



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

CESAS-RD-P

May 12, 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-2024-00369

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 the state of Georgia due to litigation.

1. SUMMARY OF CONCLUSIONS.

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.

CESAS-RD-P

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023), SAS-2024-00369

- 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	JD	Section 404
T2	JD	Section 404
T3	JD	Section 404
T7	JD	Section 404
T8	JD	Section 404
T4	Non-JD	Section 404
T5	Non-JD	Section 404
T6	Non-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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- A. 234.67 Acres
- B. Latitude: 33.4924, Longitude: -82.6224
- C. Northeast of Warrenton
- D. Warren County
- E. Georgia

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

- A. J. Strom Thurmond Reservoir, located approximately 70,000 linear feet (21 linear kilometers) northeast of the subject review, is the nearest TNW.
- 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

T1 flows northwestward and exits the property, immediately combining with T2. At the confluence of T1 and T2, flows are understood to convey northwestward via an offsite tributary for approximately 2,400 feet until it enters Middle Creek.

T3 flows generally westward and exits the property. It is understood to flow for approximately 175 linear feet and combines with an offsite unnamed tributary, forming T7.

T4 flows westward and enters T7. T5 flows southwestward and enters T7. T6 flows westward and enters T8.

T8 flows northward along the western boundary of the review area until it exits the property. It flows northward for approximately 1,600 feet and enters Middle Creek. Middle Creek flows northeastward for approximately 500 feet until its confluence with T2.

From the confluence of T2 and Middle Creek, flows convey generally northeastward for approximately 75,000 feet (23 kilometers) via Middle Creek, Big Creek, and non-navigable limits of J. Strom Thurmond Reservoir until they enter the navigable limits of J. Strom Thurmond Reservoir, 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

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.

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):

Name of Aquatic Resource	Size (in linear feet)	Flow Regime and additional description of the tributary	Method for determining flow regime
T1	1,391	Intermittent (based on relevant reach); See further explanation below.	observed flow during site visit during normal precipitation conditions
T2	177	Intermittent; See further explanation below.	observed flow during site visit during normal precipitation conditions
T3	303	Intermittent; See further explanation below.	observed flow during site visit during normal precipitation conditions
T7	1,519	Intermittent; See further explanation below.	observed flow during site visit during normal precipitation conditions
T8	1,822	Perennial; See further explanation below.	observed flow during site visit during normal precipitation conditions

- 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”).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 (in linear feet)	Type of resource generally not jurisdictional
T4	260	Tributary that is a non-relatively permanent water.
T5	100	Tributary that is a non-relatively permanent water.

⁵ 51 FR 41217, November 13, 1986.

T6	550	Tributary that is a non-relatively permanent water.
----	-----	---

T4: The subject water is a first order stream and tributary of Middle Creek located in the western portion of the review area. During the Agent's delineation, its limits were observed to consist of two miniscule ephemeral drainages that converge to form part of an overall ephemeral stream reach (260 linear feet identified as E. Stream 5). No water was present in tributary during the site visit. A total of 100% of the subject water is understood to have ephemeral (non-relatively permanent) flow. Therefore, T4 does not meet the definition of an (a)(5) water.

T5: The subject water is a first order stream and tributary of Middle Creek located in the western portion of the review area. During the Agent's delineation, its limits were observed to consist of a single ephemeral stream reach (100 linear feet identified as E. Stream 4). No water was present in the tributary during the site visit. A total of 100% of the subject water is understood to have ephemeral (non-relatively permanent) flow. Therefore, T4 does not meet the definition of an (a)(5) water.

T6: The subject water is a first order stream and tributary of Middle Creek located in the western portion of the review area. During the Agent's delineation, its limits were observed to consist of a single ephemeral stream reach (550 linear feet identified as E. Stream 1). No water was present in tributary during the site visit. A total of 100% of the subject water is understood to have ephemeral (non-relatively permanent) flow. Therefore, T6 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: April – May 2025
- b. Field determination(s): November 2, 2023 (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: Figure No. 8: Aquatic Resource Delineation GPS Exhibit, as prepared by the Agent, and dated 4/9/2024.
 - ☐ 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

