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CESWL-RD

9 December 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> **SWL-2024-00347** [1 of 1]<sup>2</sup>

**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>3</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>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</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

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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> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

## 1. SUMMARY OF CONCLUSIONS.

- 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).

Aquatic Resource Name	Jurisdictional Status	Authority
Int-01	Jurisdictional	Section 404
Per-01	Jurisdictional	Section 404
Int-02	Jurisdictional	Section 404
Eph-01	Non-Jurisdictional	
Eph-02	Non-Jurisdictional	
Ditch-01	Non-Jurisdictional	
Ditch-01a	Jurisdictional	Section 404
Ditch-02	Jurisdictional	Section 404
Ditch-03	Non-Jurisdictional	
Ditch-3a	Jurisdictional	Section 404
Ditch-04	Non-Jurisdictional	
Ditch-05	Non-Jurisdictional	
Ditch-06	Non-Jurisdictional	
Ditch-06a	Jurisdictional	Section 404
Ditch-07	Non-Jurisdictional	
Ditch-08	Non-Jurisdictional	
Wet-1	Non-Jurisdictional	
Wet-2	Non-Jurisdictional	
Wet-3	Non-Jurisdictional	
Wet-4	Non-Jurisdictional	
Wet-5	Non-Jurisdictional	
Wet-6	Non-Jurisdictional	
Wet-7	Non-Jurisdictional	
Wet-8	Non-Jurisdictional	
Wet-9	Non-Jurisdictional	
Wet-10	Jurisdictional	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. The review area is approximately 209 acres, located at Lat: 35.228573, Long: -91.732199, at the Searcy Sports Complex in Searcy, Arkansas. The proposed project would expand and upgrade the existing complex. The expansion would include relocating Int-02, culverting Int-01, and other impacts to non-jurisdictional aquatic features. The total impacts are approximately 688 linear feet of jurisdictional streams with mitigation proposed to offset those damages by purchasing credits from a local mitigation bank.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Little Red River.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The project site watershed flows collectively from West to East through INT-01 and INT-02 to the point of confluence, then flowing East through PER-01 through a culverted crossing of Highway 367 S., then continuing through an open channel (INT-01) to a point transitioning from open channel through approximately 1500 linear feet of culvert discharging offsite and East of the project site, then continuing flow generally North through and open channel to the confluence of Gin Creek, continuing generally to the North to the confluence of Little Red River (TNW).
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</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

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<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>7</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>8</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.

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):

Per-01 (lirio Creek) is a perennial creek that is approximately 968 linear feet long and has an average width of 7 feet, featuring a bedrock and cobble substrate. Per-01 is classified on the National Hydrography Dataset (NHD) as a perennial Relatively Permanent Water (RPW), and aerial imagery indicates a consistent flow of water. It is classified as a Strahler second-order stream.

Int-01 (lirio Creek) serves as the headwaters of Per-01, extending approximately 2,914 linear feet with an average width of 4 feet. The substrate here is primarily composed of bedrock and cobbles. Int-01 is also identified on the NHD as an intermittent RPW and is classified as a Strahler first-order stream.

Int-02 features an intermittent flow regime and is an RPW that feeds into Int-01. It measures approximately 628 linear feet in length with an average width of 4 feet, and the substrate consists of silt and cobbles. Int-02 is classified as a Strahler first-order stream.

Ditch-01a features an intermittent flow regime and is an RPW that spans approximately 143 linear feet, with an average width of about 1 foot and a silty loam substrate. Ditch-01a flows into Per-01 and is located below the Ordinary High Water Mark (OHWM) of Per-01.

Ditch-02 features an intermittent flow regime and is an RPW approximately 275 linear feet long, with an average width of about 6 feet. Its substrate consists of silt

and vegetation. Ditch-02 serves as a second channel for Per-01 and is classified as a Strahler first-order stream.

