



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON, TEXAS 77550

CESWG - RDN

7 May 2026

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 SWG-2026-00150

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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).

Feature Name	Feature Type	Latitude	Longitude	Acres/Linear Feet	Jurisdictional Status
Wallisville Outfall (HCFCD UNIT # H125-00-00; s1)	Stream	29.787434	-95.262452	8,721 linear feet	RPW - Jurisdictional Tributary
s2	Ditch	29.786943	-95.258977	64 linear feet	Non-RPW; Non-jurisdictional
s3	Erosional Feature	29.786629	-95.257424	7 linear feet	Non-RPW; Non-jurisdictional
s4	Erosional Feature	29.786563	-95.254269	70.8 linear feet	Non-RPW; Non-jurisdictional
w1	PFO	29.786400	-95.247697	42.86 acres	Non-jurisdictional
w2	PEM	29.786768	-95.258607	0.23 acres	Non-jurisdictional

PFO = Palustrine Forested Wetland
PEM = Palustrine Emergent Wetland
RPW = Relatively Permanent Water

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. 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act

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3. REVIEW AREA. The review area is an 85.30-acre tract of land located along the Wallisville Outfall (HCFCD Unit # H125-00-00) near 348 Oates Road, Houston, Harris County, Texas at Latitude 29.787446; Longitude -95.267164. A review of Google Earth historical aerial photography dating back to 1944 indicates that the subject area was previously open prairie and agricultural fields. The undeveloped site has been dominated by forested vegetation since approximately 2016.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. A portion of Hunting Bayou located approximately 3 miles downstream from the review area is the nearest TNW.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wallisville Outfall (HCFCD Unit # H125-00-00; s1) flows 0.73 mile eastward from the review area to Hunting Bayou, which becomes a TNW approximately 2.27 miles downstream.
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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

⁵ 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.

⁶ 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): Based on a desktop review and site visit conducted on 28 April 2026, we determined that the 8,721 linear feet of the Wallisville Outfall channel (HCFCD Unit # H125-00-00; s1) within the review area exhibits characteristics of a tributary that carries relatively permanent flow, including having flowing water year-round or seasonally, a bed and bank, an ordinary high water mark (OHWM), and drift/wrack lines. Approximately 1-6 inches of water was observed in the channel at the time of the site visit, along with a wrack line situated near the top of bank, approximately 2 feet above the channel bed indicating the approximate location of the OHWM. The applicant's aquatic resources report also identified the Wallisville Outfall as a perennial stream, and the National Wetlands Inventory (NWI) characterizes this feature as Riverine, Intermittent, Stream Bed, Seasonally Flooded, Excavated (R4SBCx). Wallisville Outfall (HCFCD Unit # H125-00-00; s1) flows 0.73 mile eastward from the review area to Hunting Bayou, which becomes a TNW approximately 2.27 miles downstream. Therefore, Wallisville Outfall (HCFCD Unit # H125-00-00; s1) is an RPW that flows to a TNW, and is a jurisdictional tributary subject to Section 404 of the CWA.
- 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").⁷ 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

⁷ 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.

Based on a desktop review of historical aerial photography, we determined that the feature s2 is a man-made ditch that was dug from uplands and does not carry relatively permanent flow. Historical aerial photography shows that this concrete-lined ditch was constructed around February 2024 and is associated detention pond that was constructed from uplands around December 2018 and a pump station constructed in 2023. Therefore, ditch s2 is non-jurisdictional under the CWA.

Based on a desktop review and site visit conducted on 28 April 2026, we determined that features s3 and s4 are erosional features between wetland w1 and the Wallisville Outfall (HCFCD Unit # H125-00-00; s1). During the site visit on 28 April 2026, we observed that s3 was a shallow erosional drainage extending down the bank of s1 from the edge of wetland w1. There was approximately 0.5 to 1 inch of standing water present in s3, but the Antecedent Precipitation tool (APT) indicated wetter than normal conditions on this date. The s3 drainage feature also had a thick stand of vegetation consisting of giant ragweed, poison ivy, and Chinese tallow saplings surround it along the bank of s1. Based on these observations and the minimal water levels during a wetter than normal precipitation condition, this drainage feature does not hold relatively permanent flow and has likely formed due to erosion associated with overland sheet flow from wetland w1 down the bank of s1. Feature s4 was another shallow erosional drainage with a dry bed extending down the bank of s1 from the edge of wetland w1. Some older rip rap was observed within s4 and was likely placed in the past to help control erosion. However, based on the lack of standing water within s4 during a wetter than normal precipitation condition, this drainage feature does not hold relatively permanent flow, and has also likely formed due erosion associated with overland sheet flow from wetland w1 down the bank of s1. Therefore, we determined that s3 and s4 are non-jurisdictional erosional features not subject to Section 404 of the CWA.

