



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT
167 NORTH MAIN STREET RM. B-202
MEMPHIS, TENNESSEE 38103

CEMVM-R

31 MARCH 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 MVM-2025-074, MFR 1 of 1²

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.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Tennessee 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. W-1, non-jurisdictional
 - ii. W-2, non-jurisdictional
 - iii. W-3, non-jurisdictional
 - iv. S-1, non-jurisdictional
 - v. D-1, non-jurisdictional
 - vi. D-2, 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 two separate parcels. The first parcel is 24.66 acres ("main property") with approximate center coordinates of N35.5754°, W89.6375° and the second parcel ("borrow area") is 17.5 acres with approximate center coordinates of N35.5825°, W89.6311°. Both parcels are located in Covington, Tipton County, Tennessee.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hatchie River
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The subject aquatic resources flow into Town Creek and then the Hatchie River
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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.
 - 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

⁶ 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.

⁷ 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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- e. Tributaries (a)(5): N/A
- 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”).⁸ 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. D-1 and D-2, as shown on the enclosed map, are man-made excavated ditches in uplands that were designed to convey stormwater (upland runoff) to off-site areas. Both D-1 and D-2 meet the definition of waters generally not considered “Waters of the United States” as specified in the preamble to the 1986 regulations in Section 328.3(d)(a). Neither feature conveys relatively permanent flow.
- 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

⁸ 51 FR 41217, November 13, 1986.

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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).

W-1 (1.3 acres) is present on the “main property” with approximate center coordinates of N35.5758°, W89.6374°. W-2 (0.05-acre) and W-3 (0.06-acre) are present near the northwest corner of the “borrow area” property near coordinates N35.5830°, W89.6323°. A field survey conducted on March 11, 2025 and review of the consultant’s waters of the United States delineation report, dated March 6, 2025, as well as review of pertinent and available electronic maps, indicate that W-1 is separated from the nearest RPW (Town Creek) through approximately 90 lf of culvert as well as approximately 635 lf of non-relatively permanent ditching for a total distance of 725 feet. W-2, and W-3 are separated from the nearest RPW (Town Creek) by a grassed swale and an upland roadside ditch for a total distance of approximately 3,780 feet. These features do not abut the nearest RPW and are, therefore, not considered waters of the United States.

S-1 is present on the “main property” and flows in a southerly direction before converging with W-1. This stream channel originates on the property and is approximately 96 linear feet in length. This channel was observed with a silt substrate and an ordinary high-water mark with a width of 3.0 feet (0.01-acre). Flowing water was not present in this channel during the consultant’s site visit of the site visit conducted by USACE On March 11, 2024. This channel has been determined to have an ephemeral, non-relatively permanent, flow 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. Site visit conducted on March 11, 2025
 - b. Maps, plans, and photos submitted by or on behalf of the AJD requestor: UES
 - c. U.S. Geological Survey map: 1:24,000 Covington, Tennessee.
 - d. Google Earth imagery various dates.
 - e. 3DEP Hillshade Imagery accessed on various dates (accessed through National Regulatory Viewer).

