DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

CESWL-RD 22 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) ,[1] **SWL-2025-00233**[2]

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.[3] 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.[4] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] 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

[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] 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.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] 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).

        i. Wet1, non-jurisdictional

        ii. Wet2, non-jurisdictional

        iii. Pond1, non-jurisdictional

        iv. Pond2, non-jurisdictional

        v. S1 (Otter Creek), jurisdictional, Section 404

        vi. S2, non-jurisdictional

        vii. S3, non-jurisdictional

        viii. S4, non-jurisdictional

        ix. S5, non-jurisdictional

        x. S6, non-jurisdictional

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 consists of approximately 70-acres site located along Shrader Road, which extends east to west through the central portion of the

site. To the south, it is bordered by Lee Town Road in Pea Ridge, Benton County, Arkansas. Surrounding the review area are upland improved grass pastures and sparsely populated rural regions. The legal description of the review area encompasses parts of Section 31, Township 21 North, Range 29 West. The approximate geographic center of the review area is located at latitude 36.4455837° and longitude -94.0986163°. This area falls within the Greasy Creek-Big Sugar Creek sub-watershed (12-digit HUC 110702080102) and the Elk watershed (8-digit HUC 11070208). Additionally, the review area contains mapped FEMA floodplains associated with Otter Creek. Figures 1-6.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Grand (Neosho) River (11070103) is the nearest downstream TNW (Oklahoma) as it is designated as a Section 10 water north of Fort Gibson, (35.869618, -95.230020)[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The subject aquatic resources convey flow to the Grand (Neosho) River (TNW) via S3 and S6, which direct flow to S1 (Otter Creek). S1 exits the site to the north, channeling flow into Big Sugar Creek, which subsequently flows into the Elk River before reaching the Grand (Neosho) River in Oklahoma (TNW). Wet1 is likely to discharge into S2 during heavy precipitation events. S2 then flows off-site to the northwest and into S1 (Otter Creek). S4 also contributes flow to S2, following the flowpath. S5 drains into Wet2, which discharges into Pond1; however, there is no hydrologic connection between Pond1 and downstream waters. Additionally, Pond2 is completely isolated and lacks any hydrologic connection to downstream waters.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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.[8] N/A

[6] 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.
[7] 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.
[8] 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

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): The agent identified 6 drainage features, of which one is considered jurisdictional: S1 (1,225.18 lf). The channel features well-defined bed and banks, with a discernible Ordinary High Water Mark (OHWM) height of approximately 2.5 feet and a channel width of around 20 feet. During the agent's site investigation, which took place during a period of below-average precipitation, the channel did not display flow but contained isolated pools, characteristic of seasonally wet intermittent streams in the region. A review of aerial imagery from Google Earth reveals that this segment of the channel supported surface water and/or flow during several periods: March 2014, February 2017, March 2018, and March 2020. Additionally, the channel exhibited minimal, if any, rooted upland vegetation within the streambed indicating at least seasonal duration of flow. Considering the hydrology, the lack of rooted upland plants, and the classification of the stream as intermittently flashy with some groundwater influence based on published data, S1 meets the criteria as a Relatively Permanent Water (RPW) and is therefore regarded as jurisdictional.

    f. The territorial seas (a)(6): N/A

    g. Adjacent wetlands (a)(7): N/A

329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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").[9] 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). The agent identified six drainage features of which five are considered non-jurisdictional: S2 (3,049.31 lf), S3 (1,060.42 lf), S4 (110.98 lf), S5 (42.13 lf), and S6 (189.59 lf). The hydrology of drainages S2, S3, S4, S5, and S6 is primarily influenced by stormwater runoff

[9] 51 FR 41217, November 13, 1986.

