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LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD

23 May 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 2025-00127** ¶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. Pond1 (~0.16 acres, isolated/upland), non-jurisdictional
 - ii. S1 (~150.2 linear feet long, Non-RPW), non-jurisdictional
 - iii. S2 (~876.5 linear feet long, Non-RPW), non-jurisdictional
 - iv. S3 (~33.3 linear feet long, Non-RPW), non-jurisdictional
 - v. S4 (~745.6 linear feet long, Non-RPW), non-jurisdictional
 - vi. S5 (~1,163.3 linear feet long, RPW), jurisdictional, Section 404
 - vii. S6 (~238.2 linear feet long, RPW), 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)
- e. 1987 Corps of Engineers Wetlands Delineation Manual, Atlantic and Gulf Coastal Plain Region Supplement

3. REVIEW AREA. The site is located in the NW 1/4 section 25 T. 16 N., R. 31 W. Farmington, Washington County Arkansas. The review area is an approximately 41-acre site labeled as "Old Farmington Rd Boundary", in red, on the attached maps. Approximate center coordinates for the review area are Lat. 36.039890, Long. -94.229514.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Illinois River which is also a Section 10 Waterway⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Pond1 is isolated, with no continuous surface connection to an off-site TNW, Interstate Water, or Territorial Sea. S1 (Non-RPW), S2 (Non-RPW), S3 (Non-RPW), S4 (Non-RPW), S5 (RPW), and S6 (RPW) flow, generally, from the southeast to the northwest where they exit the review area. S1, S2, S3, S4, S5, and S6 are unnamed tributaries of Farmington Branch (RPW), Farmington Branch is a tributary of Goose Creek (RPW), Goose Creek is a tributary of the Illinois River (TNW) which is also a Section 10 Waterway
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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
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

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

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):
 - i. S5 ~6 feet wide by 13 inches deep, 1,163.3 linear feet long 1st order RPW. The delineation report notes this feature as having an OHWM, gravel/cobble substrate, and exhibiting flow during the site visit. Historic aerial imagery also supports evidence of relatively permanent flow.
 - ii. S6 ~7 feet wide by 18 inches deep, 238.2 linear feet long 1st order RPW. The delineation report notes this feature as having an OHWM, gravel/cobble substrate, and exhibiting flow during the site visit. Historic aerial imagery also supports evidence of relatively permanent flow.
- 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”).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.
 - i. Pond1 is an approximately 0.16-acre pond located in the northeast portion of the review area. Upon review the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this pond appears to have been dug in an upland and only receives or discharges water via S1(swale) and S2 (swale).

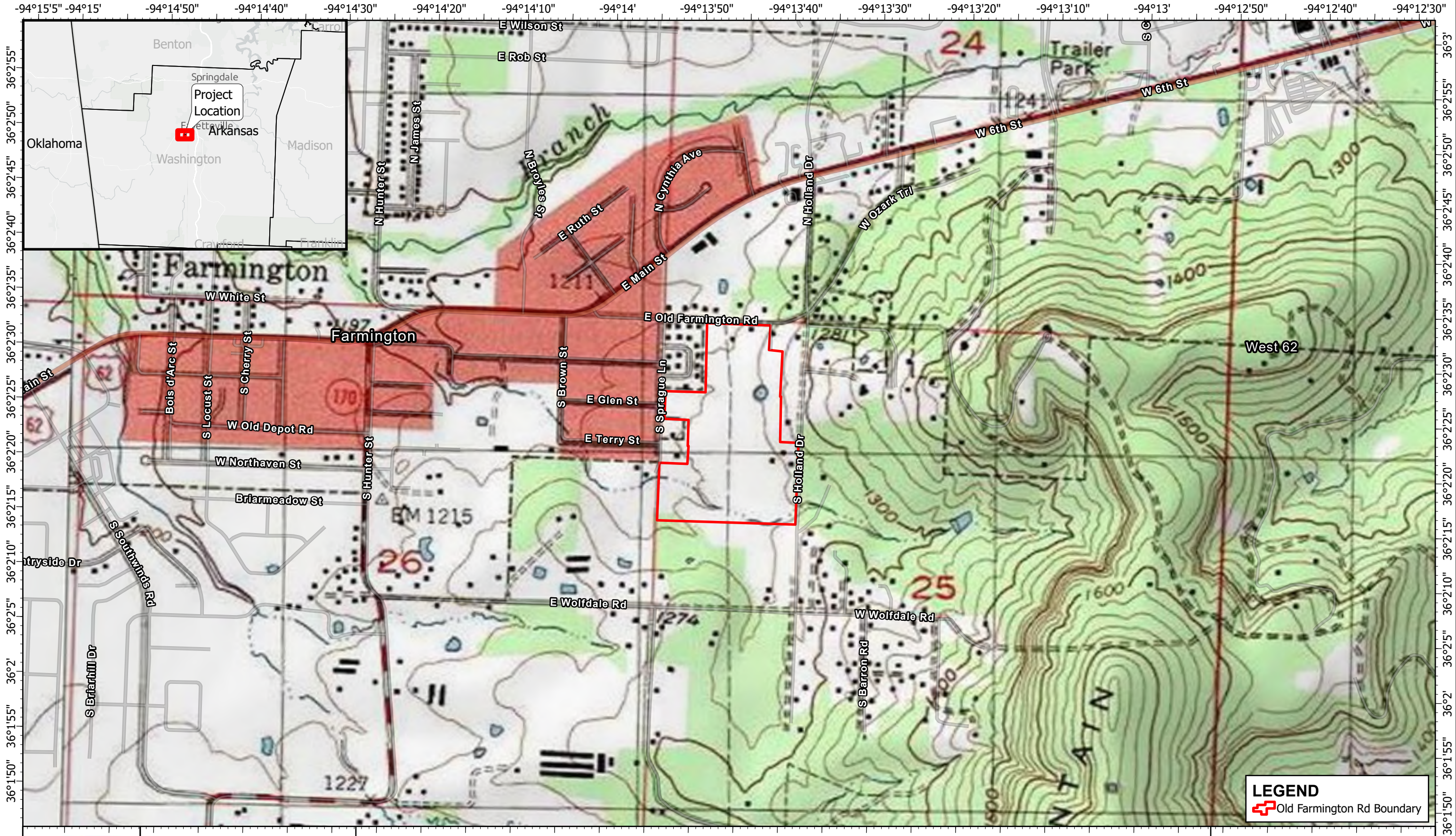
⁹ 51 FR 41217, November 13, 1986.