- 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

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- 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).

Based on a desktop review and site visit conducted on 28 April 2026, we determined that wetlands w1 and w2 do not have a continuous surface connection with an RPW tributary or TNW and are not adjacent wetlands. The applicant’s wetland delineation indicated that the boundary of w1 does not extend to the OHWM of the Wallisville Outfall (HCFCD Unit # H125-00-00; s1). Although features s3 and s4 extend from the northern boundary of w1 down the bank of the Wallisville Outfall, which is an RPW, s3 and s4 were determined to be non-jurisdictional erosional features that do not have characteristics of a tributary with relative permanent flow. Therefore, wetland w1 is not abutting an RPW and is non-jurisdictional under the CWA.

Wetland w2 is located within a detention basin that was constructed from uplands around 2018 and although it is connected to ditch s2, this ditch was determined to be non-RPW and non-jurisdictional. Therefore, w2 does not have a continuous surface connection to an RPW or TNW and is non-jurisdictional under the CWA.

- 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. Pre-USACE Verified WATERS OF THE U.S. DELINEATION REPORT, Right-of-Way Acquisition, Design and Construction of Wallisville Outfall HCFCD Project ID: H125-00-00-E001, Harris County, Texas, 29.787446°, -95.267164, RKI

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Project No: ASF25-091-01, Revision 3. Prepared by: Raba Kistner, a KIWA company on 26 February 2026.

- b. Site visit conducted on 16 September 2025.
- c. Google Earth Aerial Imagery of the review area from 1995, 2002, 2004, 2006, 2018, 2023, 2024.
- d. USGS Topographic Maps: 7.5-minute Quadrangle – Settegast, Texas 2016.
- e. USGS Map 3D Elevation Program (3DEP) Digital Elevation Model (DEM) on the Corps National Regulatory Viewer, Accessed on 27 April 2026.
- f. National Wetlands Inventory map on the Corps National Regulatory Viewer, Accessed on 7 May 2026.
- g. Antecedent Precipitation Tool, Accessed on 5 May 2026.

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.

PREPARED BY:



