



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103

CEMVS-RD

[December 30, 2024]

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 [MVS-2024-607]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

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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AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Missouri 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).
 - 1) Ephemeral turning to Intermittent Stream S1 (1730 feet), S1 ephemeral (853 feet) non-jurisdictional (non-RPW), S1 intermittent (877 feet) jurisdictional (a)(5) (RPW)
 - 2) Ephemeral Stream S2 (50 feet), non-jurisdictional (non-RPW)
 - 3) Ephemeral Stream S3 (66 feet), non-jurisdictional (non-RPW)
 - 4) Ephemeral Stream S4 (80 feet), non-jurisdictional (non-RPW)
 - 5) Ephemeral Stream S5 (195 feet), non-jurisdictional (non-RPW)
 - 6) Intermittent Stream S6 (2563 feet), jurisdictional (a)(5) (RPW)
 - 7) Ephemeral Stream S7 (85 feet), non-jurisdictional (non-RPW)
 - 8) Ephemeral Stream S8 (296 feet), non-jurisdictional (non-RPW)
 - 9) Ephemeral Stream S9 (342 feet), non-jurisdictional (non-RPW)
 - 10) Ephemeral Stream S10 (484 feet), non-jurisdictional (non-RPW)
 - 11) Ephemeral Stream S11 (546 feet), non-jurisdictional (non-RPW)

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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The JD review area consists of approximately 29.2 acres and is situated in Section 22 of Township 31 North, Range 3 East, Annapolis, Iron County, Missouri, Latitude: 37.3488, Longitude: -90.7030). The project area is composed of an active mine site and is bordered by a forest complex. The project area is

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bordered by the City of Annapolis to the north, rural forested area to the south, State Highway 49 to the east, and Highway K to the west. The wetland delineation of the project area was performed on October 31, 2024.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Watershed within project area flows into Big Creek, a secondary tributary stream to the Mississippi River (TNW) ⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: All aquatic resources within the project area flow into Stream S1 or S6, an intermittent system. Stream S1 & S6 continues to flow **outside** the limits of the project area and into Big Creek (a)(5) water. Leaving Big Creek downstream of 16 miles, the stream flow continues into St. Francis River, where the stream flow eventually meets the Mississippi River (a)(1) water.
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

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.

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

Tributaries (a)(5):

Stream S1 (intermittent) meets the Relatively Permanent Standard (RPS). The stream flow regime as determined during the consultant site visit, was relatively permanent flow based on visual observation of flow, OHWM, and bed and channel bank stream morphology. This stream is characterized by typical year-round flows. The APT was used to determine normal site conditions. APT results for site visit conducted August 6, 2024 indicated mild wetness site conditions during the dry season, however, the site had received normal precipitation patterns within the 30-year normal range for this time of year.

Stream S6 (intermittent) meets the RPS. This stream reach begins its flow regime from the beginning point immediately adjacent to existing mine footprint. The stream flow regime as determined during the consultant site visit conducted in addition was relatively permanent flow based on visual observation of flow, OHWM, and bed and channel bank stream morphology. This stream is characterized by seasonal continuous flows. The APT was used to determine normal site conditions. APT results for site visit conducted August 6, 2024 indicated mild wetness site conditions during the dry season, however, the site had received normal precipitation patterns within the 30-year normal range for this time of year. Within the delineation, it was indicated that there is an 81-foot section at the very downstream portion that is losing or where flows/pools were non-present. However, the flow daylighted again before going off site. This section of dry stream bed would not be enough to fall under the threshold percentage of a non-RPW.

- e. The territorial seas (a)(6): N/A
- f. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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- 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. [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).

⁸ 51 FR 41217, November 13, 1986.

