IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA, Plaintiff, v. CHAMELEON LLC and GARY V. LAYNE, Defendants.	)))))))))))	Civil Action No. 3:23cv763

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

Chameleon LLC and Gary V. Layne (collectively "Defendants") move to dismiss the United States of America's ("Government") Complaint for lack of subject matter jurisdiction and failure to state a cognizable claim under the Clean Water Act ("CWA").

PRELIMINARY STATEMENT

The Government brings a single Count for purported daily violations of the CWA against Defendants, contending that they discharged dredge and fill material into wetlands on their property (the "Site") without the allegedly-applicable federal wetlands permit. Bare allegations and legal conclusions in the Complaint assert jurisdiction exists under the CWA for these alleged violations, while the documents and federal governmental websites incorporated by reference into the Complaint actually demonstrate the lack of federal jurisdiction.

Until 2023, the question of the applicable test to determine the scope of CWA jurisdiction over wetlands remained open. In *Rapanos v. United States*, 547 U.S. 715 (2006), the Supreme Court could not reach a majority consensus on the applicable test as to what qualified as "waters of the United States" ("WOTUS") and, therefore, what wetlands were subject to CWA jurisdiction. In the plurality opinion, Justice Scalia proposed a relatively strict two-part test. First, the wetland had to be connected to a "water[] of the United States," which "includes only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] . . . oceans, rivers [and] lakes'"; and second, the wetland had to "ha[ve] a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins." Justice Kennedy proposed a looser test in his concurrence—that the wetland had to have a "significant nexus" with nearby WOTUS that could be based on numerous factors tying the wetlands to WOTUS. Until May 2023, satisfaction of either test could potentially confer CWA jurisdiction over the wetlands. But in

Sackett v. Environmental Protection Agency, 598 U.S. 651 (2023), the Supreme Court specifically adopted Justice Scalia's strict, two-part test from *Rapanos* and rejected Justice Kennedy's significantly more expansive approach.

Application of Justice Scalia's controlling test from *Rapanos* is dispositive here.

First, CWA jurisdiction does not extend to intermittent streams because they are not WOTUS. To qualify as WOTUS and establish CWA jurisdiction, the water in question must be a "relatively permanent, standing, or flowing bod[y] of water." *Rapanos*, 547 U.S. at 732. These terms "connote *continuously* present, fixed bodies of water, *as opposed to* ordinarily dry channels through which water occasionally or *intermittently* flows." *Id.* at 733 (emphases added). While *Rapanos* did not announce a complete bright-line rule as to what specific waters categorically qualified as WOTUS (*e.g.*, "perennial streams"), the Court did repeatedly state that "intermittent streams" categorically do *not* qualify. *Id.* at 730-40. As demonstrated by United States Geological Survey ("USGS") maps incorporated by reference into the Complaint, the closest *potential* "relatively permanent, standing, or flowing bodies of water," are perennial stream segments of Lickinghole and Campbell Creeks that are great distances from the Site. Those streams become intermittent (and not WOTUS) far from the Site. Lickinghole Creek becomes intermittent over 7,284 feet (1.38 miles)[1] away. Campbell Creek becomes intermittent over 5,385 feet (1.02 miles) away.[2] At these points these waters no longer qualify as *potentially* WOTUS and CWA jurisdiction ends.[3]

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[1] USGS measures these sections as 2.2 km. *See* Exhibit D-3 through D-5 (National Map Exhibit).
[2] USGS measures this section as 1.64 km. *See* Exhibit D-6.
[3] The CWA forbids discharge of dredge or fill material into "navigable waters" without a permit. *See* 33 U.S.C. § 1311. The CWA defines "'navigable waters' as 'the waters of the United States, including territorial seas.'" *Rapanos*, 547 U.S. at 723 (quoting 33 U.S.C. § 1362(7)). This is a "frustrating drafting choice," *Sackett*, 598 U.S. at 671, but the terms are not interchangeable, as "navigable" still must have some meaning, *see Rapanos*, 547 U.S. at 734.

Second, even if the 7,284-foot intermittent stream sections of Lickinghole Creek and 5,385-foot intermittent stream section of Campbell Creek were WOTUS, which they clearly are not, the USGS mapping relied on in the Complaint demonstrates that these intermittent streams do not reach the Site. The wetlands are all located on the Site and are not connected to any WOTUS. Therefore, CWA jurisdiction is again lacking under the first element of the *Rapanos/Sackett* test.

Third, the wetlands do not maintain a continuous surface connection with any WOTUS on the Site such that it is difficult to determine where the WOTUS ends and the wetlands begin. Indeed, one must go miles off the Site to reach any WOTUS. Not even intermittent streams (which do not qualify as WOTUS) reach the Site. The wetlands at the Site do not have a continuous surface connection to WOTUS. This fails the second element of the *Rapanos/Sackett* test.

Sackett, in adopting *Rapanos*, "significantly tightens the definition of *federally* regulable wetlands." *Lewis v. United States*, 88 F.4th 1073, 1078 (5th Cir. 2023) (emphasis added). *Sackett*, however, left untouched States' ability to regulate their own wetlands. After *Sackett*, the Commonwealth's Department of Environmental Quality ("DEQ") assured stakeholders that the decision does not affect its own jurisdiction and that it will continue robust regulation of and enforcement over the Commonwealth's wetlands.[4] Thus, these wetlands are subject to regulation—just not under the CWA in federal court.

STANDARD OF REVIEW

Lack of subject matter jurisdiction. The Court "must dismiss the action" where it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3); *see* Fed. R. Civ. 12(b)(1). That is because

[4] DEQ Memorandum – Recent Supreme Court Decision *Sackett v. Environmental Protection Agency (EPA)* – Effect in Virginia and How to Move Forward Without Economic Dislocation at 1-3 (June 29, 2023) ("DEQ Mem.") 1-3, *available at* https://www.deq.virginia.gov/home/showpublisheddocument/18677.

"[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only such power as is authorized by the Constitution or conferred by statute." *Stewart v. Nottoway Cnty.*, __ F. Supp. 3d __, 2023 WL 4849936, at *3 (E.D. Va. July 28, 2023) (Hudson, J.) (quoting *Kokkonen*, 511 U.S. at 377). The threshold requirement of subject matter jurisdiction "spring[s] from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." *Id.* (alteration in original) (quoting *Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 94-95 (1998)).

A challenge to subject matter jurisdiction under Rule 12(b)(1) can be either facial or factual. *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017). A facial challenge, such as Defendants make here, contends that the complaint fails to allege sufficient well-pled facts supporting subject matter jurisdiction. *See Stewart*, __ F. Supp. 3d __, 2023 WL 4849936, at *3. If the complaint and documents relied on in the complaint fail to allege sufficient facts to invoke subject matter jurisdiction, the court should grant the motion. *See id.*; *see, e.g.*, *Ketterson v. Wolf*, 2001 WL 940909, at *3 (D. Del. Aug. 14, 2001) (noting that documents referenced in and attached to complaint can be considered for facial challenge to subject matter jurisdiction).

The Court should apply the same standard for plausibility of allegations in assessing a Rule 12(b)(1) motion asserting lack of subject matter jurisdiction as it would for a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6). *See Muwwakil-Davis v. Wilmington Finance, Inc.*, 2011 WL 63868, at *4 (E.D. Va. Jan. 7, 2011) (Payne, J.) ("Certainly, if any aspect of a complaint must meet the plausibility requirements set by [*Twombly* and *Iqbal*], it would be the requisites for subject matter jurisdiction."). That is, the court should disregard legal conclusions "couched as facts or unwarranted inferences, unreasonable conclusions, or arguments." *See Call v. GEICO Advantage Ins. Co.*, 2023 WL 5109549, at *3 (E.D. Va. Aug. 9,

2023) (Hudson, J.) (quoting *Turner v. Thomas*, 930 F.3d 640, 544 (4th Cir. 2019)) (dismissing under failure to state a claim standard).

Given that federal courts' jurisdiction stems only from the Constitution or from a federal statute, courts consider plaintiff's lack of jurisdiction under the CWA as a lack of federal court subject matter jurisdiction. *See, e.g.*, *Cape Fear River Watch, Inc. v. Duke Energy Progress, Inc.*, 25 F. Supp. 3d 798, 808 & n.10 (E.D.N.C. 2014) (Flanagan, J.) (dismissing for lack of subject matter jurisdiction under CWA and stating that although defendants challenged CWA jurisdiction "as a failure to state a claim, the court examines it . . . as a jurisdictional question pursuant to the CWA"), *as amended* 2014 WL 10991530 (E.D.N.C. Aug. 1, 2014).[5]

Failure to state a claim. The court should dismiss a claim when plaintiff fails to plead facts on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Facial plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Id.*

These factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A right to relief that is "merely 'conceivable'" does not suffice. *Olajuwon v. Ofogh*, 2023 WL 2667999, at *1 (E.D. Va. Mar. 28, 2023) (Hudson, J.) (quoting *Twombly*, 550 U.S. at 570). A complaint will not "suffice if it tenders

[5] At least one court outside of the Fourth Circuit has viewed CWA jurisdiction as a required element for stating a claim under the CWA. *See, e.g.*, *Inland Empire Waterkeeper v. Corona Clay Co.*, 2023 WL 8125772, at *2 (C.D. Cal. Oct. 26, 2023) (stating that "defining a body of water as a WOTUS is more accurately treated as an element of a claim for relief under the CWA"). Regardless, the Government still must adequately plead CWA jurisdiction. Here, the Government has not and cannot do so. Thus, the result is the same: dismissal.

'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). The Court should disregard legal conclusions "couched as facts or unwarranted inferences, unreasonable conclusions, or arguments. *See Call*, 2023 WL 5109549, at *3 (quoting *Turner*, 930 F.3d at 544).

Consideration of documents other than the Complaint. At the motion to dismiss stage, the court may consider documents incorporated by reference into the complaint, attached as exhibits, or documents "integral to the complaint" where there is no dispute regarding those documents' authenticity. *Call*, 2023 WL 5109549, at *3 (quoting *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165-66 (4th Cir. 2016)); *see, e.g.*, *Ketterson*, 2001 WL 940909, at *3. Where the "bare allegations" of the complaint conflict with those documents, the documents prevail. *See Call*, 2023 WL 5109549, at *3 (quoting *Goines*, 822 F.3d at 166). Moreover, a court may take judicial notice of certain documents and information in disposing of a motion to dismiss. *See In re PEC Sols., Inc. Securities Litig.*, 418 F.3d 379, 388 n.7 (4th Cir. 2005).

BACKGROUND

I. The Site, Lickinghole Creek, and Campbell Creek

Understanding the reach and limits of CWA jurisdiction should be facilitated by an initial discussion and a geographic understanding of the Site and waters identified in the Complaint.

A. The Site

Mr. Layne, through his LLC, owns a parcel of property totaling approximately 101 acres in Hanover County, Virginia just south of Ashland. (Compl. ¶ 24 & Ex. 1.) The Site is roughly a triangle. (Compl. Ex. 1.) The eastern boundary of the Site abuts and runs parallel to Interstate 95, but the Site does not cross it. (*See id.*) The northwestern boundary runs along a large powerline cut. (*See id.*) The southern boundary runs behind properties located on Ashcake Road, with a

small portion jutting towards Ashcake Road itself. (*See id.*) Between the Site and the closest southern intermittent stream section (which is an unnamed tributary of Lickinghole Creek) is Ashcake Road. *See* Figure 1. Between the Site and the closest eastern intermittent stream section (which is an unnamed tributary of Campbell Creek) is Interstate 95. *See* Figure 1.

There are three alleged wetland areas contained fully on the Site. (*See* Compl. ¶¶ 28-43 & Ex. 1.) The Complaint, without any factual support, asserts that the wetlands connect to traditional navigable waterways through "unnamed tributaries." (*See* Compl. ¶¶ 31, 35, 38, 40.) The Complaint does not offer any specifics as to the locations of these "unnamed tributaries," other than offering the conclusory legal allegation that they "have continuous surface connection with" wetlands on the Site. (*See* Compl. ¶¶ 30, 34, 38, 40.)

An overview excerpted from the USGS National Map is depicted here[6]:

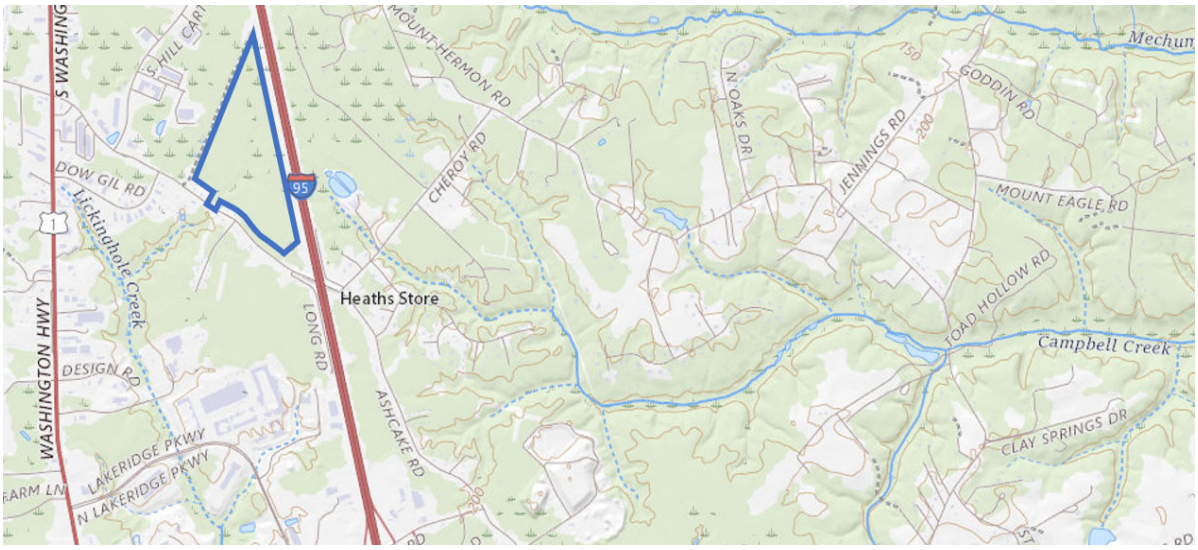

Figure 1, excerpted from Exhibit A-5.

[6] The Government incorporates by reference three websites to try to establish CWA jurisdiction. (*See* Compl. ¶¶ 32 & n.1, 32 & n.2, 41 n.3.) The "National Map" and "StreamStats" hyperlinks bring the user to a map of the United States generally. The "My Waterway" hyperlink brings the user to a map of the upper portion of Lickinghole Creek generally. The series of maps excerpted are attached as Exhibits with detail as to how the maps were taken from those websites. The Site's overlay is taken from publicly-available GIS data for Hanover County, Virginia.

B. Lickinghole Creek and Its "Unnamed Tributary"

To understand the reach of CWA jurisdiction in this case, it is important to start where CWA jurisdiction undoubtedly lies: the Chickahominy and Pamunkey Rivers. These are traditionally-navigable waterways. (Compl. ¶¶ 31, 35.)

The Chickahominy is about 4.39 miles from the Site.[7] The Complaint contends that Stony Run is a relatively permanent tributary of the Chickahominy. (Compl. ¶ 33.) Stony Run's tributary Lickinghole Creek is the linchpin allegedly connecting WOTUS to the Site. (*See* Compl. ¶ 33.)[8]

Lickinghole Creek meets Stony Run well south of the Site. *See* Exhibit A-4. Northward upstream, the USGS identifies a section of Lickinghole Creek as perennial, then turning intermittent. Crossing Lewistown Road and continuing towards the Site, but just south of Lakeridge Parkway, the USGS map identifies this section of Lickinghole Creek as a perennial stream. To this point, there is *potential* CWA jurisdiction. *Rapanos* did not enunciate a complete bright-line rule as to which "solid blue line streams" categorically qualified as WOTUS, but it did make clear that intermittent streams categorically did *not*. *See* 547 U.S. at 733 n.5, 735, 736, 739.

