



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT  
4155 EAST CLAY STREET  
VICKSBURG, MISSISSIPPI 39183

CEMVK-RD

18 June 2025

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),<sup>1</sup> [MVK-2025-296](#)

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 [Mississippi](#) 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).

Waters_Name	State	Cowardin_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude
Pond 1	MISSISSIPPI	L1	Area	0.284589	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91375800	-89.78861900
Pond 2	MISSISSIPPI	L1	Area	0.718578	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91428000	-89.78288900
Pond 3	MISSISSIPPI	L1	Area	1.792039	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91282700	-89.78202800
Pond 5/6	MISSISSIPPI	L1	Area	3.271126	ACRE	A3.OTHER-404	34.91708600	-89.78392500
Pond 7	MISSISSIPPI	L1	Area	0.611725	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91771500	-89.78177700
Pond 4	MISSISSIPPI	L1	Area	1.506392	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91579900	-89.78497500
PFO 2	MISSISSIPPI	PFO	Area	0.341261	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91162300	-89.79209400
PFO 1	MISSISSIPPI	PFO	Area	0.039032	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91071400	-89.79295400
PFO 3	MISSISSIPPI	PFO	Area	0.054577	ACRE	A7-AJD.WETL-404	34.91182300	-89.79055000
PFO 8	MISSISSIPPI	PFO	Area	0.158018	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91754800	-89.78136200
PEM 6	MISSISSIPPI	PEM	Area	0.489795	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91415900	-89.78245300
PEM 4	MISSISSIPPI	PEM	Area	0.322115	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91235300	-89.78274700
PEM 5	MISSISSIPPI	PEM	Area	0.261803	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91153800	-89.78303000
PEM 7	MISSISSIPPI	PEM	Area	0.023624	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	34.91612000	-89.78262100
Ephemeral 1	MISSISSIPPI	R6	Linear	524.9079	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	34.91139400	-89.79248300
Ephemeral 4	MISSISSIPPI	R6	Linear	98.93342	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	34.91145400	-89.78189500
Ephemeral 3	MISSISSIPPI	R6	Linear	1134.913	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	34.91214100	-89.78274700
Ephemeral 5	MISSISSIPPI	R6	Linear	683.8798	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	34.91816400	-89.78343800
Ephemeral 6	MISSISSIPPI	R6	Linear	108.7816	FOOT	NON-WOTUS-STREAM.NEGATIVE-A5	34.91834500	-89.78056100

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Ephemeral 7	MISSISSIPPI	R6	Linear	569.1557	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91781100	-89.77771800
Intermittent 3	MISSISSIPPI	R4	Linear	426.7659	FOOT	A5.TRIB-404	34.91307400	-89.79230900
Intermittent 2	MISSISSIPPI	R4	Linear	1828.982	FOOT	A5.TRIB-404	34.91281100	-89.79237100
Intermittent 5	MISSISSIPPI	R4	Linear	1123.226	FOOT	A5.TRIB-404	34.91161300	-89.79075800
Intermittent 6	MISSISSIPPI	R4	Linear	387.7269	FOOT	A5.TRIB-404	34.91139500	-89.79082900
Intermittent 8	MISSISSIPPI	R4	Linear	2986.965	FOOT	A5.TRIB-404	34.91825700	-89.78035900
Erosional 4	MISSISSIPPI	R6	Linear	202.8523	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91118900	-89.79147000
Erosional 7	MISSISSIPPI	R6	Linear	810.6997	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91070300	-89.78852100
Erosional 9	MISSISSIPPI	R6	Linear	69.10613	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91835500	-89.78043000
Erosional 10	MISSISSIPPI	R6	Linear	609.5614	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91831700	-89.77963900
Perennial 1	MISSISSIPPI	R3	Linear	3339.388	FOOT	A5.TRIB-404	34.91205300	-89.79129000

## 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. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025)

## 3. REVIEW AREA.

- **The review area is comprised of 167 acres located east of Bethel Road and south of Highway 78 in Byhalia, DeSoto County, Mississippi. (34.914124, - 89.785813). The property is composed of mainly forested areas along with several ponds, a few tributaries, and a few wetlands.**

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

- **The nearest TNW is Section 10 Waters of the Coldwater River.**

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

- **The flow path off the property is via tributaries. Flow path from the western part of the property is via perennial 1 for 2.5 miles south until reaching section 404 waters of the Coldwater River. Flow path from the eastern side of the property is via intermittent 8 for 2.1 miles east then southeast until reaching section 404 waters of the Coldwater River. Section 404 of the Coldwater River flows southwest for 126 miles until reaching Section 10 Waters of the Coldwater River.**

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

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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.