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- 1) Ephemeral Stream S2 (50 feet), non-jurisdictional (non-RPW)
- 2) Ephemeral Stream S3 (66 feet), non-jurisdictional (non-RPW)
- 3) Ephemeral Stream S4 (80 feet), non-jurisdictional (non-RPW)
- 4) Ephemeral Stream S5 (195 feet), non-jurisdictional (non-RPW)
- 5) Ephemeral Stream S7 (85 feet), non-jurisdictional (non-RPW)
- 6) Ephemeral Stream S8 (296 feet), non-jurisdictional (non-RPW)
- 7) Ephemeral Stream S9 (342 feet), non-jurisdictional (non-RPW)
- 8) Ephemeral Stream S10 (484 feet), non-jurisdictional (non-RPW)
- 9) Ephemeral Stream S11 (546 feet), non-jurisdictional (non-RPW)

Streams S2, S3, S4, S5, S7, S8, S9, S10, S11 are characterized by the presence of OHWM indicators and ephemeral flow regimes located within the upper extent of the watershed. OHWM indicators included, scour, sediment sorting, water staining, deposition, shelving, as well as changes in character of soil, bed and bank, and plant community changes with leaf litter disturbance. These streams exhibited no flowing water at the time of the consultant delineation (August 2024). Therefore, these streams do not have continuous flow at least seasonally and are non-relatively permanent waters.

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. USGS.gov/streamstats, December 20, 2024
- b. ECT Delineation Report, August 6, 2024
- c. MVD/Missouri Regulatory Viewer (multiple data sources), December 20, 2024
- d. Antecedent Precipitation Tool, August 6, 2024
- e. Historic aerial imagery and USGS topographic maps, December 20, 2024.

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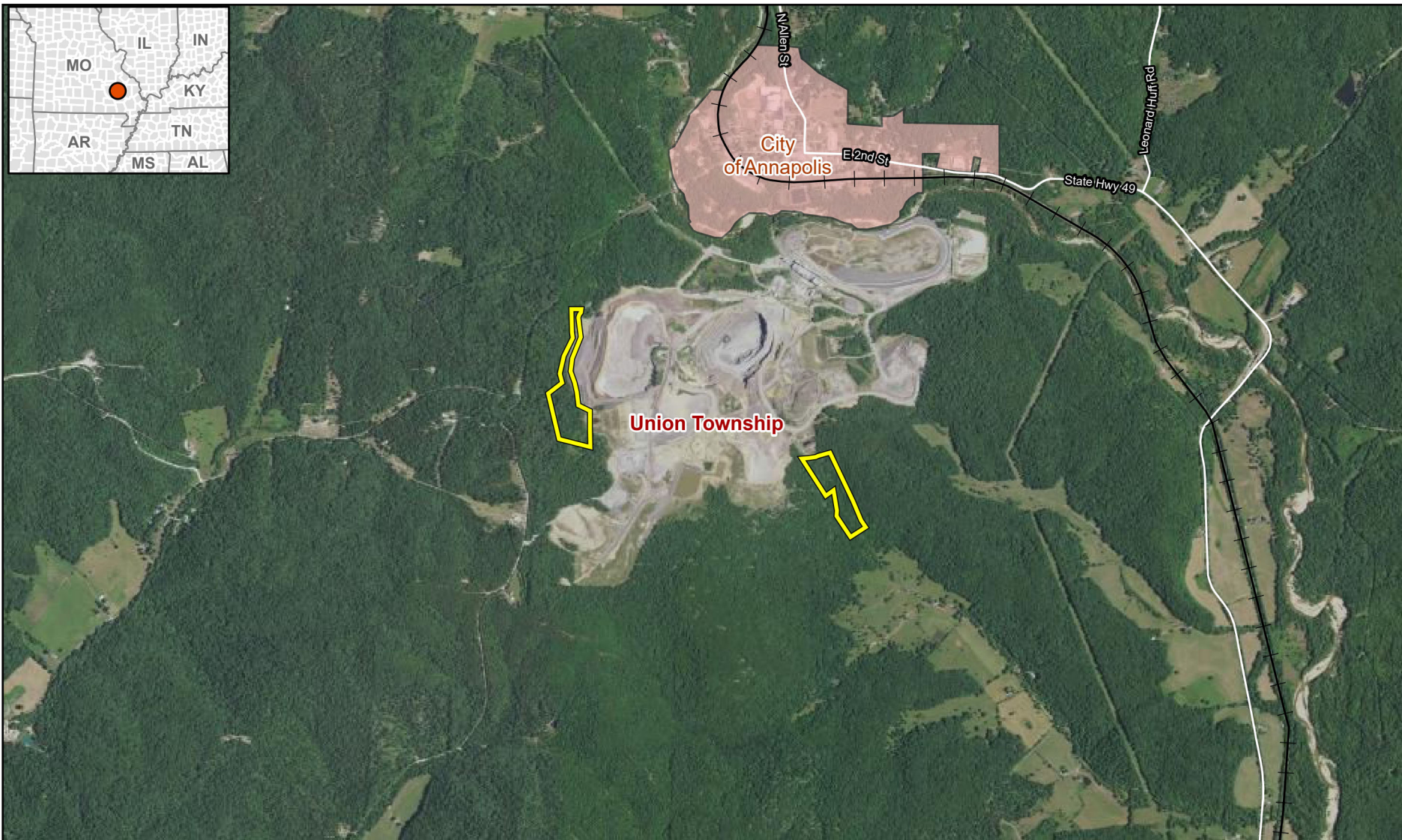
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10. OTHER SUPPORTING INFORMATION.

