



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

CEMVK-RD

22 August 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),¹ [MVK-2025-491](#)

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable [Mississippi](#) due to litigation.

1. SUMMARY OF CONCLUSIONS.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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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
PEM 1	MISSISSIPPI	PEM	Area	1.252628	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73413000	-90.19947300
PEM 2	MISSISSIPPI	PEM	Area	0.007438	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73399500	-90.19907000
PFO 1	MISSISSIPPI	PFO	Area	0.575887	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.72007600	-90.22182800
PFO 2	MISSISSIPPI	PFO	Area	0.043283	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.72056600	-90.22242900
PFO 3	MISSISSIPPI	PFO	Area	0.03945	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73360000	-90.19895500
PFO 4	MISSISSIPPI	PFO	Area	0.017113	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73356300	-90.19885700
Ephemeral 1	MISSISSIPPI	R6	Linear	508.519799	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	32.73186900	-90.20338800
Ephemeral 2	MISSISSIPPI	R6	Linear	1034.573884	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	32.72022100	-90.22206900
Ephemeral 3	MISSISSIPPI	R6	Linear	1698.95852	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	32.72218200	-90.19666400
Ephemeral 4	MISSISSIPPI	R6	Linear	228.638021	FOOT	NON-WOTUS-TRIB.NEGATIVE-A5	32.72100500	-90.22258100
Intermittent 1	MISSISSIPPI	R4	Linear	676.753826	FOOT	A5.TRIB-404	32.73092300	-90.20458900

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’

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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 roughly 687 acres located in Yazoo County, Mississippi. (32.721715, -90.209209). This parcel of land in the city of Fugate is being assessed for 4 potential ponds to be constructed on. Each of the 4 potential areas was previously open water habitats historically but eventually drained and/or converted to agriculture fields. Deer Creek runs along the western portion of the property.

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 Big Black River.**

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

- **The flow path from Pond 1 is east via unnamed tributary 2 for 1.2 miles until reaching Deer Creek. Ponds 2 and 3 flow path is south via unnamed tributary 1 for 1.4 miles until reaching Deer Creek. Pond 3 flow is south via Deer Creek for 6 miles until reaching Big Lake Run. Big Lake Run flows southwest for 2.3 miles until reaching section 404 of the Big Black River. The 404 section flows 61 miles southwest until reaching section 10 waters of the Big Black River.**

6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ **N/A**

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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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):

Intermittent 1	MISSISSIPPI	R4	Linear	676.753826	FOOT	A5.TRIB-404	32.73092300	-90.20458900
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- **The intermittent tributary listed above meets the relatively permanent standard to be an RPW/WOTUS and is therefore jurisdictional.**

- 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”).⁷ Include size of the aquatic resource or feature within

⁷ 51 FR 41217, November 13, 1986.

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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).

PEM 1	MISSISSIPPI	PEM	Area	1.252628	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73413000	-90.19947300
PEM 2	MISSISSIPPI	PEM	Area	0.007438	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.73399500	-90.19907000
PFO 1	MISSISSIPPI	PFO	Area	0.575887	ACRE	NON-WOTUS-WETL.NEGATIVE-A7	32.72007600	-90.22182800
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PFO 4	MISSISSIPPI	PFO	Area	0.017113	ACRE	NON-WOTUS- WETL.NEGATIVE-A7	32.73356300	-90.19885700
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- **The aquatic resources listed above are not adjacent too or directly abut a requisite water of the US and are therefore non-jurisdictional.**

Ephemeral 1	MISSISSIPPI	R6	Linear	508.519799	FOOT	NON-WOTUS- TRIB.NEGATIVE-A5	32.73186900	-90.20338800
Ephemeral 2	MISSISSIPPI	R6	Linear	1034.573884	FOOT	NON-WOTUS- TRIB.NEGATIVE-A5	32.72022100	-90.22206900
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Ephemeral 4	MISSISSIPPI	R6	Linear	228.638021	FOOT	NON-WOTUS- TRIB.NEGATIVE-A5	32.72100500	-90.22258100

- **The aquatic resources listed above do not meet the relatively permanent standard and are therefore non-jurisdictional.**

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.

