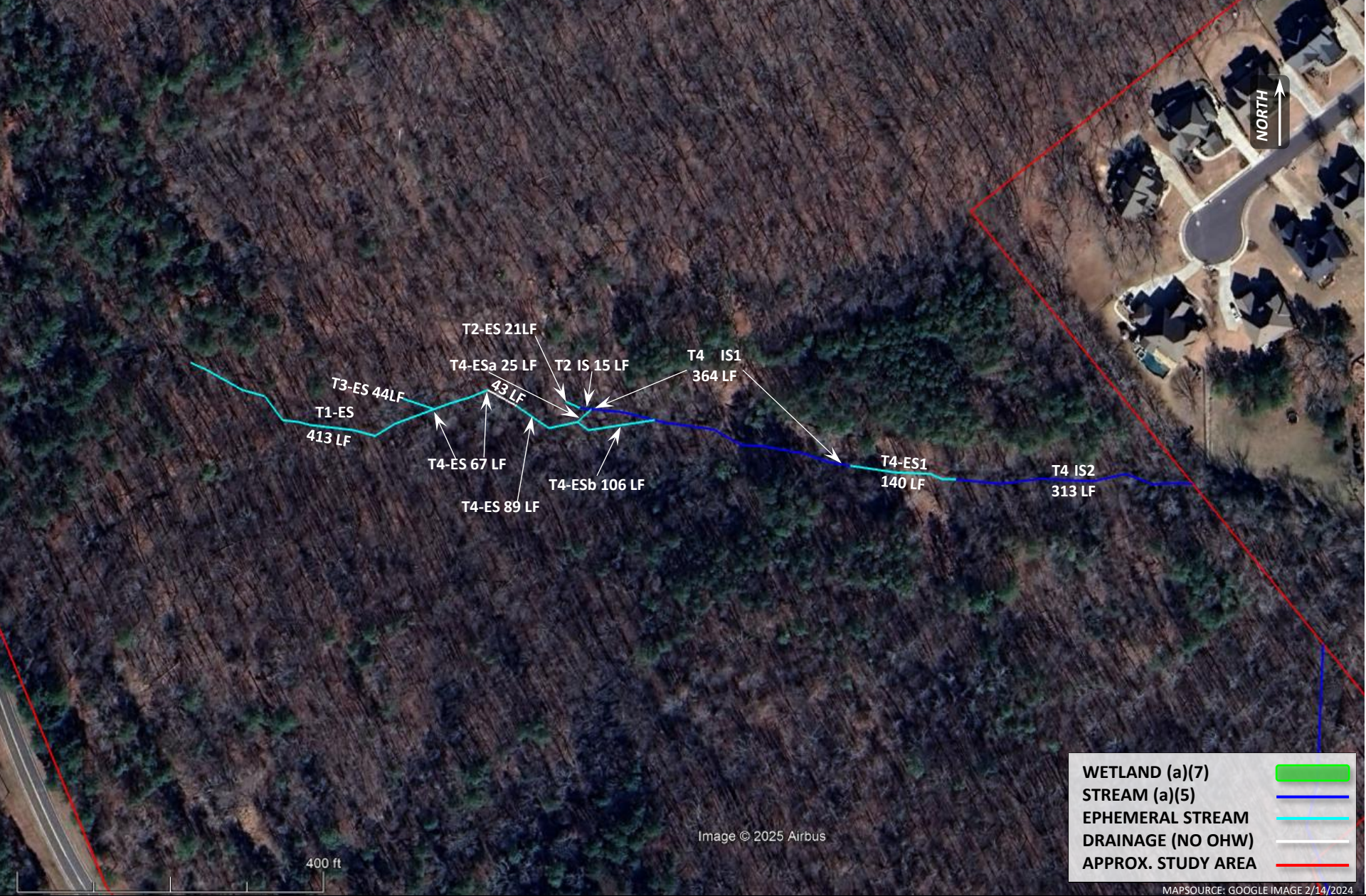


**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

PREPARED FOR:
ST. BOURKE DEVELOPMENT

**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

EXHIBIT 3
UPDATED FEBRUARY 14, 2025 BY:
NELSON ENVIRONMENTAL, INC.
www.NelsonEnvironmental.us PH:404/862-1665

