

May 9, 2024

Mr. Bryan Day
Little Rock Port Authority
10600 Industrial Harbor Drive
Little Rock, Arkansas 72206

VIA EMAIL: bryan.day@portoflittlerock.com

Re: Section 404 – Preliminary Jurisdictional Evaluation
Little Rock Port Authority – Supersite, Little Rock, Arkansas
ECCI Project # 4446-3022

Dear Mr. Day:

At your request, ECCI has evaluated the Port of Little Rock project site located south of Thibault Road and both east and west of a portion of Frazier Pike Road in light of current Section 404 jurisdiction.

Since the time when the delineation of the site was conducted (report dated March 30, 2023), there have been changes in both regulations from the Environmental Protection Agency (EPA) and interpretation/implementation of regulations/guidance from the United States Army Corps of Engineers (USACE) Little Rock District (LRD).

At this time, the EPA and USACE are actively undergoing a review of rules surrounding federal jurisdiction over surface waters in the US. Recent projects have undergone much scrutiny by both agencies as they struggle to settle what is jurisdictional and what is not in light of a US Supreme Court decision on waters of the US (WOTUS) issued in 2023. Based on the 2023 EPA Revised Definition of WOTUS: non-relatively permanent waters (RPWs) and wetlands lacking continuous surface hydrologic connectivity to tributaries of traditionally navigable waters (TNWs) are not considered jurisdictional waters. RPWs and wetlands with a continuous surface hydrologic connection to tributaries are considered jurisdictional under Section 404 of the CWA. Perennial and intermittent streams are considered RPWs. Ephemeral streams are characterized by short-term, weather-related hydrology and are generally considered non-RPWs (although, in some recent cases, the USACE has exerted jurisdiction over ephemeral channels, ditches, and connected wetlands).

Enclosure 1 provides maps illustrating the aquatic features observed during the 2023 site delineation (1Q2023).

Table 1 provides a summary of the wetlands observed in the 2023 delineation, along with the 1Q2023 jurisdictional status and assumed current jurisdictional status.



Table 1. Summary of wetland jurisdictional status.
(Features with differing jurisdictional status are highlighted in blue)

Wetland ID	Vegetative Community Type(s)	Area (acres)	Jurisdictional as of 1Q2023	*Currently Jurisdictional
WET-A	Former Borrow Pit	6.0	Yes	No
WET-B	Agricultural field wetland	15	Yes	No
WET-C	Herbaceous/Scrub/Shrub field edge wetland	1.4	Yes	No
WET-D	Agricultural wetland swale/slough	2.1	Yes	No
WET-E	Forested wetland	0.49	Yes	No
WET-F	Agricultural field wetland	0.36	Yes	Yes
WET-G	Forested bottomlands wetland	2	Yes	Yes
WET-H	Forested wetland slough	3.3	Yes	Yes
WET-I	Agricultural field wetland	7.6	Yes	Yes
WET-J	Forested wetland depression	0.92	Yes	Yes
WET-K	Forested wetland depression	0.5	Yes	Yes
WET-L	Herbaceous wetland swale/drainageway	2.1	Yes	Yes
WET-M	Herbaceous wetland swale/drainageway	1.3	Yes	Yes
WET-N	Forested wetland slough	1.6	No	No
WET-O	Inundated herbaceous wetland	0.2	No	No
WET-P	Agricultural field wetland	2	No	No
WET-Q	Forested wetland slough	0.65	No	No
WET-R	Forested wetland depression	0.16	No	No
WET-S	Inundated herbaceous wetland	0.72	No	No
WET-T	Forested wetland depression	0.23	No	No
WET-U	Inundated herbaceous wetland	0.5	No	No
WET-V	Forested wetland depression	0.28	Yes	Yes
WET-W	Agricultural wetland swale/slough	1.7	Yes	Yes
WET-X	Forested wetland swale/slough	4.1	Yes	Yes
WET-Y	Agricultural wetland swale/slough	0.29	Yes	Yes
WET-Z	Forested wetland depression	1.3	Yes	No
WET-AA	Forested wetland depression	0.57	Yes	No
WET-AB	Forested wetland swale/slough	4.4	Yes	Yes
WET-AC	Agricultural wetland swale/slough	0.21	Yes	Yes
WET-AD	Former pond wetland	0.16	No	No
WET-AE	Forested wetland swale/slough	8.1	Yes	No
WET-AF	Agricultural wetland swale/slough	0.88	Yes	No
WET-AG	Agricultural (primarily) wetland swale/slough	0.12	Yes	Yes
WET-AH	Agricultural wetland swale/slough	0.51	Yes	Yes
WET-AI	Agricultural field wetland	0.2	Yes	No
WET-AJ	Agricultural wetland swale/slough	1.4	Yes	Yes
WET-AK	Agricultural wetland swale/slough	2.5	Yes	Yes
WET-AL	Forested wetland swale/slough	0.74	Yes	Yes
WET-AM	Agricultural wetland swale/slough	2.5	Yes	Yes



