



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
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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-2025-00247**<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).
  - i. WET-A, jurisdictional, Section 404
  - ii. WET-B, jurisdictional, Section 404
  - iii. RPW-1 (Osage Creek), jurisdictional, Section 404
  - iv. RPW-2, 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 encompasses approximately 18 acres located west of the intersection of Hwy 112 and W. Wallis Rd. in Cave Springs, Benton County, Arkansas. It is situated in the northeast quarter of Section 36, Township 19 North, Range 31 West, on the Bentonville South, Arkansas 7.5-minute quadrangle. The area generally slopes to the west and features two wetland areas: WET-A along the northern border and WET-B along the western border, with RPW-1 and RPW-2 located along the northern edge. Historic aerial imagery indicates that the site was previously utilized for agricultural purposes, with various agricultural and residential structures present from 1968 to 2025. Since 1968, the land has predominantly been maintained as a field, periodically harvested for hay. The approximate geographic center of the review area is 36.27993°N, -94.22936°W (NAD 83). Maps detailing the review area and resource locations are provided in Figures 1-6.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Illinois River (11110103) is the nearest downstream TNW (Oklahoma) as it is designated as a Section 10 water northeast of Tahlequah, Oklahoma (36.040570, -94.904086).<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. WET-A discharges into RPW-2, which then flows into RPW-1 (Osage Creek). RPW-1 moves northwest as a braided channel of Osage Creek, eventually reconnecting with the main channel of Osage Creek. This channel continues downstream into the Illinois River (TNW). Additionally, WET-B discharges directly into RPW-1, which also reconnects to Osage Creek, ultimately flowing into the Illinois 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 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.

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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.

- 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 two jurisdictional stream features that were confirmed by a Corps desktop evaluation: RPW-1 (740 lf) and RPW-2 (45 lf). RPW-1 is a side channel of a braided section of Osage Creek, classified by the National Wetlands Inventory (NWI) as R2UBH (riverine, lower perennial, unconsolidated bottom, permanently flooded, streambed). Within the project area, RPW-1 meanders approximately 740 linear feet along the western boundary, flowing north toward Osage Creek and eventually into the Illinois River. RPW-1 features a clearly defined Ordinary High Water Mark, distinct bed and bank geomorphology, and aquatic vegetation indicative of flow permanence. RPW-1 exhibits flow that meets the Relatively Permanent Water standard and maintains a continuous hydrologic connection to both the upstream and downstream segments of the main channel of Osage Creek (RPW). Given its hydrologic connectivity to the perennial stream Osage Creek, RPW-1 is determined to be jurisdictional. RPW-2 is a tributary of RPW-1, extending approximately 45 linear feet and originating from a spring wellhouse situated in the northeastern section of the property. RPW-2 displays features such as flow permanence and vegetation communities typically associated with perennial spring seeps, following a distinct channel that drains into RPW-1. Given that RPW-2 is fed by groundwater and possesses characteristics that align with the Relatively Permanent Water standard, it is deemed jurisdictional.
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): The agent identified two jurisdictional, abutting wetland features that were confirmed by a Corps desktop evaluation: WET-A (0.005-acre) and WET-B (0.25-acre). WET-A is an herbaceous wetland encompassing 0.005 acres, located in the northeastern section of the site, draining directly into a relatively permanent water, specifically RPW-2. WET-B, spanning 0.25 acres, is a herbaceous vegetated linear drainageway situated along the western boundary of the project area, also discharging into a relatively permanent water, namely RPW-1. Both WET-A and WET-B are characterized by Captina silt loam with slopes ranging from 1 to 3 percent, supporting hydrophytic vegetation, hydric soils, and wetland hydrology. During the agent's site visit, WET-A displayed surface water, and the soils were identified as hydric, predominantly consisting of obligate wetland species. WET-B exhibited water marks, indicating a high water

table and saturation, and it successfully passed the FAC-neutral test based on the assessment of the vegetative communities present. Furthermore, WET-B showed redox dark surfaces in the soil profile, confirming the presence of hydric soils. Considering these characteristics and their continuous surface connections to jurisdictional stream features, both WET-A and WET-B are deemed federally jurisdictional wetland features.