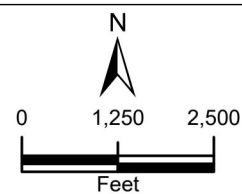
Other Citations:

Joint Policy Memorandums: [NWK-2024-00392](#), [POH-2023-187](#), [NWK-2022-00809](#), [NAP-2023-01223](#), & [SWG-2023-00284](#)

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.



-  Area of Interest (\pm 29.92 ac.)
-  Township Boundary
-  City



Base Layer: USDA NAIP, 2022

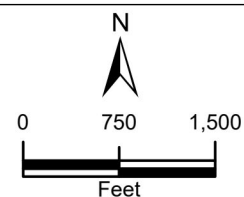
Figure 1
Site Location Map

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



 Area of Interest (\pm 29.92 ac.)



Base Layer: USGS Topographic Quads, Des Arc 2021

Figure 2
USGS Topographic Map

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



 Area of Interest (± 29.92 ac.)

 NHD Watercourse

National Wetland Inventory (USFWS)

 Freshwater Forested/Shrub Wetland

 Freshwater Pond

 Riverine

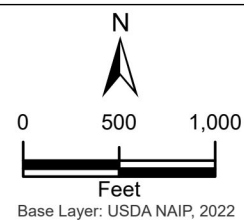
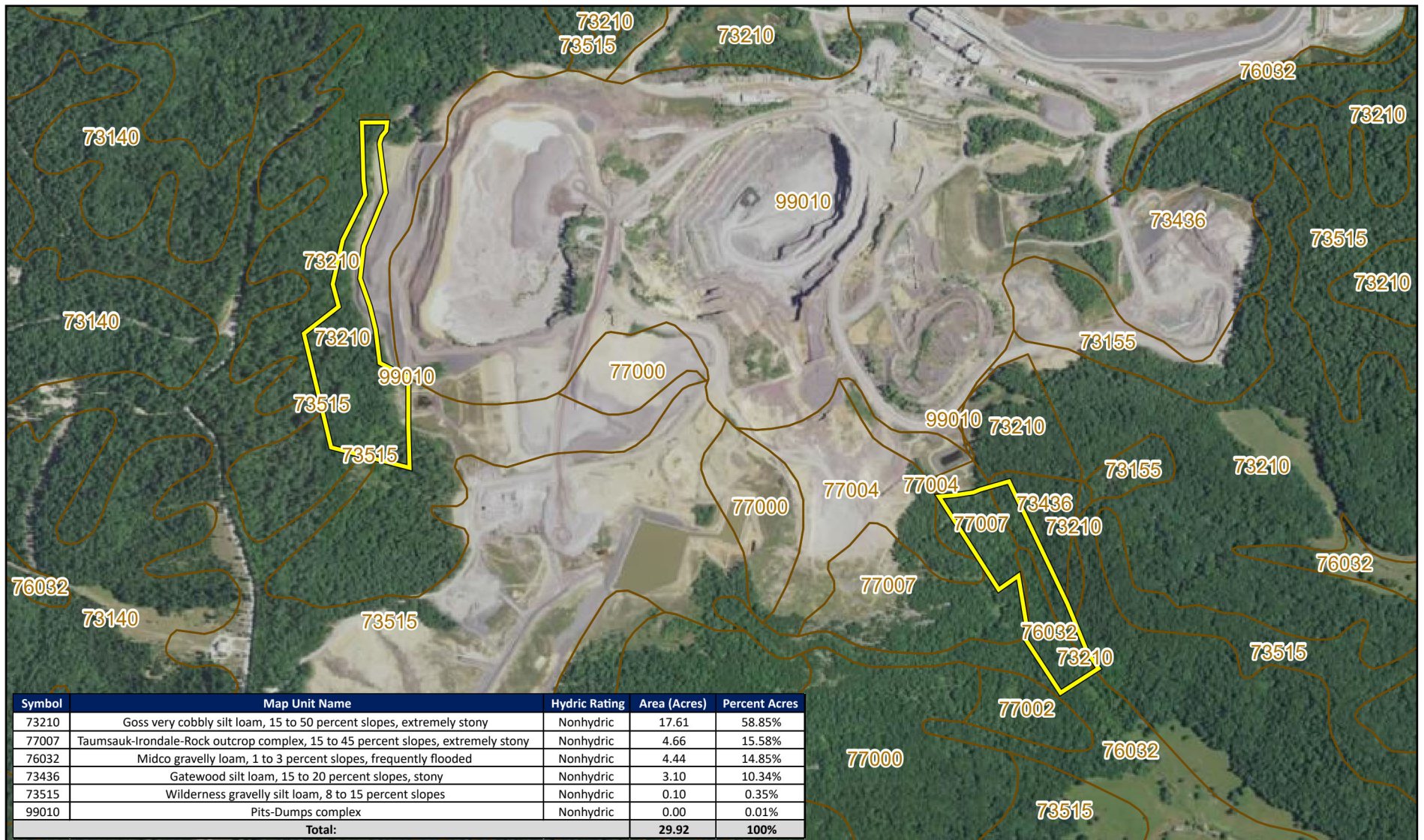