Table 1. Summary of wetland jurisdictional status (continued).
(Features with differing jurisdictional status are highlighted in blue)

Wetland ID	Vegetative Community Type(s)	Area (acres)	Jurisdictional as of 1Q2023	*Currently Jurisdictional
WET-AN	Agricultural wetland swale/slough	0.74	Yes	Yes
WET-AO	Agricultural wetland swale/slough	1.8	Yes	Yes
WET-AP	Forested wetland swale/slough	2.2	Yes	Yes
WET-AQ	Agricultural wetland swale/slough	0.72	Yes	No
WET-AR	Agricultural wetland swale/slough	1.9	Yes	Yes
WET-AS	Agricultural wetland swale/slough	2.5	Yes	Yes
WET-AT	Forested wetland swale/slough	0.63	Yes	Yes
WET-AU	Forested wetland (on river side of levee)	2.5	Yes	Yes
Acreage		92.08	85.86	49.1

*Jurisdictional status assumed based on current regulations.

Based on current regulations, it is possible that of the 85.86 acres of wetlands considered jurisdictional in 1Q2023, only 49.1 acres may currently be considered jurisdictional. The change in assumed jurisdictional status is due to select wetlands not abutting (lacking direct hydrologic connectivity to) an RPW.

Table 2 provides a summary of the non-wetland aquatic features observed in the 2023 delineation, along with the 1Q2023 jurisdictional status and assumed current jurisdictional status.

Table 2. Summary of non-wetland aquatic features.
(Features with differing jurisdictional status are highlighted in blue)

Feature ID	Feature Type	Size (linear feet/acres)	Jurisdictional as of 1Q2023	*Currently Jurisdictional
Farm Ditch-1	Dug farm drainage ditch	5,473 lf	Yes	Yes
Farm Ditch-2	Dug farm drainage ditch	968 lf	Yes	Yes
Farm Ditch-3	Dug farm drainage ditch	1,448 lf	Yes	No
Farm Ditch-4	Dug farm drainage ditch	4,875 lf	Yes	Yes
Farm Ditch-5	Dug farm drainage ditch	531 lf	Yes	Yes
Farm Ditch-6	Dug farm drainage ditch	612 lf	Yes	Yes
Farm Ditch-7	Dug farm drainage ditch	809 lf	Yes	Yes
EPH-1	Ephemeral channel	255 lf	Yes	No
EPH-2	Ephemeral channel	110 lf	Yes	No
EPH-3	Ephemeral channel	58 lf	Yes	No
OW-1	Man-made open water pond	0.04 ac	No	No
OW-2	Man-made open water pond	0.61 ac	No	No
Linear feet of farm ditches and ephemeral channels		15,139 lf	15,139 lf	13,268 lf
Acres of open water		0.65 ac	0 ac	0 ac

*Jurisdictional status assumed based on current regulations.



Based on current regulations, it is possible that of the 15,139 linear feet of drainages considered jurisdictional in 1Q2023, only 13,268 linear feet may currently be considered jurisdictional. The change in assumed jurisdictional status is due to the ephemeral channels not being considered RPWs and Farm Ditch-3 lacking direct hydrologic connectivity to a downstream RPW.