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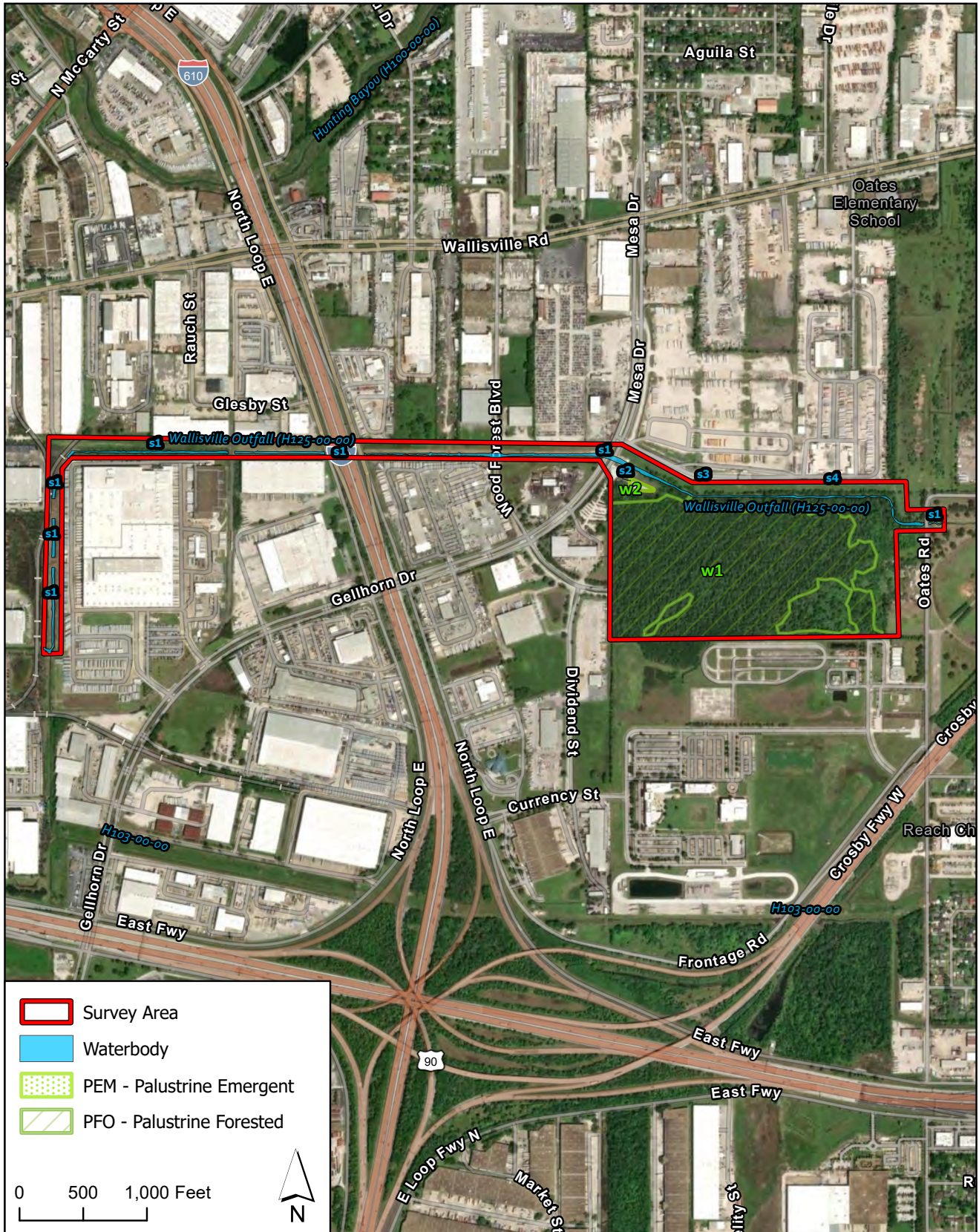
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REVIEWED/APPROVED BY:

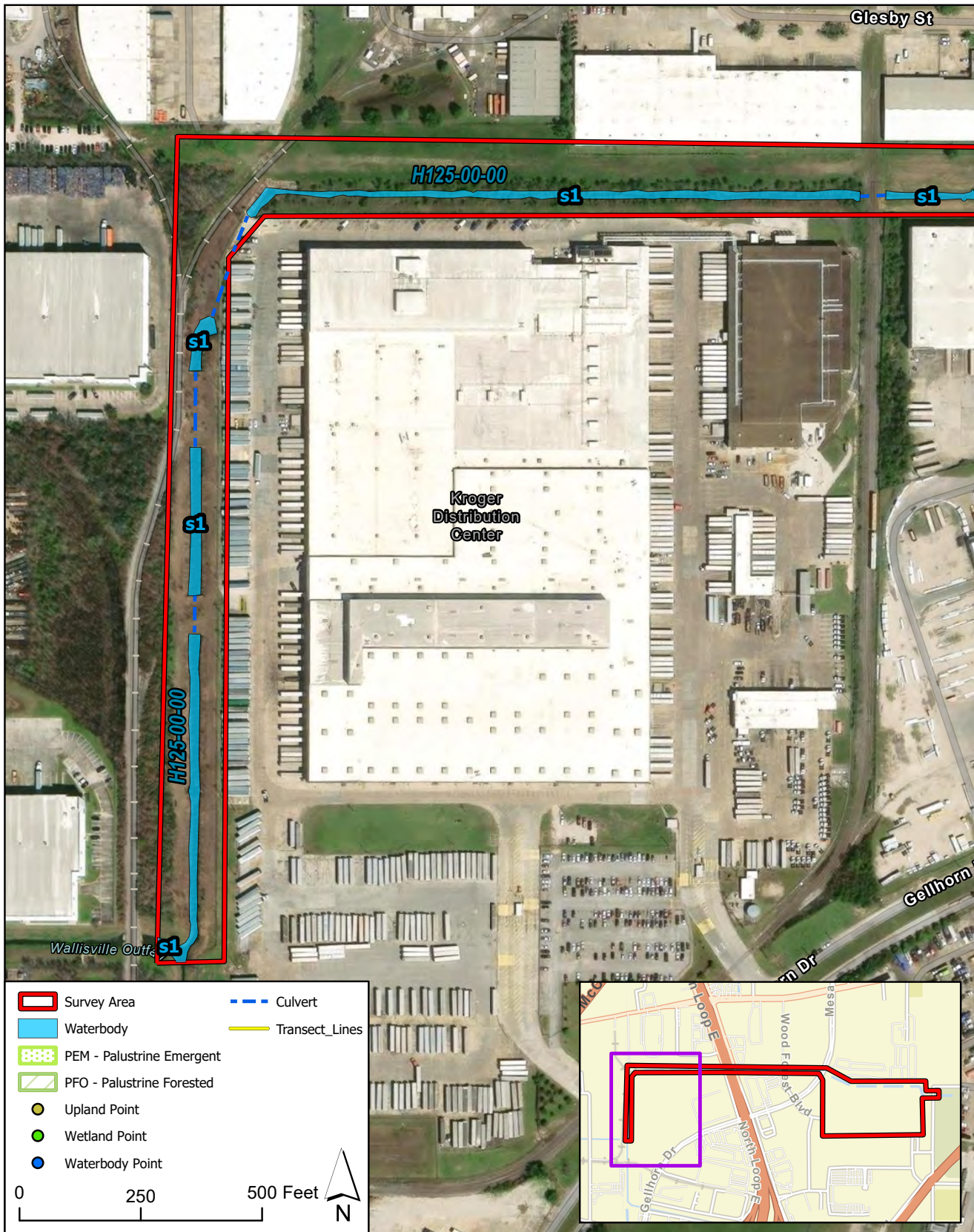


Andria Davis
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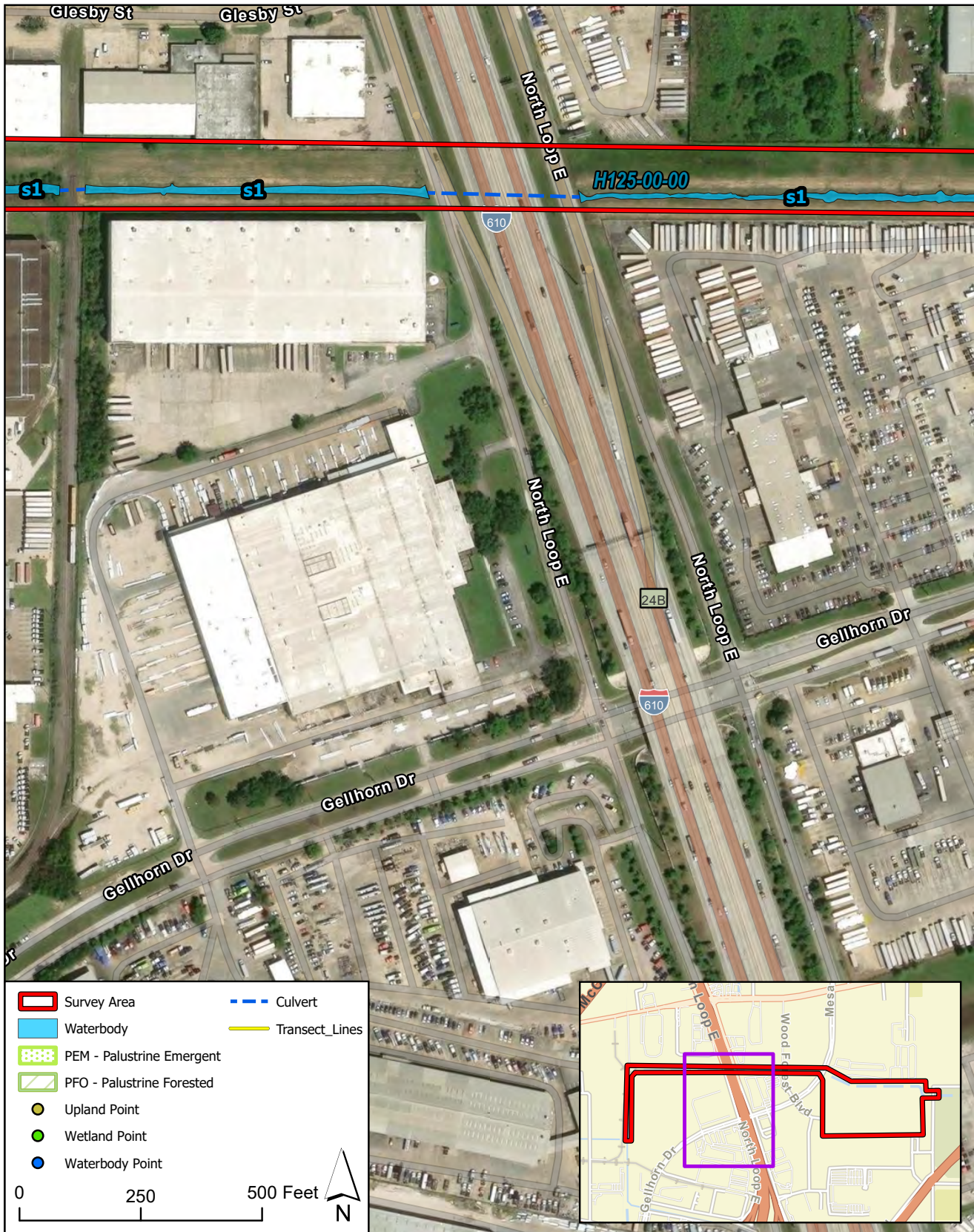