during or shortly after precipitation events and sheet flow from the surrounding landscape. Channel S2 enters the project area at the southern boundary and flows northwest before exiting. This channel is fully vegetated for most of its length and appears to transition to an intermittent channel with defined bed and banks just before it exits the western property boundary. Although this channel displays an Ordinary High Water Mark (OHWM), it did not exhibit flow during the agent's site visit. Based on its channel characteristics and a review of aerial imagery and other desktop tools, S2 is classified as a non-seasonal intermittent channel (non-RPW) and is non-jurisdictional. Channel S3 is an ephemeral upland drainage originating from a large concrete pad used for farming activities, discharging into S1. Due to its ephemeral nature (non-RPW), S3 is non-jurisdictional. Channel S4 is an ephemeral upland swale (non-RPW) that channelizes just before entering S2 and is non-jurisdictional. Channel S5 is another ephemeral upland swale (non-RPW) that channels just before flowing through Wet2 and into Pond1. This feature does not exhibit a hydrologic connection to downstream jurisdictional waters and is therefore non-jurisdictional. Channel S6 is an ephemeral upland drainage (non-RPW) that flows along Shrader Road as a roadside ditch before discharging into channel S1 and is non-jurisdictional.

The agent identified two wetland features which are considered non-jurisdictional: Wet1 (0.14-acre) and Wet2 (0.13-acre). Wet1 is situated near the southwestern corner of the project area. Hydrology of Wet1 appears to stem from seepage from channel S2 and sheet flow from the adjacent landscape, which collects against a stormwater culvert in a depression. Wet1 does not possess a continuous surface connection to jurisdictional waters and is therefore considered non-jurisdictional. Wet2 is situated in the western part of the project area and abuts a man-made pond (Pond1). The hydrology of Wet2 is supplied by direct input from channel S5 and sheet flow from the surrounding landscape. Since the adjacent channel (S5) and pond (Pond1) do not possess a continuous surface connection to a relatively permanent water (RPW), Wet2 is considered non-jurisdictional.

The agent identified two open-water pond features which are considered non-jurisdictional: Pond1 (0.25-acre) and Pond2 (0.07-acre). Pond1 is a man-made, open water pond. The hydrology of Pond1 is likely sustained by direct input from S5 and sheet flow from the surrounding landscape. There is no distinct drainage channel exiting the pond. Pond 1 does not have a distinct hydrologic surface connection to other aquatic resources and is an isolated feature, therefore Pond1 is non-jurisdictional. Pond2 is another man-made, open water pond measuring also mapped by NWI and NHD. The hydrology for Pond2 is supported by sheet flow from the surrounding area, and it does not possess a hydrologic connection to other waters within the review area. Due to a lack of a surface connection to other features, Pond2 is isolated and is 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.

   a. A Corps desktop evaluation was conducted 20 November 2025.

   b. Agent provided Section 404 Delineation Report: 24305600 Shrader Road Subdivision AJD Request

   c. NHD data accessed on National Regulatory Viewer, Accessed 20 November 2025.

   d. USGS Topographic Quadrangle Pea Ridge, AR (1:24K), Accessed 20 November 2025.

   e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website, Accessed 20 November 2025.