Just south of Lakeridge Parkway, Lickinghole Creek and its all of its upper sections become

[7] The National Map contains features that measure distance of water segments. The distances contained herein were taken from that map and calculated by adding up the segments' lengths. The distances discussed herein do not include the distance between the end of Lickinghole and Campbell Creeks and the Site, which would make these measurements even longer if included.

[8] On September 8, 2023, EPA and the Corps issued a "conforming rule" attempting to amend their existing invalid regulatory definitions of WOTUS to comply with *Sackett*. 88 Fed. Reg. 61,964, 61964-68 (Sept. 8, 2023) (amending 33 C.F.R. Part 328 and 40 C.F.R. Part 120). Defendants' use of terms such a "tributary" specifically does *not* incorporate previous federal regulations, guidance, or interpretations of such terms. EPA's and the Corps' numerous regulatory schemes and interpretations have resulted in a "system of 'vague' rules that depended on 'locally developed practices'" and "guidance documents that 'recognized larger grey areas and called for more fact-intensive individualized determinations in those grey areas.'" *Sackett*, 598 U.S. at 666-67 (citations omitted). Moreover, the text of the CWA as interpreted by the Supreme Court controls, *see id.* at 671, not agency regulations, interpretations, and guidance documents.

intermittent streams (dotted blue lines):

Figure 2, excepted from Exhibit A-5.

Continuing northward upstream, the intermittent stream sections of Lickinghole Creek and its unnamed tributaries terminate to the west and southwest of the Site:

Figure 3, excerpted from Exhibit A-6.

Three sections of Lickinghole Creek identified as intermittent run 7,284 feet (1.38 miles) and end before reaching the Site. *See* Exhibit D-3 through D-5. These sections do not qualify as WOTUS under Justice Scalia's *Rapanos* test. *See* 547 U.S. at 730-40. The USGS map does not

identify any further tributaries—either named or "unnamed" that connect to the Site.

The "StreamStats" website likewise follows the USGS mapping for Lickinghole Creek with two differences. First, it does not identify Lickinghole Creek as either perennial or intermittent. Second, it does not show any branch or unnamed tributary of the creek approaching the southern/Ashcake Road side of the Site:

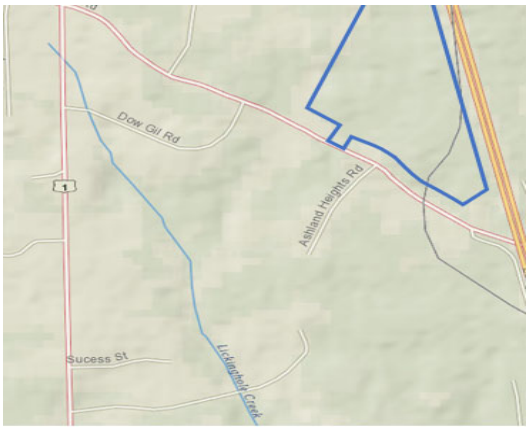

Figure 4, excerpted from Exhibit B-6 (StreamStats Map).

The "My Waterway" map is in accord. It also confirms that the "[u]pper portion of watershed above [the] confluence of Stony Run and Lickinghole Creek" ends before the Site. Exhibit C-2 (My Waterway Map). It also dos not identify any further tributary—"unnamed" or named—that reaches the Site.

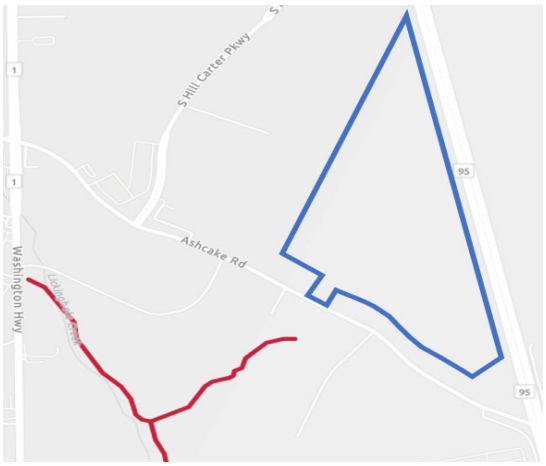

Figure 5, excerpted from Exhibit C-4.

C. Campbell Creek and Its "Unnamed Tributary"

Just as with Lickinghole Creek, one must start with the nearest traditionally navigable water, the Pamunkey River, (Compl. ¶ 35), to assess the extent to which CWA jurisdiction runs upstream to towards the Site. The Pamunkey is approximately 8.99 miles from the Site. The Complaint contends that "Machumps [sic] Creek," (Compl. ¶ 36), is a relatively permanent tributary of the Pamunkey. A tributary of Mechumps Creek is Campbell Creek. (Compl. ¶ 36.) Campbell Creek and an alleged "unnamed tributary" are the purported key links to the Site.

Campbell Creek flows into Mechumps Creek just northwest of Cadys Mill Road in Hanover, County. *See* Exhibit D-3. Much like sections of Lickinghole Creek, the USGS map classifies sections of Campbell Creek as perennial, and *potentially* WOTUS, *see Rapanos*, 547 U.S. at 733 n.5, where it meets Mechumps Creek as well as the section to the west.

But that classification only holds to a point. To the west and even further upstream, Campbell Creek ceases being perennial and becomes intermittent, losing any potential status as WOTUS, as it branches into two intermittent stream sections:

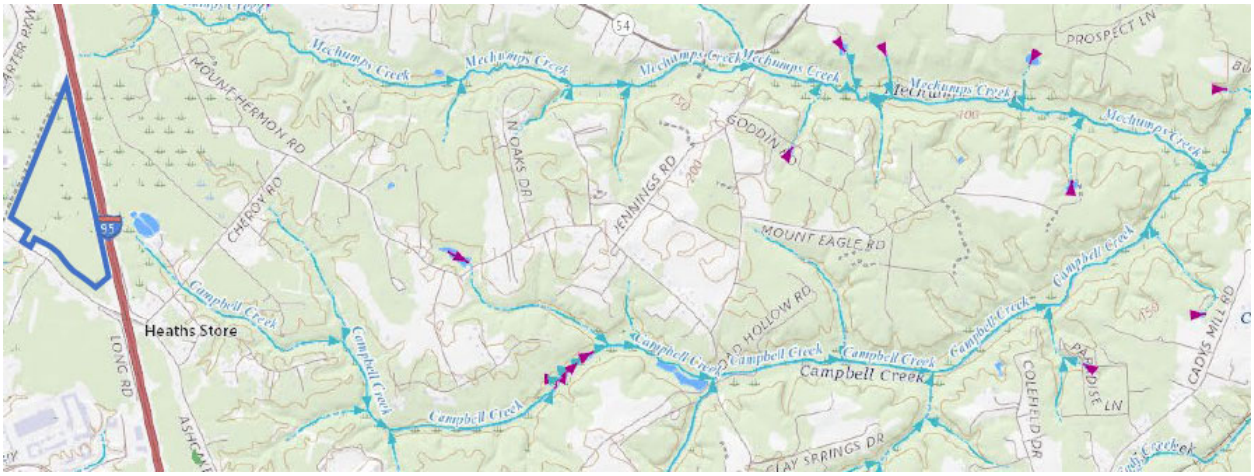

Figure 6, excerpted from Exhibit D-3.

The northwestern of these intermittent sections of Campbell Creek stretches 5,385 feet (1.02 miles) and ends to the east of Interstate 95, well short of the Site. *See* Exhibit D-6. The

USGS map identifies no "unnamed tributary" extending further west to the Site.

StreamStats paints a similar picture with two exceptions. It does not classify this section as perennial or intermittent, and it does not show any northeastern segment. Instead, it confirms that Campbell Creek ends before reaching the Site, and it identifies no further "unnamed tributary":

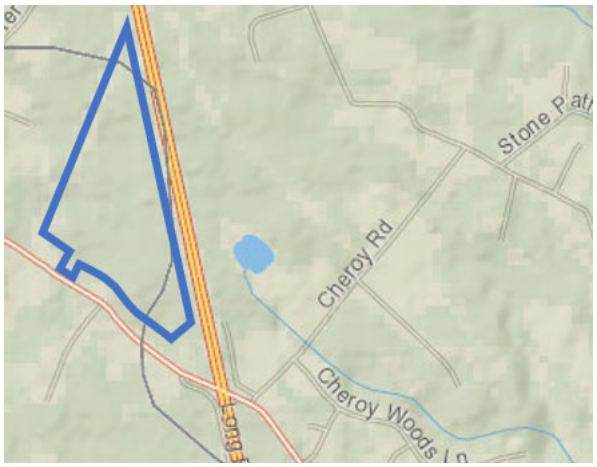

Figure 7, excerpted from Exhibit B-5.

II. Pre-*Sackett* Investigation and Post-*Sackett* Litigation

According to the Government, between 2019 and 2021, Defendants conducted "earthmoving activities on the Site, including but not limited to land-clearing, grubbing, ditching, sidecasting, and installing culverts, surface impoundments, and drainage pipes." (Compl. ¶ 44.) This allegedly caused "unauthorized discharges of dredged and/or fill material" into the wetlands. (Compl. ¶¶ 45-46.) The Government's single count asserts violation of the CWA because Mr. Layne did not obtain a federal "section 404" permit before discharging "dredged soil, rock, sand, and/or cellar dirt" into federally-regulated wetlands on the Site. (Compl. ¶ 72.)

These alleged activities were previously reported to DEQ. (*See* Compl. ¶ 49.) DEQ obtained a warrant to enter the Site, (Compl. ¶ 51), and eventually issued a Notice of Violation based on the observation of alleged impermissibly-impacted wetlands, (Compl. ¶ 53).

Shortly thereafter, the federal government initiated its own investigation into the same

alleged violations. (Compl. ¶ 54.) The EPA conducted a three-day inspection at the Site in April of 2021, yet the Complaint offers no further specific details of that inspection. (Compl. ¶ 63.)

Well *after* the inspection but *before* the filing of this lawsuit, the Supreme Court issued its opinion in *Sackett*, adopting Justice Scalia's strict approach to CWA regulation and jurisdiction over wetlands from *Rapanos*. Over two-and-a-half years after its Site inspection and six months after *Sackett*, the Government filed the instant Complaint.

ARGUMENT

The core legal issue is whether CWA jurisdiction reaches to the wetlands at the Site. *Rapanos* and *Sackett* foreclose jurisdiction here. The mile-plus intermittent stream segments that allegedly connect the wetlands on the Site to traditionally-navigable waters do not qualify as WOTUS. And like the wetlands in *Sackett*, one must go off the Site for some distance before reaching any body of water subject to CWA jurisdiction. Additionally, the wetlands on the Site are also clearly distinguishable from any potentially-covered waters.

I. Overview of the CWA

A. Land Use And Water Regulation Were And Continue To Be Quintessential State and Local Powers.

States have traditionally held the rights and prerogatives to regulate both water and land use within their borders. *See* 33 U.S.C. § 1251(b). That was so because "[r]egulation of land use . . . is a quintessential state and local power." *Rapanos*, 547 U.S. at 738; *Sackett*, 598 U.S. at 679 ("Regulation of land and water use lies at the core of traditional state authority.").

Passed in 1972, the CWA's objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA prohibits the discharge of pollutants, including of "dredged or fill materials," into navigable waters without a

permit. *Id.* §§ 1311(a), 1344(a).[9] The statute defines "navigable waters" as "waters of the United States, including the territorial seas." *Id.* § 1362(7).

Oversight under and enforcement of federally-regulated wetlands fall to the Army Corps of Engineers ("Corps") and the United States EPA. The Corps maintains primary responsibility for issuing permits related to discharge of dredged and fill material into covered wetlands. *See* 33 U.S.C. § 1344(a). EPA takes post-violation enforcement actions. *See id.* § 1319.

"The CWA is a potent weapon." *Sackett*, 589 U.S. at 660. Front end compliance to obtain a permit can be "arduous, expensive, and long." *Id.* at 661 (citation omitted). It can take years and hundreds-of-thousands of dollars to complete the permitting process. *Rapanos*, 547 U.S. at 721 (plurality). But there is no guarantee of approval, as the Corps "exercises the discretion of an enlightened despot" in issuing the permits. *Id.*; *see Sackett*, 598 U.S. at 661 (noting that "[s]uccess is also far from guaranteed" given Corps' "long, nonexclusive" list of factors to consider for approval). Back-end consequences "even for inadvertent violations" can be "crushing." *Sackett*, 598 U.S. at 660 (quoting *Army Corps of Engr's v. Hawkes Co.*, 578 U.S. 590, 602 (2016) (Kennedy, J., concurring)). Individuals face "severe criminal penalties" and civil penalties up to $60,000 per day for violations. *See id*. Given these significant consequences, expansive interpretation of the CWA could give rise to serious due process concerns. *See id.* at 680-81 (stating that due process requires definiteness in penal statutes and EPA interpretation of WOTUS remained "hopelessly indeterminate" (citation omitted)).

But federal regulation and enforcement are neither omnipresent nor omnipotent. Congress

[9] The CWA requires different permits for other types of discharges, but permitting for placing fill material into covered wetlands is the only relevant one here. 33 U.S.C. § 1344(a); *see Rapanos*, 547 U.S. at 744-45 ("The Act recognizes this distinction [between other pollutants and dredged or fill material] by providing a separate permitting program for such discharges in § 1344(a).").

recognized States' important and historical interests when passing the CWA. Congress's explicit policy was "to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources." 33 U.S.C. § 1251(b).

In other words, while the CWA granted authority to the Federal Government, it remained the primary responsibility and right of each State to protect its waters and regulate its lands. *See id.* § 1251(b); *Sackett*, 598 U.S. at 674 ("It is hard to see how the States' role in regulating water resources would remain 'primary' if the EPA had jurisdiction over anything defined by the presence of water." (citation omitted)). Where CWA jurisdiction ends, the federal government cannot pursue enforcement, but the States can pursue their own remedies. *Cf. Sackett*, 598 U.S. at 679 (stating that Congress must use "exceedingly clear language" if it wishes to "significantly alter" the balance between federal and state powers over private property (citation omitted).)

States should be primarily concerned with regulation and use of the land and waters within their borders because they have better understanding of the specific and various impacts and benefits of activities within their own jurisdictions. Indeed, the Commonwealth's goal through regulation of its land and waters, including wetlands, "is straightforward: *healthy state and local economies and healthy waterways are integrally related; balanced economic development and water quality are not mutually exclusive*." DEQ Mem. at 3.[10]

DEQ has robust regulatory and enforcement capabilities. (*See* Compl. ¶¶ 49-53.) DEQ issues Water Protection Permits related to activities potentially impacting the state's land and waters through Virginia Code § 62.1-44.15:20. Virginia law defines "state waters" to include

[10] The Court can and should take judicial notice of this government document. *See* Fed. R. Evid. 201; *Shore v. Charlotte-Mecklenburg Hosp. Auth.*, 412 F. Supp. 3d 568, 573 (M.D.N.C. 2019) (court may take notice of "public documents and government documents").

wetlands: "'State waters' means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." Va. Code § 62.1-44.3. DEQ notes that this definition of "state waters" is far broader than the CWA's definition of WOTUS. *See* DEQ Mem. at 1 ("In contrast to the CWA, Virginia has a very *broad* and *comprehensive* statutory definition of state waters." (emphasis added)). Moreover, in the wake of *Sackett*, the DEQ noted that the decision did not affect its regulation of wetlands and that DEQ would continue its regulation despite the restriction of federal jurisdiction. *See id.* at 1-3.

B. Tension Between Regulatory Expansion Of Jurisdiction And Text Of CWA.

After the CWA's enactment, the Corps and EPA adopted numerous different regulations that had varied views regarding jurisdiction, including over wetlands. *See Sackett*, 598 U.S. at 720-22 (Kavanaugh, J., concurring) (discussing regulations and stating that "eight administrations since 1977 have maintained dramatically different views of how to regulate the environment"). These varied regulations generated significant litigation, with the Supreme Court repeatedly attempting to reign in the administrative expansion of the CWA by consistently returning to the text of the statute itself. *See Rapanos*, 547 U.S. at 724-27. This jurisdictional wrangling included disputes over wetland regulation. *See, e.g.*, *Solid Waste Agency of N. Cook Cnty. v. Army Corps. of Eng'rs*, 531 U.S. 159, 162 (2001) (striking down "Migratory Bird Rule" attempting to expand jurisdiction to isolated intrastate waters which "provide[d] habitat for migratory birds").