<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.

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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):

Pond 5/6	MISSISSIPPI	L1	Area	3.271126	ACRE	A3.OTHER-404	34.91708600	-89.78392500
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- **Pond 5/6 is adjacent to and directly abut a requisite water and is therefore considered jurisdictional.**

- d. Impoundments (a)(4): [N/A](#)

- e. Tributaries (a)(5):

Intermittent 3	MISSISSIPPI	R4	Linear	426.7659	FOOT	A5.TRIB-404	34.91307400	-89.79230900
Intermittent 2	MISSISSIPPI	R4	Linear	1828.982	FOOT	A5.TRIB-404	34.91281100	-89.79237100
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Perennial 1	MISSISSIPPI	R3	Linear	3339.388	FOOT	A5.TRIB-404	34.91205300	-89.79129000

- **All tributaries above meet the relatively permanent standard to be considered an RPW and is therefore jurisdictional.**

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

- g. Adjacent wetlands (a)(7):

PFO 3	MISSISSIPPI	PFO	Area	0.054577	ACRE	A7-AJD.WETL-404	34.91182300	-89.79055000
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- **PFO 3 is adjacent to and directly abut a requisite water and is therefore considered jurisdictional.**

## 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”).<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 under the CWA as a preamble water.

Pond 1	MISSISSIPPI	L1	Area	0.284589	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91375800	-89.78861900
Pond 2	MISSISSIPPI	L1	Area	0.718578	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91428000	-89.78288900
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Pond 7	MISSISSIPPI	L1	Area	0.611725	ACRE	NON-WOTUS-LAKE.POND.NEGATIVE-A5	34.91771500	-89.78177700

- **All aquatic resources above meet the relatively permanent standards to be considered a preamble water and are therefore considered non-jurisdictional.**
- 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**

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

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- 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).