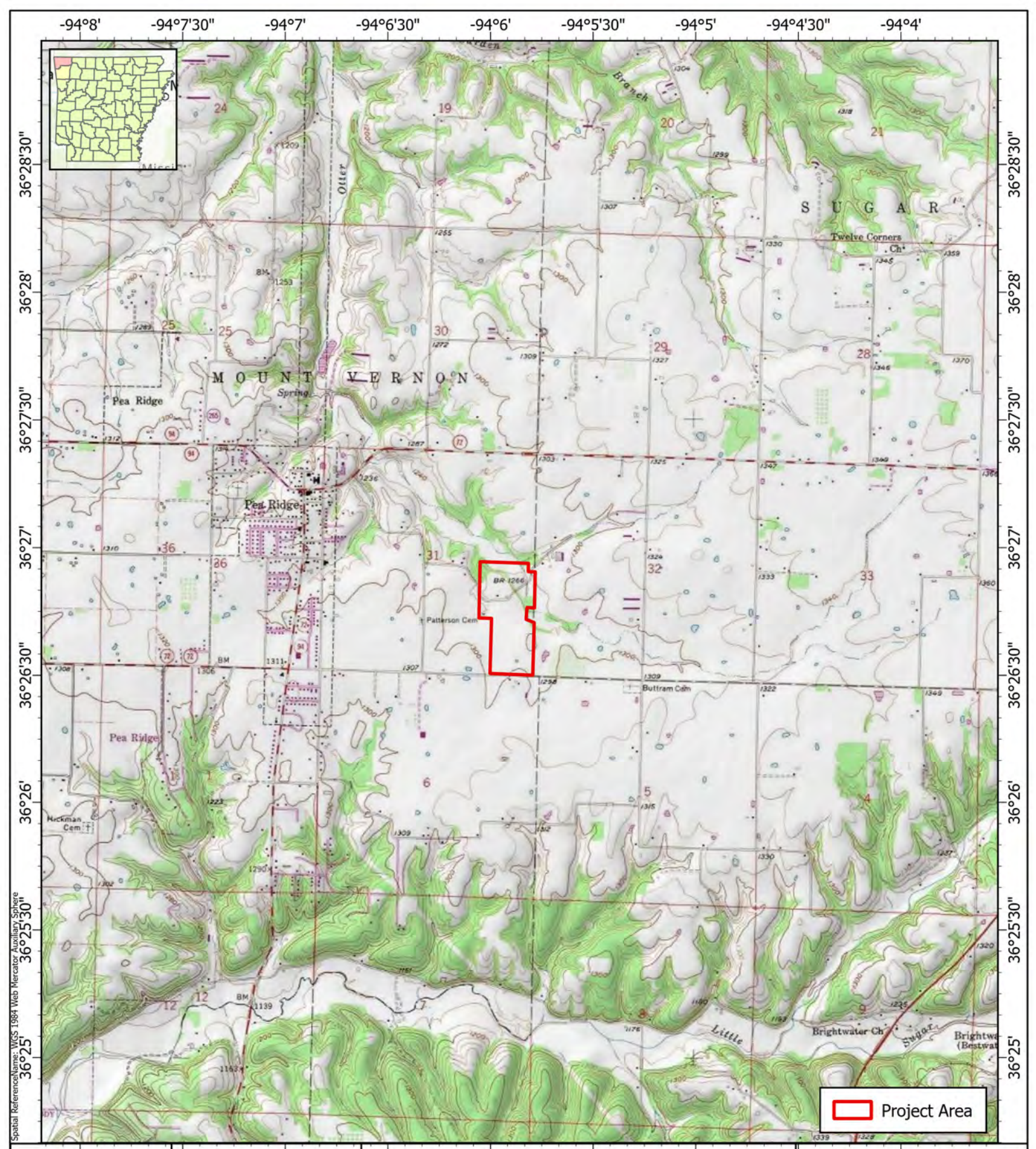
   f. Google Earth Pro. (1993-2025 Imagery). *Lat. 36.4455°N, Long. -94.0986°,* Accessed 19 November 2025.

   g. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey. Accessed 20 November 2025.

10. OTHER SUPPORTING INFORMATION.

    Leasure, D.R.; Magoulick, D.D.; Longing, S.D. 2016. Natural flow regimes of the Ozark-Ouachita interior highlands region. River Res. Appl. 32: 18–35.

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.