- Office determination based on consultant delineation. Accessed on 8-18-2025**
- GIS Accessed on 8-18-2025**
- Aerial Photos Accessed on 8-18-2025**
- NHD Accessed on 8-18-2025**
- NWI Accessed on 8-18-2025**
- LiDAR Accessed on 8-18-2025**
- Google Earth Pro Accessed on 8-18-2025**
- Digital Globe Accessed on 8-18-2025**

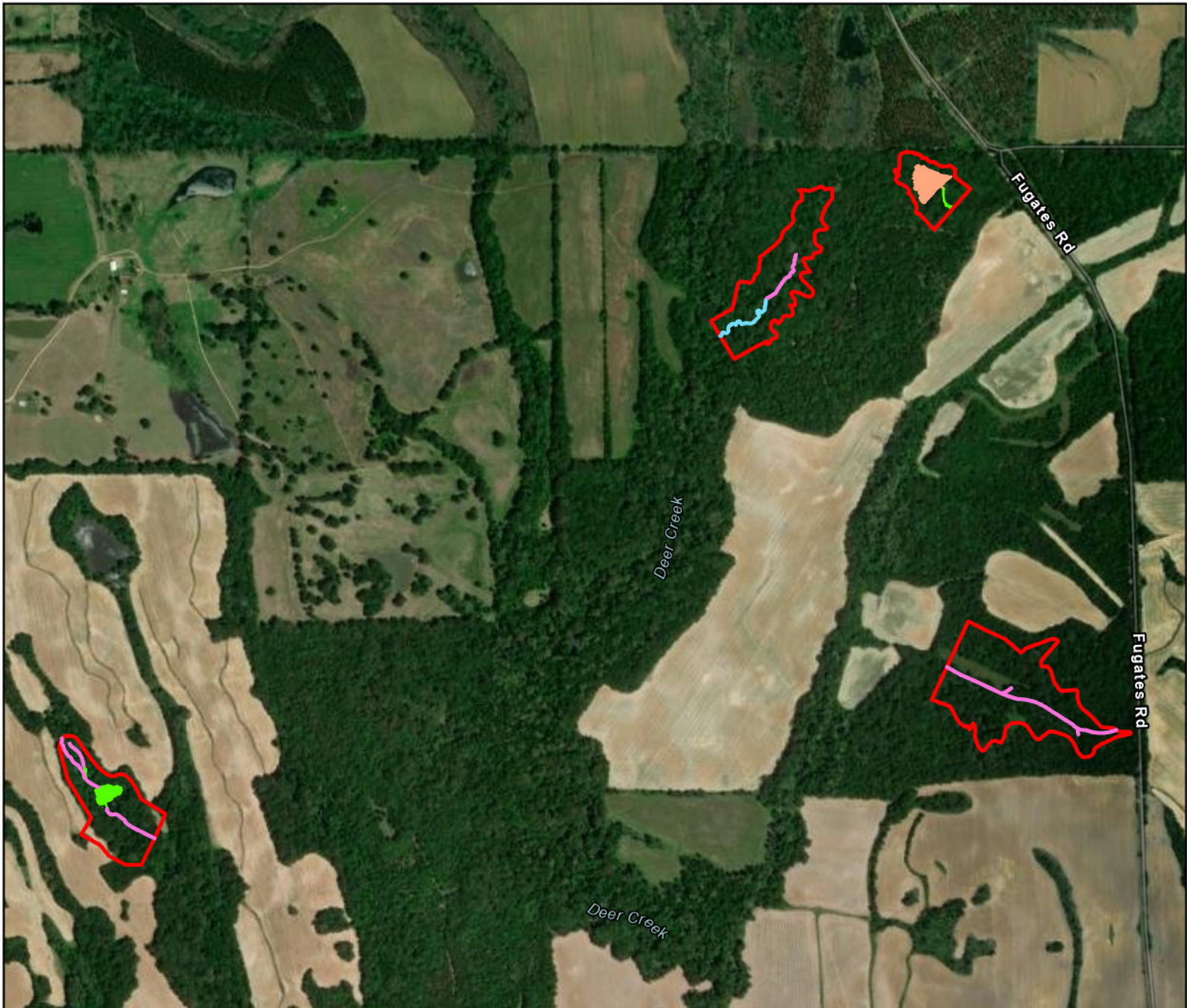
10. OTHER SUPPORTING INFORMATION. **N/A**