Figure 3
Surface Water Features

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



 Area of Interest (± 29.92 ac.) **NRCS Hydric Rating**
 Nonhydric (0%)

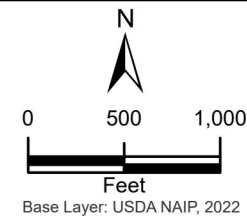
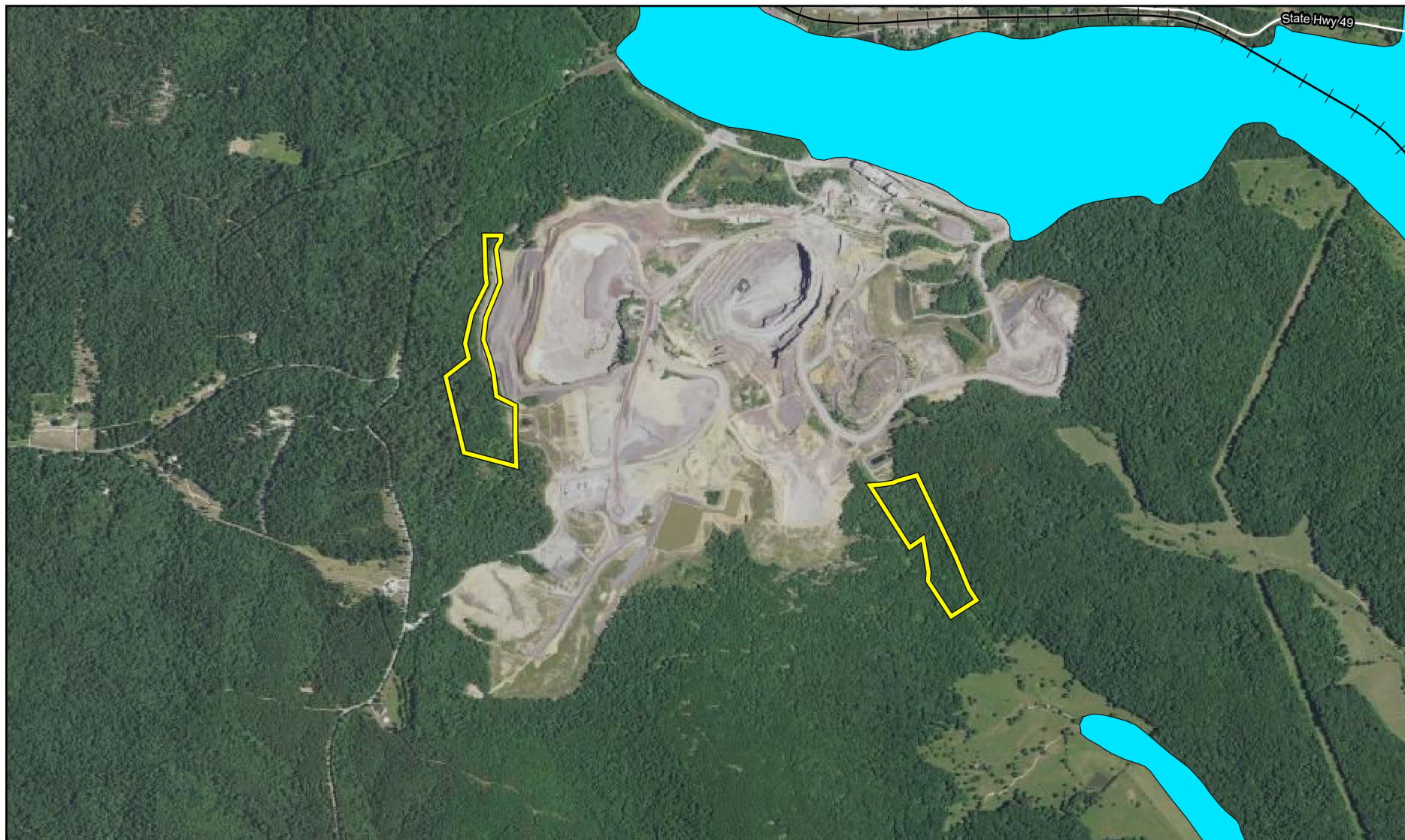