Shrader Road Subdivision

Figure 1

Project Location & USGS Topographic Quadrangle

N

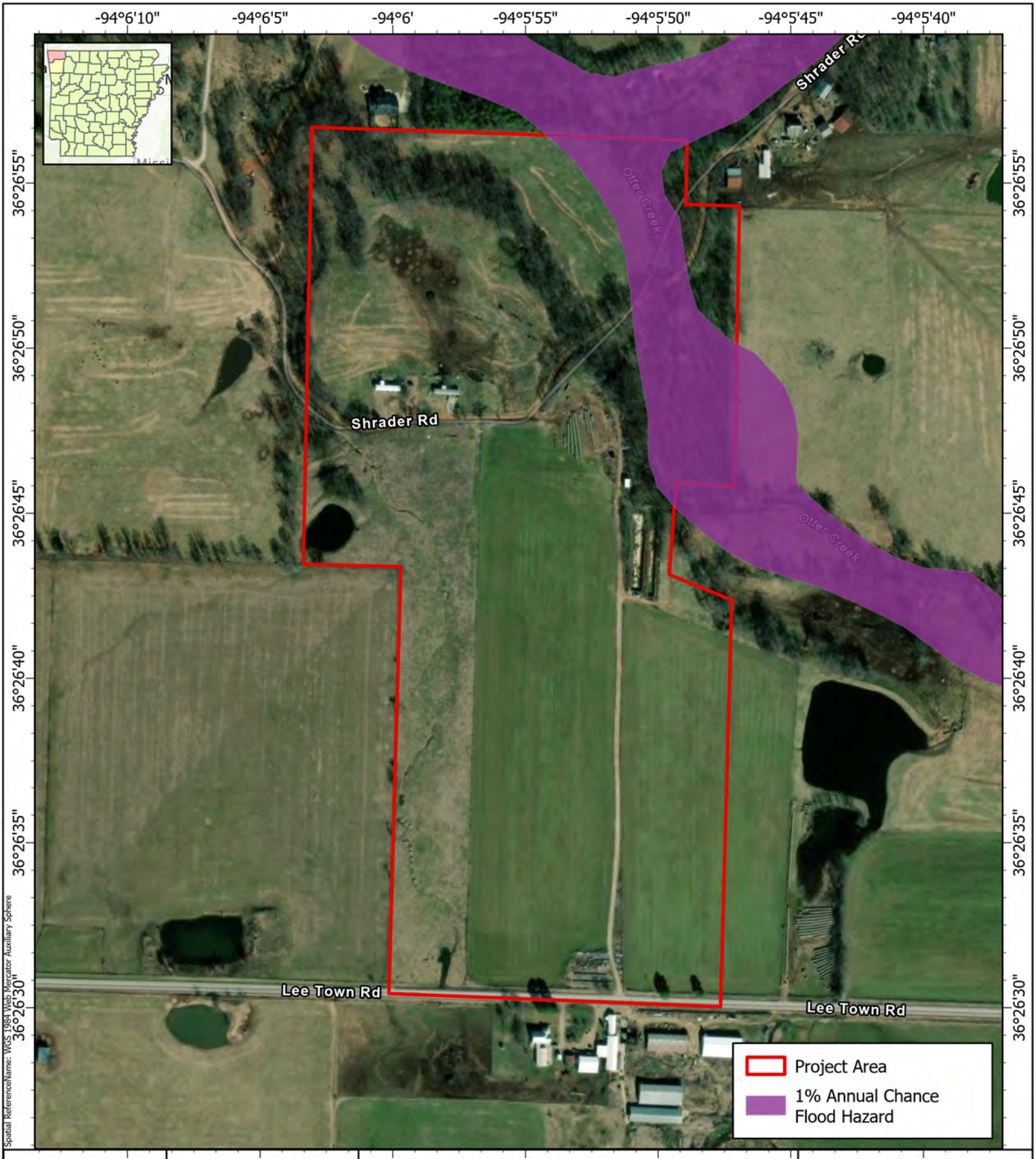
Miles

0 0.6 1

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/2/2025 10:47 AM [BR5284]

Action No. SWL 2025-00233
Pea Ridge, Benton Co. AR
Shrader Road Development
Section: 31 Township: 21 N. Range: 29 W.
December 2025 Page 1 of 10