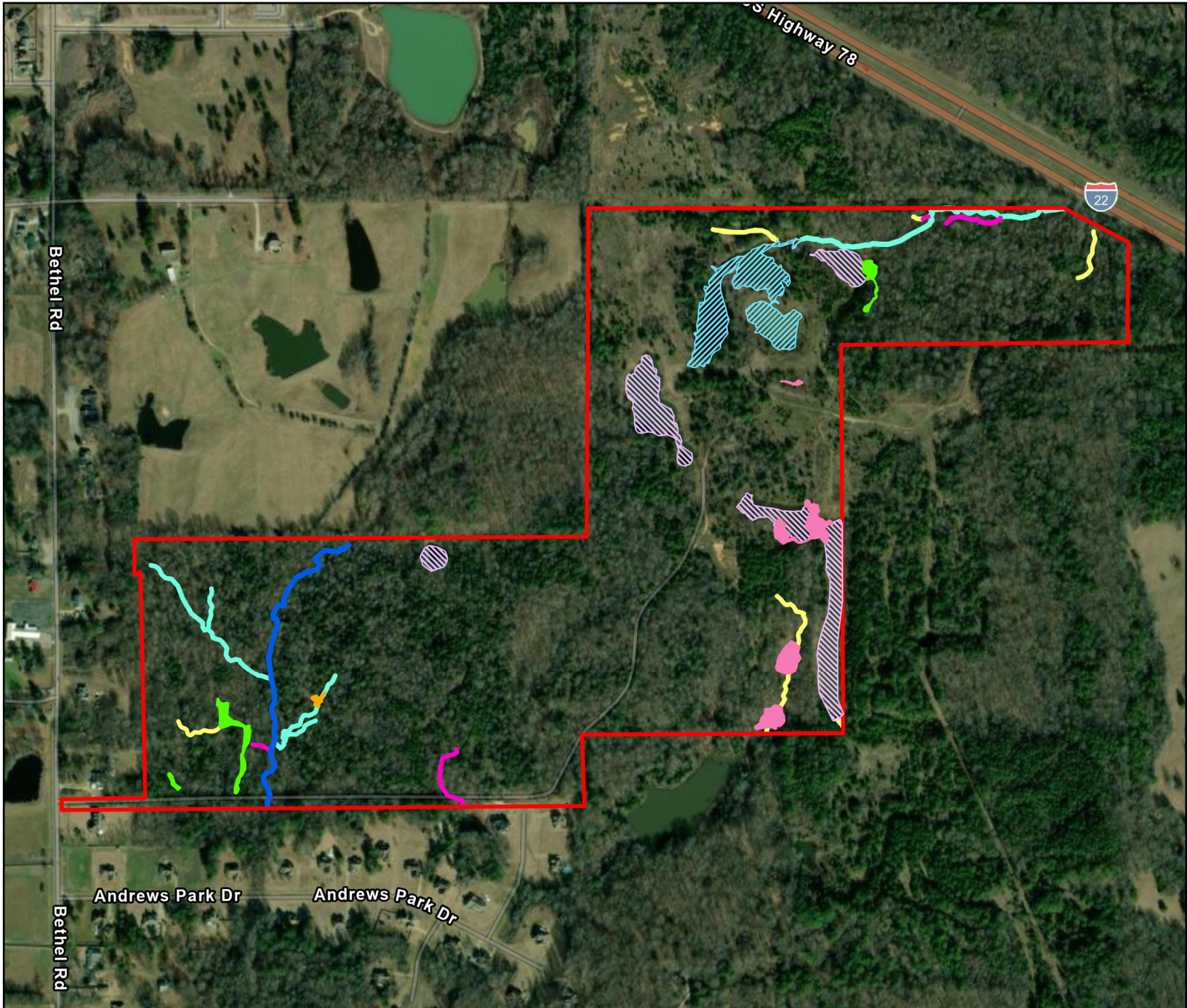
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Erosional 4	MISSISSIPPI	R6	Linear	202.8523	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91118900	-89.79147000
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Erosional 9	MISSISSIPPI	R6	Linear	69.10613	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91835500	-89.78043000
Erosional 10	MISSISSIPPI	R6	Linear	609.5614	FOOT	NON-WOTUS- STREAM.NEGATIVE-A5	34.91831700	-89.77963900

- **All aquatic resources above meet the relatively permanent standards to be considered a preamble water and are therefore considered non-jurisdictional.**

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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. **Office determination based on consultant delineation.** [Accessed on 6-11-2025](#)
  - b. **GIS** [Accessed on 6-11-2025](#)
  - c. **Aerial Photos** [Accessed on 6-11-2025](#)