## 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
- 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

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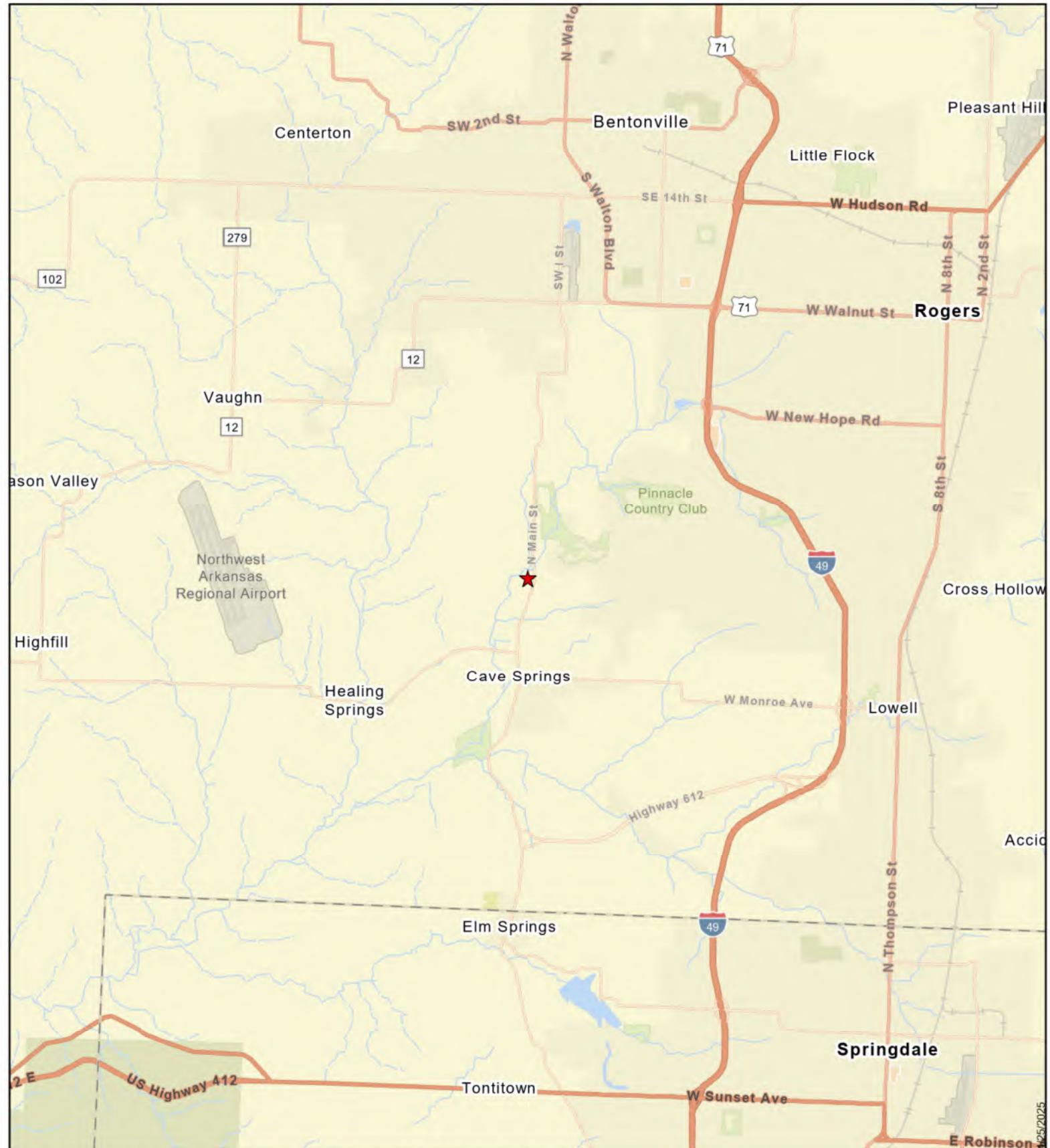
<sup>9</sup> 51 FR 41217, November 13, 1986.

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). N/A

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 on 8 December 2025.
  - b. Agent provided Section 404 Delineation Report: 112 and W Wallis- Confidential Commercial Development – NWP\_AJD request EXECUTED 2025-07-11, December 08, 2025
  - c. NHD data accessed on the National Regulatory Viewer, Accessed 8 December 2025.
  - d. USGS Topographic Quadrangle Bentonville South, AR (1:24K), Accessed 8 December 2025.
  - e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website, Accessed 13 November 2025.
  - f. Google Earth Pro. (1993-2025 Imagery). *Lat. 36.27993°, Long. -94.22936°*, Accessed 8 December 2025.
  - g. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey. Accessed 8 December 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.