Ditch-03a features an intermittent flow regime and is an RPW approximately 149 linear feet in length, with an average width of about 1 foot. Its substrate includes silty loam and vegetation. Ditch-03a flows into Per-01 and receives water from Ditch-04 (Non-RPW, ephemeral) and Ditch-03 (Non-RPW, ephemeral).

Ditch-06a features an intermittent flow regime and is an RPW approximately 285 linear feet long, with an average width of 2 feet and a silty loam substrate. Ditch-06a drains Wet-10 and utilizes an adjacent culvert beneath the water line on S. Main Street, which is situated below the OHWM of Per-01.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wet-10 is approximately 0.03 acres and is classified as a palustrine emergent wetland, meeting all three criteria outlined in the 1987 Corps of Engineers Wetland Delineation Manual and associated regional supplement. Wet-10 flows directly into Ditch-06a, which subsequently flows into Per-01, a RPW that connects to Gin Creek and ultimately drains into the Little Red River, a TNW.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").<sup>9</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. 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

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<sup>9</sup> 51 FR 41217, November 13, 1986.

- 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).

Eph-01 and Eph-02 are Non-RPWs (ephemeral) streams that flow into Int-02, characterized by a substrate consisting of silt and vegetation. Non-RPWs (non-Relatively Permanent Waters) are classified as non-jurisdictional waters under the pre-2015 Clean Water Act (CWA) regime.

Ditch-01 and Ditch-05 are Non-RPWs, separated from Ditch-01a (an RPW) by a change in elevation that directs the flow of water to the north. Because of this change in flow direction, these two ditches do not have a Continuous Surface Connection (CSC) and are not jurisdictional under the pre-2015 CWA regime.

Ditch-03 and Ditch-04 are Non-RPWs, connected to Ditch-03a (an RPW); however, due to an elevation change that directs water away from Ditch-03a, these two ditches do not have a CSC and are not jurisdictional under the pre-2015 CWA regime.

Ditch-06 is an Non-RPW (ephemeral) system flowing south, featuring a silty loam substrate with vegetation, and it flows into Wet-10. Non-RPWs are classified as non-jurisdictional waters under the pre-2015 CWA regime.

Ditch-07 and Ditch-08 are also Non-RPW (ephemeral) systems that flow south with a silty loam and vegetative substrate, draining into Per-01. Non-RPWs are classified as non-jurisdictional waters under the pre-2015 CWA regime.

Wet-1, Wet-2, Wet-3, Wet-4, Wet-5, Wet-6, Wet-7, Wet-8, and Wet-9 are palustrine emergent wetlands that meet the criteria for wetlands as outlined in the

1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. However, these wetlands lack a continuous surface connection to a jurisdictional RPW and are therefore not considered jurisdictional under the pre-2015 CWA regime.

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. National Regulatory Viewer, Accessed June 26, 2025
  - b. June 26, 2025, Office Evaluation
  - c. July 1, 2025, Field Visit, USACE and Crafton Tull
  - d. August 15, 2025, Field Visit, USACE
10. OTHER SUPPORTING INFORMATION. Wetlands and Waters of the U.S. Delineation Report – Pursuant to Section 404 of the Clean Water Act Searcy Sports Park Renovations and Expansion | Searcy, AR, conducted by Crafton Tull, Dated September 23, 2025
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.