CESAS-RD-P

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023), SAS-2024-00369

- ☒ Photographs: Figure No[s].: Sheet 1 of 4 – Sheet 4 of 4: *Photo Index Exhibit and Site Photographs*, prepared by the Agent on 2/11/2023, and provided to CESAS-RD-P on 4/9/2025
- ☒ Aerial Imagery: Figure No. 5: *2021 Ortho Aerial*, as prepared by the Agent and dated 4/9/2024.
- ☒ LIDAR: Figure No. 7: NOAA Topographic Lidar, as prepared by the Agent and dated 4/9/2024; LiDAR (3DEP DEM and 3DEP Hillshade) imagery, retrieved from the National Regulatory Viewer (NRV) by CESAS-RD-P in 4/2025.
- ☒ USDA NRCS Soil Survey: Figure No. 3: NRCS Soil Map, as prepared by the Agent and dated 4/9/2024; and Hydric Rating by Map Unit, retrieved by CESAS-RDP in 4/2025.
- ☒ USFWS NWI maps: Figure No. 4: National Wetlands Inventory, as prepared by the Agent and dated 4/9/2024.
- ☒ USGS topographic maps: Figure No. 2: USGS Topographic Map, as prepared by the Agent and dated 4/9/2024.
- ☒ USGS NHD data/maps: NHD data retrieved from the NRV by CESAS-RD-P in 4/2025.
- ☐ Section 10 resources used: Title and Dates
- ☐ NC DWQ stream identification forms
- ☐ Antecedent Precipitation Tool Analysis (List Date(s)):
- ☒ Other sources of Information: USGS StreamStats data retrieved by CESAS-RD-P in 4/2025; USDM (Georgia) for 7/11/2023; and Georgia Flood Map Program map, prepared by Agent, and dated 4/9/2024.