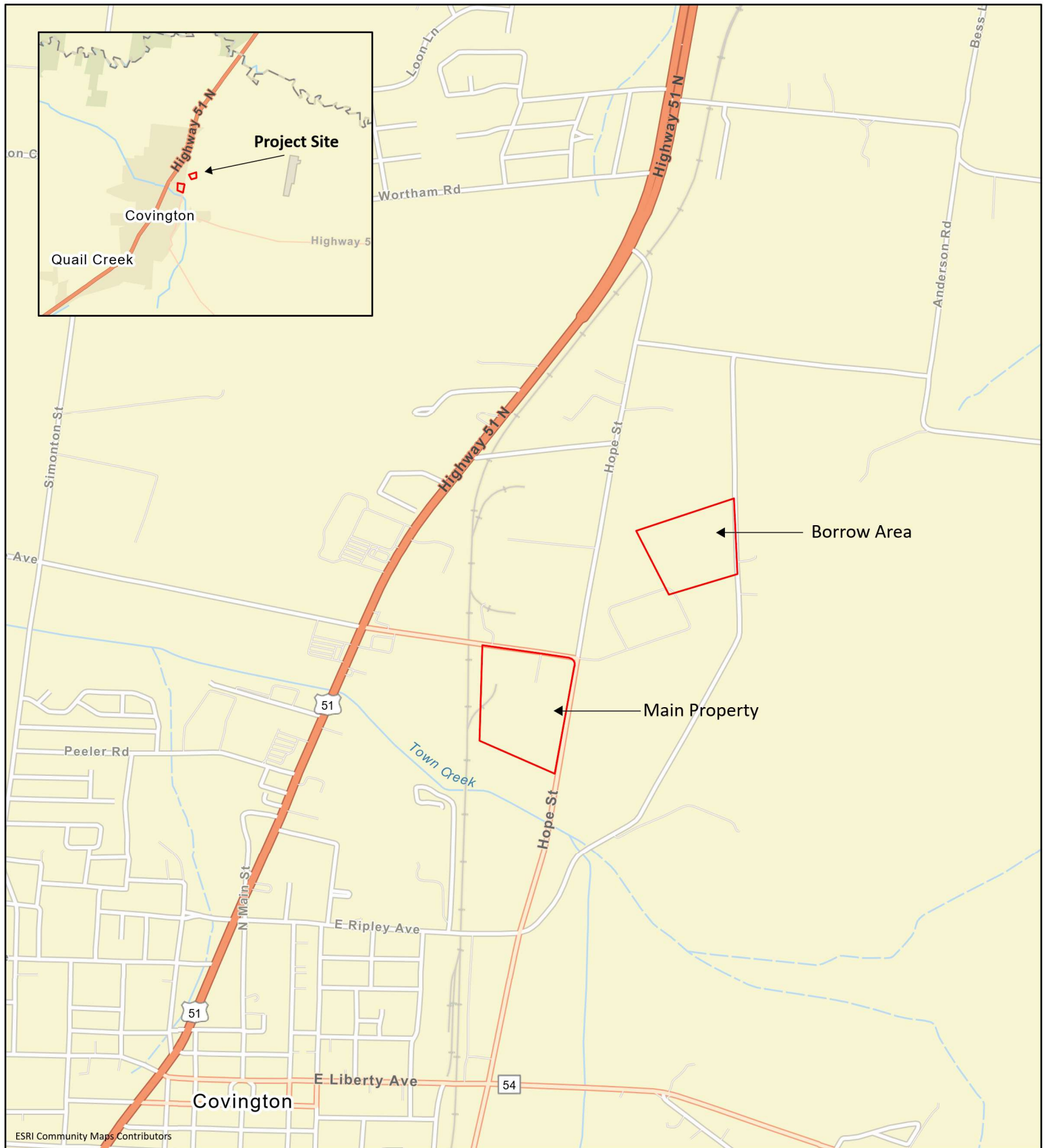
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f. National Wetlands Inventory (accessed through National Regulatory Viewer).

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.