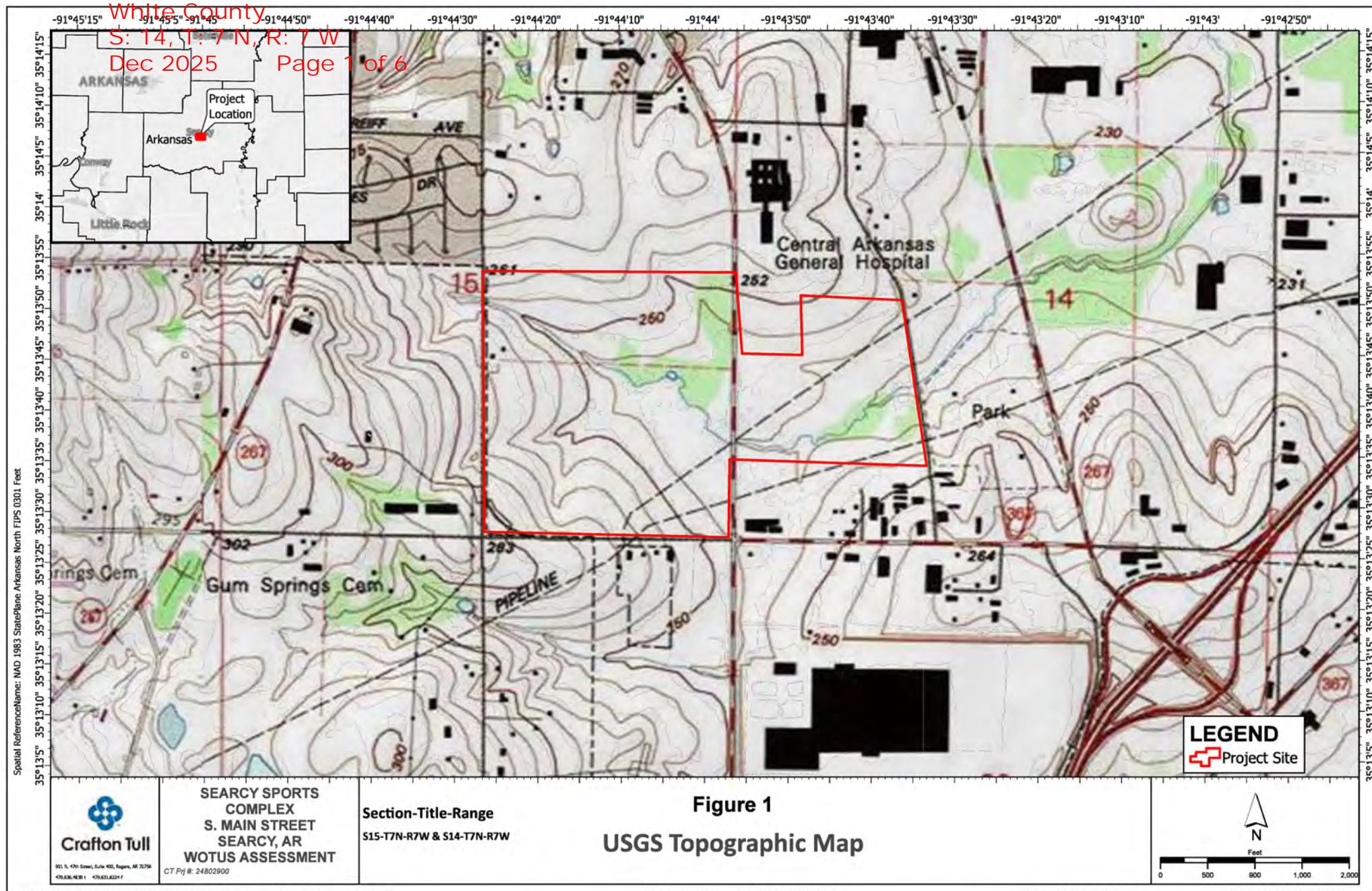
Action ID: SWL-2024-00347

City of Searcy/AJD

White County

S: 14, T: 7 N, R: 7 W