## Qty 1 Hwy 112 and W Wallis Rd. Section 404 Delineation



Project Area

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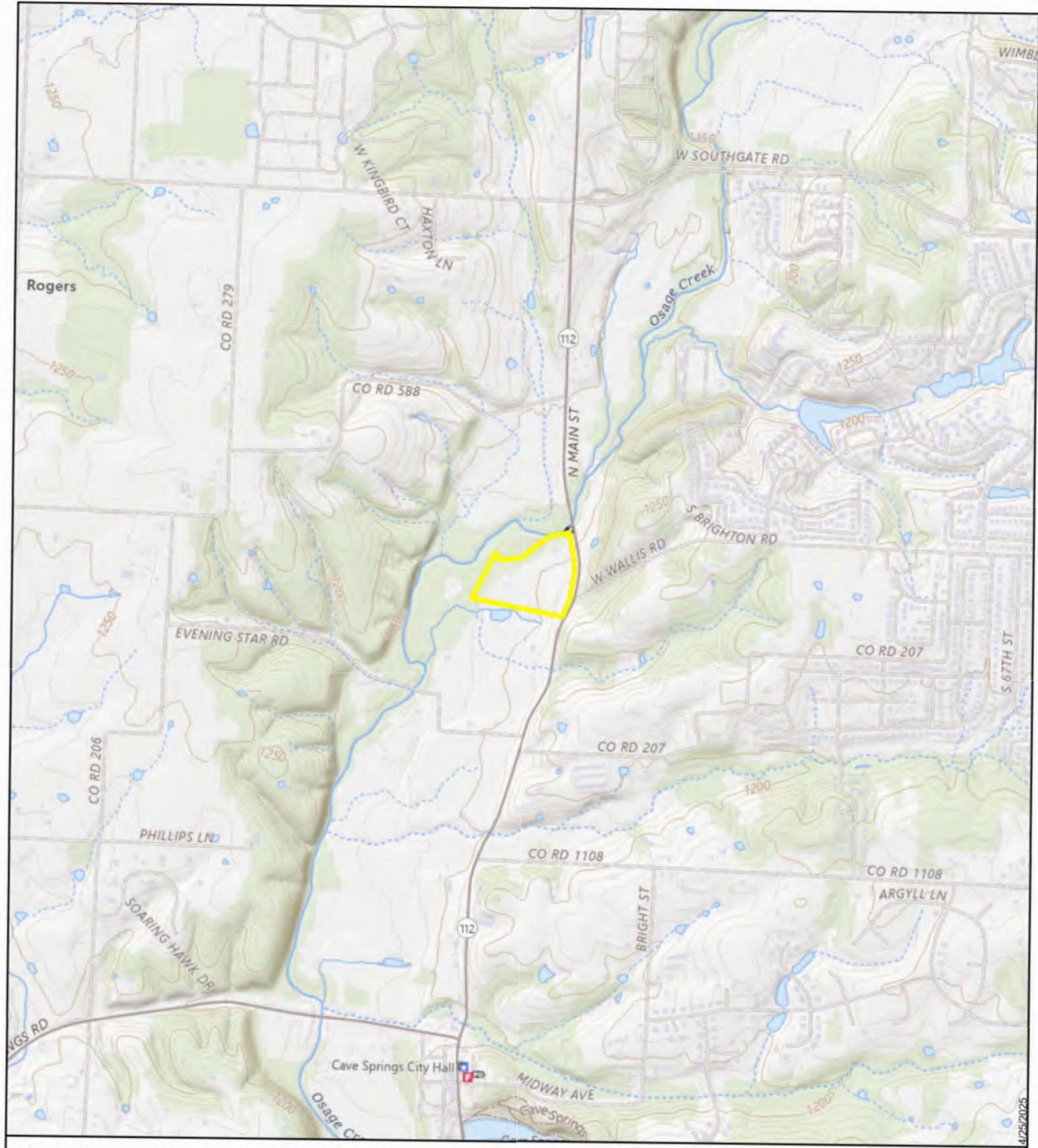


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Background: Esri,  
NRCan, Esri Japan, M

Figure 1. Map showing project vicinity overlaid on ESRI World

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ECCI - CEI Engineering - Hwy 112 and W Wallis Rd  
Commercial Development  
Section: 36 Township: 19 N. Range: 31 W.  
December 2025 Page 1 of 6