Shrader Road Subdivision

Figure 2

FEMA National Flood Hazard Layer

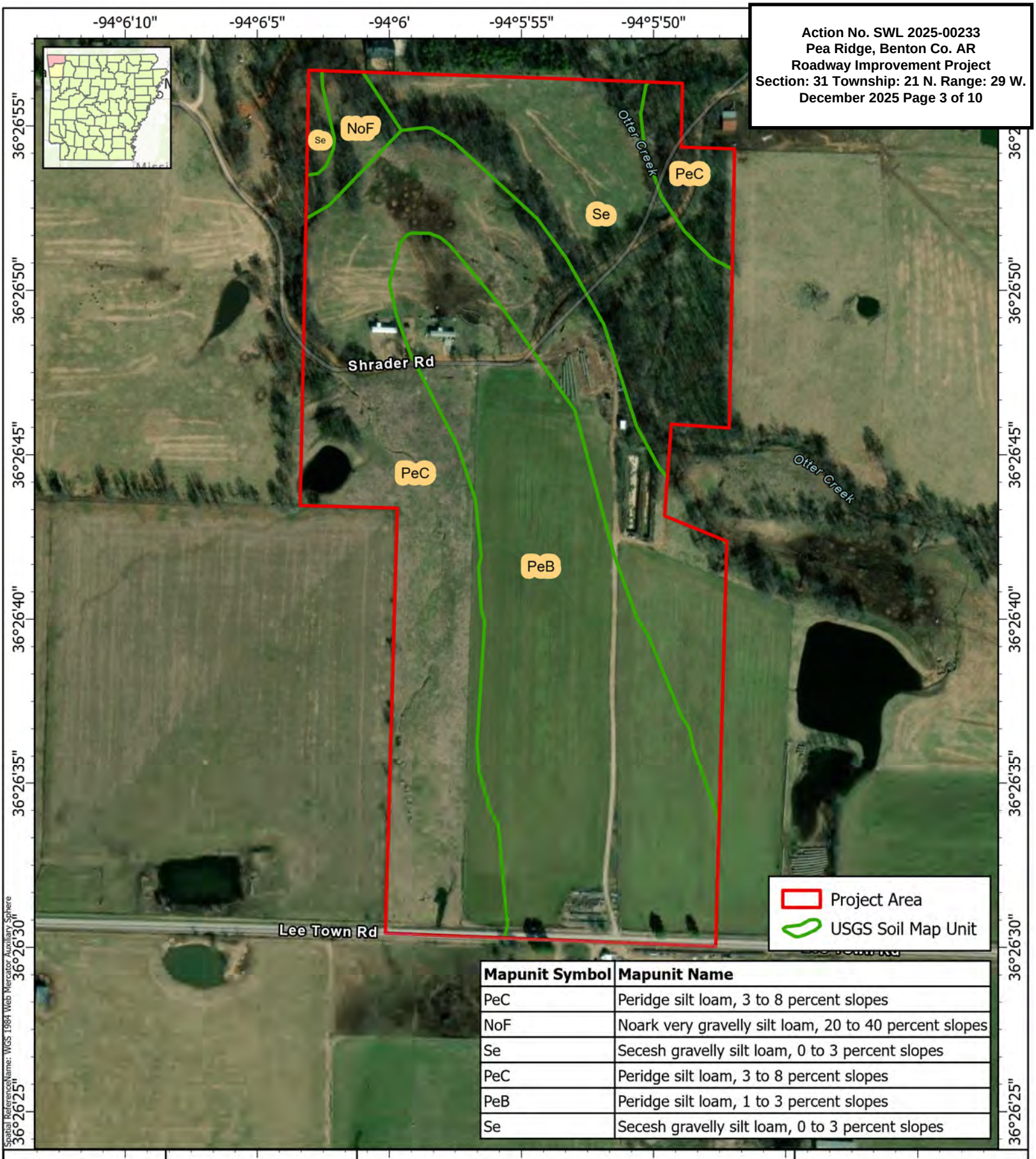
N

Feet

0 400 800

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/2/2025 11:55 AM [BR5284]



Mapunit Symbol	Mapunit Name
PeC	Peridge silt loam, 3 to 8 percent slopes
NoF	Noark very gravelly silt loam, 20 to 40 percent slopes
Se	Secesh gravelly silt loam, 0 to 3 percent slopes
PeC	Peridge silt loam, 3 to 8 percent slopes
PeB	Peridge silt loam, 1 to 3 percent slopes
Se	Secesh gravelly silt loam, 0 to 3 percent slopes