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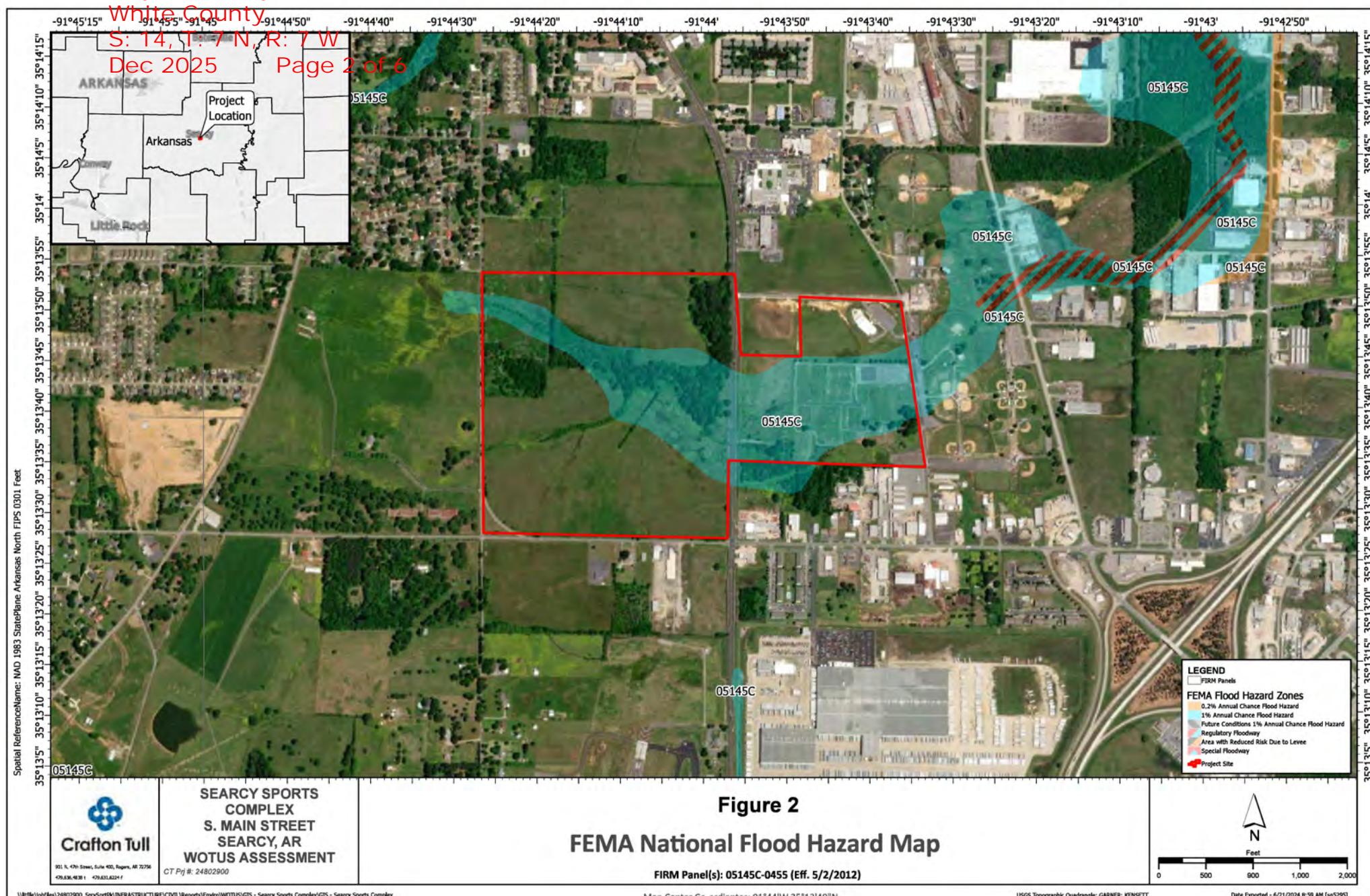
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City of Searcy/AJD