In *Rapanos*, the Court again attempted to clarify the appropriate test for jurisdiction over wetlands, including what may or may not qualify as WOTUS. At that time, the Corps considered WOTUS to include, in addition to the "traditional interstate navigable waters," the following:

> "[a]ll interstate waters including interstate wetlands," § 328.3(a)(2); "[a]ll other waters such as intrastate lakes, rivers, streams (including *intermittent streams*), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate

> or foreign commerce," § 328.3(a)(3); "[t]ributaries of [such] waters," § 328.3(a)(5); and "[w]etlands adjacent to [such] waters [and tributaries] (other than waters that are themselves wetlands)," § 328.3(a)(7). The regulation defines "adjacent" wetlands as those "bordering, contiguous [to], or neighboring" waters of the United States. § 328.3(c). It specifically provides that "[w]etlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'" *Ibid.*

Rapanos, 547 U.S. at 724 (alterations in original) (emphasis added). This definition, which included "intermittent streams," was an "immense expansion of federal regulation of land use." *Id.* at 722. This also came "without *any* change in the governing statute." *Id.* (emphasis added).

The Court decried this expansive definition of WOTUS, noting that it covered "270-to-300 million acres of swampy lands in the United States—including half of Alaska and an area the size of California in the lower 48 states." *Id.* at 722. Additional jurisdictional assertions by the Corps "engulf[ed] entire cities and immense arid wastelands. In fact, the entire land area of the United States lies in some drainage basin, and an endless network of visible channels furrows the entire surface, containing water ephemerally wherever the rain falls." *Id.* Under the Corps' interpretation, "[a]ny plot of land containing such a channel may potentially be regulated as a 'water of the United States.'" *Id.*

With that backdrop, Justice Scalia and the plurality focused on the text of the CWA to reign in federal jurisdiction, homing in on the characteristics of water flow to conclude what did or did not qualify as WOTUS. The Corps' definition claimed jurisdiction "over virtually any parcel of land containing a channel or a conduit—whether man-made or natural, broad or narrow, permanent or ephemeral—through which rainwater or drainage may occasionally or *intermittently* flow." *Id.* (emphasis added). But the plurality concluded that the phrase "waters of the United States" included "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] . . . oceans,

rivers, [and] lakes.'" *Id.* at 739 (alterations in original) (quoting Websters Dictionary (Second) 2882). Critically, WOTUS did *not* include "channels through which water flows *intermittently* or ephemerally, *or* channels that periodically provide drainage for rainfall." *Id.* (emphases added).

Restricting WOTUS in this manner—excluding water "containing merely *intermittent* or ephemeral flow"—was "common sense." *Id.* at 733-34 (emphasis added). To include "'ephemeral streams,' 'wet meadows,' storm sewers and culverts, 'directional sheet flow during storm events,' drain tiles, man-made drainage ditches, and dry arroyos in the middle of the desert" would stretch interpretation of WOTUS "beyond parody." *Id*. The "plain language of the statute simply does not authorize [a] 'Land Is Waters' approach to federal jurisdiction." *Id.* at 734.

Accordingly, the plurality put forward a two-part test to determine jurisdiction over wetlands. First, the water connected to the wetland must itself "contain[] [WOTUS] (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters)." *Id.* at 742. Second, the wetland must have a "continuous surface connection with that [WOTUS], making it difficult to determine where the 'water' ends and the 'wetland' begins." *Id.*

Justice Kennedy filed a concurring opinion in which he opined that the test as to whether a wetland qualified for regulation under the CWA turned on whether the wetland possessed a "significant nexus" to navigable waters. *Id.* at 782 (Kennedy, J., concurring). For Justice Kennedy, this looser approach meant that the Corps had to "establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands." *Id.* Thus, CWA jurisdiction required an assessment of the hydrological connection between the wetlands and WOTUS. *See id.* at 784-85.

Given the lack of a majority opinion, resulting guidance indicated that satisfaction of *either* test could confer CWA jurisdiction. *See Cape Fear River Watch, Inc.*, 25 F. Supp. 3d at 808 (opining that Corps and EPA guidance issued after *Rapanos* stated that satisfaction of "either test

would satisfy a finding of" WOTUS). Courts recognized that Justice Kennedy's broader test conferred more federal jurisdiction than Justice Scalia's strict test. *See, e.g.*, *Georgia v. Wheeler*, 418 F. Supp. 3d 1336, 1352-53 (S.D. Ga. 2019).[11]

But in May 2023, the Supreme Court clarified that only one test applied: Justice Scalia's. In *Sackett v. Environmental Protection Agency*, the Supreme Court once again addressed the question of "what the [CWA] means by 'the waters of the United States'" and the correct test to apply for adjacent wetlands. 598 U.S. at 659. The Court unanimously overruled the Ninth Circuit Court of Appeals' use of Justice Kennedy's "significant nexus" test, and the majority adopted Justice Scalia's two-part test applying the plain text of the CWA. *See id.*

II. The Court Lacks Subject Matter Jurisdiction Over the Government's Claim.

The Government must first establish that Lickinghole Creek, Campbell Creek, and their "unnamed tributaries" qualify as WOTUS and connect to the wetlands on the Site. Next, the Government must establish that the wetlands on the Site have a "continuous surface connection with that [WOTUS], making it difficult to determine where the 'water' ends and the 'wetland' begins." *Id*. at 678-79; *Cape Fear River Watch, Inc.*, 25 F. Supp. 3d at 808 & n.10.

But it cannot meet these requirements. First, intermittent streams do not qualify as WOTUS. CWA jurisdiction clearly does not extend past those points where Lickinghole and Campbell Creeks become intermittent streams. Second, even if these streams did qualify as WOTUS past those points, they do not extend to the Site. Third, because there are no WOTUS that extend to the Site, there is no continuous surface connection with the wetlands on the Site.

[11] Pre-*Sackett*, the Fourth Circuit recognized the concurrence as controlling. *See Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637, 649 n.10 (4th Cir. 2018), *judgment vacated* 140 S. Ct. 2736 (2020). The "primary issue" in *Upstate Forever* was "whether an indirect discharge of [(gasoline)] through ground water, which has a direct hydrological connection to navigable waters, c[ould] support a theory of liability under the CWA." *Id.* at 646.

A. Intermittent Streams Are Not WOTUS.

CWA jurisdiction only extends to WOTUS. It does not extend to intermittent streams. Thus, where Lickinghole and Campbell Creeks become intermittent, CWA jurisdiction ends.

Rapanos focused on what qualified as WOTUS. Justice Scalia explained that the nature of the flow of the waters is determinative, effectively grouping water bodies into three categories across a spectrum depending on their flow: permanent, "relatively permanent," and intermittent/ephemeral. To qualify as WOTUS, the waters must at a *minimum* be "relatively permanent, standing or flowing bodies of water" such as "streams, oceans, rivers, and bodies of water." *Rapanos*, 547 U.S. at 732-33 (internal quotation marks omitted). This meant that the waters had to be "*continuously* present [or] *fixed*." *Id.* at 733 (emphasis added). Justice Scalia noted that even the "least substantial" term of "'streams[]' connotes a *continuous* flow of water in a *permanent* channel." *Id.* (emphases added).

In defining which bodies of water constituted WOTUS, the plurality started by clarifying what both did and did not qualify. On one end of the spectrum, "channels containing permanent flow are plainly within the definition." *See id.* at 732 n.5. On the other end, "'*intermittent*' and '*ephemeral*' *streams* . . . are not." *Id.* (emphasis added). Justice Scalia and the plurality admonished at least *six* different times that intermittent flow disqualified a water in question as WOTUS. *See e.g.*, *id.* at 733, 735-36, 739.

The exact contours of what qualified as "relatively permanent" was left for another day. The plurality explained that "relatively permanent" did not "necessarily exclude streams, rivers or lakes that might dry up in extraordinary circumstances, such as a drought" or "seasonal rivers" where water may not be ever-present. *Id.* at 732 n.5. "[S]cientifically precise distinctions between 'perennial' and 'intermittent' *flows* [we]re no doubt available." *Id.* (emphasis added). But the

Court had "no occasion in th[at] litigation to decide exactly when the drying up of a streambed is continuous and frequent enough to disqualify the channel as" WOTUS. Thus, it did not announce a bright-line rule as to what qualified as "relatively permanent" for perennially flowing water. Such water may qualify as WOTUS (a seasonal river), but it also may not qualify as WOTUS. What is clear is that "'intermittent' and 'ephemeral' streams . . . are not" WOTUS. *Id.*

Both the dissent and concurrence further clarified the plurality's ruling that "intermittent streams" do not qualify as WOTUS. The dissent argued at length that the plurality's conclusion that WOTUS "does not cover intermittent streams" was incorrect. *Id.* at 803 (dissent). For the dissent, "intermittent streams" were still "streams." *See id.* at 801. Justice Kennedy also clarified that "relatively permanent, standing or flowing bodies of water" comprised "a category that in the plurality's view includes 'seasonal' rivers, that is, rivers that carry water continuously except during 'dry months,' but not intermittent or ephemeral streams." *Id.* at 769 (concurrence) (citing to plurality opinion at 732 & n.5). He posited that intermittent streams could qualify as WOTUS what water was "flowing." *See id.* at 770.

Taking on these disagreements on this critical point (intermittent streams do not constitute WOTUS), Justice Scalia carefully parsed the phrase "intermittent stream"—focusing on the adjective and the noun. Streams that were "intermittent" did not qualify for the category of "relatively permanent" because by definition, intermittent flow is "[c]oming and going at intervals." *Id.* at 732 n.5 (plurality) (alteration in original) (citation omitted). And the "principal definition of 'stream' likewise include[d] reference to such *permanent*, geographically fixed bodies of water." *Id.* at 732 n.6 (emphasis added). Secondary definitions "repeatedly emphasized the requirement of *continuous* flow." *Id.* Use of "intermittent" to describe a stream rendered the phrase a "useful oxymor[on]." *Id.* Indeed, "[p]roperly speaking [intermittent streams] constitute

extant 'streams' only while they are 'continuous[ly] flow[ing]; and the usually dry channels that contain them are never 'streams.'" *Id.* (last two alterations in original).

This also undercut Justice Kennedy's position. If an intermittent stream were "relatively permanent" while flowing, that would make it a "channel . . . covered by the [CWA] only during those times when water flow actually occur[ed]." *Id.* at 732 n.6. And "no one contends that federal jurisdiction appears and evaporates along with water in such regularly dry channels." *Id.*

Moreover, the CWA categorized "channels and conduits that typically carry intermittent flows of water separately from 'navigable waters,' by including them in the definition of 'point source.'" *Id.* at 735. "The definitions thus conceive of 'point sources' and 'navigable waters' as separate and distinct categories." *Id.* This separate classification demonstrated that point sources such as channels and conduits "that typically carry intermittent flows of water separate from 'navigable waters'" were not WOTUS. *See id.* A contrary reading (that "point sources" equaled "navigable waters") would make little sense and render the definitions duplicative. *See id.* In the context of dredged or fill material, as here, this distinction also makes a difference because dredged or fill material is "typically deposited for the sole purpose of staying put" and "does not normally wash downstream." *Id.* at 744. Thus, dredged or fill material "does not normally constitute an 'addition . . . to navigable waters' when deposited in upstream isolated wetlands." *Id.*

Further, any expansive definition of WOTUS would infringe, and could even eliminate, the States' interest in maintaining their "quintessential" power to regulate land and water use. *Id.* at 738. Near limitless jurisdiction under the CWA, including over intermittent streams, would turn the Corps and EPA into "de facto regulator[s] of immense stretches of intrastate land." *Id.* This would result in an "unprecedented intrusion into traditional state authority." *Id.*

Rapanos therefore forecloses CWA jurisdiction here based on the very USGS maps relied

on in the Complaint. The water bodies at issue contain some continuously present and fixed bodies of water subject to CWA jurisdiction. But that clearly ends far before the Site where Lickinghole Creek, 7,284 feet (1.38 miles), and Campbell Creek, 5,385 feet (1.02 miles), become intermittent because such streams do not constitute WOTUS.

Just as *Rapanos* rejected "intermittent streams" as WOTUS, so too should this Court reject that the upper 7,284 feet (1.38 miles) intermittent stream section of Lickinghole Creek and final 5,385 feet (1.02 miles) intermittent stream section of Campbell Creek qualify as WOTUS.[12] The USGS map specifically identifies these portions as "intermittent streams." By definition, there is not *continuous* flow establishing that these waters are "relatively permanent" when their flow is *intermittent*. As a result, CWA jurisdiction ends at these two points—7,284 feet (1.38 miles) away from the Site for Lickinghole Creek, *see* Exhibit D-3 through D-5, and 5,385 feet (1.02 miles) away from the Site for Campbell Creek, *see* Exhibit D-6, because these waters are *intermittent*.

The lack of *federal* jurisdiction will not render those wetlands free from any regulation at all. The Commonwealth, through DEQ, still has jurisdiction over land, waters, and wetlands within its borders. The CWA recognizes this important state function. *See* 33 U.S.C. 1251(b). *Rapanos* and *Sackett* highlight it. *See Rapanos*, 547 U.S. at 745 ("It is not clear that the state and local conservation efforts that the CWA explicitly calls for are in any way inadequate for the goal of preservation." (citation omitted)); *Sackett*, 598 U.S. at 683 ("States can and will continue to exercise their primary authority to combat water pollution by regulating land and water use.").

[12] Mr. Layne's situation is similar to that of Mr. Rapanos. There, the closest body of traditionally navigable water was 11 to 20 miles away. *See Rapanos*, 547 U.S. at 720. Here, the Site is over 4 and almost 9 miles away from traditional-navigable waters as well. *See* (Compl. ¶¶ 33-34.) The focus of *Rapanos* and *Sackett* was on WOTUS, not necessarily on "the CWA's other jurisdictional terms" such as "navigable." *Sackett*, 598 U.S. at 685 (Thomas and Gorsuch, J.J., concurring). If the CWA were to cover only traditionally navigable waters, CWA jurisdiction may end at the Chickahominy and Pamunkey Rivers, over 4.39 miles and 8.99 miles from the Site, respectively.

DEQ recognized that *Sackett* "appears to exclude smaller waterbodies, such as intermittent streams and tributaries of traditionally navigable waters, from CWA protection." DEQ Mem. at 1. But DEQ assures stakeholders that Virginia's "very broad and comprehensive statutory definition of state waters" also includes wetlands. *Id.* DEQ stresses that *Sackett* had no effect on its ability to regulate the Commonwealth's wetlands. *Id.* at 1-2. DEQ maintains its ability and intent to continue with its regulatory and enforcement capabilities, unaffected by *Sackett*. *Id.*

DEQ is not alone in recognizing that the CWA's jurisdiction no longer covers intermittent streams. Even ardent opponents who decry *Sackett* as "an unprovoked hit job on the [N]ation's ability to protect its waters" agree that the decision "remove[d] ephemeral and intermittent streams from the Clean Water Act's coverage." Lazarus, Richard J., *Judicial Destruction of the Clean Water Act:* Sackett v. EPA, U. Chicago L. Rev. Online 1, https://lawreview.uchicago.edu/judicial-destruction-clean-water-act-sackett-v-epa (Aug. 11, 2023).

Moreover, the Complaint acknowledges that the Commonwealth was already investigating the very actions at the heart of this litigation. (Compl. ¶¶ 49-53.) DEQ had already issued a Notice of Violation. (Compl. ¶ 53.) The Complaint paints a picture that the Government stepped in to duplicate what DEQ had already been doing.

CWA jurisdiction does not extend to intermittent streams. The presence of the intermittent stream sections of Lickinghole Creek and Campbell Creek evidence the end of federal jurisdiction 7,284 feet (1.38 miles) and 5,384 feet (1.02 miles) from the Site, respectively. Accordingly, this Court should dismiss this case for lack of jurisdiction.