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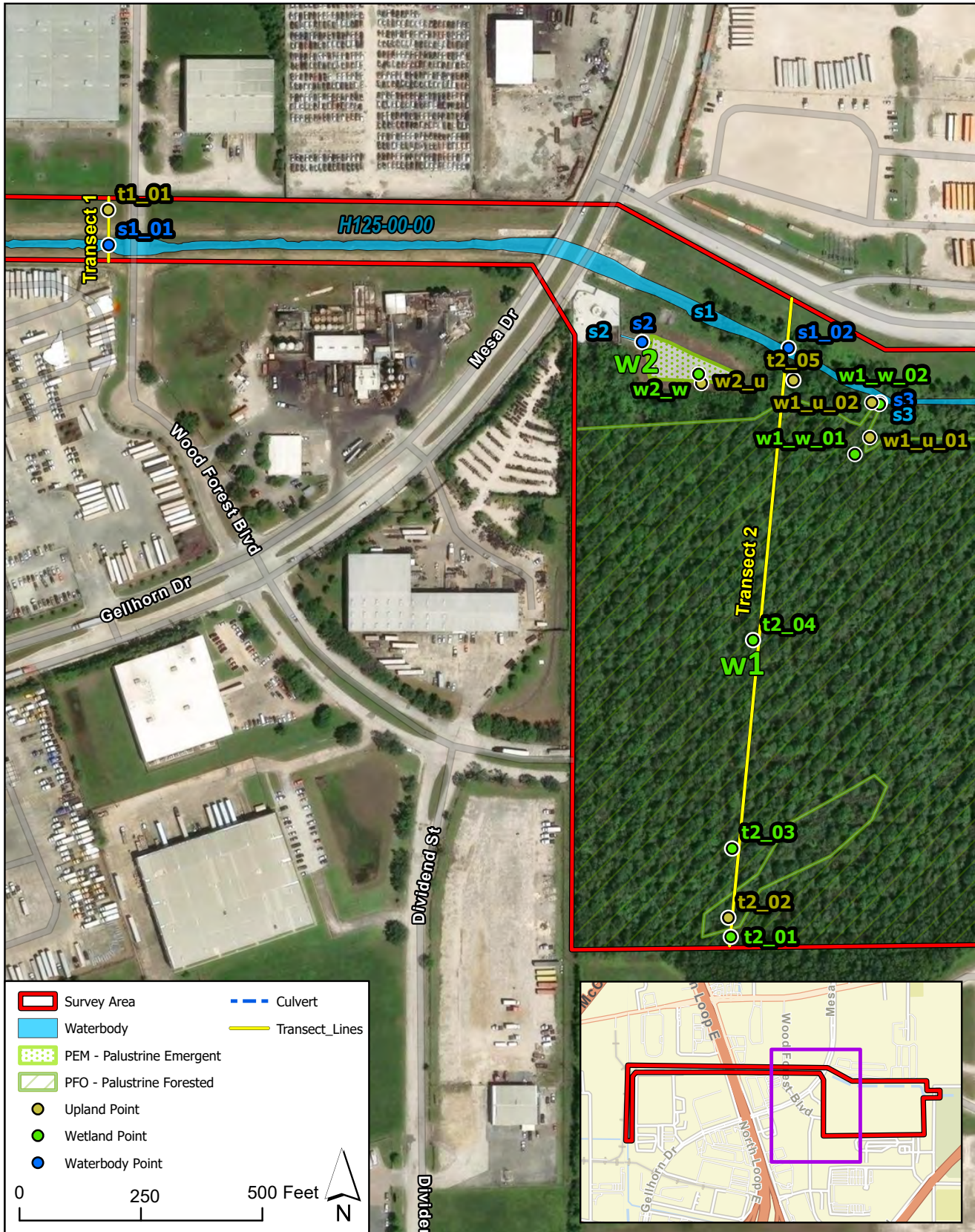
SOURCE: 1) Aerial basemap from ESRI