Figure 4
NRCS Soils

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024


ECT



 Area of Interest (± 29.92 ac.)

Flood Zones (FEMA)

 1% Annual Chance Flood Hazard

 Zone X - Area of Minimal Flood Hazard

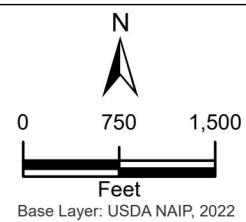


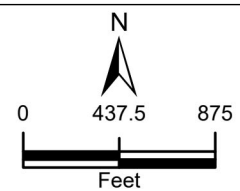
Figure 5
FEMA Floodplain

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



- Area of Interest (\pm 29.92 ac.)**
- ▲ Photo Location
- Delineated Stream**
- Ephemeral Stream
 - Intermittent Stream
 - Dry Streambed



Base Layer: USDA NAIP, 2022

Figure 6
Aquatic Delineation Overview

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



- Area of Interest (± 29.92 ac.)
- ▲ Photo Location
- Delineated Stream**
- Intermittent Stream
- - - Dry Streambed

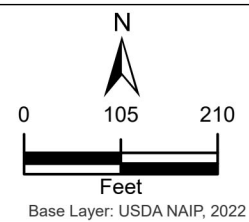


Figure 6 - Page 1 of 5
Aquatic Delineation

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



- Area of Interest (± 29.92 ac.)**
- Delineated Stream**
- Photo Location
 - Intermittent Stream
 - Ephemeral Stream