- 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.
 - i. S1 is an approximately 150.2 linear-foot-long swale. Upon review the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature lacks any defined bed and bank. Additionally, it lacks any riffle/pool morphology and has a substrate that is dominated by herbaceous vegetation.
 - ii. S2 is an approximately 876.5 linear-foot-long swale. Upon review the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature lacks any defined bed and bank. Additionally, it lacks any riffle/pool morphology and has a substrate that is dominated by herbaceous vegetation.
 - iii. S3 is an approximately 33.3 linear-foot-long swale. Upon review the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature lacks any defined bed and bank. Additionally, it lacks any riffle/pool morphology and has a substrate that is dominated by herbaceous vegetation.
 - iv. S4 is an approximately 745.6 linear-foot-long swale. Upon review the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature lacks any defined bed and bank. Additionally, it lacks any riffle/pool morphology and has a substrate that is dominated by herbaceous vegetation and silt.
- 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). 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. Office review by Corps personnel was conducted on 4 April 2025.
 - b. Crafton Tull Delineation Report dated, March 10, 2025
 - c. USGS Stream Stats accessed, April 04, 2025
 - d. USGS topoView Fayetteville, AR 1:24K accessed, April 04, 2025
 - e. Google Earth Pro. (1994-2021 Imagery) accessed, April 04, 2025
 - f. USDA Natural Resources Conservation Service Web Soil Survey Washington County accessed, April 04, 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.