Shrader Road Subdivision

Figure 4

USGS Soils Map

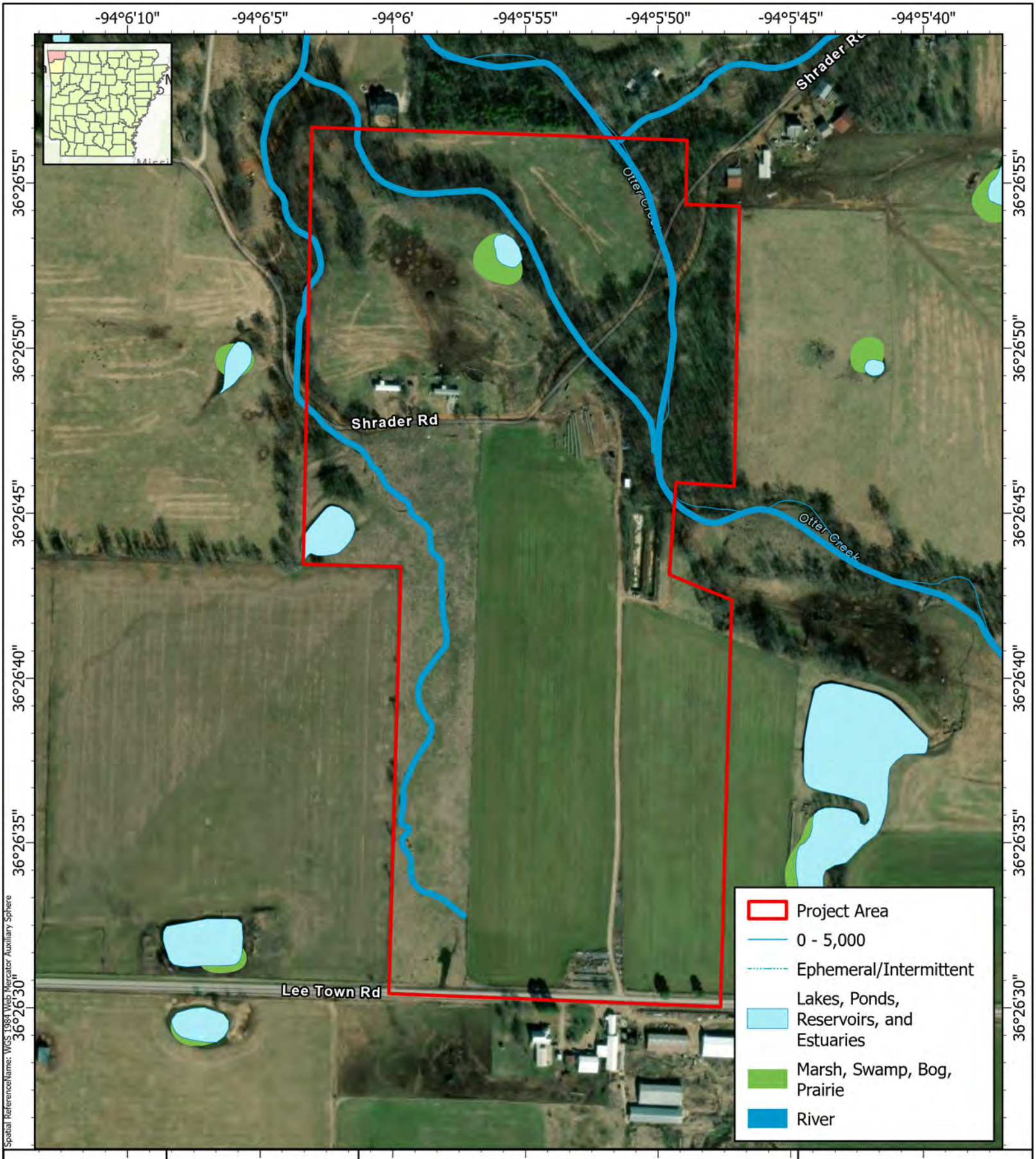
N

Feet
0 400 800

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/2/2025 11:32 AM [BR5284]

Action No. SWL 2025-00233
Pea Ridge, Benton Co. AR
Shrader Road Development
Section: 31 Township: 21 N. Range: 29 W.
December 2025 Page 3 of 10