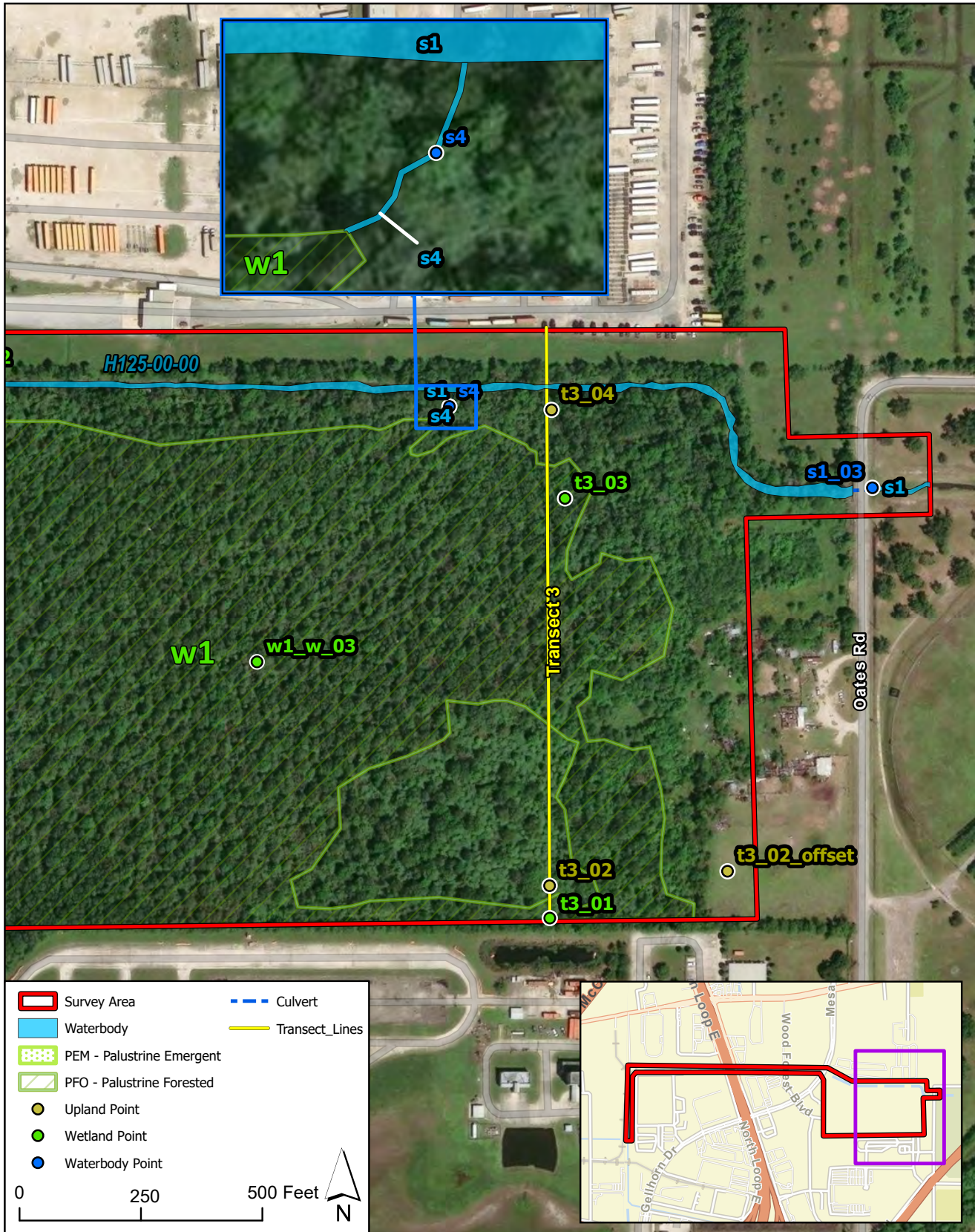
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