Legend

Sites



0 1,000 2,000 3,000
 Feet

FIGURE 1. LOCATION MAP
 CHARMS LLC PROPERTY AND BORROW AREA
 COVINGTON, TENNESSEE

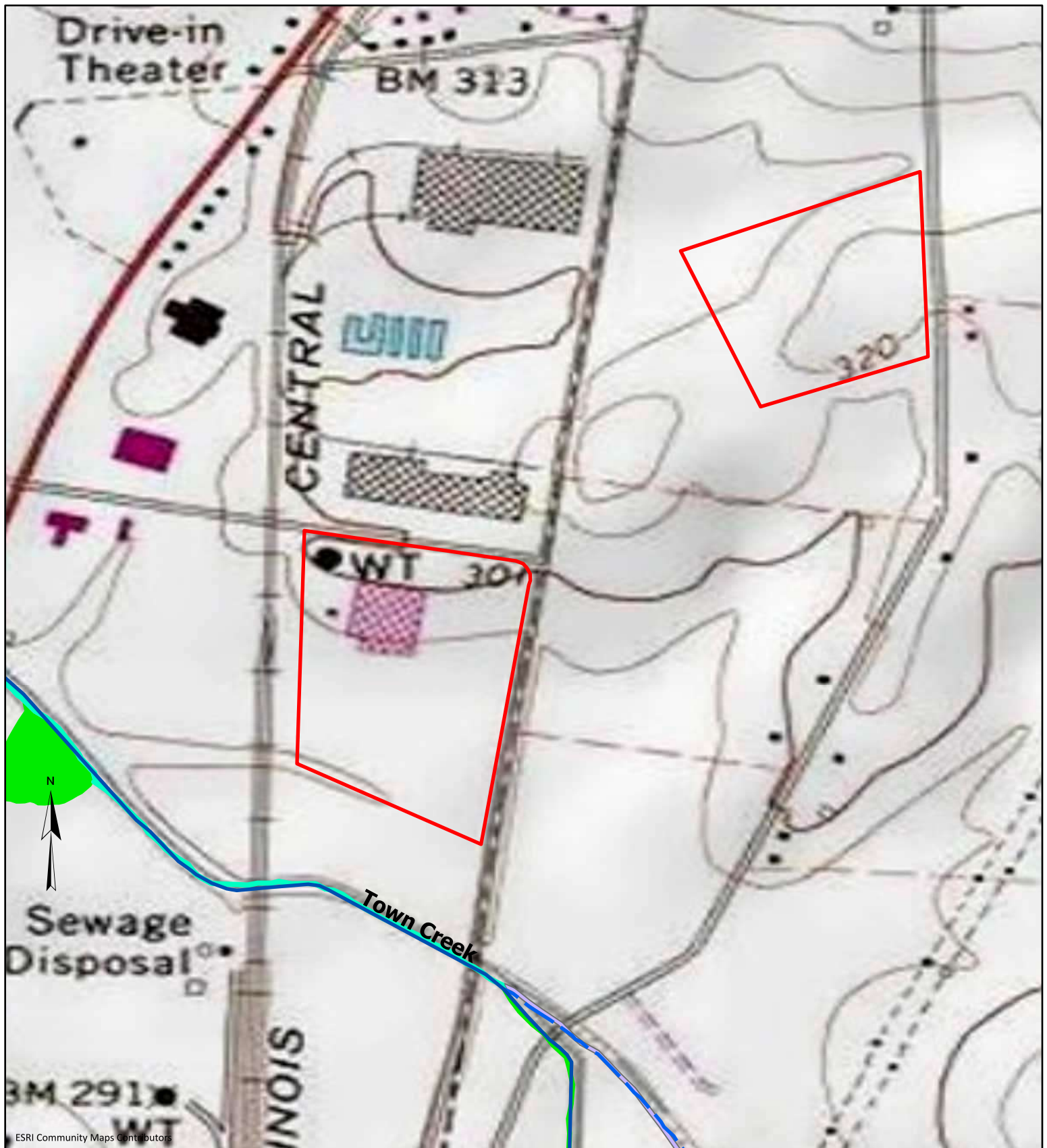
Project Number: J042177.04



Drawn by: JMF
 Date: 08/21/2024

Ch'd By: MSR
 Date: 08/23/2024

App'vd By: JMF
 Date: 08/23/2024



Legend

- | | |
|--|--|
| Sites | --- Intermittent Stream |
| Freshwater Emergent Wetland | — Perennial Stream |
| Riverine Wetland | |
- 0 1,000 2,000 Feet

FIGURE 2. TOPOGRAPHIC, NATIONAL WETLAND INVENTORY, AND NATIONAL HYDROGRAPHY MAP
CHARMS LLC PROPERTY AND BORROW AREA
COVINGTON, TENNESSEE

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Legend

Sites



0 500 1,000 1,500
 Feet

FIGURE 3. AERIAL MAP
 CHARMS LLC PROPERTY AND BORROW AREA
 COVINGTON, TENNESSEE

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Legend

- Sites
- FEMA 100 Year Floodplain (1%)