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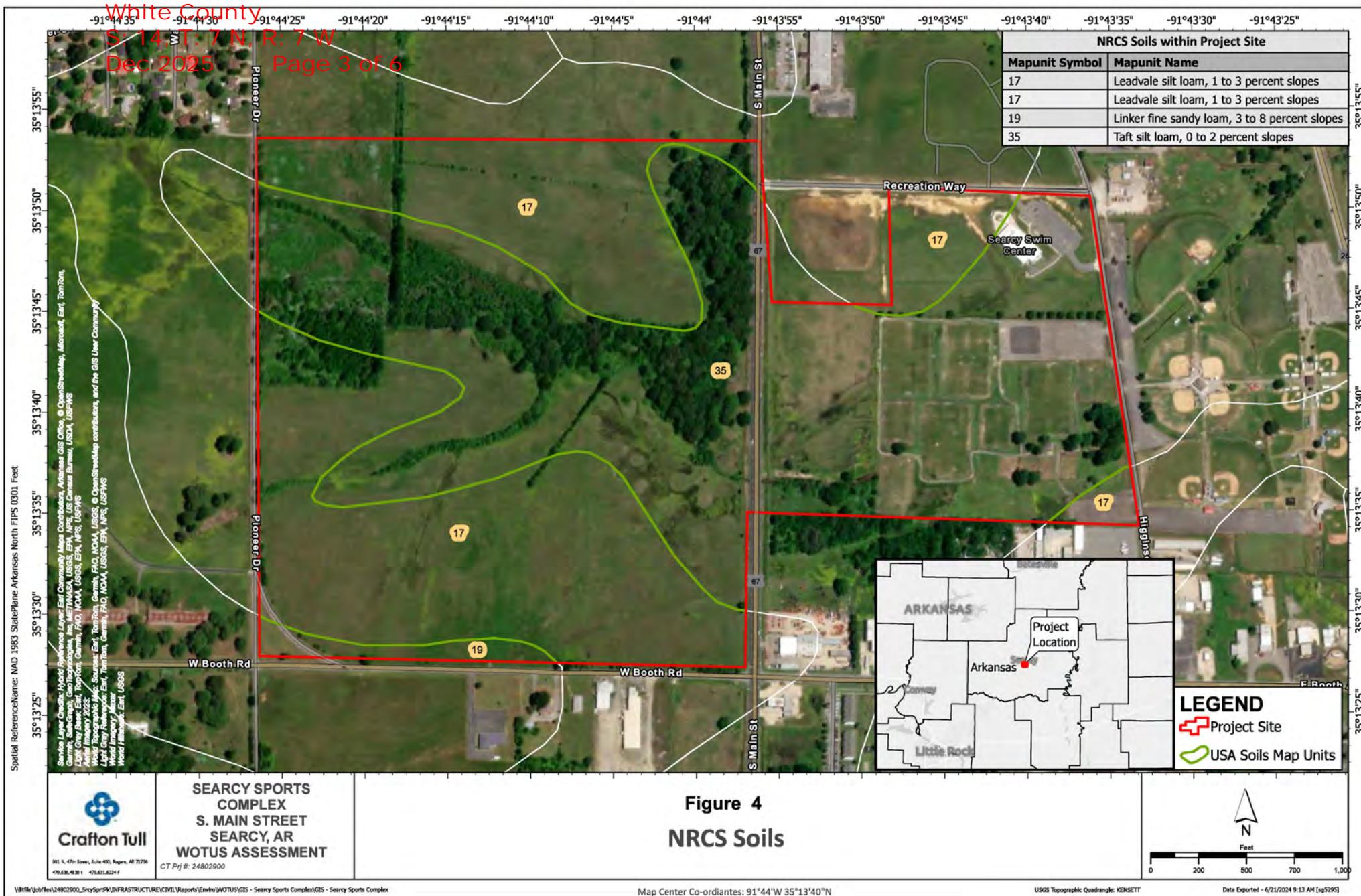