B. The Site Does Not Connect To Any Water Bodies, Much Less WOTUS.

Even if the intermittent stream sections of Lickinghole Creek and Campbell Creek could qualify as WOTUS, which they cannot, the Government still has not shown that the wetlands on

the Site are connected to WOTUS.

The maps relied on in the Complaint show that the only nearby unnamed tributary of Lickinghole Creek ends well away from the Site. *See* Exhibits A-D. The same goes for Campbell Creek. *See* Exhibits A-B, D. CWA jurisdiction cannot extend further than intermittent streams falling *outside* of the Site. That they may be close does not cut it. *See Sackett*, 598 U.S. at 662-63 (rejecting EPA's argument characterized as conferring CWA jurisdiction over wetlands "in the same neighborhood" as traditionally navigable waters). Close only counts in horseshoes and hand grenades.[13]

To the extent that the Complaint does try and show any "unnamed tributaries," it relies on "hillshade elevation data." (*See* Compl. ¶¶ 32, 35.) Figure 8 is illustrative:

Figure 8, excerpted from Exhibit E.

But what does "hillshade elevation data" show? It simply brings the land's topography into sharper view. *See* USGS, Hillshades, https://earthquake.usgs.gov/education/geologicmaps/hillshades.php#:~:text=Shaded%20relief%2C%20or%20hillshading%2C%20is,sh

[13] Nick Acocella, *More Info On Frank Robinson*, ESPN Classic, https://www.espn.com/classic/000728frankrobinsonadd.html (last visited February 20, 2024) (crediting Frank Robinson with first use of phrase by stating that "[c]lose don't count in baseball. Close only counts in horseshoes and hand grenades.").

adows)%20on%20hills%20and%20canyons (last visited February 20, 2024). And what does topography help show? Watersheds. *See* USDA, How to Read a Topographic Map and Delineate a Watershed at 1, *available at* https://bwsr.state.mn.us/sites/default/files/2020-05/MN_Watershed_Delineation.pdf.[14] So while the "hillshade elevation data" may show "something" that purports to "connect" the Site to Lickinghole Creek and Campbell Creek, it is not actually a waterway (much less a WOTUS), it is a water*shed*. At best, it shows a drainage channel from the Site towards Ashcake Road.

But drainage channels also specifically do not qualify as WOTUS. *Rapanos* rejected any contrary notion: WOTUS does not include "channels that periodically provide drainage for rainfall." *Rapanos*, 547 U.S. at 739. A contrary position would render "[a]ny plot of land" subject to CWA jurisdiction. *Id.* at 722; *see also Sackett*, 598 U.S. at 669. This would effectively engulf the entire Nation as "the entire land area of the United States lies in some drainage basin, and an endless network of visible channels furrows the entire surface, containing water ephemerally wherever the rain falls." *Rapanos*, 547 U.S. at 722.

Not only would this expansion of jurisdiction run contrary to the consistent message from the Supreme Court that the CWA's jurisdiction has limits, but also it would erode, if not eliminate, States' significant interest in policing and regulating land use and waters within their own jurisdictions. Because the entire Nation lies within some drainage basin, if these areas were subject to CWA jurisdiction, it would render the federal government's regulatory and enforcement powers plenary. But the plain text of the CWA recognizes that the "primary responsibilit[y] and right[]" to "prevent, reduce, and eliminate" water pollution and to regulate land use lies with the States.

[14] The Court should take judicial notice of the information from these government websites. *See* Fed. R. Evid. 201; *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (stating that courts "routinely" take judicial notice of information from "state and federal government websites").

33 U.S.C. § 1251(b). To hold that CWA jurisdiction lies over the Site where (1) mapping shows that no "unnamed tributaries" exist and (2) that topographic depictions show, at best, a drainage channel not subject to CWA jurisdiction would run contrary to the CWA's mandate.

Accordingly, because there are no "unnamed tributaries" reaching the Site and any connection is at best through a mere drainage channel, there is no CWA jurisdiction.

C. There Is No Continuous Surface Connection To WOTUS.

The Complaint again offers nothing but bare legal conclusions that the wetlands at the Site maintain a continuous surface connection with any WOTUS. (*See* Compl. ¶ 28.) On its face, the Complaint offers zero factual support for the continuous surface connection requirement. But as can be seen in the above images, there is a clear end to each of the identified intermittent stream sections before even reaching the Site. *See* Exhibits A-D; Figures 1, 3, 5-6, 7.

Moreover, the Complaint does not allege that the wetlands extend off site. To the contrary, Exhibit 1 shows that the wetlands are only on Site. (*See* Compl. Ex. 1.) If there is no WOTUS extending to the Site and no wetlands off the Site, they are by definition distinguishable because there is physical separation (including Ashcake Road and Interstate 95) between them.

Sackett's facts are illustrative. There, the wetlands were located on the Sackett's property, but not connected to any WOTUS. *See id.* at 662. The closest the wetlands were to any water, much less WOTUS, was allegedly through what was "described as an 'unnamed tributary' on the other side of a 30-foot road." *Id.* at 662-63. In other words, there, like here, existed a physical gap between the wetland and the waters off site. That off site "unnamed tributary" then fed into a non-navigable creek. *Id.* at 663. That non-navigable creek then finally fed into Priest Lake, "an intrastate body of water that the EPA designated as traditionally navigable." *Id.* Given the physical gap, the Court held that the wetlands were "distinguishable from any possible covered waters."

Id. at 684. USGS mapping of the Sackett's property clarifies this point. Bear in mind that all nine Justices agreed that the wetlands on the Sacketts' property did not constitute WOTUS:

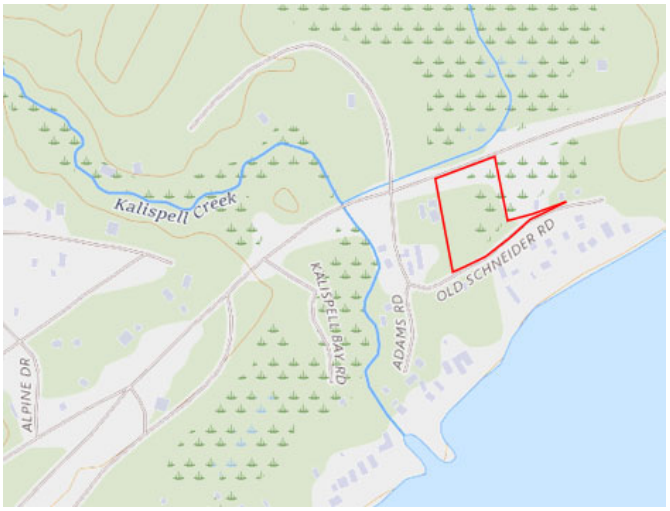

Figure 9, excerpted from Exhibit F.[15]

The Fifth Circuit recently held that a tract of land could not meet *Sackett*'s test where it too was separate from CWA-covered waters. In *Lewis v. United States*, the Fifth Circuit addressed jurisdiction over wetlands where the "nearest relatively permanent body of water [wa]s removed miles away from the Lewis property by roadside ditches, a culvert, and a non-relatively permanent tributary." 88 F.4th at 1078. This meant that it was "not difficult to determine where the 'water' ends and any 'wetlands' on Lewis's property begin—*there is simply no connection whatsoever*." *Id* (emphasis added). Thus, there was "no factual basis as a matter of law for federal [CWA] regulation." *Id.*

The same holds true here. Like *Sackett* and *Lewis*, the wetlands are alleged to be on site.

[15] The same USGS map in Exhibit A was used to obtain the above figure. According to the original, district court complaint, the Sacketts "own[ed] a .63-acre dirt lot parcel located at 1604 Kalispell Bay Road, in Bonner County, Idaho. . . . The property is bounded to the north by Kalispell Bay Road, to the east and west by undeveloped lots, and to the south by Old Schneider Road." (Compl. ¶ 23, Doc. 1, *Sackett v. U.S. EPA*, Case No. 2:08cv185 (D. Idaho).) The overlay of the property boundary is taken from GIS mapping data publicly available through Bonner County, Idaho's website. *See* http://cloudgisapps.bonnercountyid.gov/public.

Also like *Sackett* and *Lewis*, there is physical space between the on-site wetlands and potential covered waters. They do not connect. One has to go off the Site to reach any water body, much less any CWA-covered ones. Just like *Sackett* and *Lewis*, any connection to a CWA-covered waterway requires two lengthy jaunts down at least two non-CWA covered intermittent streams. Just as the Supreme Court held in *Sackett* and the Fifth Circuit held in *Lewis*, so too should this Court hold that the alleged wetlands onsite are distinguishable from any possible covered waters.

III. The Government's Complaint Fails To State A Claim For Relief Upon Which Relief May Be Granted.

Should the Court decline to follow Judge Flannagan's reasoning that lack of jurisdiction under the CWA equates to lack of subject matter jurisdiction for this Court, the Court should still dismiss the Government's claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The documents relied on in the Complaint demonstrate the lack of CWA jurisdiction.

To state a claim under the CWA for unlawful discharge of dredged or fill material into wetlands, the Complaint must plead sufficient facts to plausibly show that Defendants are "(1) persons who (2) discharged a pollutant from a point source (3) into wetlands (4) that qualify as jurisdictional [WOTUS] (5) without a permit issued under CWA section 404." *United States v. RGM Corp.*, 222 F. Supp. 2d 780, 786 (E.D. Va. 2002); *see* 33 U.S.C. §§ 1311(a), 1344; *Sackett*, 598 U.S. at 676. The Complaint must meet the two-part *Sackett*/*Rapanos* to satisfy the fourth element, and it cannot do so as explained above and summarized below.

First, the wetlands do not connect to any WOTUS for all those reasons stated above. *See Sackett*, 598 U.S. at 676; Argument Section II.A. Lickinghole Creek and Campbell Creek fail to qualify as WOTUS over a mile from the site when they become intermittent. Accordingly, they do not qualify as WOTUS. *See Rapanos*, 547 U.S. at 731-40; *see also Sackett*, 598 U.S. at 676. Therefore, there can be no discharge into WOTUS as required to state a claim.

Second, the Site does not contain WOTUS for those reasons stated above. *See Sackett*, 598 U.S. at 676; Argument Section II.B. Even if intermittent streams counted as WOTUS, which they do not, the relied-upon mapping actually shows that no water body—intermittent, named or unnamed—reaches the Site. *See* Exhibits A-D; Figures 1, 3-7. The best the Complaint can muster is alleging that purported "unnamed tributaries" can be seen through "hillside elevation data." But the best this shows is that there may be a drainage channel on the Site that periodically or intermittently flows when rain falls, draining towards Lickinghole Creek. *See* Exhibit E. But that is not WOTUS. *See Rapanos*, 547 U.S. at 739 (stating that "channels that periodically provide drainage for rainfall" are not WOTUS).

Third, the wetlands on the Site do not maintain a continuous surface connection with any WOTUS such that it is difficult to determine where the wetlands end and WOTUS begins as described above. *See Sackett*, 598 U.S. at 676; Argument Section II.C. The wetlands on Site do not connect to any WOTUS. As such, the wetlands are distinguishable from any WOTUS. Accordingly, the Government has failed to meet this element as well.

For these reasons, the Government's Complaint fails to state a claim.

CONCLUSION

For the reasons set forth above, this Court should dismiss this case for lack of subject matter jurisdiction or in the alternative dismiss for failure to state a claim.

Dated: February 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 20, 2024, I filed the forgoing electronically, which sent a notice of electronic filing to all counsel of record in this matter.

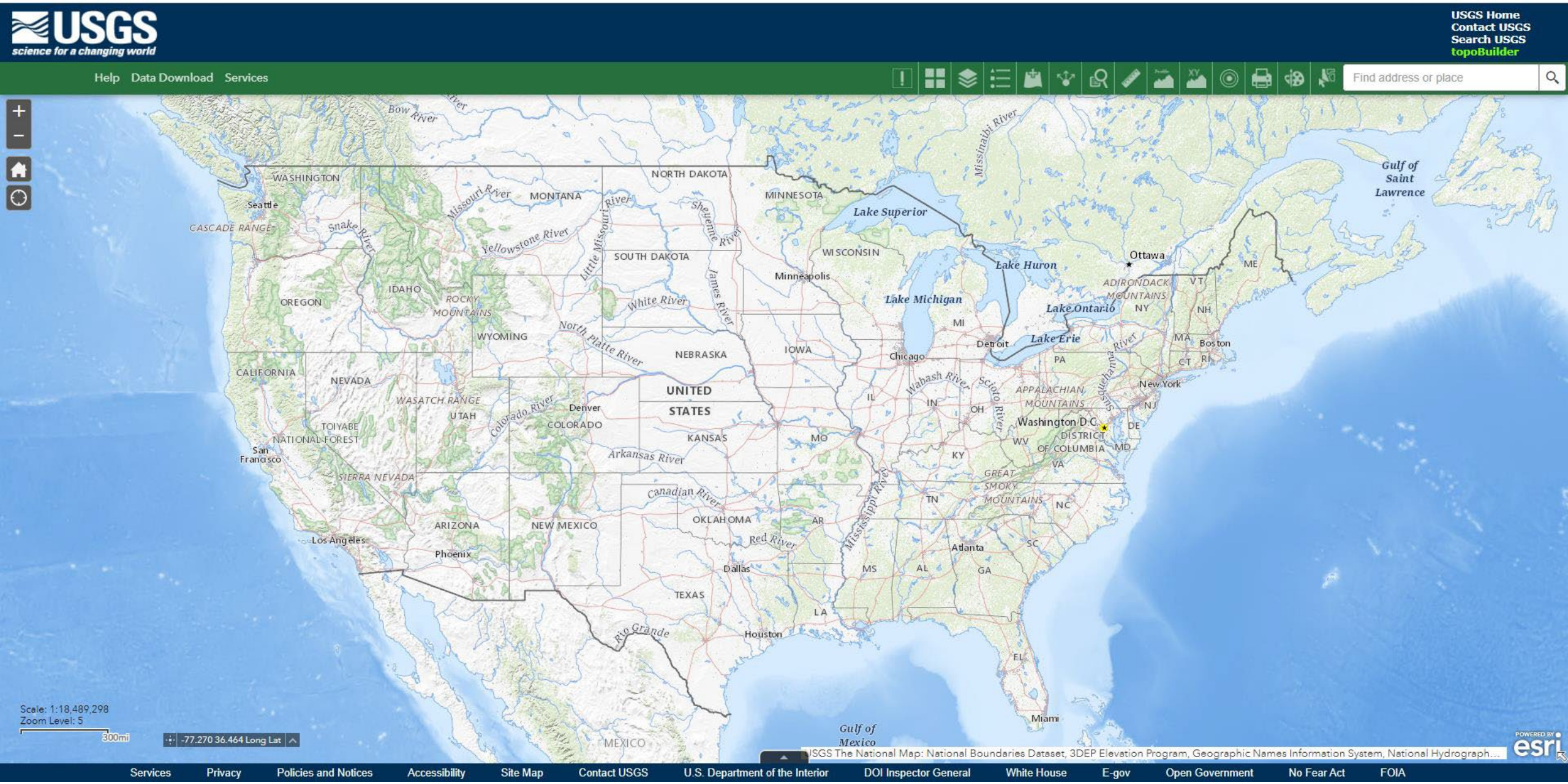
/s/ *Frank Talbott V*

Exhibit A

USGS National Map

https://apps.nationalmap.gov/viewer/

Maps shown at Levels 5, 8, 12, 14, 15
300-mile, 30-mile, 2-mile, 0.4-mile, 0.2-mile scale