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

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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.

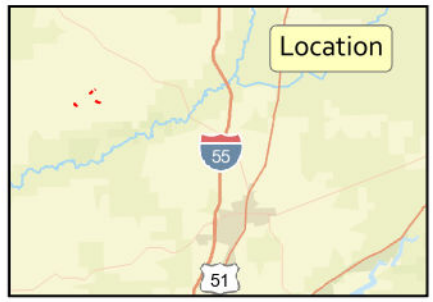


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Haney Property Project

Approved Jurisdictional
 Determination

Hayleigh Rogers

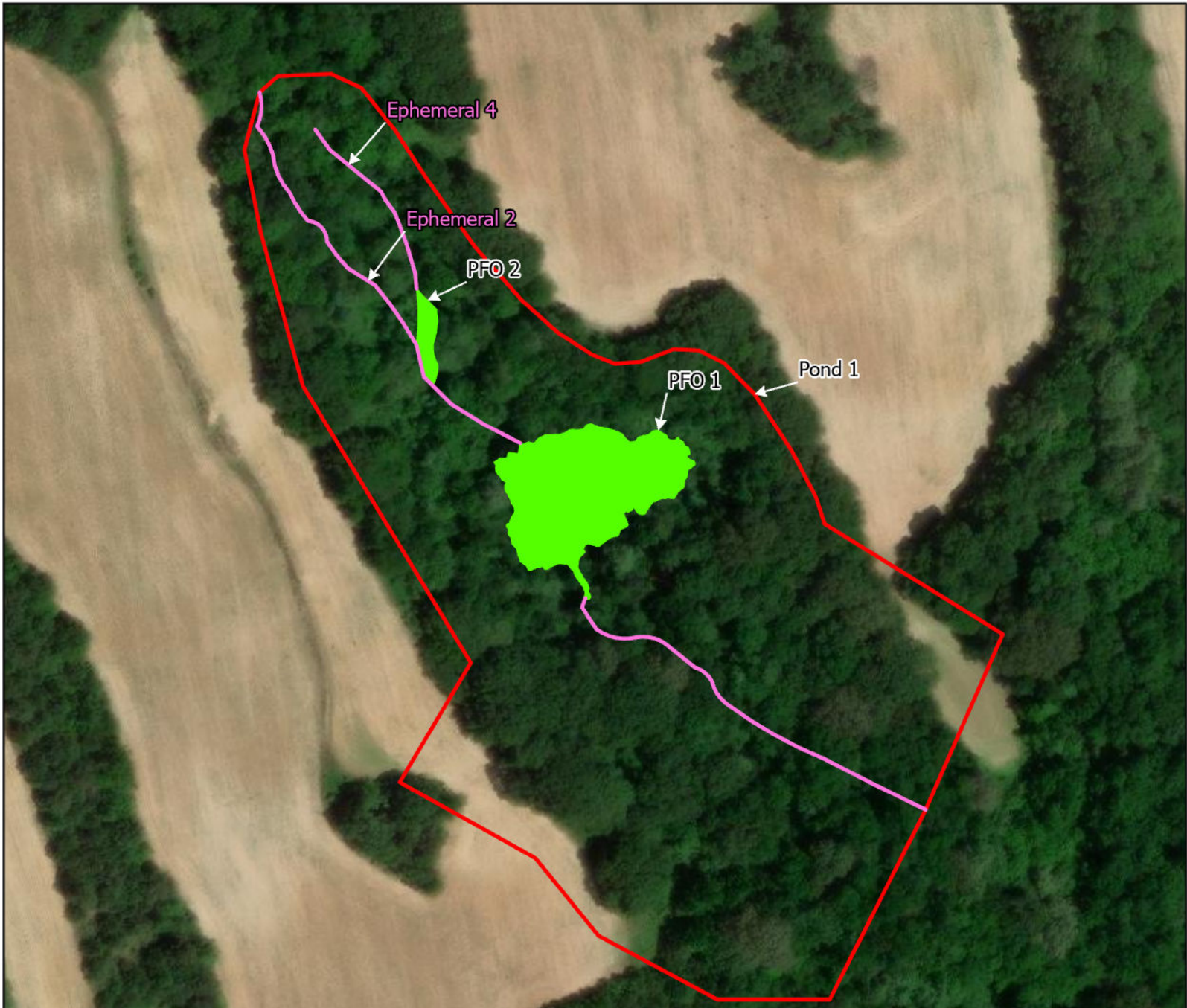


US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 500 1,000
 Feet

- Legend**
- Boundary (47.31 Acres)
 - Emergent Wetlands Non-jurisdictional (1.26 Acres)
 - Forested Wetland Non-Jurisdictional (0.67 Acres)
 - Ephemeral Stream Non-RPW Non-jurisdictional (3470.69' LF)
 - Intermittent Stream RPW Jurisdictional (676.75' LF)