## Hwy 112 and W Wallis Rd. Section 404 Delineation



  Project Area

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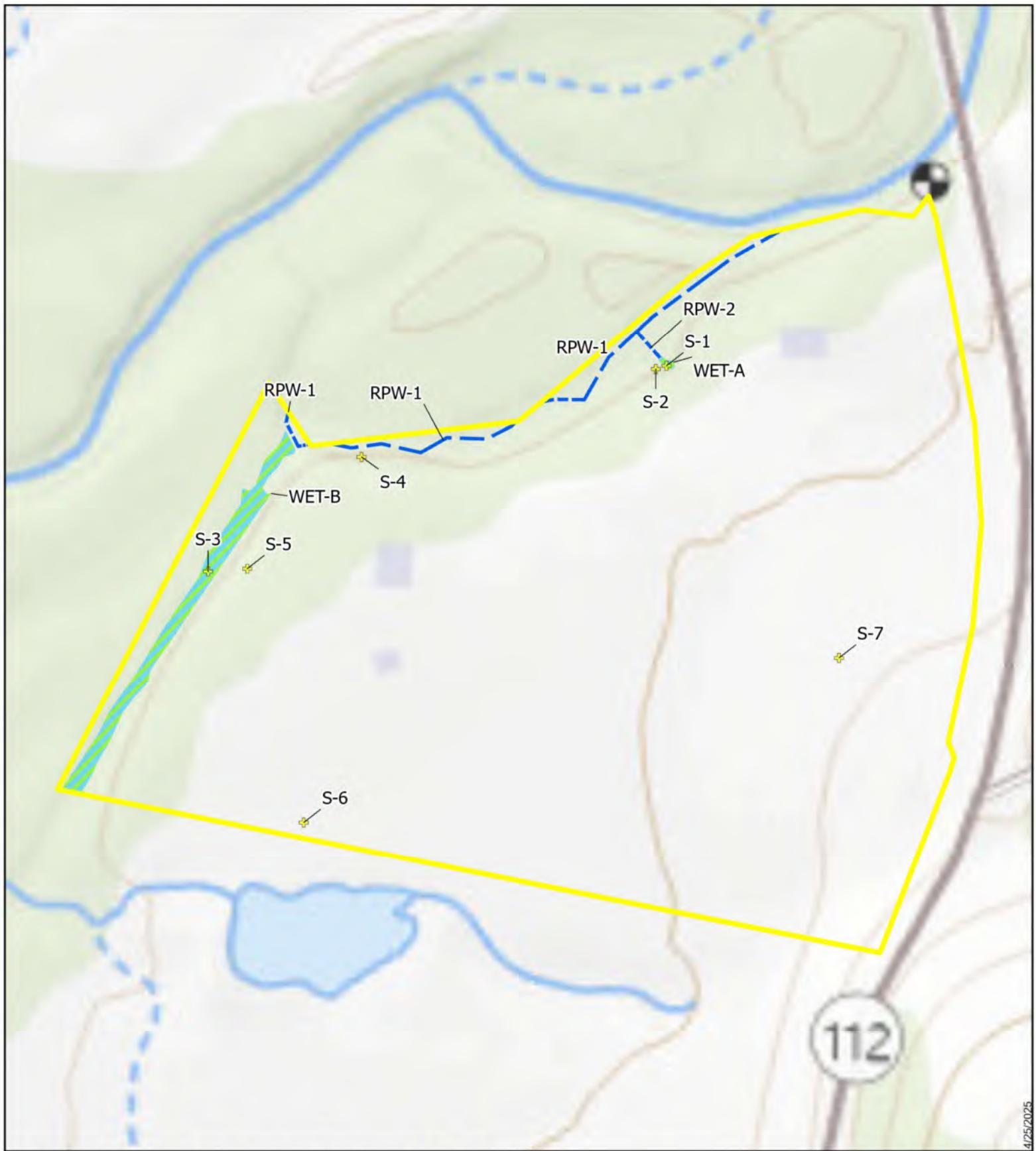
Figure 2. Map showing project area overlaid on USGS TNM Topo Base Map.