apps.nationalmap.gov/viewer/
USGS
science for a changing world
USGS Home
Contact USGS
Search USGS
topoBuilder
Help
Data Download
Services
Find address or place
WASHINGTON
Seattle
CASCADE RANGE
OREGON
CALIFORNIA
NEVADA
IDAHO
MONTANA
WYOMING
UTAH
COLORADO
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
ILLINOIS
MICHIGAN
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
MAINE
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND
CONNECTICUT
NEW JERSEY
DELAWARE
MARYLAND
DISTRICT OF COLUMBIA
Lake Superior
Lake Michigan
Lake Huron
Lake Erie
Lake Ontario
Gulf of Saint Lawrence
Gulf of Mexico
Missinaibi River
Bow River
Missouri River
Snake River
Yellowstone River
Little Missouri River
Cheyenne River
James River
White River
North Platte River
Colorado River
Arkansas River
Canadian River
Red River
Rio Grande
Wabash River
Scioto River
Susquehanna River
Mississippi River
ROCKY MOUNTAINS
WASATCH RANGE
SIERRA NEVADA
APPALACHIAN MOUNTAINS
ADIRONDACK MOUNTAINS
GREAT SMOKY MOUNTAINS
TOIYABE NATIONAL FOREST
Seattle
Portland
San Francisco
Los Angeles
Phoenix
Denver
Dallas
Houston
Atlanta
Chicago
Minneapolis
Detroit
Ottawa
Boston
New York
Washington D.C.
Miami
Scale: 1:18,489,298
Zoom Level: 5
300mi
-77.270 36.464 Long Lat
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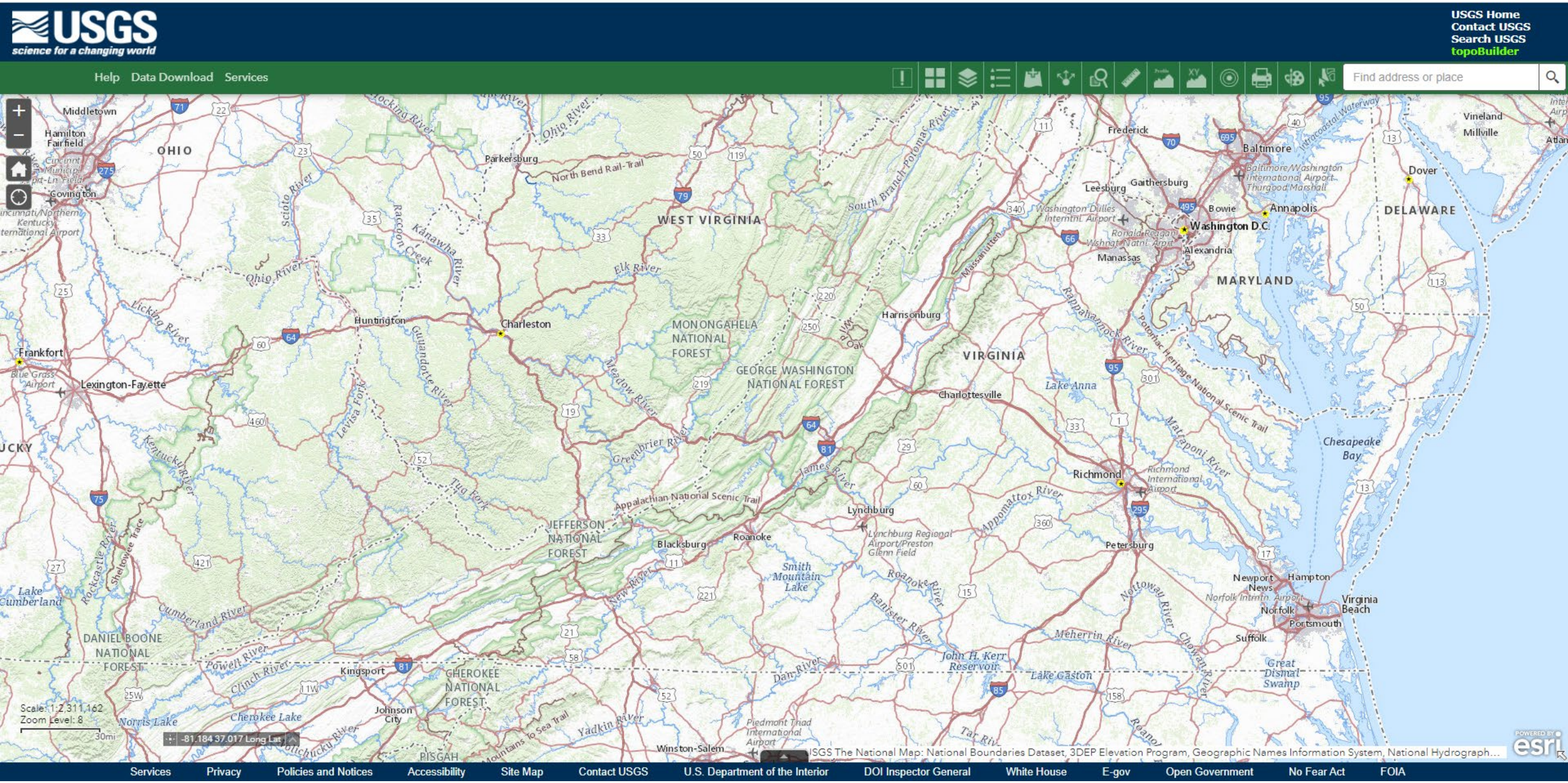
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North Bend Rail-Trail
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Scioto River
Raccoon Creek
Kanawha River
WEST VIRGINIA
Elk River
Huntington
Charleston
Frankfort
Blue Grass Airport
Lexington-Fayette
Licking River
Guyandotte River
Meadow River
Greenbrier River
Levisa Fork
Kentucky River
Tug Fork
MONONGAHELA NATIONAL FOREST
GEORGE WASHINGTON NATIONAL FOREST
Harrisonburg
Little Oak
Massanutten
VIRGINIA
Charlottesville
Lake Anna
Rappahannock River
Potomac Heritage National Scenic Trail
Frederick
Baltimore
Baltimore/Washington International Airport Thurgood Marshall
Leesburg
Gaithersburg
Washington Dulles Intrntl Airport
Bowie
Annapolis
Washington D.C.
Ronald Reagan Washgt Natnl Arpt
Alexandria
Manassas
MARYLAND
DELAWARE
Dover
Vineland
Millville
Intracoastal Waterway
Richmond
Richmond International Airport
Chesapeake Bay
Matapponi River
Appomattox River
Petersburg
Lynchburg
Lynchburg Regional Airport/Preston Glenn Field
Blacksburg
Roanoke
Appalachian National Scenic Trail
JEFFERSON NATIONAL FOREST
James River
Smith Mountain Lake
Roanoke River
Banister River
New River
Newport News
Hampton
Norfolk Intrntl Airport
Norfolk
Virginia Beach
Portsmouth
Suffolk
Nottoway River
Chowan River
Meherrin River
John H. Kerr Reservoir
Lake Gaston
Great Dismal Swamp
Dan River
Lake Cumberland
Rockcastle River
Shawnee Trace
Cumberland River
DANIEL BOONE NATIONAL FOREST
Powell River
Clinch River
Kingsport
CHEROKEE NATIONAL FOREST
Johnson City
Norris Lake
Cherokee Lake
Holtchucky River
Yadkin River
Mountains to Sea Trail
PISGAH
Winston-Salem
Piedmont Triad International Airport
Scale: 1:2,311,162
Zoom Level: 8
30mi
-81.184 37.017 Long Lat
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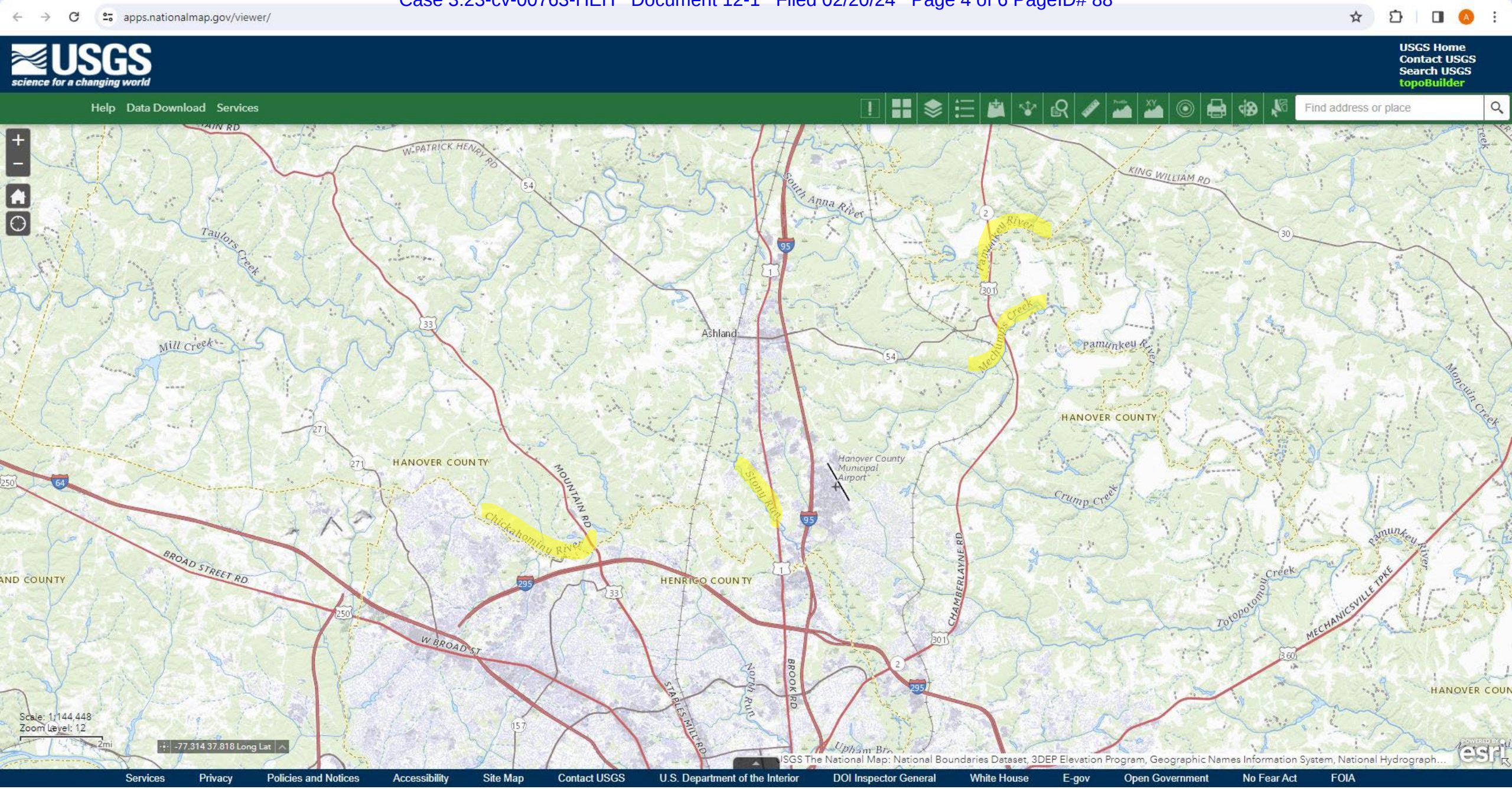
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W PATRICK HENRY RD
KING WILLIAM RD
South Anna River
Taylors Creek
Mill Creek
Ashland
Pamunkey River
Mechumps Creek
Moncuin Creek
HANOVER COUNTY
Hanover County Municipal Airport
Stony Run
Crump Creek
Chickahominy River
MOUNTAIN RD
BROAD STREET RD
W BROAD ST
HENRICO COUNTY
CHAMBERLAYNE RD
Totopotomoy Creek
MECHANICSVILLE TPKE
STABLES MILL RD
North Run
BROOK RD
Upham Brc
Scale: 1:144,448
Zoom Level: 12
2mi
-77.314 37.818 Long Lat
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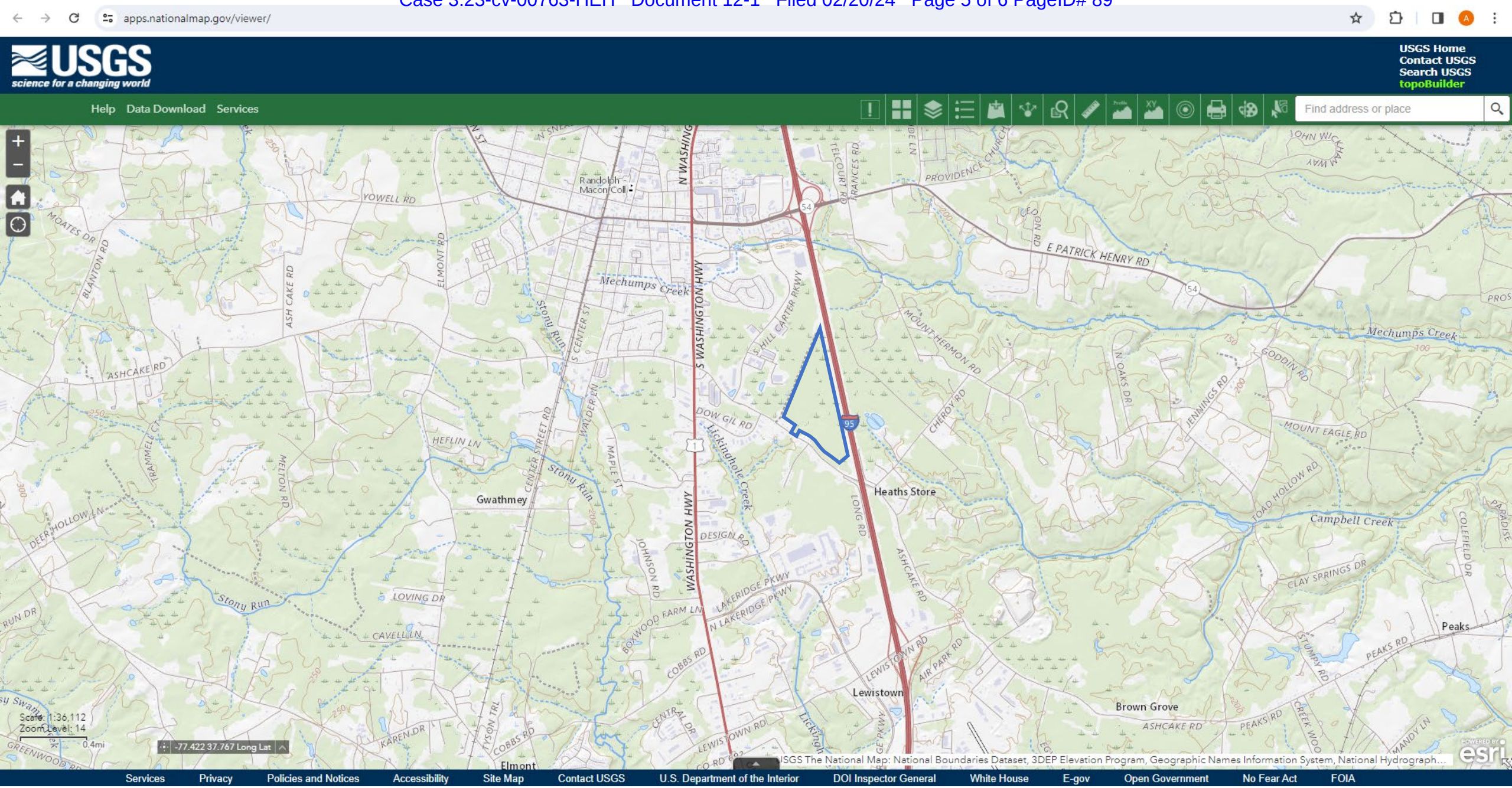
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Randolph - Macon Coll
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Stony Run
Gwathmey
Heaths Store
Lewistown
Brown Grove
Peaks
Elmont
Campbell Creek
N WASHINGTON HWY
S WASHINGTON HWY
E PATRICK HENRY RD
ASHCAKE RD
LONG RD
DOW GIL RD
LAKERIDGE PKWY
LEWISTOWN RD
PEAKS RD
Scale: 1:36,112
Zoom Level: 14
0.4mi
-77.422 37.767 Long Lat
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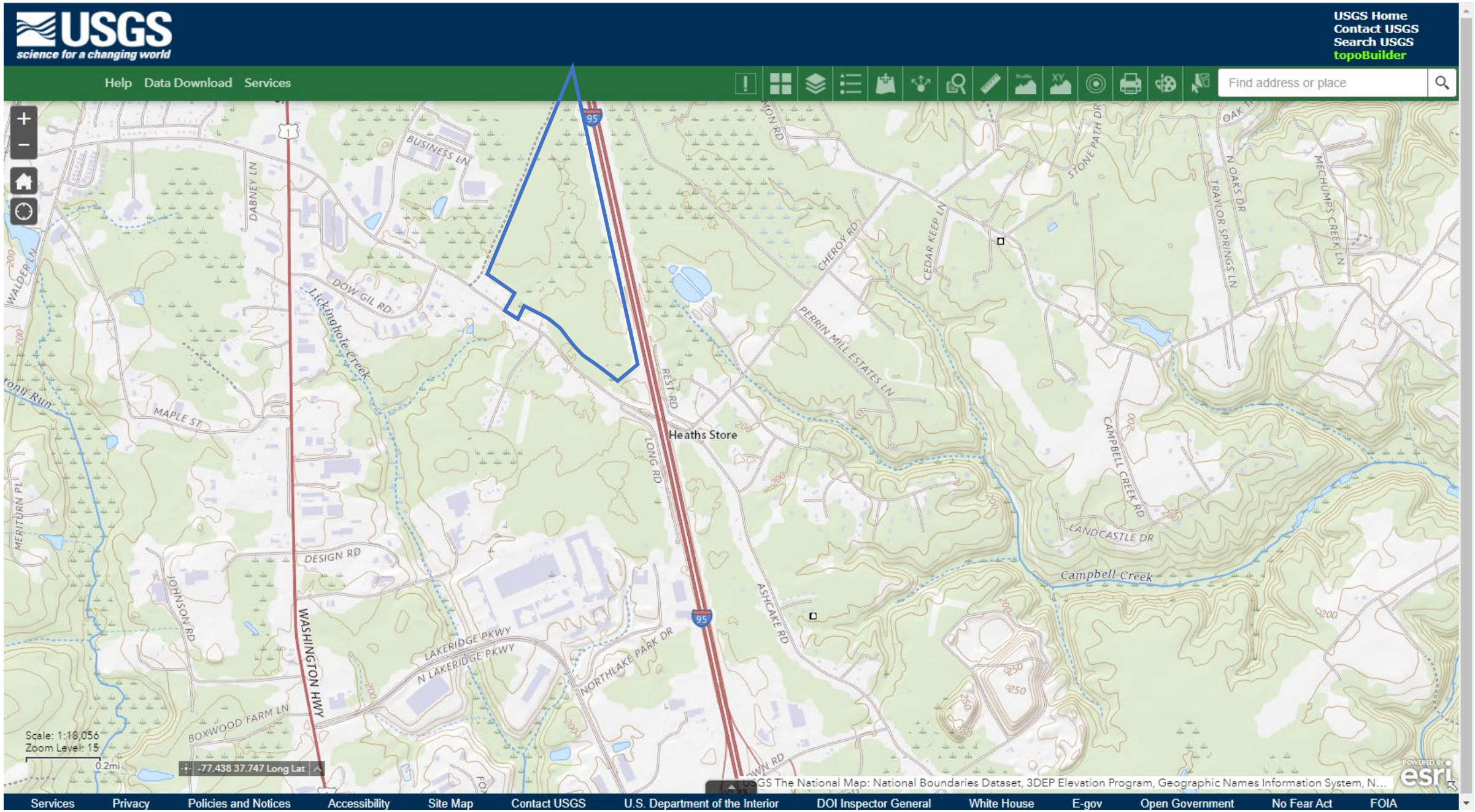
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Heaths Store
Campbell Creek
WASHINGTON HWY
LAKERIDGE PKWY
N LAKERIDGE PKWY
NORTHLAKE PARK DR
ASHCAKE RD
LONG RD
REST RD
CHEROY RD
CEDAR KEEP LN
PERRIN MILL ESTATES LN
STONE PATH DR
N OAKS DR
TRAYLOR SPRINGS LN
MECHUMPS CREEK LN
CAMPBELL CREEK RD
LANDCASTLE DR
DESIGN RD
DOW GIL RD
BUSINESS LN
DABNEY LN
MAPLE ST
JOHNSON RD
BOXWOOD FARM LN
Licknaghole Creek
Scale: 1:18,056
Zoom Level: 15
0.2mi
-77.438 37.747 Long Lat
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Exhibit B