Due to recent changes in regulations and ongoing review of jurisdictional status, please be aware that the information presented in this letter represents the current best professional option of ECCI staff regarding the likely jurisdictional/non-jurisdictional status of aquatic features at the project site. This opinion is based on years of professional experience; however, the USACE and the EPA are ultimately the deciding parties and are legally the only entities who can make a final and official determination of federal jurisdiction on surface waters. Furthermore, the EPA and USACE are in the process of further clarifying regulations regarding jurisdictional status. Future guidance (expected Summer 2024) may alter the assumed jurisdictional status of onsite aquatic features presented in this addendum. Therefore, it is the recommendation of ECCI that a jurisdictional determination be requested from the USACE prior to any development that may affect aquatic features at the project site.

Sincerely,

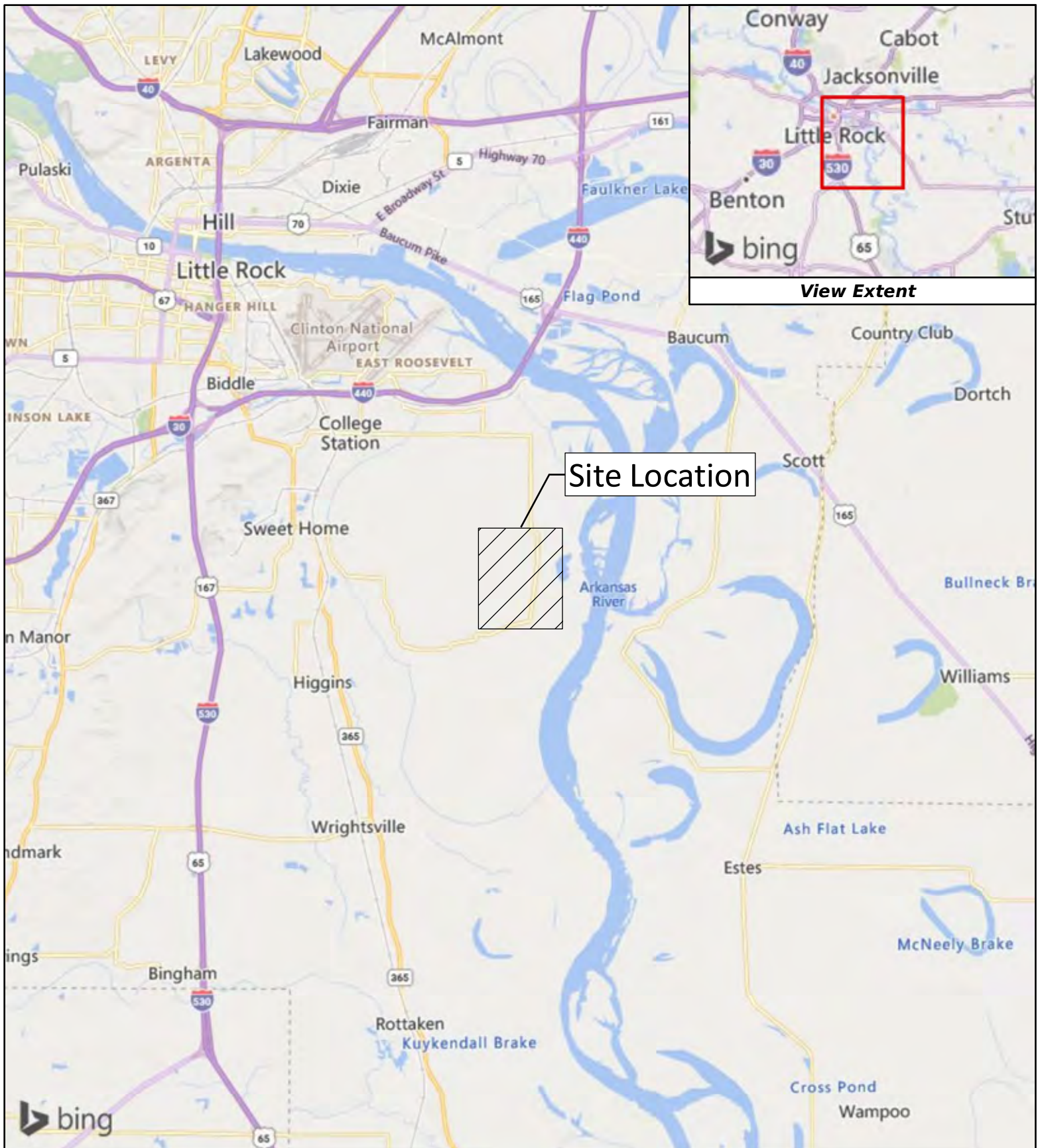
ECCI

Jimmy Rogers
Senior Environmental Scientist

ENCLOSURE 1

Figures

Used from the March 2023 delineation report prepared by FTN Associates, Ltd.