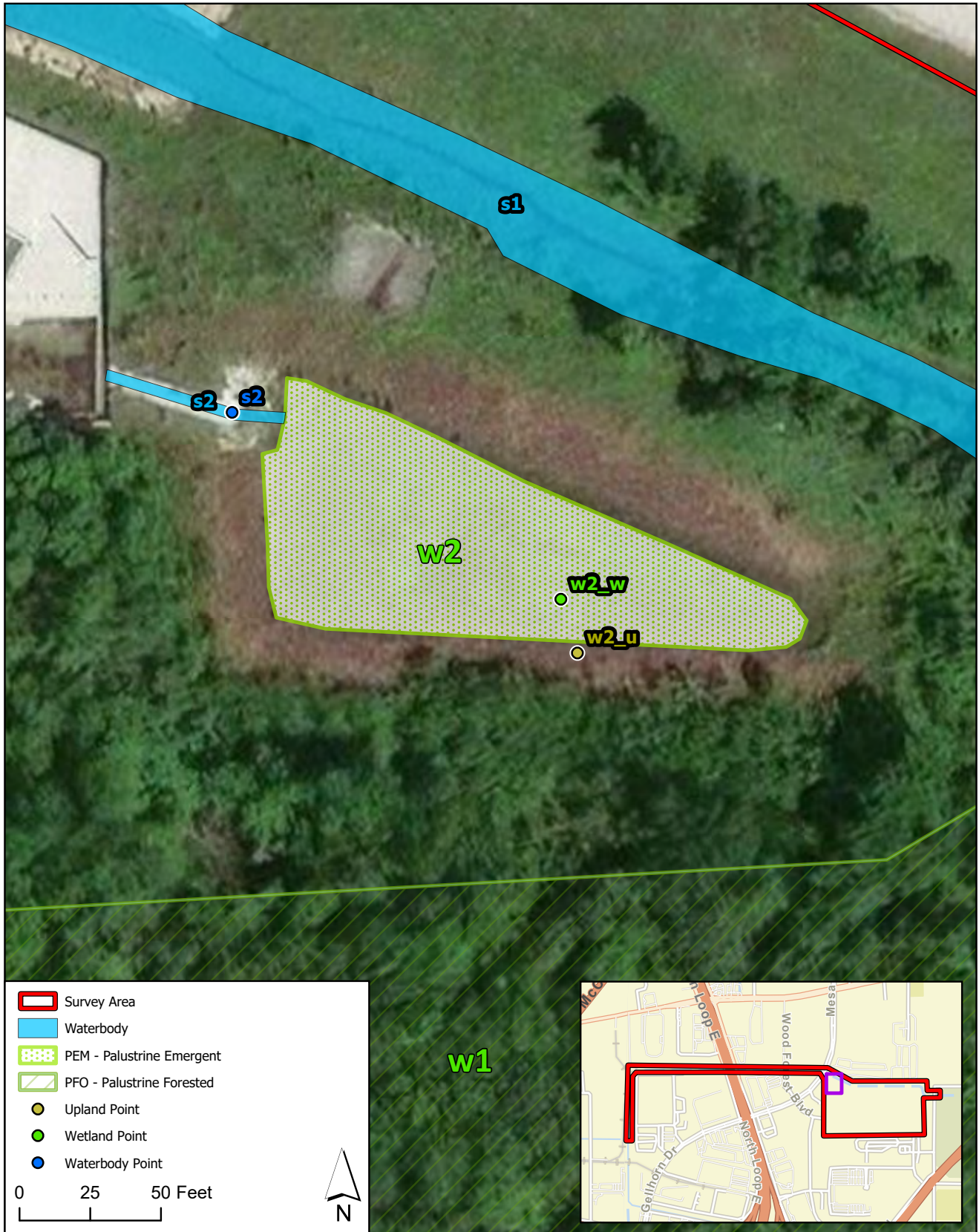