  - d. **NHD** [Accessed on 6-11-2025](#)
  - e. **NWI** [Accessed on 6-11-2025](#)
  - f. **LiDAR** [Accessed on 6-11-2025](#)
  - g. **Google Earth Pro** [Accessed on 6-11-2025](#)
  - h. **Digital Globe** [Accessed on 6-11-2025](#)
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.

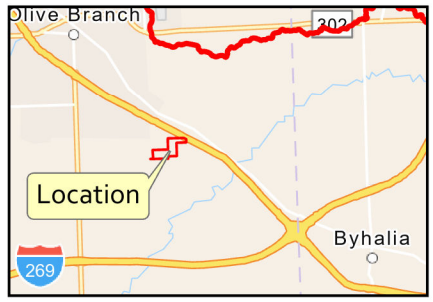


**18 JUNE 2025**  
**MVK-2025-296**

Proposed Residential  
 Neighborhood in Lewisburg

Approved Jurisdictional  
 Determination

Hayleigh Rogers



**Legend**

Boundary (165.78 Acres)	Pond Non-Jurisdictional (4.91 Acres)
Emergent Wetlands Non-Jurisdictional (1.09 Acres)	Ephemeral Stream Non-RPW Non-Jurisdictional (3,120.6')
Forested Wetland Jurisdictional (0.05 Acres)	Erosional Feature Non-RPW Non-Jurisdictional (1,692.3')
Forested Wetland Non-Jurisdictional (0.54 Acres)	Intermittent Stream RPW Jurisdictional (6,753.7')
Pond Jurisdictional (3.27 Acres)	Perennial Feature RPW Jurisdictional (3,339.4')