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Miles



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 Commercial Development  
 Section: 36 Township: 19 N. Range: 31 W.  
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## **Hwy 112 and W Wallis Rd. Section 404 Delineation**



- Sample Point
- RPW
- Wetland
- Project Area

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300



Figure 3. Map showing project details overlaid on USGS TNM Topo Base Map

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## Hwy 112 and W Wallis Rd. Section 404 Delineation



+ Sample Point    Wetland  
--- RPW   --- Project Area

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Background: <https://gis.arkansas.gov>

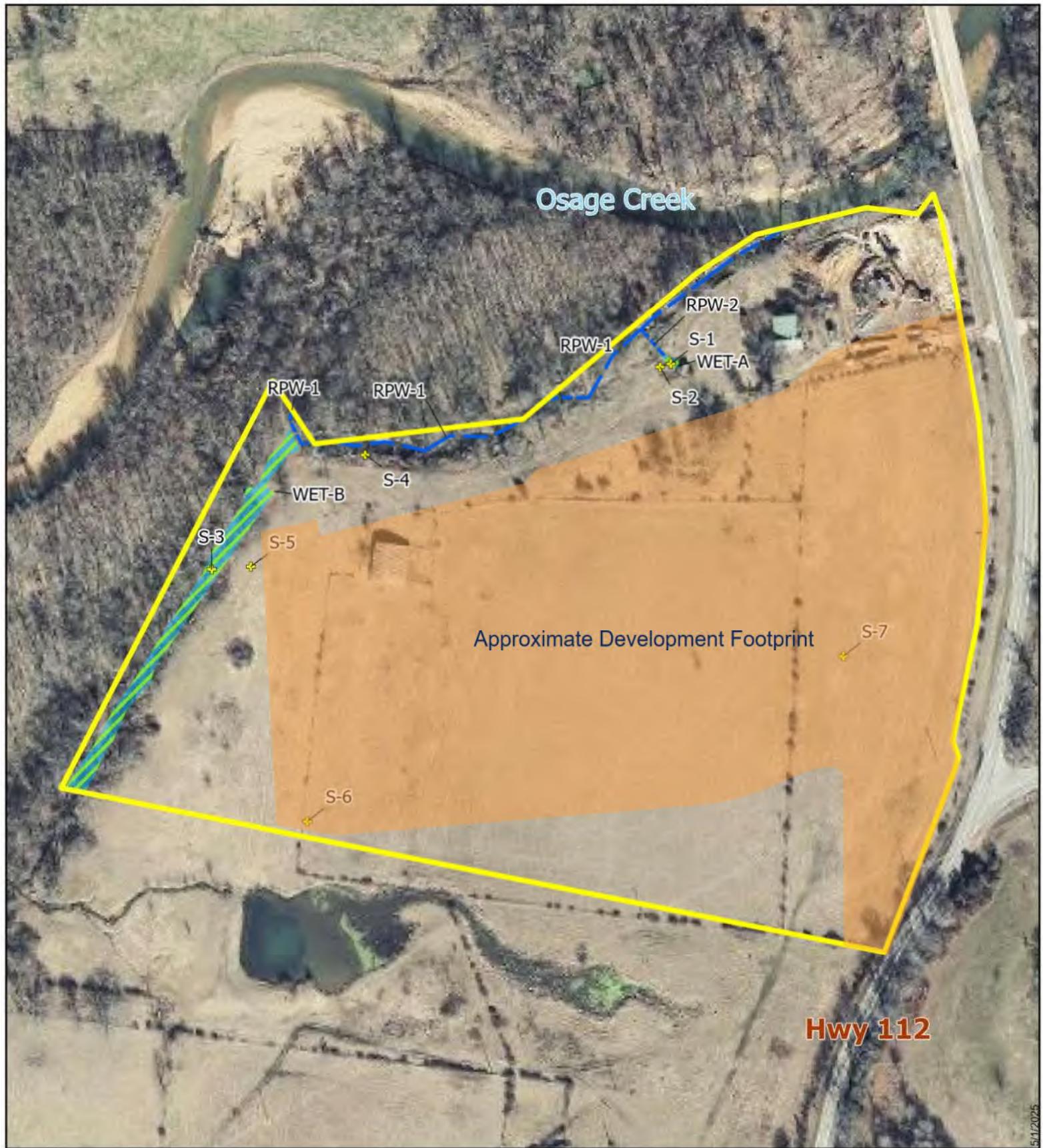
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Feet



Figure 4. Map showing project details overlaid on 2023 9-inch aerial imagery.

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## Hwy 112 and W Wallis Rd. Section 404 Permit

**ECCI**

\* Sample Point     Wetland  
 - - - RPW     Project Area

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Background: <https://vais.arkansas.gov>

Figure 1. Map showing delineation project details overlaid on 2023 9-inch aerial image.