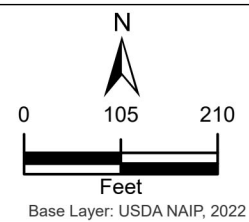
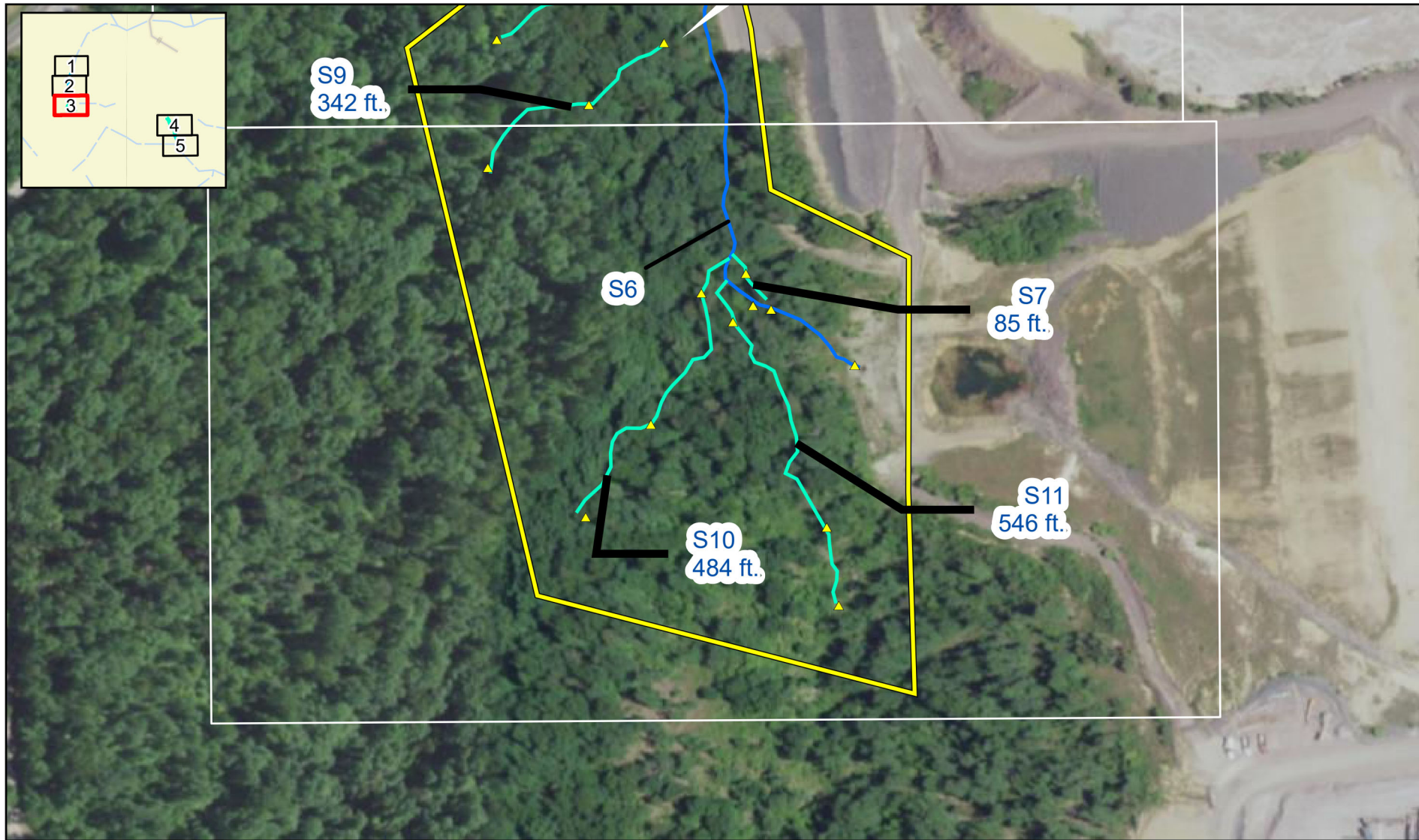


Figure 6 - Page 2 of 5
Aquatic Delineation

SGI-Annapolis
 Iron County, Missouri
 Date: 10/31/2024

ECT



- Area of Interest (\pm 29.92 ac.)
- ▲ Photo Location
- Delineated Stream**
- Intermittent Stream
- Ephemeral Stream