**US Army Corps of Engineers®**

REGULATORY DIVISION  
 MISSISSIPPI BRANCH

0 500 1,000 Feet

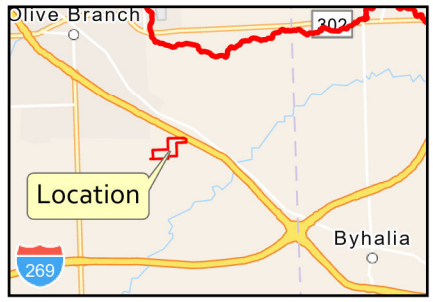


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 Neighborhood in Lewisburg



Approved Jurisdictional  
 Determination

**H a y l e i g h R o g e r s**




**Legend**

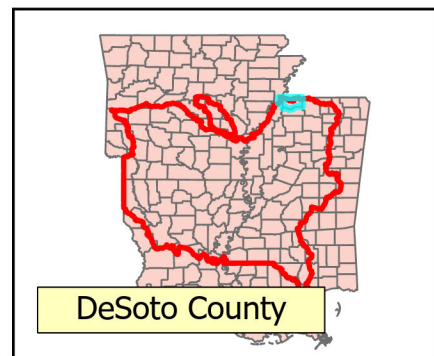
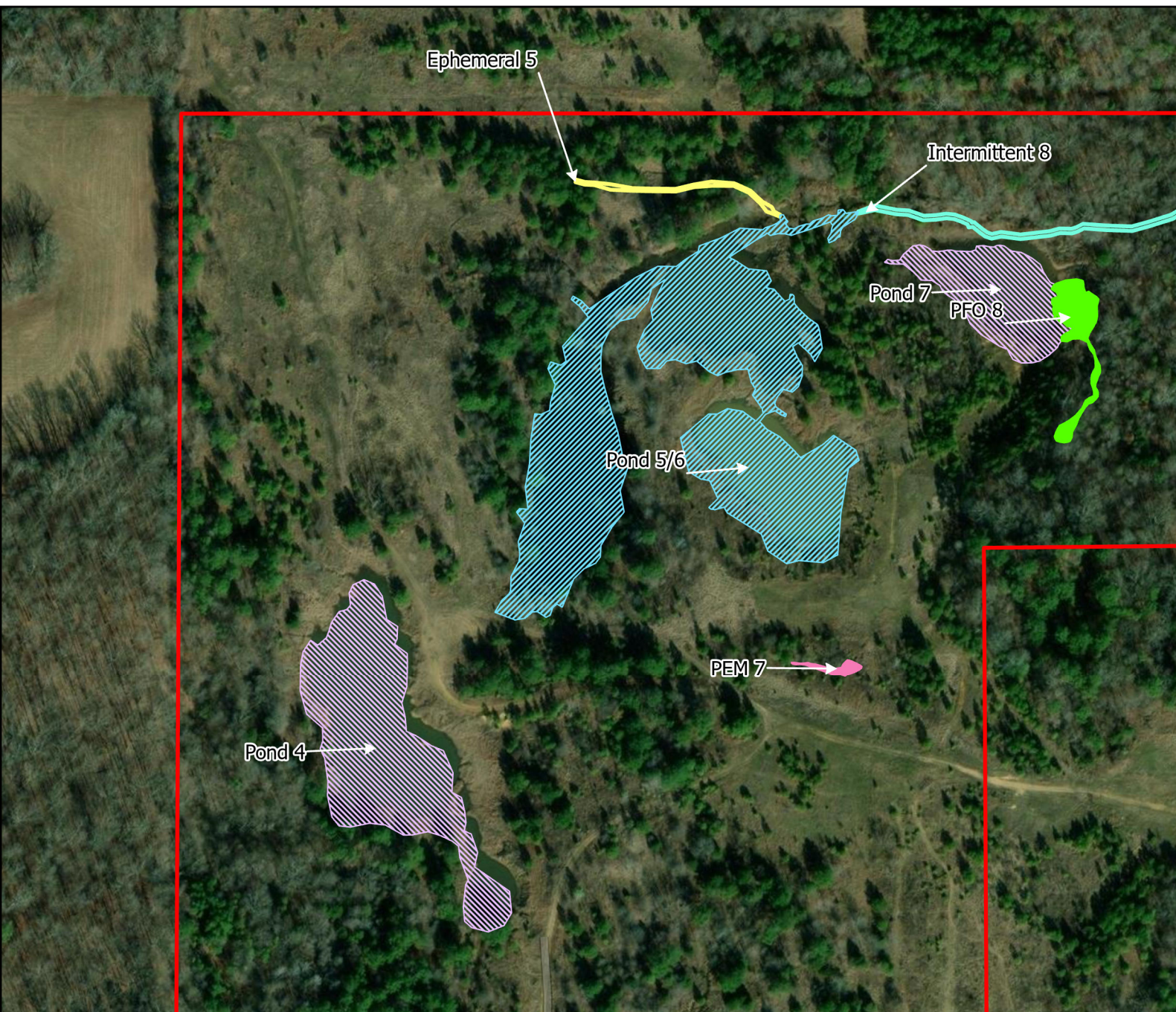
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**US Army Corps  
of Engineers®**