USGS StreamStats Using "National Geographic" base map

https://streamstats.usgs.gov/ss/

Maps shown at Levels 5, 8, 12, 14, 15
200-mile, 20-mile, 1-mile, 2000-foot, 1000-foot scale


streamstats.usgs.gov/ss/
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Help
SELECT A STATE / REGION
Step 1: Use the map or the search tool to identify an area of interest. At zoom level 8 or greater State/Region selection will be enabled.
Search for a place
Help
IDENTIFY A STUDY AREA
SELECT SCENARIOS
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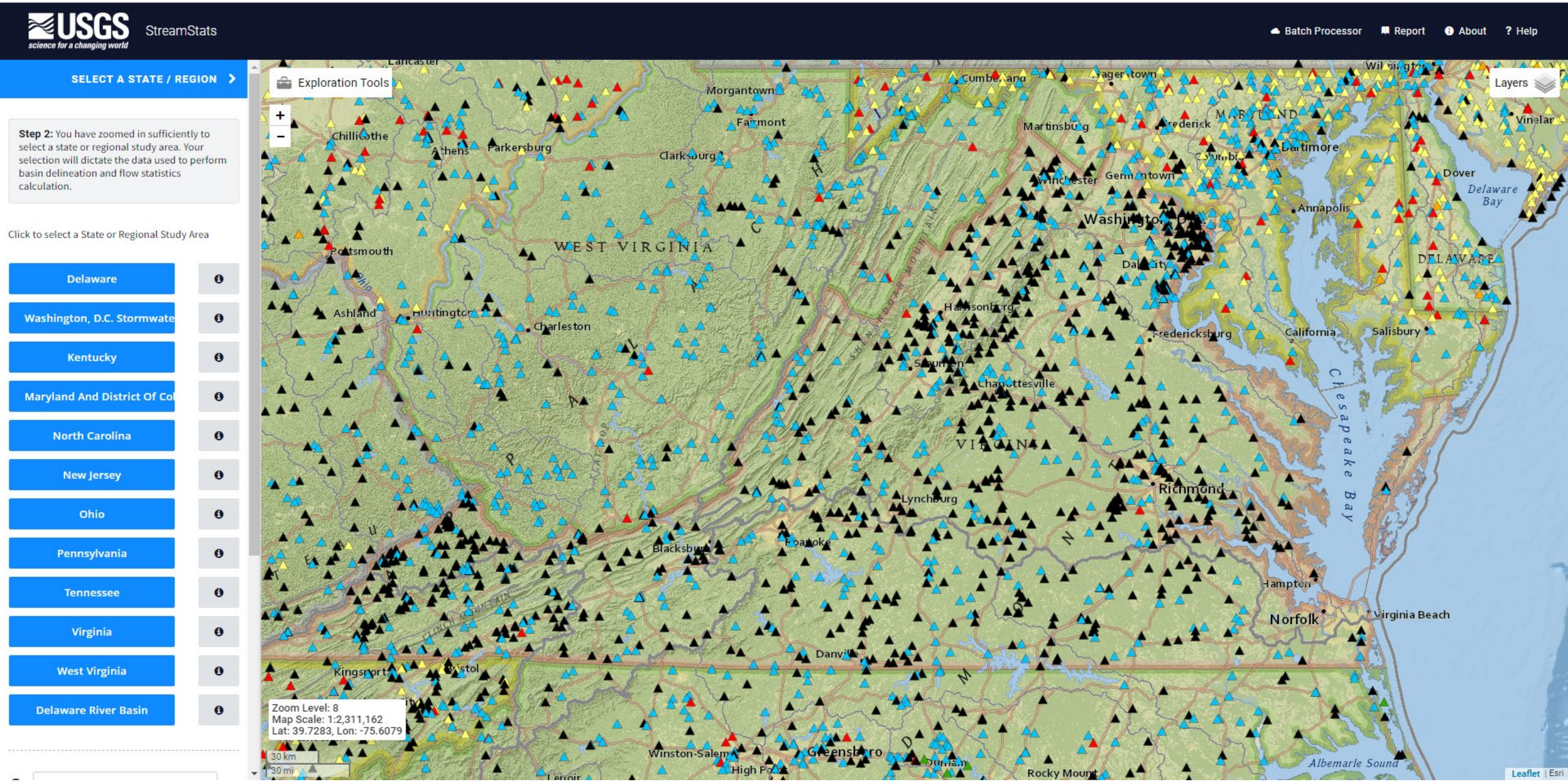
Exploration Tools
Layers
Base Maps
National Geographic
National Map
Streets
World Topographic
Gray
Dark Gray
Imagery
Shaded Relief
National Layers
Zoom Level: 5
Map Scale: 1:18,489,298
Lat: 51.4266, Lon: -63.6768
300 km
200 mi
Leaflet | Esri


streamstats.usgs.gov/ss/
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Batch Processor
Report
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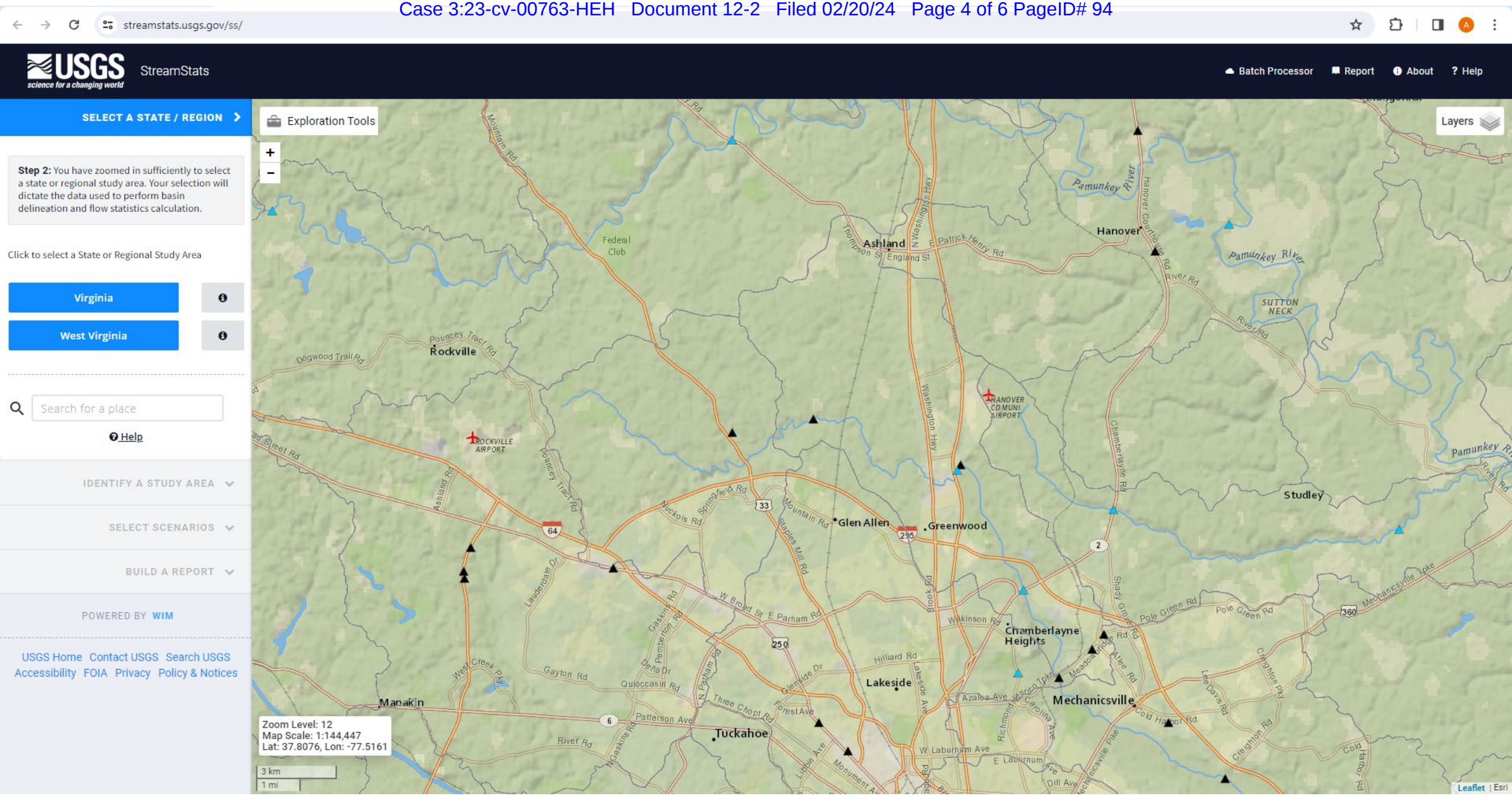
Help
SELECT A STATE / REGION
Exploration Tools
Layers
Step 2: You have zoomed in sufficiently to select a state or regional study area. Your selection will dictate the data used to perform basin delineation and flow statistics calculation.
Click to select a State or Regional Study Area
Delaware
Washington, D.C. Stormwate
Kentucky
Maryland And District Of Col
North Carolina
New Jersey
Ohio
Pennsylvania
Tennessee
Virginia
West Virginia
Delaware River Basin
Zoom Level: 8
Map Scale: 1:2,311,162
Lat: 39.7283, Lon: -75.6079
30 km
30 mi
Leaflet | Esri