Port of Little Rock – 1,000+ Acre Project

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Miles

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Background: Microsoft Corporation and its data suppliers

Figure 1. Vicinity Map

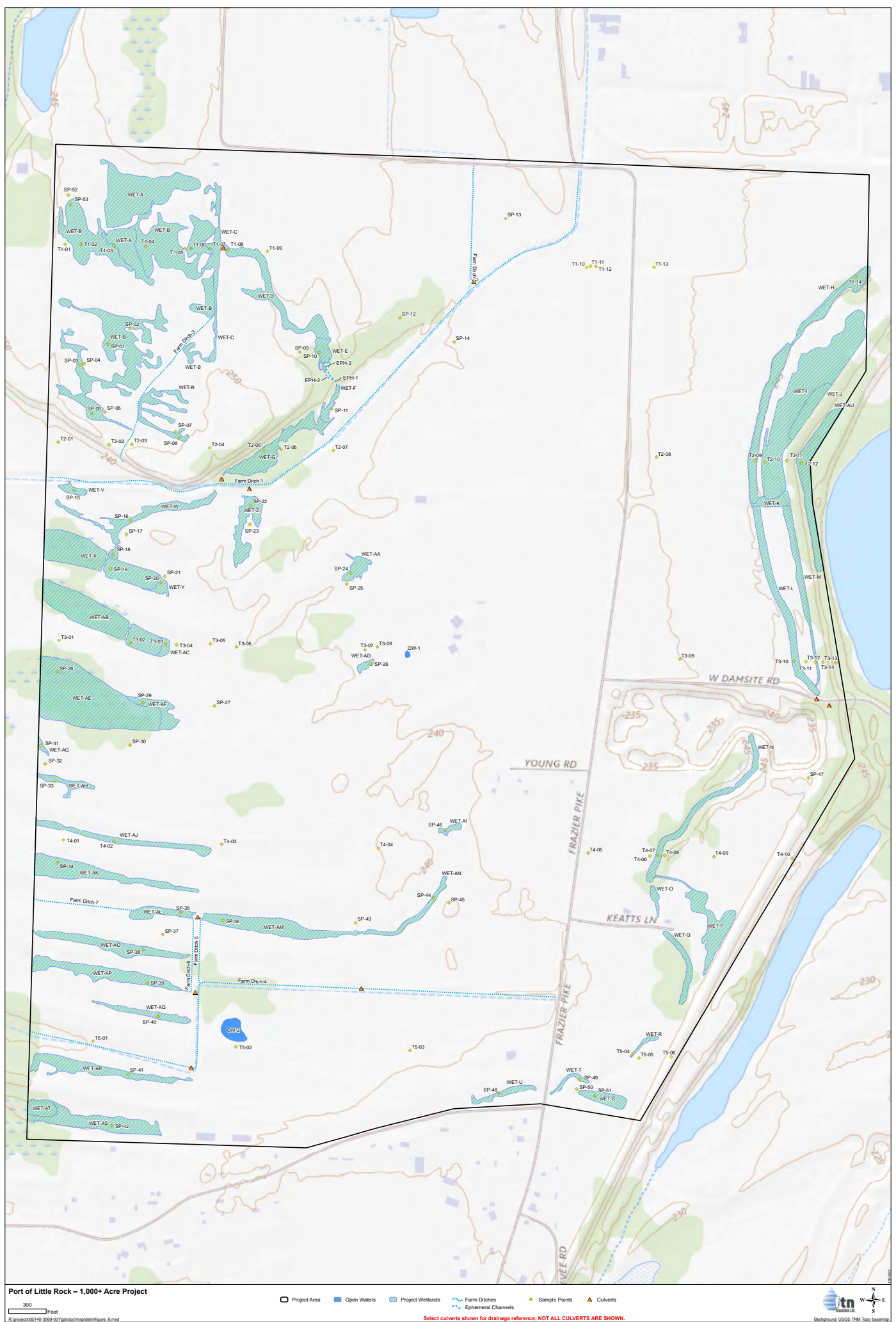




Figure 3. Map showing project area details overlaid on aerial imagery via ESRI World Imagery service (captured July 2022).