Shrader Road Subdivision

Figure 5

National Wetlands Inventory & National Hydrography Dataset

N

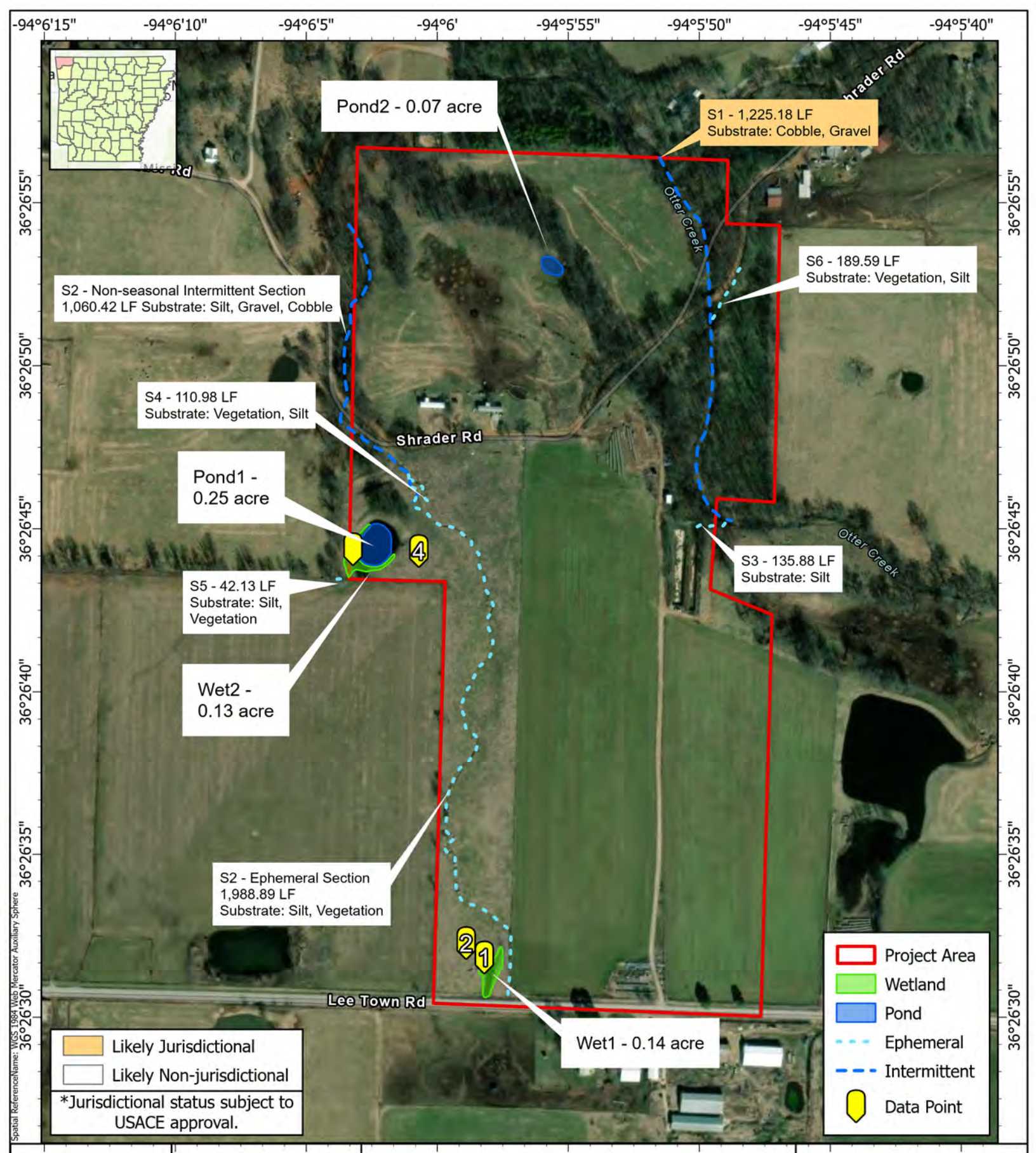
Feet

0 400 800

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/2/2025 11:49 AM [BR5284]

Action No. SWL 2025-00233
Pea Ridge, Benton Co. AR
Shrader Road Development
Section: 31 Township: 21 N. Range: 29 W.
December 2025 Page 4 of 10