0 500 1,000 1,500 Feet



FIGURE 4. FEMA FLOODPLAINS
CHARMS LLC PROPERTY AND BORROW AREA
COVINGTON, TENNESSEE

Project Number: J042177.04

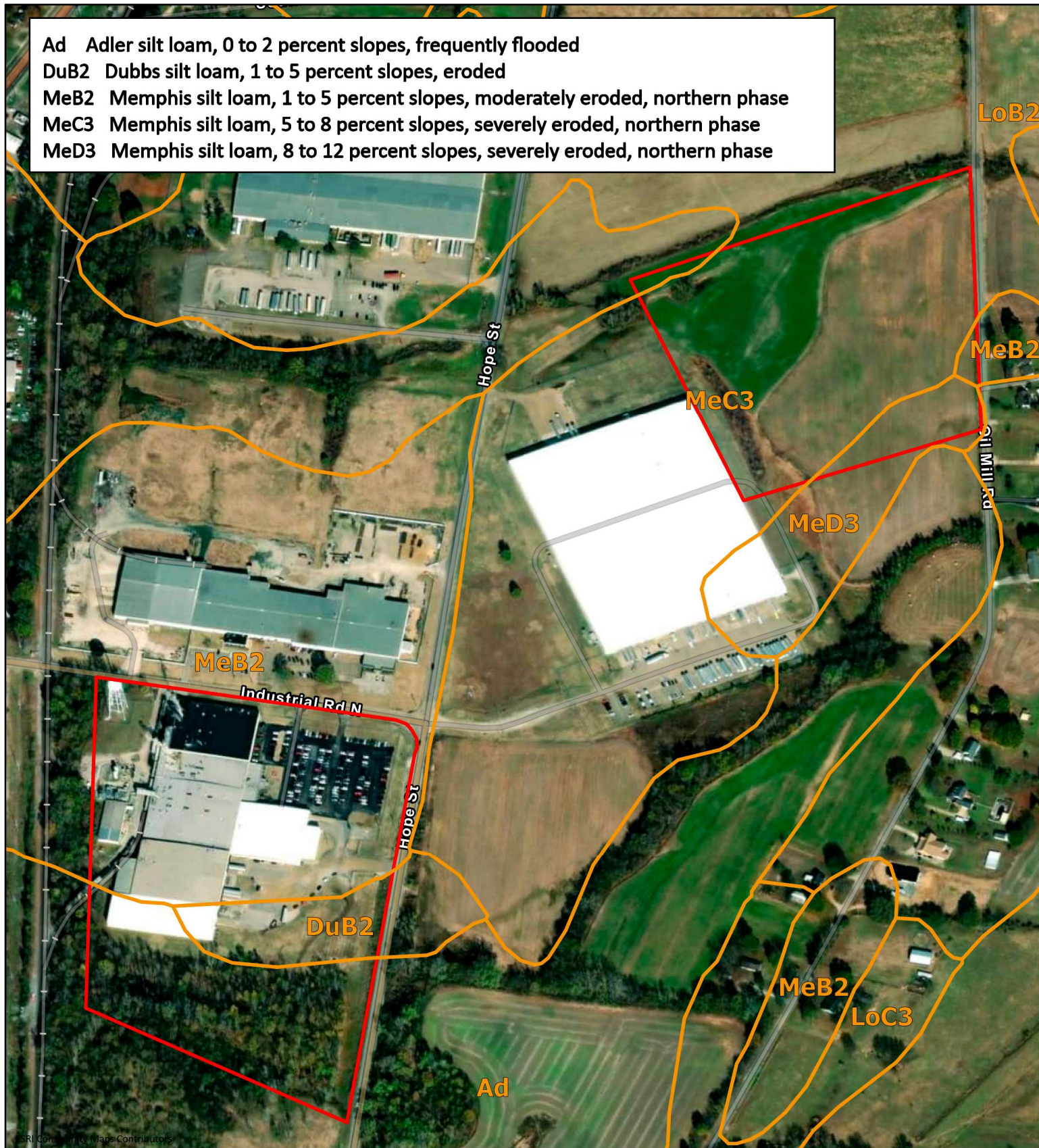


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Ad Adler silt loam, 0 to 2 percent slopes, frequently flooded
 DuB2 Dubbs silt loam, 1 to 5 percent slopes, eroded
 MeB2 Memphis silt loam, 1 to 5 percent slopes, moderately eroded, northern phase
 MeC3 Memphis silt loam, 5 to 8 percent slopes, severely eroded, northern phase
 MeD3 Memphis silt loam, 8 to 12 percent slopes, severely eroded, northern phase



Legend

- Sites
- NRCS Soils



0 500 1,000
 Feet

FIGURE 5. NRCS SOILS
 CHARMs LLC PROPERTY AND BORROW AREA
 COVINGTON, TENNESSEE

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Legend

- | | |
|---|---|
| Sites | --- Ephemeral Stream |
| Emergent Wetland | --- Non-Stream Drainage |
| Forested Wetland | |
| ● Photo Point | |
| ● Sample Point | |

FIGURE 6. DELINEATED FEATURES
CHARMS LLC PROPERTY AND BORROW AREA
COVINGTON, TENNESSEE

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