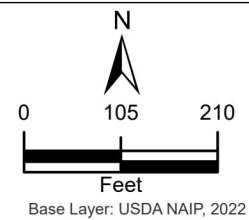
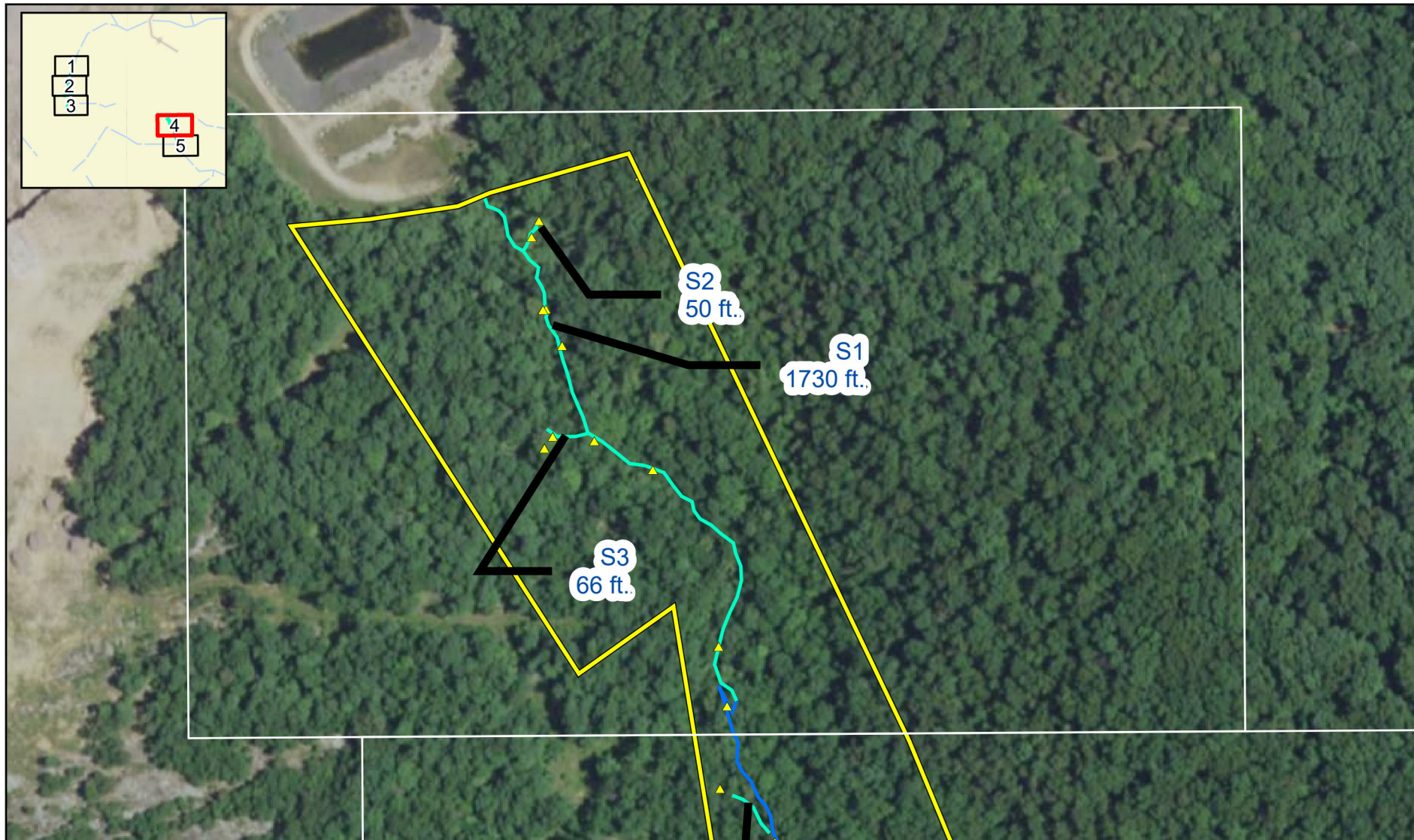
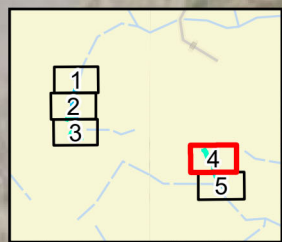






Figure 6 - Page 3 of 5
Aquatic Delineation

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



-  Area of Interest (\pm 29.92 ac.)
-  Photo Location
- Delineated Stream**
-  Intermittent Stream
-  Ephemeral Stream