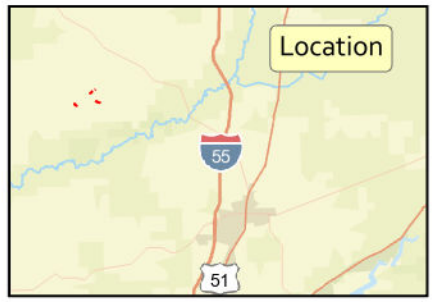


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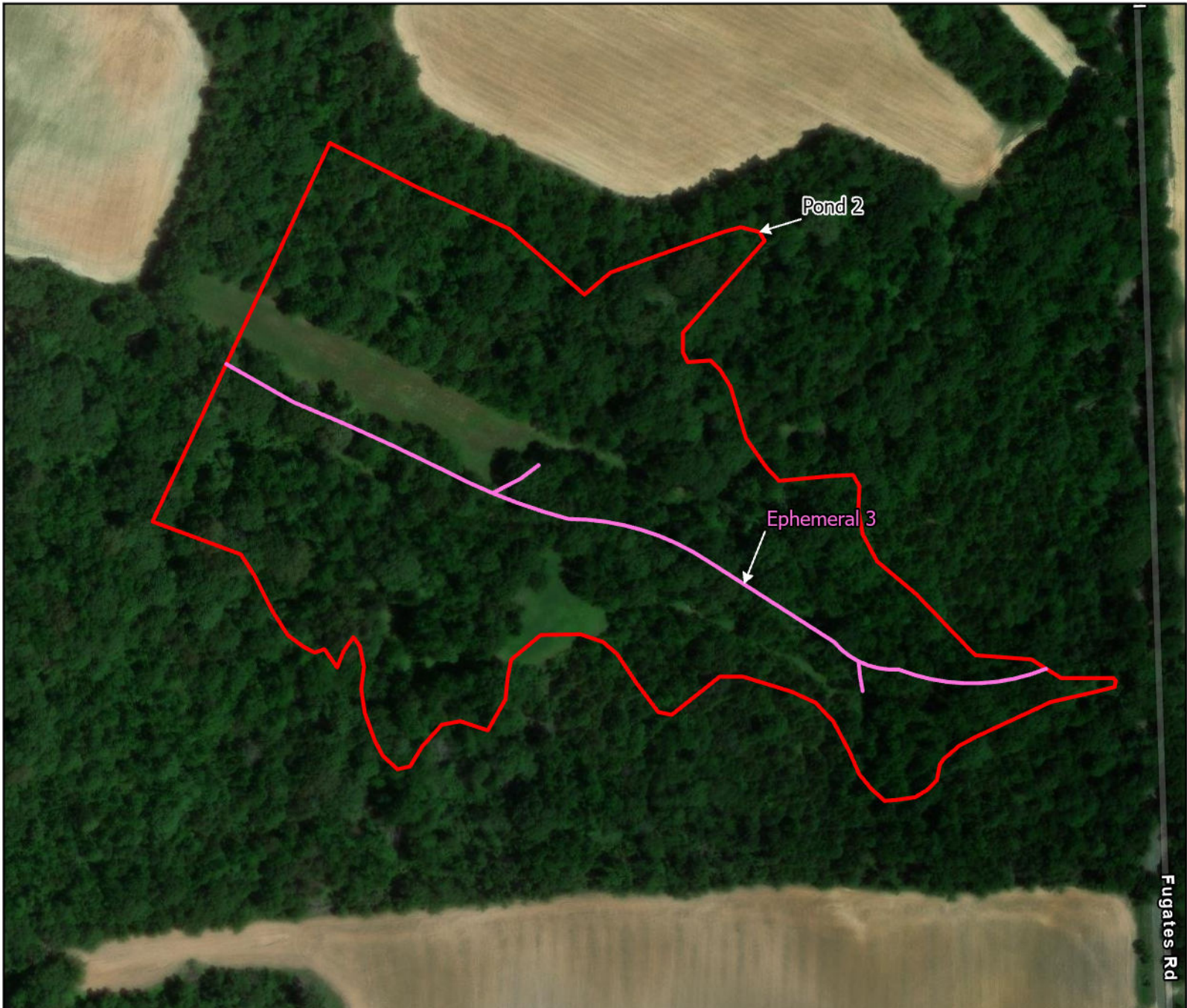


US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 125 250
 Feet

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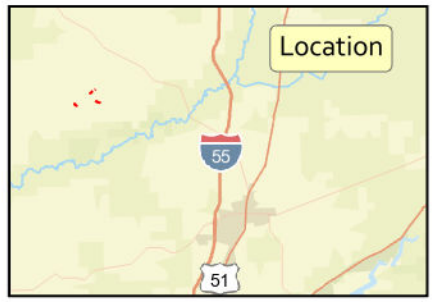


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Haney Property Project

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US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 190 380 Feet

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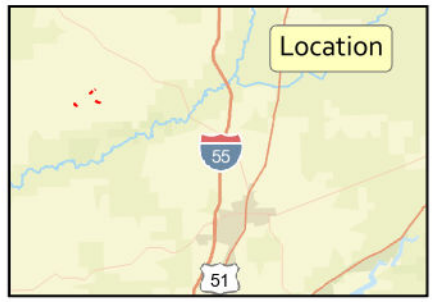