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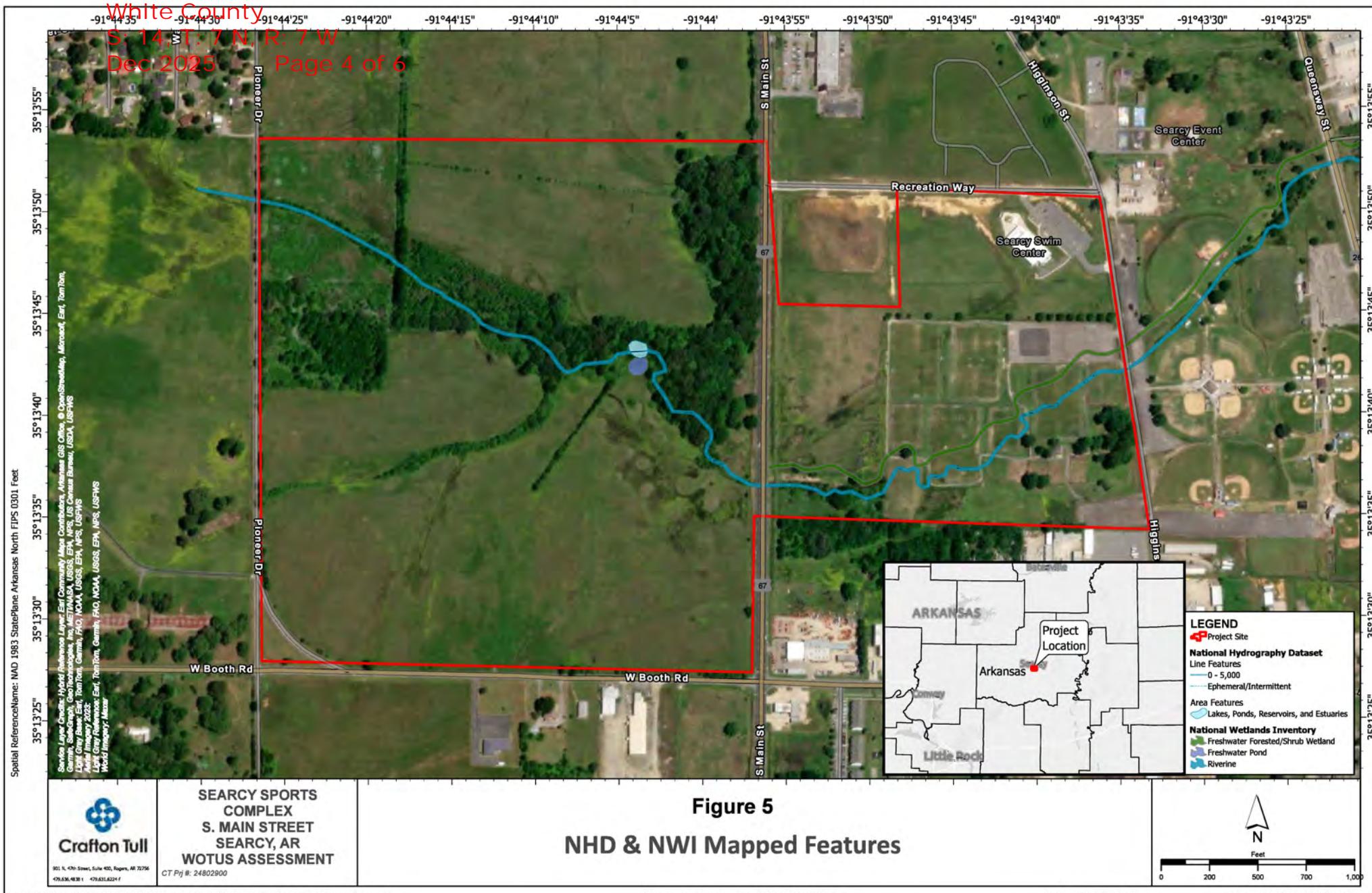
## City of Searcy/AJD