Spatial ReferenceName: NAD 1983 StatePlane Arkansas North FIPS 0301 Feet



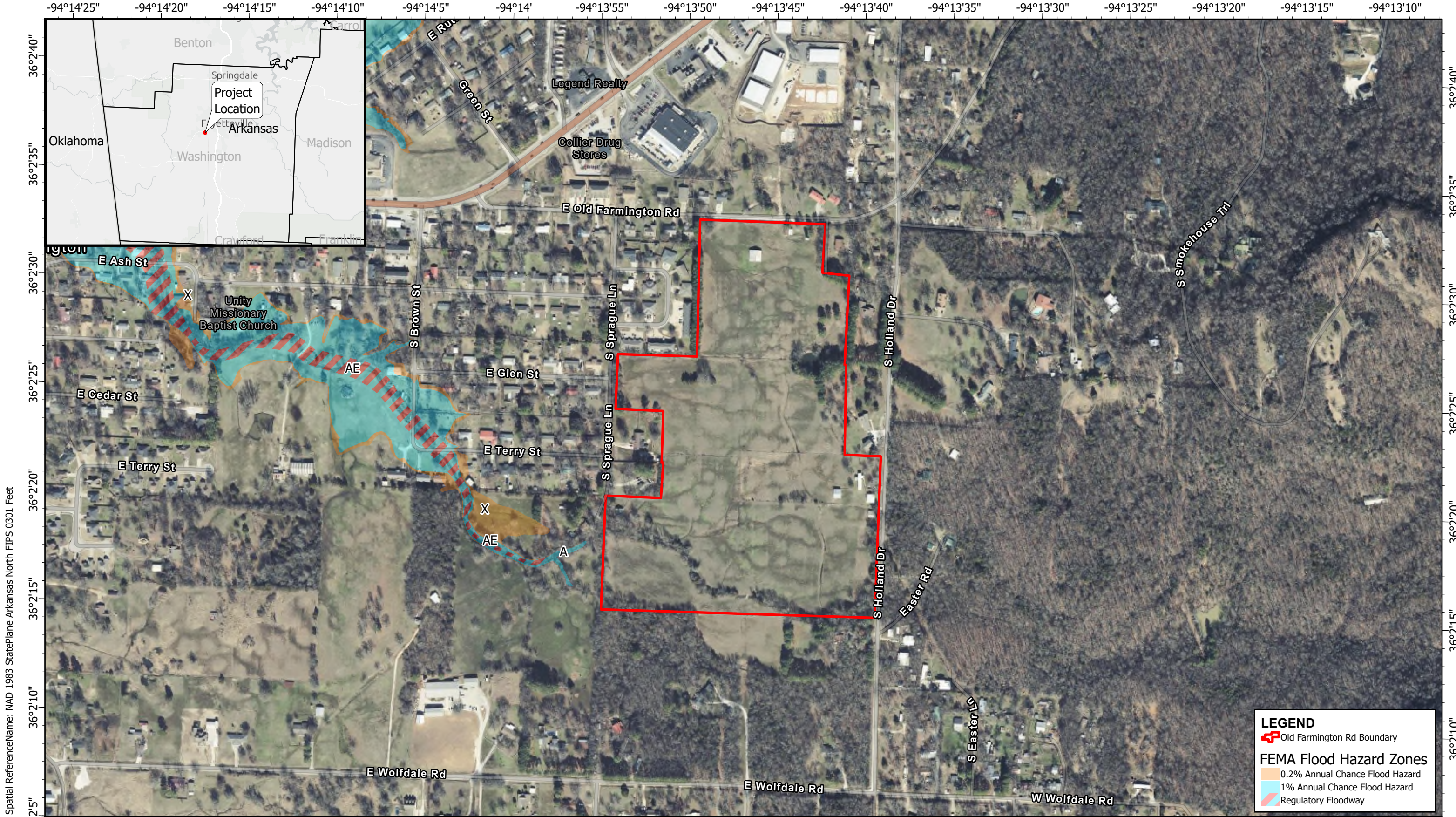
**OLD FARMINGTON RD
SUBDIVISION
FARMINGTON, AR
WOTUS ASSESSMENT**

CT Prj #: 24305500


Section-Title-Range
**S26-T16N-R31W & S25-
T16N-R31W & S24-T16N-
R31W**

Figure 1 USGS Topographic Map

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Spatial ReferenceName: NAD 1983 StatePlane Arkansas North FIPS 0301 Feet



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Figure 2

FEMA National Flood Hazard Map

FIRM Panel(s): 05143C-0215 (Eff. 5/16/2008)

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Spatial ReferenceName: NAD 1983 StatePlane Arkansas North FIPS 0301 Feet

Service Layer Credits: Light Gray Reference: Sources: Esri, TomTom, Garmin, FDO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
Light Gray Base: Sources: Esri, TomTom, Garmin, FDO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
Map Imagery 2020:
World Topographic Map: Sources: Esri, TomTom, Garmin, FDO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
World Reference Layer: Sources: Esri, TomTom, Garmin, FDO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
World Hydrography: Esri, USGS



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Figure 3
NRCS Soils


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Mapunit Symbol	Mapunit Name
Ec	Elsah cobbly soils (ceda)
EnD2	Enders gravelly loam, 8 to 12 percent slopes, eroded
ErE	Enders-Leesburg complex, 8 to 20 percent slopes
JaC	Jay silt loam, 3 to 8 percent slopes
JaC	Jay silt loam, 3 to 8 percent slopes
MoD	Montevallo soils, 3 to 12 percent slopes
Sa	Samba silt loam
Sfc2	Savannah fine sandy loam, 3 to 8 percent slopes, eroded
Sn	Sloan silt loam
Ta	Taloka complex, mounded

LEGEND

 Old Farmington Rd Boundary

 USA Soils Map Units

Spatial ReferenceName: NAD 1983 StatePlane Arkansas North FIPS 0301 Feet

Service Layer Credits: Light Gray Reference: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
Light Gray Base: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
Aerial Imagery 2020:
Hydro Reference Layer: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



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Figure 4
NHD & NWI Mapped Features

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