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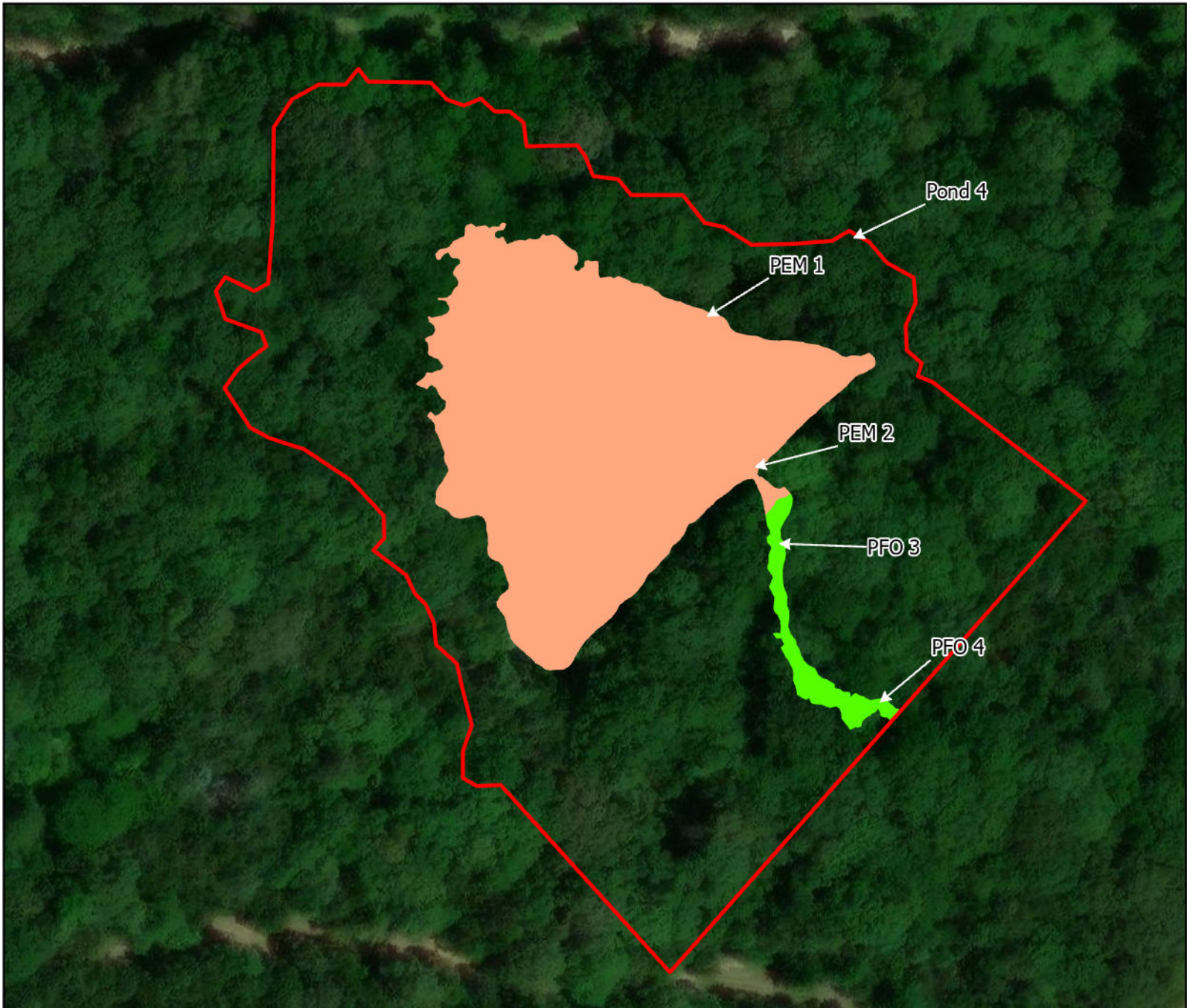
Hayleigh Rogers



US Army Corps of Engineers
 REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 170 340 Feet

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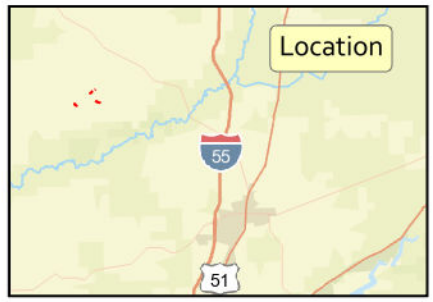


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US Army Corps of Engineers

REGULATORY DIVISION
 MISSISSIPPI BRANCH

0 80 160 Feet

- Legend**
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 - Forested Wetland Non-Jurisdictional (0.67 Acres)
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