Action No. SWL 2025-00247

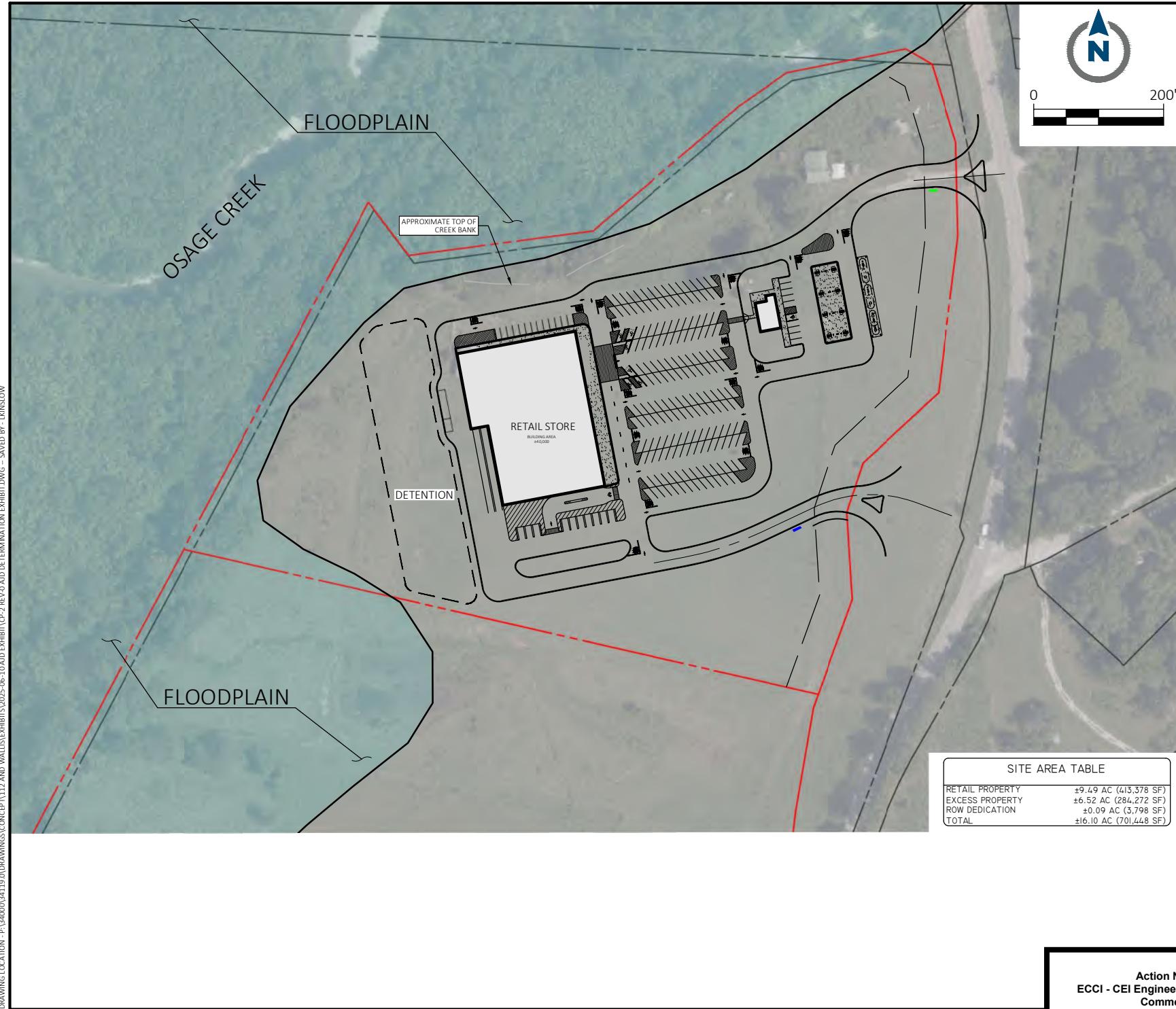
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Commercial Development

Section: 36 Township: 19 N. Range: 31 W.

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**RETAIL STORE**  
INTERSECTION OF 112 AND W WALLIS ROAD  
CAVE SPRINGS, ARKANSAS

PROFESSIONAL OF RECORD	SKP
PROJECT MANAGER	CEA
DESIGNER	LK
CEI PROJECT NUMBER	34116.0
DATE	6/10/2025
REVISION	REV-0

CONCEPTUAL SITE PLAN  
SHEET TITLE

Action No. SWL 2025-00247  
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Commercial Development  
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