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**Figure 5**  
**NHD & NWI Mapped Features**

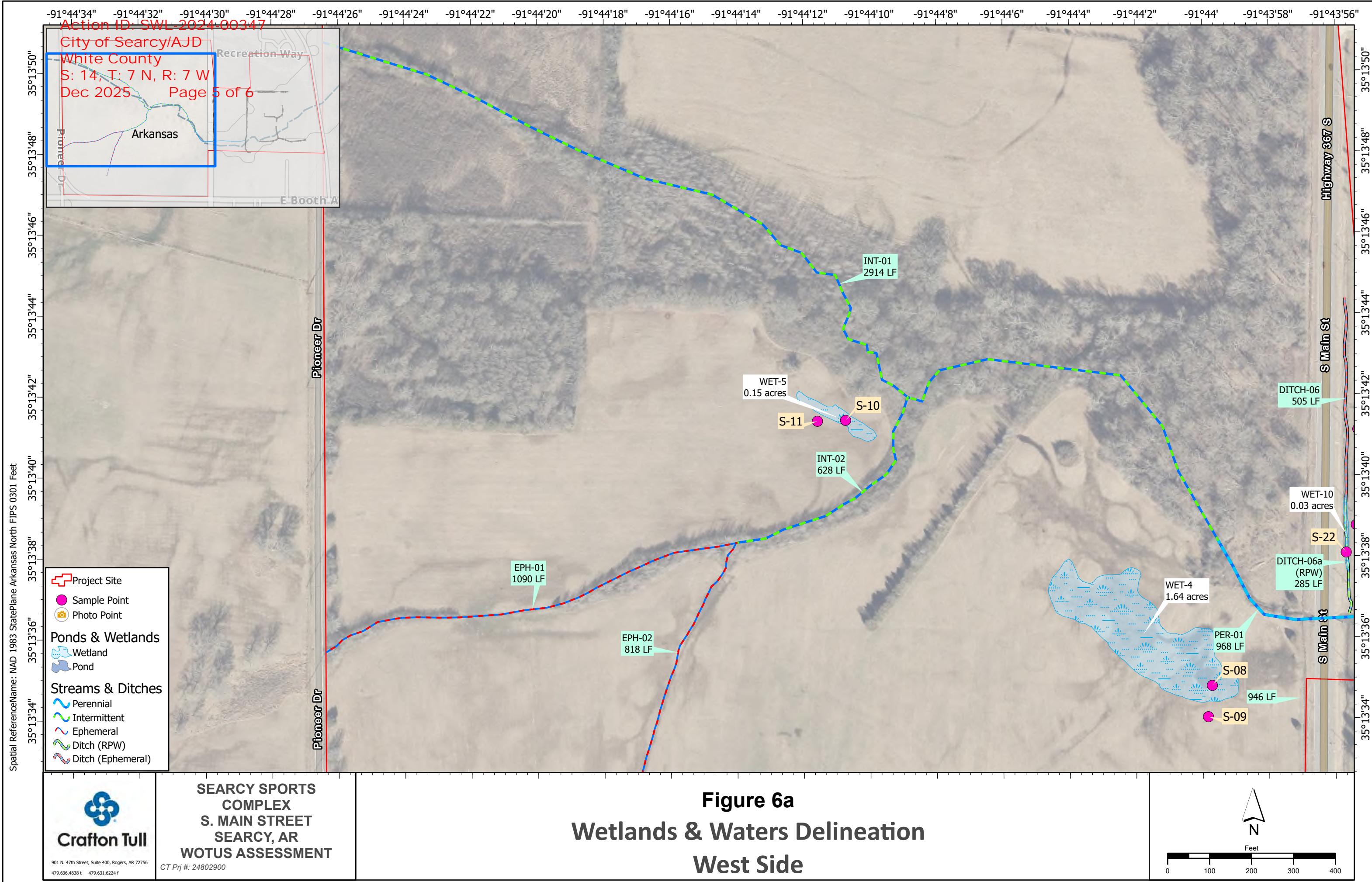
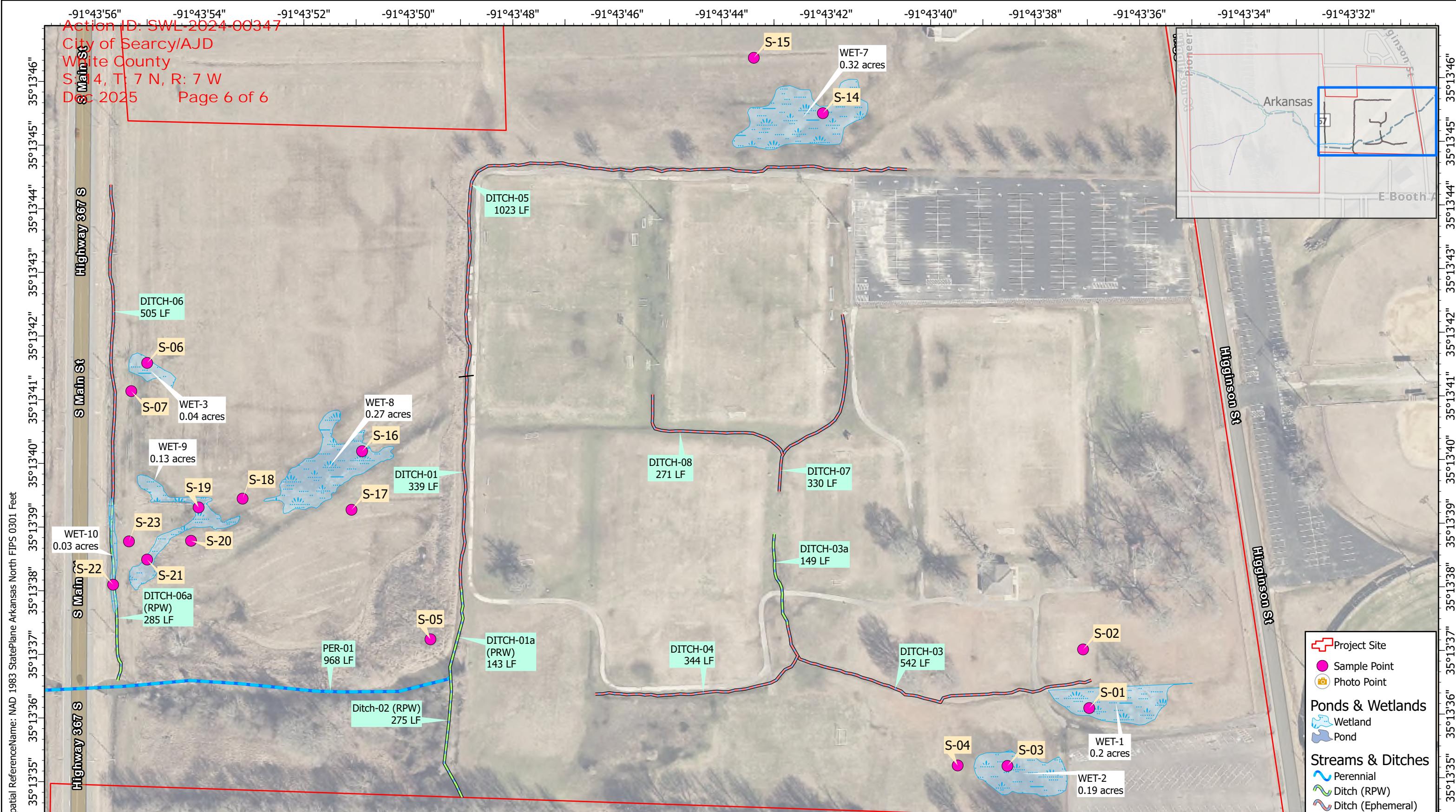


Figure 6a  
Wetlands & Waters Delineation  
West Side



**Figure 6b**  
**Wetlands & Waters Delineation**  
**East Side**



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