Shrader Road Subdivision

Figure 6

WOTUS Exhibit

N

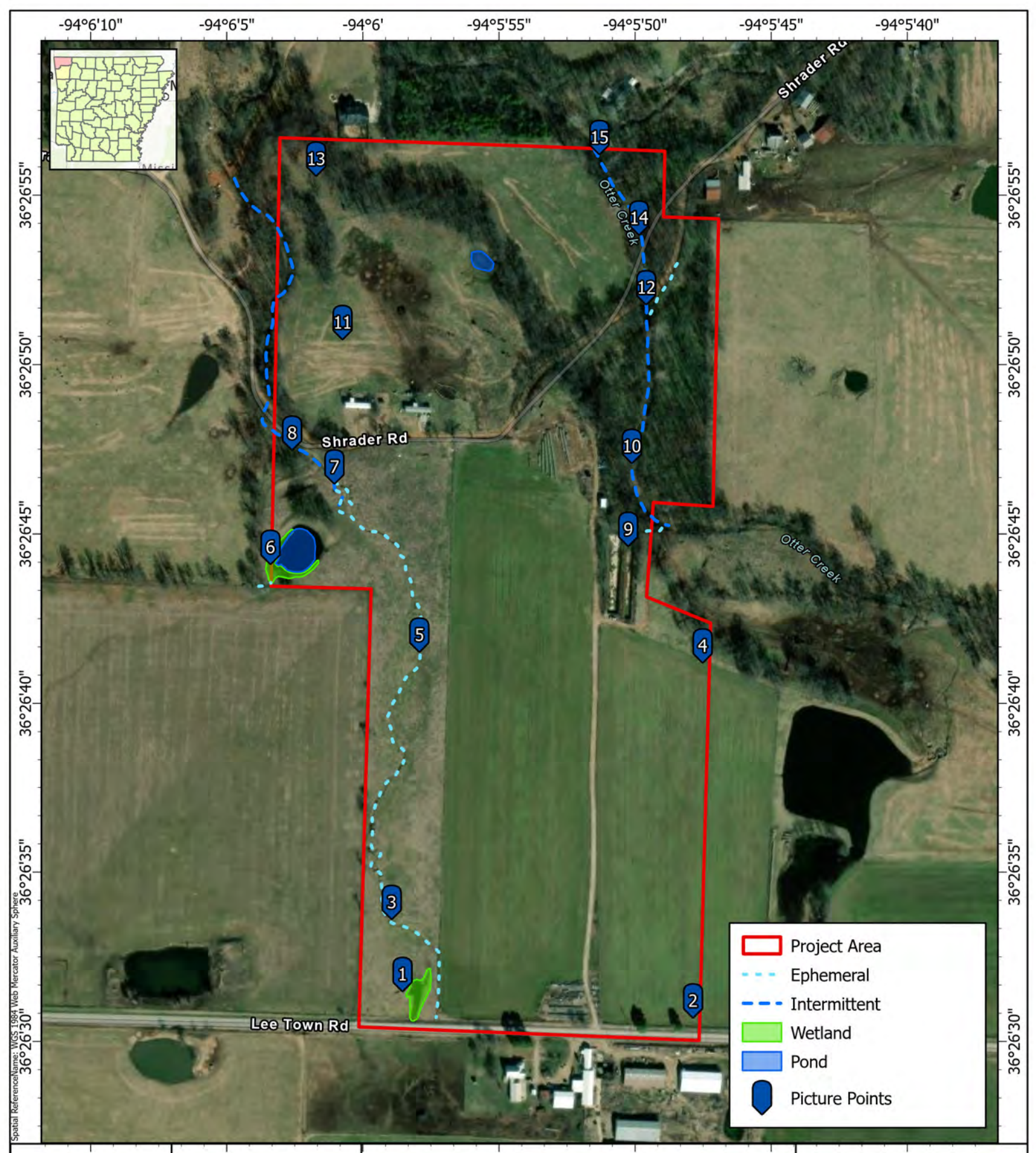
Feet

0 400 800

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/7/2025 4:29 PM [BR5284]

Action No. SWL 2025-00233
Pea Ridge, Benton Co. AR
Shrader Road Development
Section: 31 Township: 21 N. Range: 29 W.
December 2025 Page 5 of 10



Shrader Road Subdivision

Picture Point Location Map

N

Feet

0 400 800

S\WOTUS\GIS\24305600 Shrader Road WOTUS\24305600 Shrader Road WOTUS.gdb

Date Exported - 1/6/2025 3:44 PM [BR5284]

Action No. SWL 2025-00233
Pea Ridge, Benton Co. AR
Shrader Road Development
Section: 31 Township: 21 N. Range: 29 W.
December 2025 Page 6 of 10