streamstats.usgs.gov/ss/
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StreamStats
Batch Processor
Report
About
Help
SELECT A STATE / REGION
Step 2: You have zoomed in sufficiently to select a state or regional study area. Your selection will dictate the data used to perform basin delineation and flow statistics calculation.
Click to select a State or Regional Study Area
Virginia
West Virginia
Search for a place
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SELECT SCENARIOS
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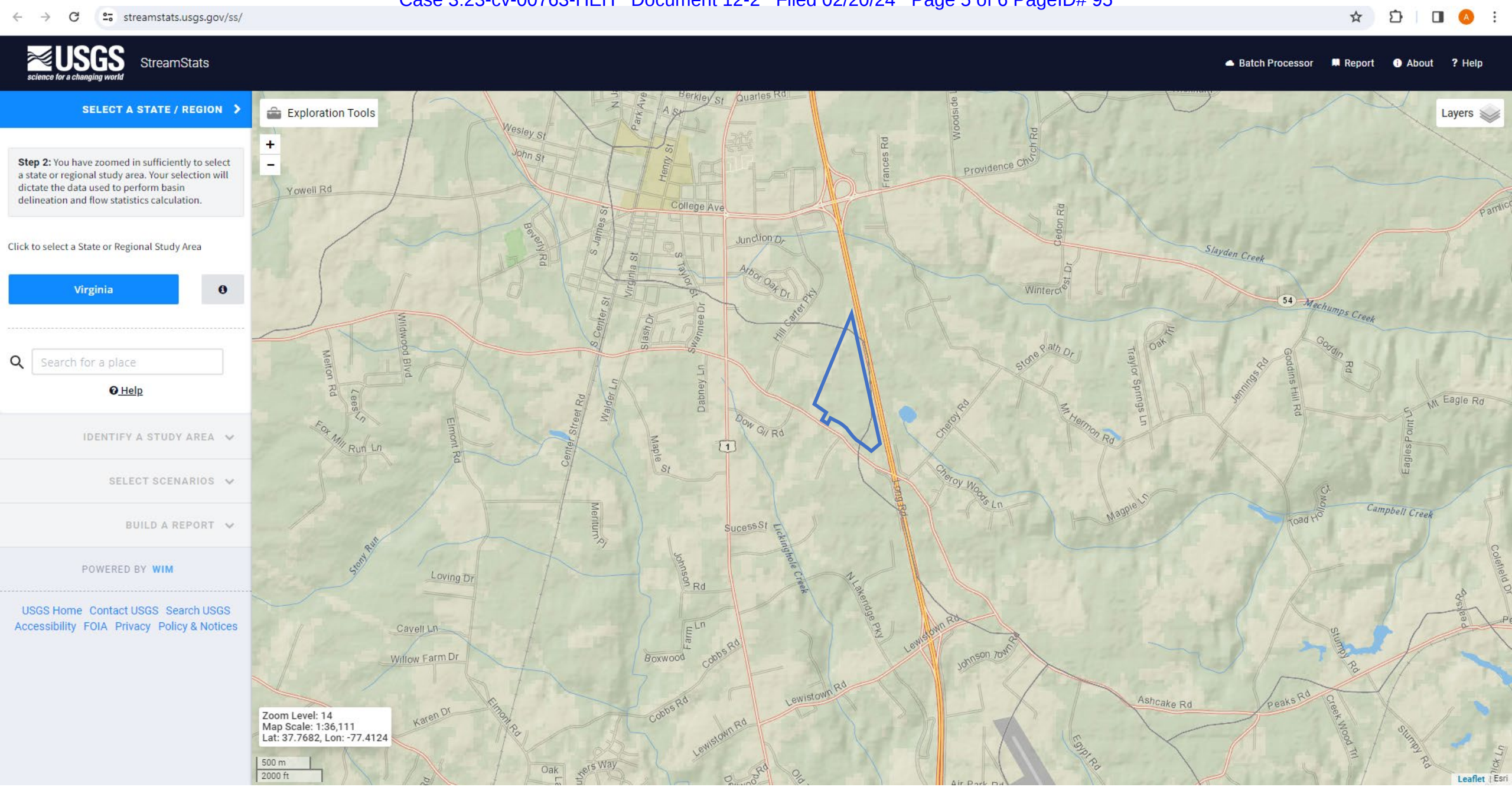
Layers
Ashland
Hanover
Rockville
Glen Allen
Greenwood
Studley
Chamberlayne Heights
Lakeside
Mechanicsville
Manakin
Tuckahoe
Pamunkey River
SUTTON NECK
HANOVER COMUNI AIRPORT
ROCKVILLE AIRPORT
Zoom Level: 12
Map Scale: 1:144,447
Lat: 37.8076, Lon: -77.5161
3 km
1 mi
Leaflet | Esri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Step 2: You have zoomed in sufficiently to select a state or regional study area. Your selection will dictate the data used to perform basin delineation and flow statistics calculation.
Click to select a State or Regional Study Area
Virginia
Search for a place
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SELECT SCENARIOS
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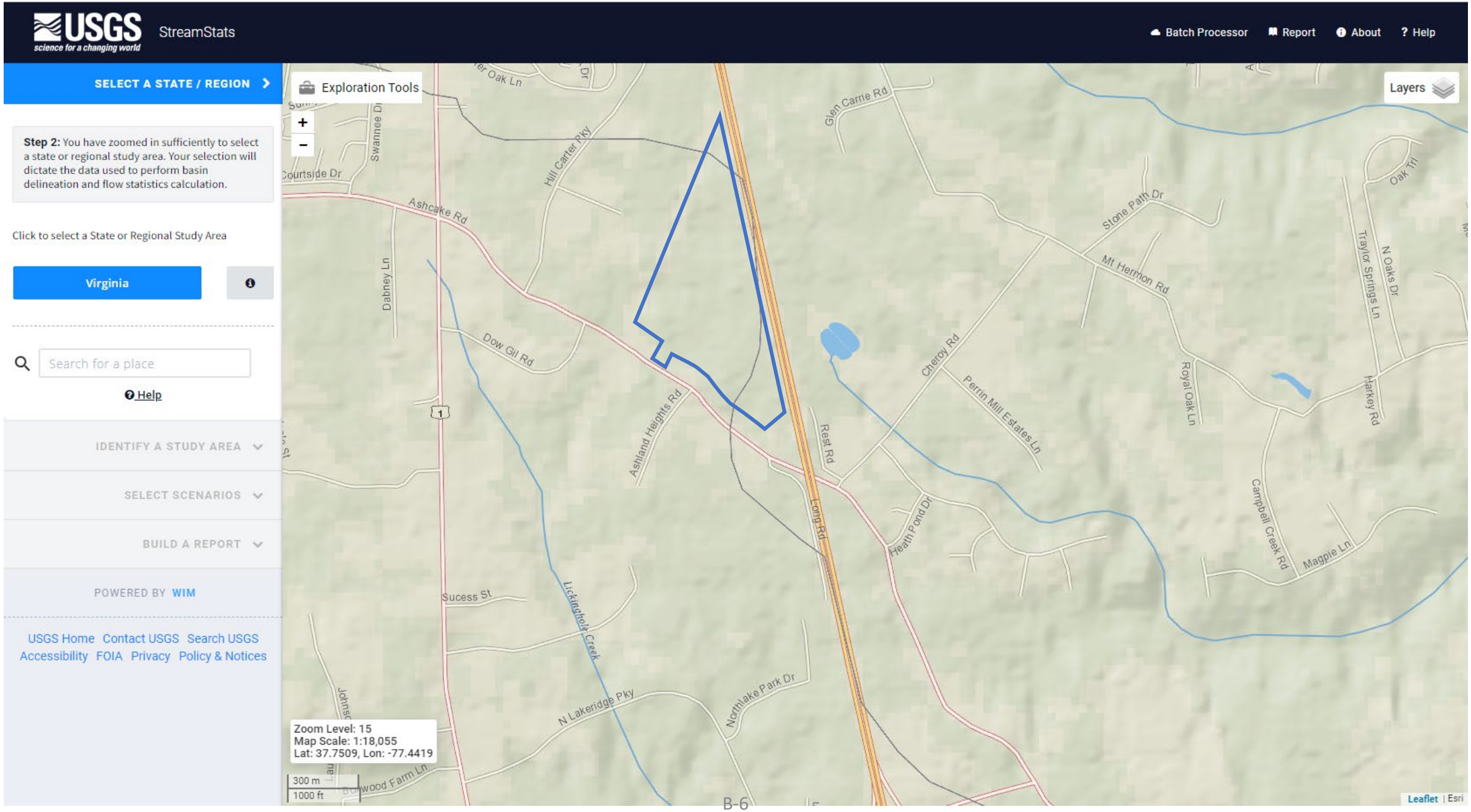
Exploration Tools
Layers
Zoom Level: 14
Map Scale: 1:36,111
Lat: 37.7682, Lon: -77.4124
500 m
2000 ft
Leaflet | Esri


streamstats.usgs.gov/ss/
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SELECT A STATE / REGION
Step 2: You have zoomed in sufficiently to select a state or regional study area. Your selection will dictate the data used to perform basin delineation and flow statistics calculation.
Click to select a State or Regional Study Area
Virginia
Search for a place
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IDENTIFY A STUDY AREA
SELECT SCENARIOS
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Exploration Tools
Layers
Courtside Dr
Ashcake Rd
Swannee Dr
Hill Carter Pky
Glen Carrie Rd
Stone Path Dr
Oak Trl
Mt Hermon Rd
Taylor Springs Ln
N Oaks Dr
Dabney Ln
Dow Gil Rd
Ashland Heights Rd
Cheroy Rd
Perrin Mill Estates Ln
Royal Oak Ln
Harkey Rd
Rest Rd
Long Rd
Heath Pond Dr
Campbell Creek Rd
Maggie Ln
Sucess St
Lickinghole Creek
N Lakeridge Pky
Northlake Park Dr
Zoom Level: 15
Map Scale: 1:18,055
Lat: 37.7509, Lon: -77.4419
300 m
1000 ft
Leaflet | Esri

Exhibit C

EPA “My Waterway”

https://mywaterway.epa.gov/waterbody-report/21VASWCB/VAP-G05R_SNF02A12/2022

Maps shown at 5000-foot, 1000-foot scale

Stony Run and Tributaries

Assessment Unit ID: VAP-G05R_SNF02A12

Waterbody Condition: Impaired (Issues Identified)

Existing Plans for Restoration: Yes

303(d) Listed: No

Year Reported: 2022

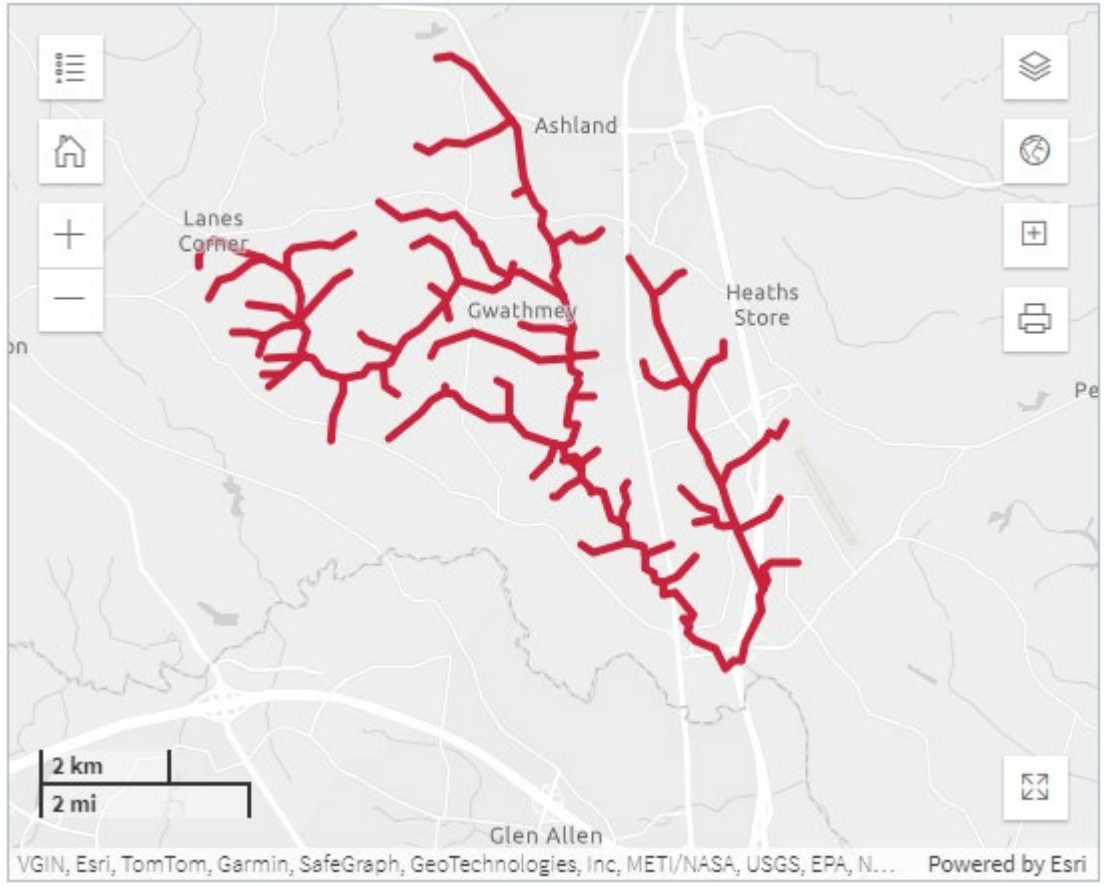
Organization Name (ID): Virginia (21VASWCB)

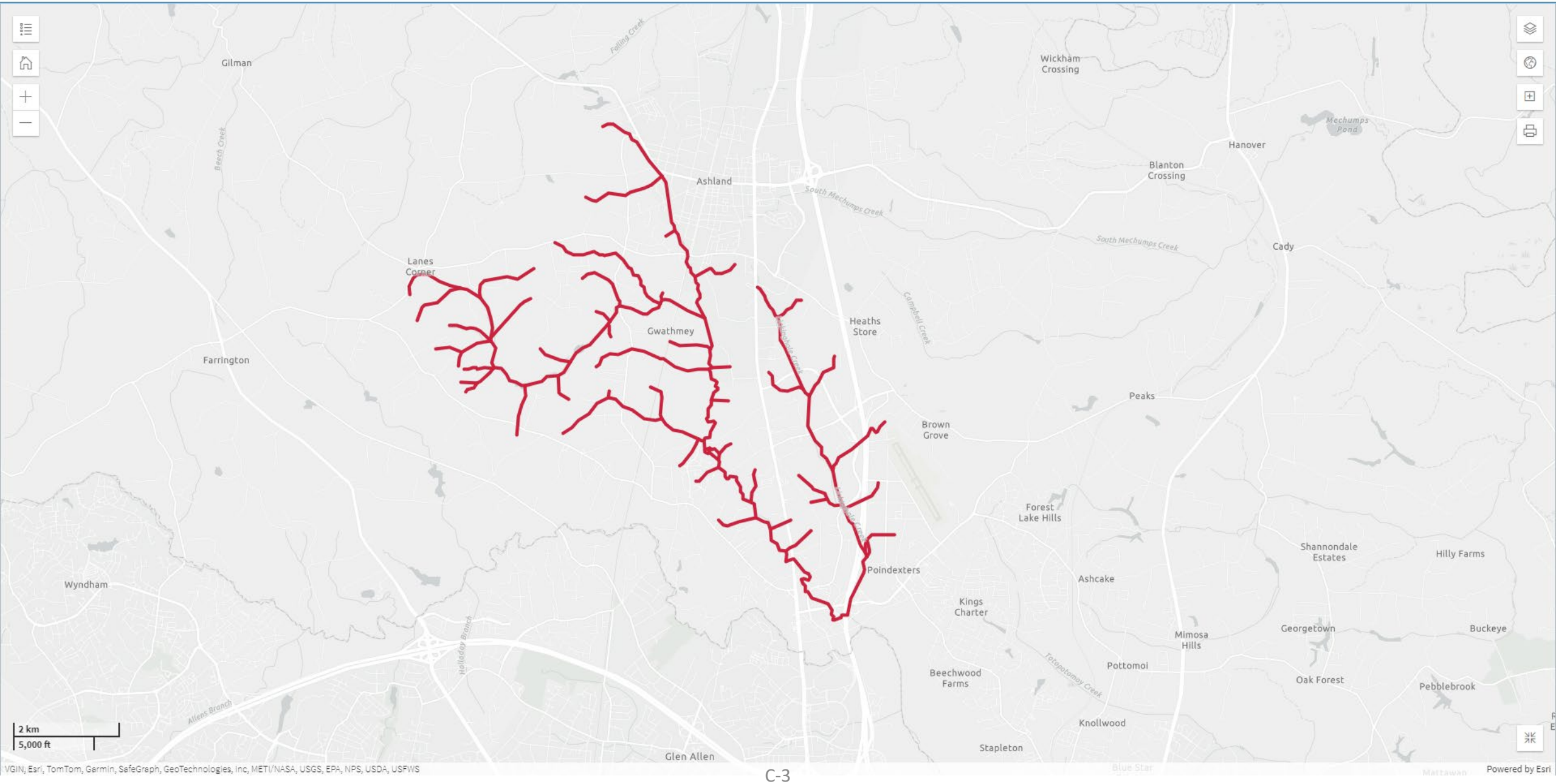
What type of water is this?

River (39.87 Miles)

Where is this water located?