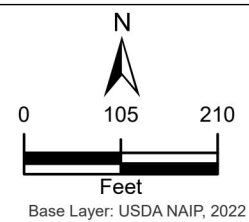
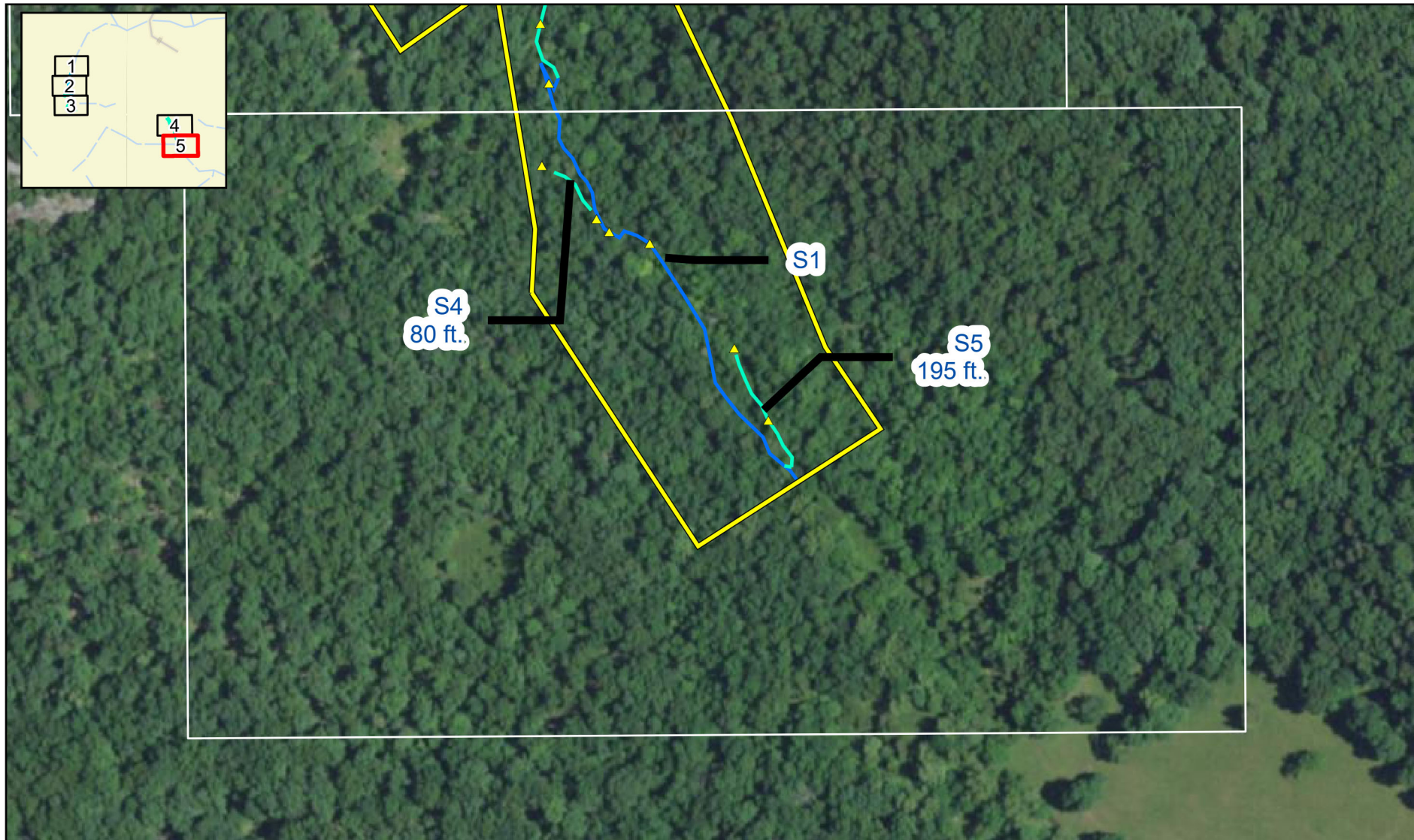


Figure 6 - Page 4 of 5
Aquatic Delineation

SGI-Annapolis
Iron County, Missouri
Date: 10/31/2024

ECT



- Area of Interest (± 29.92 ac.)
- Intermittent Stream
- Ephemeral Stream
- ▲ Photo Location

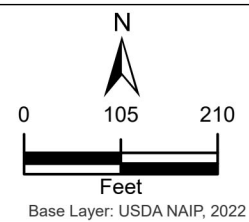


Figure 6 - Page 5 of 5 Aquatic Delineation

SGI-Annapolis
 Iron County, Missouri
 Date: 10/31/2024

ECT