**REGULATORY DIVISION  
MISSISSIPPI BRANCH**

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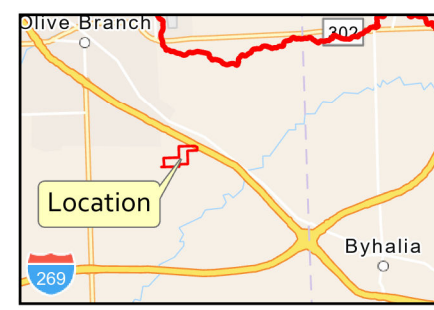


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Proposed Residential  
 Neighborhood in Lewisburg

Approved Jurisdictional  
 Determination

Hayleigh Rogers



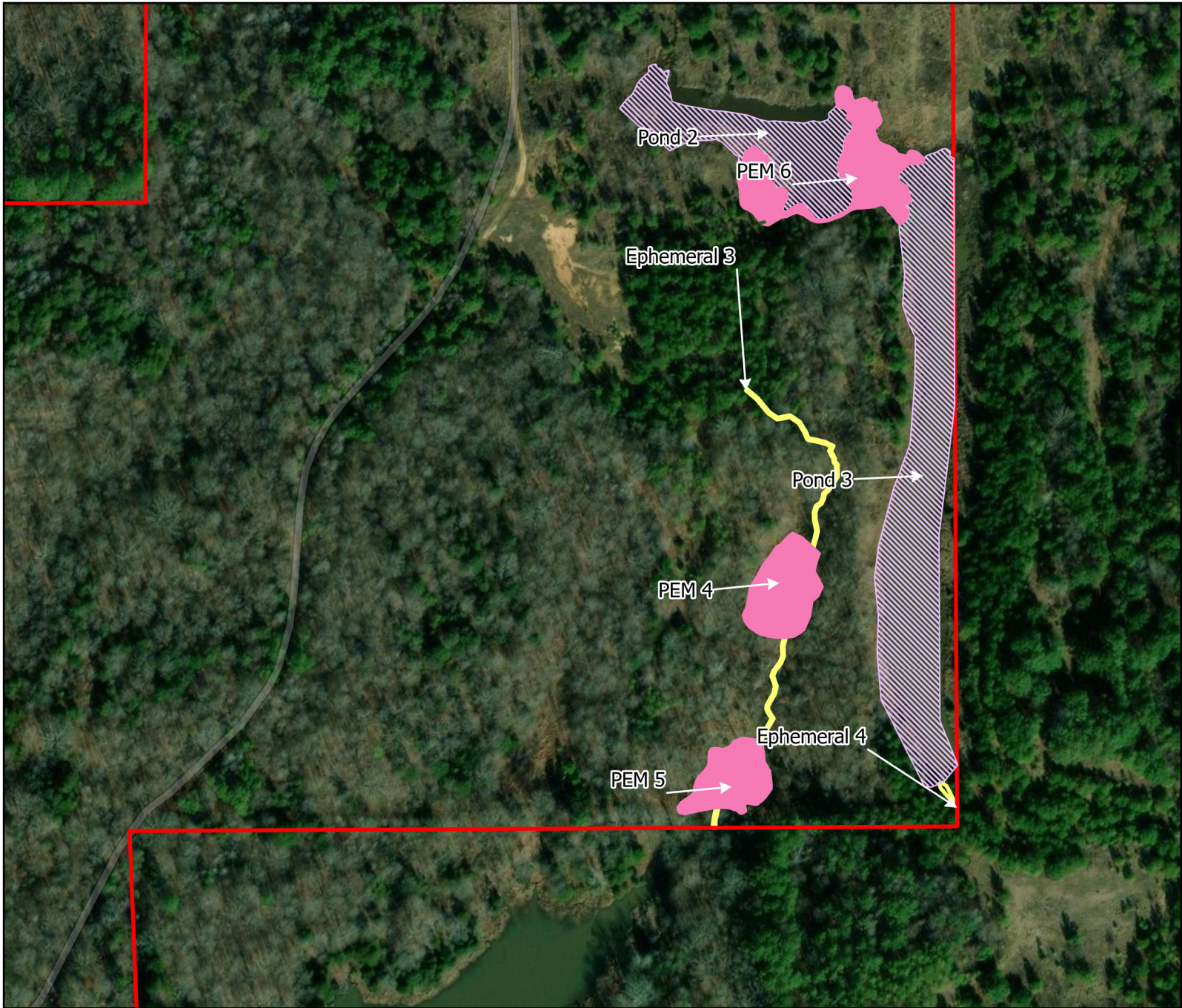
**US Army Corps of Engineers**

REGULATORY DIVISION  
 MISSISSIPPI BRANCH

0 170 340 Feet

**Legend**

Boundary (165.78 Acres)	Pond Non-Jurisdictional (4.91 Acres)
Emergent Wetlands Non-Jurisdictional (1.09 Acres)	Ephemeral Stream Non-RPW Non-Jurisdictional (3,120.6')
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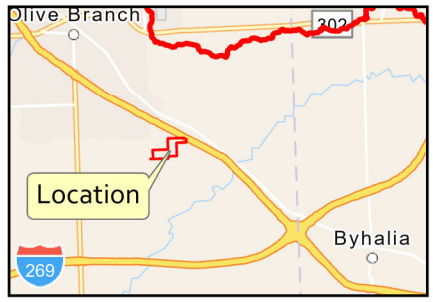


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 Neighborhood in Lewisburg

Approved Jurisdictional  
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Hayleigh Rogers