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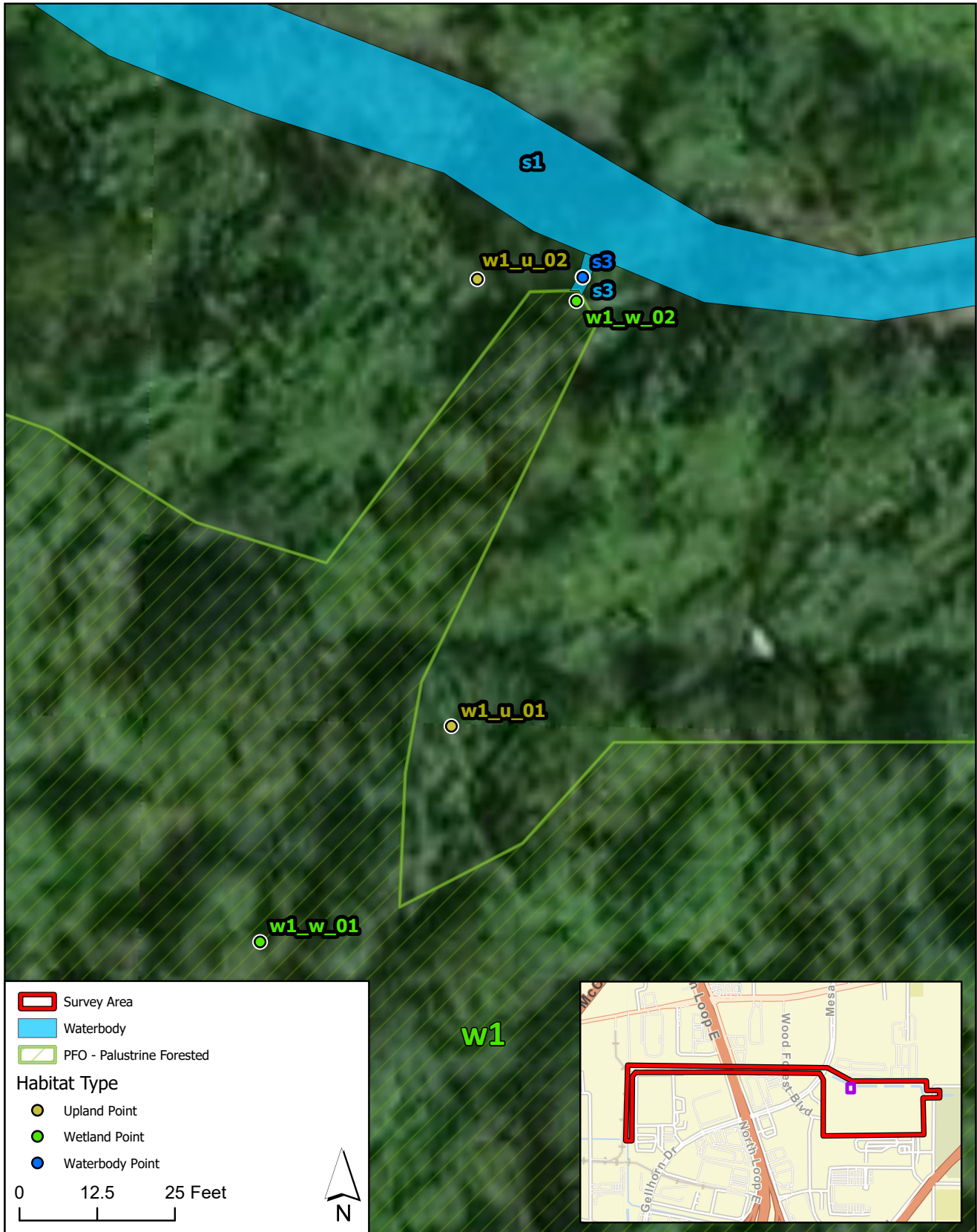


SOURCE: 1) Aerial basemap from ESRI

POTENTIAL WATERS OF THE U.S. FIGURE 7E
 Right-of-Way Acquisition, Design and Construction of Wallisville Outfall
 Harris County, Texas
 RKI Project No. ASF25-091-01



SOURCE: 1) Aerial basemap from ESRI



SOURCE: 1) Aerial basemap from ESRI