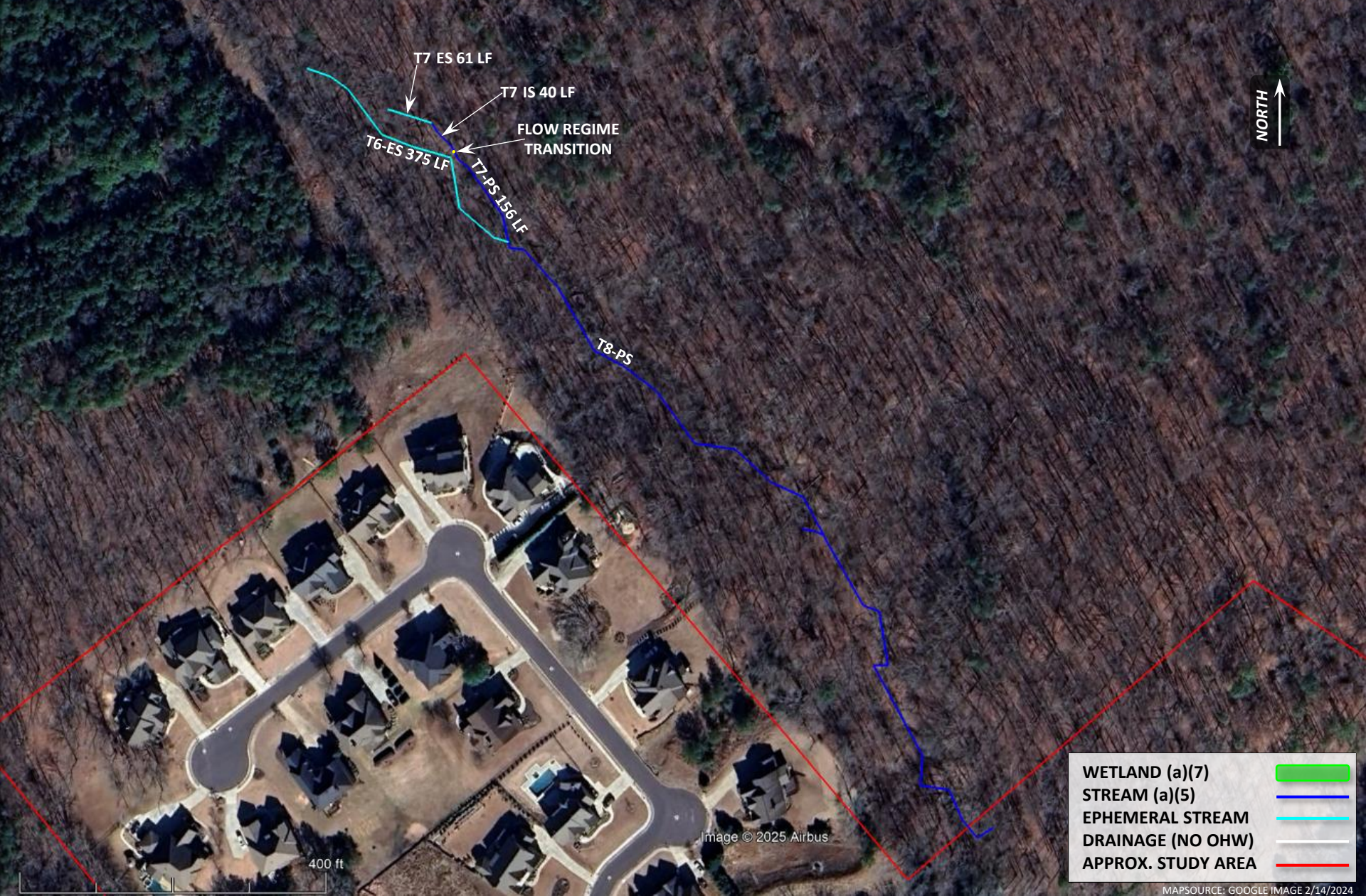


**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

**PREPARED FOR:
ST. BOURKE DEVELOPMENT**

**EXHIBIT 4
UPDATED FEBRUARY 14, 2025 BY:
NELSON ENVIRONMENTAL, INC.
www.NelsonEnvironmental.us PH:404/862-1665**



**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

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**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

EXHIBIT 5
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**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

PREPARED FOR:
ST. BOURKE DEVELOPMENT

**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

EXHIBIT 6
UPDATED FEBRUARY 14, 2025 BY:
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| | |
|--------------------|---|
| WETLAND (a)(7) | |
| STREAM (a)(5) | |
| EPHEMERAL STREAM | |
| DRAINAGE (NO OHW) | |
| APPROX. STUDY AREA | |

MAPSOURCE: GOOGLE IMAGE 2/14/2024

**AERIAL PHOTO W/
AQUATIC RESOURCE LOCATIONS**

**DELINEATION OF AQUATIC RESOURCES
POOLE MOUNTAIN CENTRAL
SAS-2017-00166
GWINNETT COUNTY, GEORGIA**

EXHIBIT 7
 UPDATED FEBRUARY 14, 2025 BY:
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