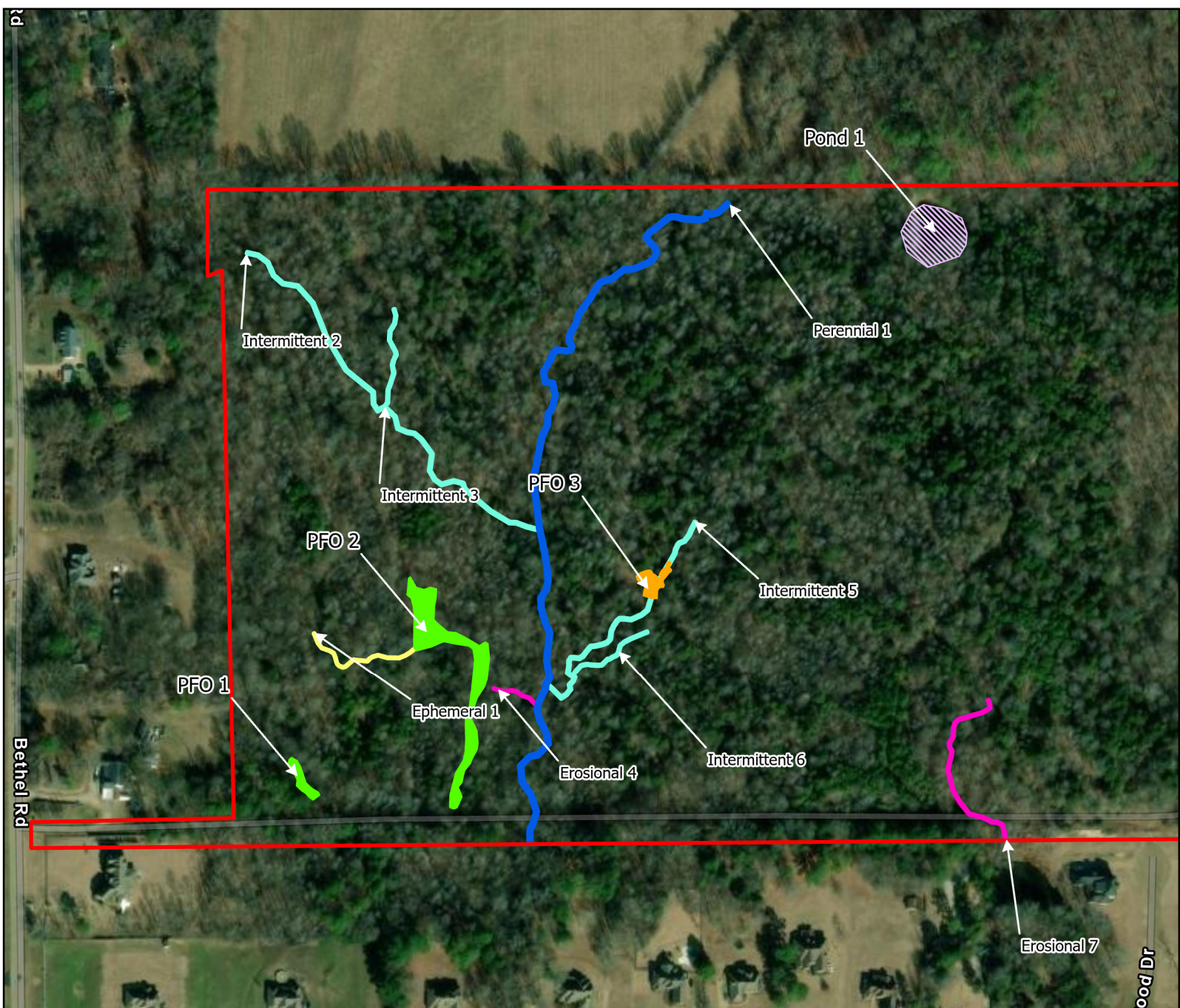
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Boundary (165.78 Acres)	Pond Non-Jurisdictional (4.91 Acres)
Emergent Wetlands Non-Jurisdictional (1.09 Acres)	Ephemeral Stream Non-RPW Non-Jurisdictional (3,120.6')
Forested Wetland Jurisdictional (0.05 Acres)	Erosional Feature Non-RPW Non-Jurisdictional (1,692.3')
Forested Wetland Non-Jurisdictional (0.54 Acres)	Intermittent Stream RPW Jurisdictional (6,753.7')
Pond Jurisdictional (3.27 Acres)	Perennial Feature RPW Jurisdictional (3,339.4')

**US Army Corps  
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**REGULATORY DIVISION  
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0 170 340  
 Feet

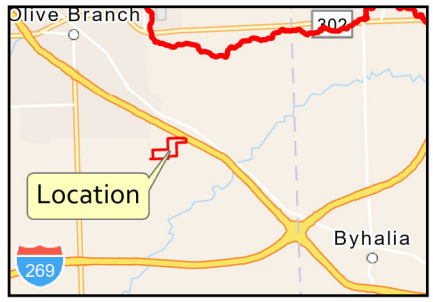


**18 JUNE 2025**  
**MVK-2025-296**

Proposed Residential  
 Neighborhood in Lewisburg

Approved Jurisdictional  
 Determination

Hayleigh Rogers



**Legend**

Boundary (165.78 Acres)	Pond Non-Jurisdictional (4.91 Acres)
Emergent Wetlands Non-Jurisdictional (1.09 Acres)	Ephemeral Stream Non-RPW Non-Jurisdictional (3,120.6')
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