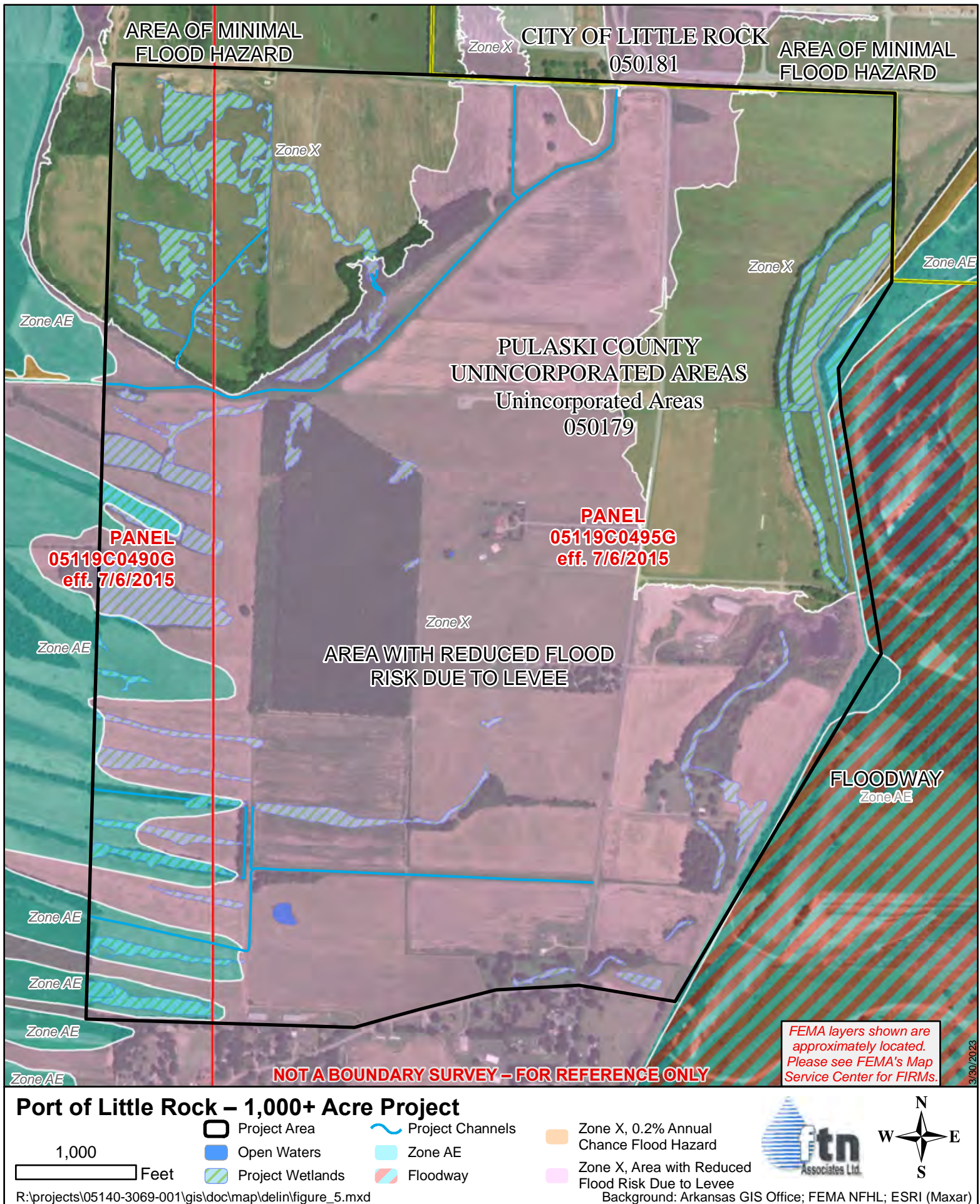


Figure 4. Map showing project area details with FEMA's National Flood Hazard Layer data overlaid on aerial imagery via ESRI World Imagery service (captured July 2022.)