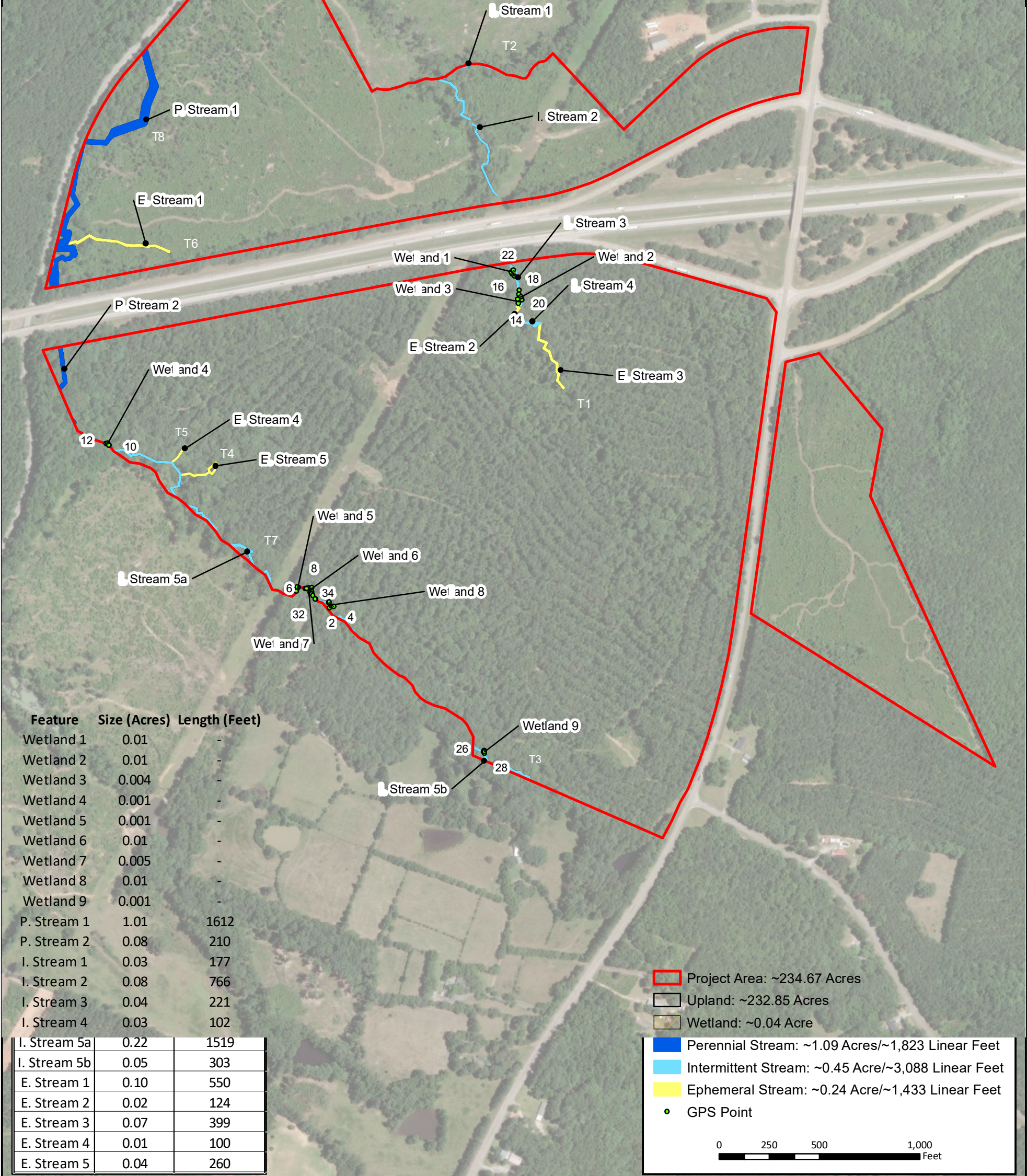
10. OTHER SUPPORTING INFORMATION. N/A

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.



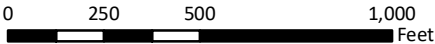
Annotated by CESAS-RD-P on
May 7, 2025

Label	Latitude	Longitude	Label	Latitude	Longitude
1	33.489690	-82.625253	21	33.494239	-82.622257
2	33.489761	-82.625275	22	33.494272	-82.622293
3	33.489766	-82.625262	23	33.494292	-82.622310
4	33.489707	-82.625190	24	33.494320	-82.622279
5	33.489891	-82.625552	25	33.487703	-82.622715
6	33.489953	-82.625621	26	33.487729	-82.622732
7	33.489956	-82.625603	27	33.487740	-82.622718
8	33.489963	-82.625545	28	33.487722	-82.622714
9	33.489906	-82.625545	29	33.489967	-82.625769
10	33.491902	-82.628873	30	33.489910	-82.625803
11	33.491923	-82.628921	31	33.489969	-82.625785
12	33.491928	-82.628891	32	33.489806	-82.625487
13	33.491903	-82.628873	33	33.489951	-82.625657
14	33.493916	-82.622133	34	33.489947	-82.625633
15	33.493916	-82.622133	35	33.489892	-82.625571
16	33.494046	-82.622181	36	33.489880	-82.625558
17	33.493993	-82.622183	37	33.489876	-82.625553
18	33.493954	-82.622151	38	33.489853	-82.625528
19	33.493870	-82.622197	39	33.489808	-82.625489
20	33.493921	-82.622208			



Feature	Size (Acres)	Length (Feet)
Wetland 1	0.01	-
Wetland 2	0.01	-
Wetland 3	0.004	-
Wetland 4	0.001	-
Wetland 5	0.001	-
Wetland 6	0.01	-
Wetland 7	0.005	-
Wetland 8	0.01	-
Wetland 9	0.001	-
P. Stream 1	1.01	1612
P. Stream 2	0.08	210
I. Stream 1	0.03	177
I. Stream 2	0.08	766
I. Stream 3	0.04	221
I. Stream 4	0.03	102
I. Stream 5a	0.22	1519
I. Stream 5b	0.05	303
E. Stream 1	0.10	550
E. Stream 2	0.02	124
E. Stream 3	0.07	399
E. Stream 4	0.01	100
E. Stream 5	0.04	260

- Project Area: ~234.67 Acres
- Upland: ~232.85 Acres
- Wetland: ~0.04 Acre
- Perennial Stream: ~1.09 Acres/~1,823 Linear Feet
- Intermittent Stream: ~0.45 Acre/~3,088 Linear Feet
- Ephemeral Stream: ~0.24 Acre/~1,433 Linear Feet
- GPS Point



RLC Project No.:	23-336
Figure No.:	8
Prepared By:	MW
Sketch Date:	5/6/2025
Map Scale :	1 inch = 500 feet

Four Site Holdings Tract

Warren County, Georgia

Aquatic Resource Delineation GPS Exhibit

Prepared For: Four Site Holdings, LLLP



RESOURCE+LAND
CONSULTANTS
41 Park of Commerce Way, Ste 101
Savannah, GA 31405
tel 912.443.5896 fax 912.443.5898