Upper portion of watershed above confluence of Stony Run and Lickinghole Creek




mywaterway.epa.gov/waterbody-report/21VASWCB/VAP-G05R_SNF02A12/2022
Gilman
Wickham Crossing
Hanover
Mechumps Pond
Blanton Crossing
Ashland
South Mechumps Creek
Cady
Lanes Corner
Gwathmey
Heaths Store
Farrington
Peaks
Brown Grove
Forest Lake Hills
Shannondale Estates
Hilly Farms
Poindexters
Wyndham
Ashcake
Kings Charter
Mimosa Hills
Georgetown
Buckeye
Pottomoi
Beechwood Farms
Oak Forest
Pebblebrook
Knollwood
Stapleton
Glen Allen
2 km
5,000 ft
VGIN, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS
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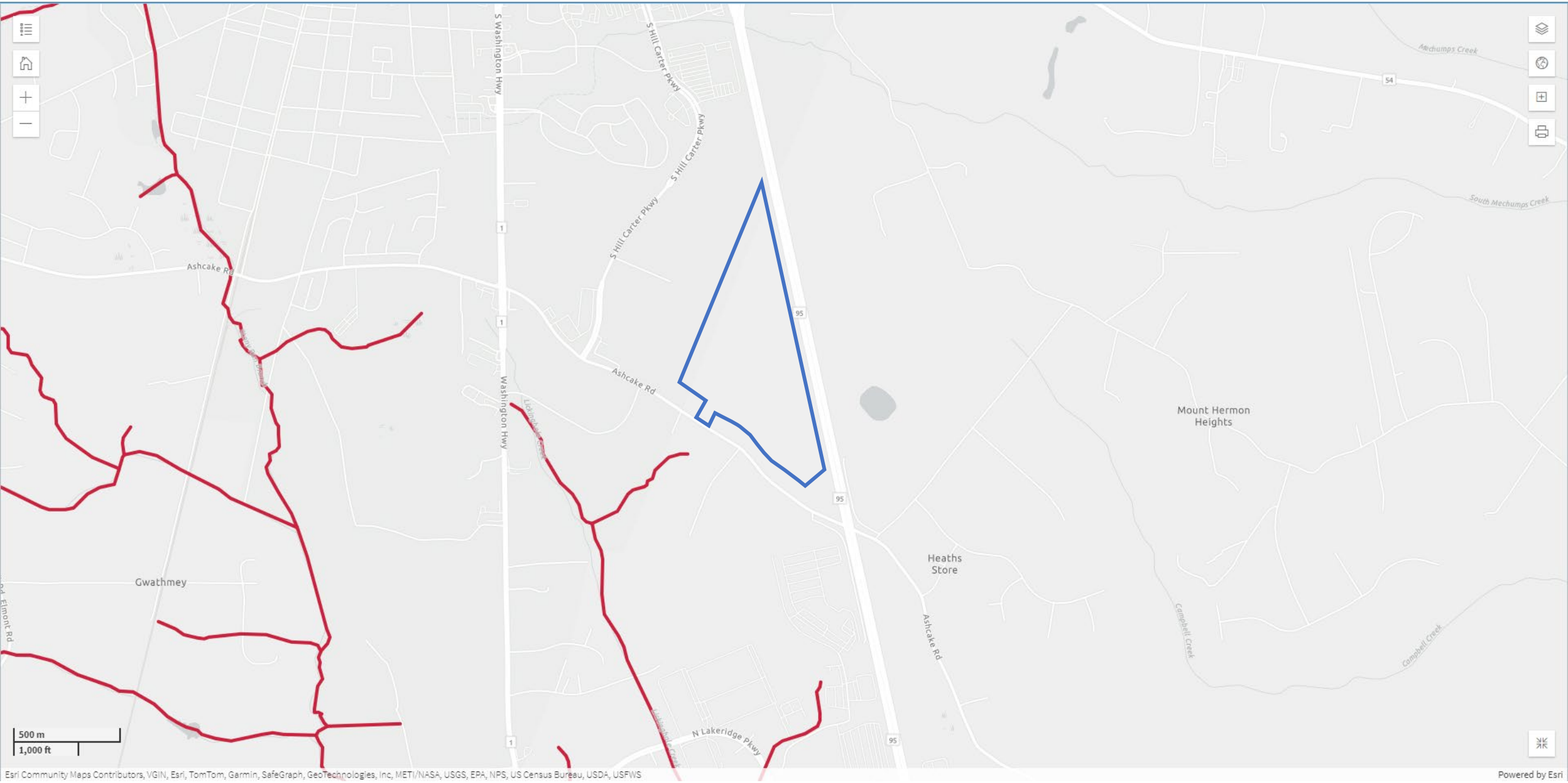
S Washington Hwy
S Hill Carter Pkwy
Ashcake Rd
Mechumps Creek
South Mechumps Creek
54
95
Mount Hermon Heights
Heaths Store
Gwathmey
N Lakeridge Pkwy
Campbell Creek
500 m
1,000 ft
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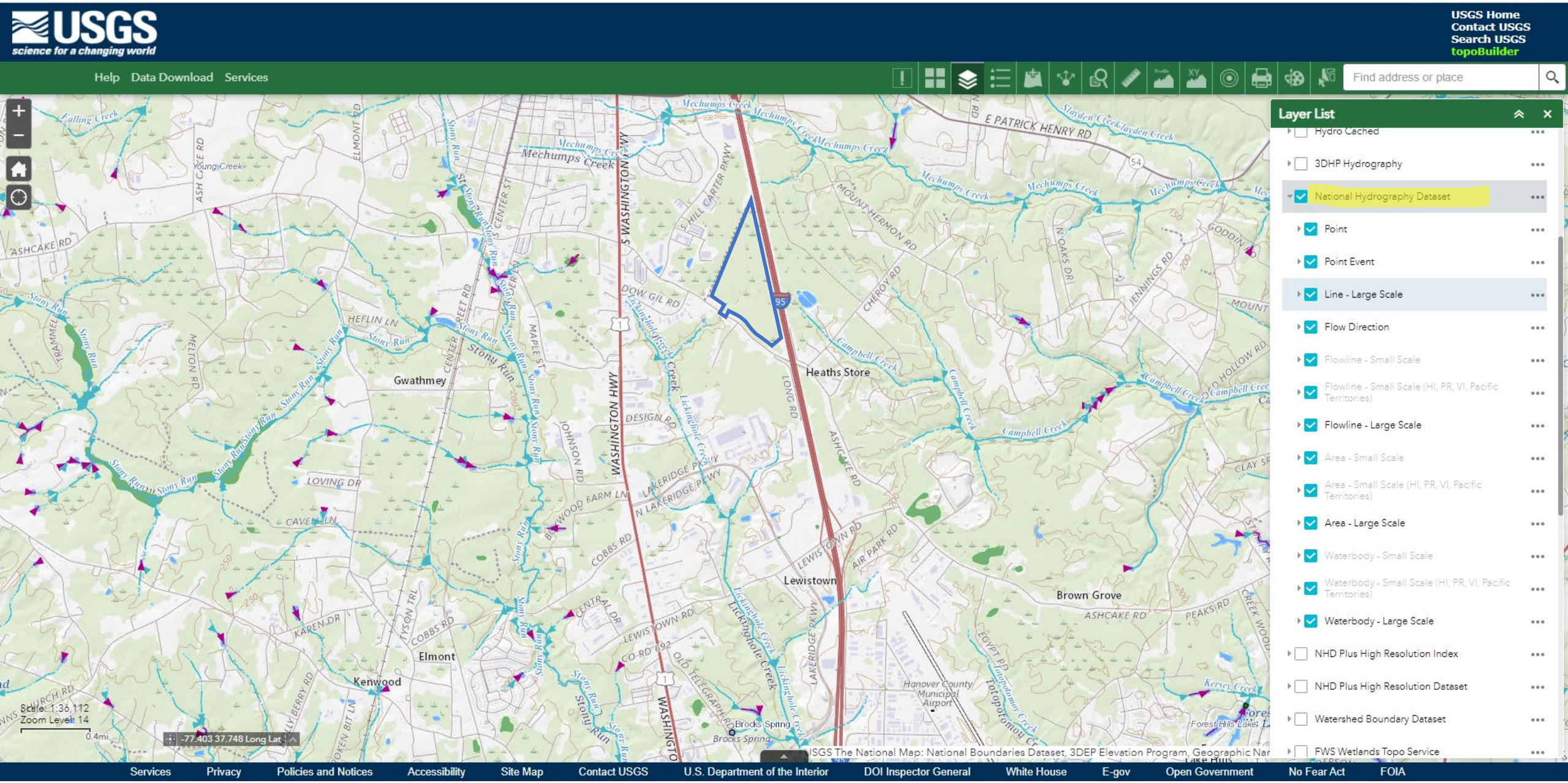
Exhibit D

USGS National Map with National Hydrography Dataset

https://apps.nationalmap.gov/viewer/

Maps showing Intermittent and Perineal Streams
from National Hydrography Dataset all shown at Level 14 (0.4 mile)
and
Segments shown with blue markers and lengths of segments in attribute table are measured in KM and then converted to miles and linear feet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3DHP Hydrography
National Hydrography Dataset
Point
Point Event
Line - Large Scale
Flow Direction
Flowline - Small Scale
Flowline - Small Scale (HI, PR, VI, Pacific Territories)
Flowline - Large Scale
Area - Small Scale
Area - Small Scale (HI, PR, VI, Pacific Territories)
Area - Large Scale
Waterbody - Small Scale
Waterbody - Small Scale (HI, PR, VI, Pacific Territories)
Waterbody - Large Scale
NHD Plus High Resolution Index
NHD Plus High Resolution Dataset
Watershed Boundary Dataset
FWS Wetlands Topo Service
Gwathmey
Heaths Store
Lewistown
Brown Grove
Elmont
Kenwood
Brocks Spring
Hanover County Municipal Airport
E PATRICK HENRY RD
WASHINGTON HWY
LONG RD
ASHCAKE RD
LEWISTOWN RD
LAKERIDGE PKWY
Mechumps Creek
Stony Run
Lickinghole Creek
Campbell Creek
Scale: 1:36,112
Zoom Level: 14
0.4mi
-77.403 37.748 Long Lat
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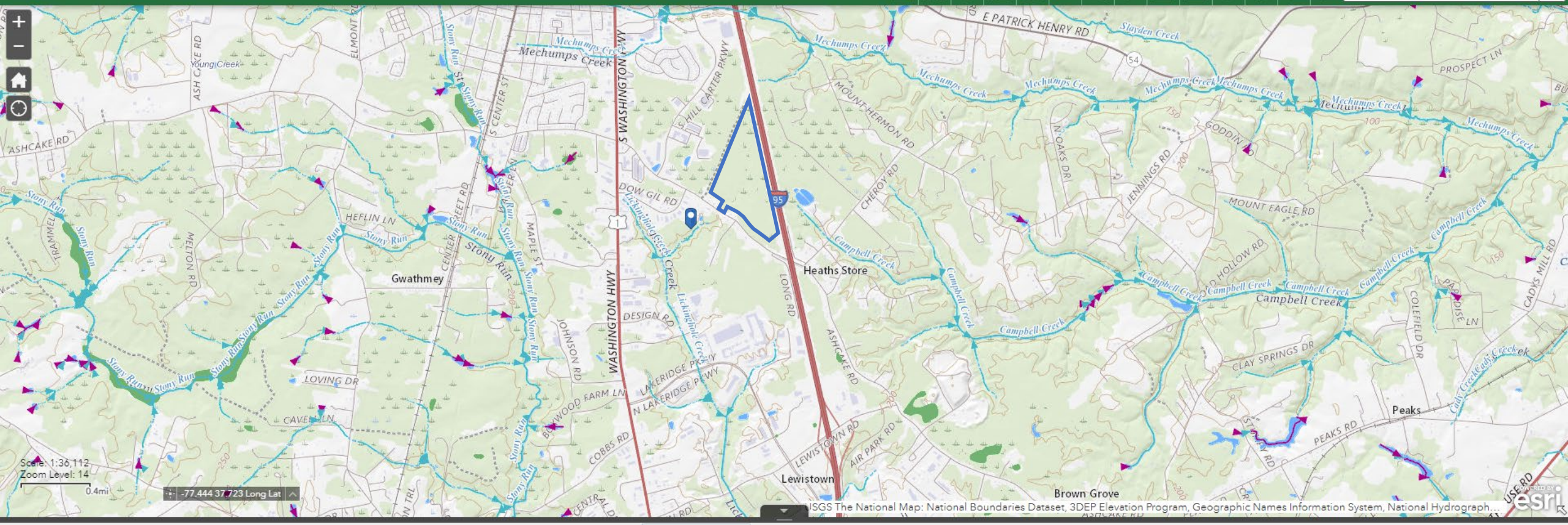

Point | Point Event | Line - Large Scale | Flow Direction | Flowline - Small Scale | Flowline - Small Scale (HI, PR, VI, Pacific Territories) | Flowline - Large Scale | Area - Small Scale | Area - Small Scale (HI, PR, VI, Pacific Territories) | Area - Large Scale | Waterbody - Small Scale | Waterbody - Small Scale (HI, PR, VI, Pacific Territories)

Options | Filter by map extent | Zoom to | Clear selection | Refresh

GNIS_NAME	FType	FCode	PERMANENT_IDEN	FDATE	Resolution	GNIS_ID	LENGTHKM	REACHCODE	FlowDir	WBAREA_PERMAN	Shape	InNetwork	MainPath	VisibilityFilter	SHAPE_Length	GLOBALID
	StreamRiver	Stream/River: Hydrographic Category = Intermittent	135631170	March 10, 2012	High		0.58	02080206002983	WithDigitized			Yes	Unspecified	Approximately 1:100,000 or Larger Scale	740.99	{28B14D48-4C7A-11E1-BCF4-0021280458E6}

0.36 miles/
1900.8 feet

1 features 0 selected

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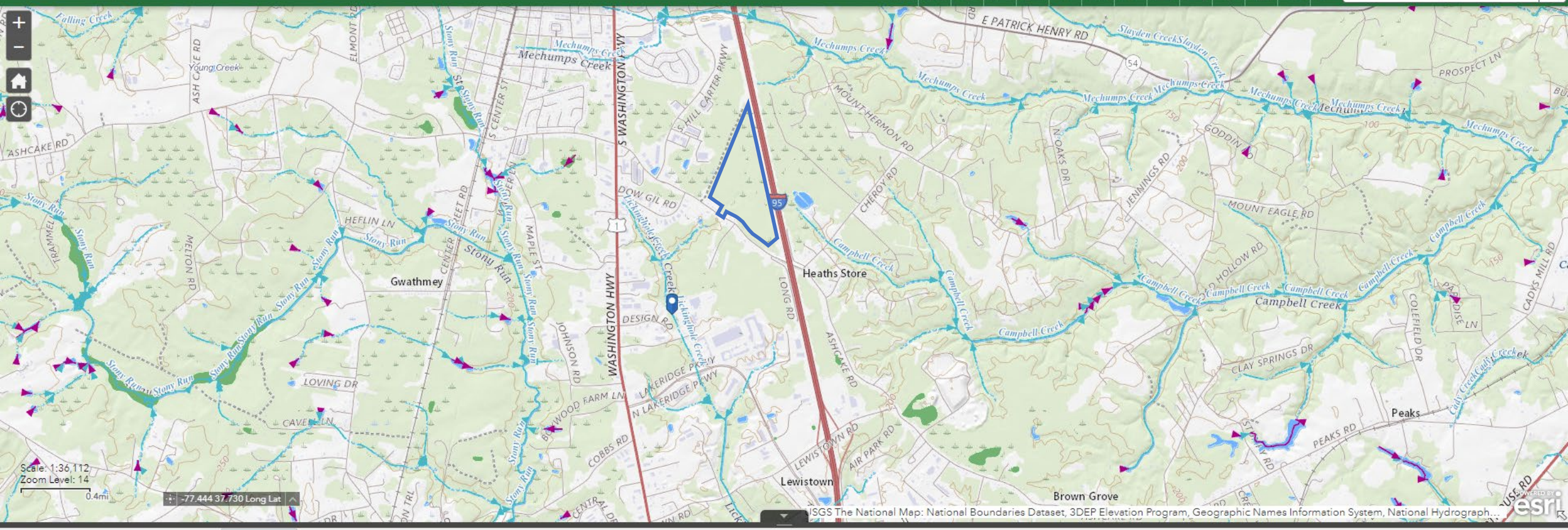

Point | Point Event | Line - Large Scale | Flow Direction | Flowline - Small Scale | Flowline - Small Scale (HI, PR, VI, Pacific Territories) | Flowline - Large Scale | Area - Small Scale | Area - Small Scale (HI, PR, VI, Pacific Territories) | Area - Large Scale | Waterbody - Small Scale | Waterbody - Small Scale (HI, PR, VI, Pacific Territories)

Options | Filter by map extent | Zoom to | Clear selection | Refresh

GNIS_NAME	FType	FCode	PERMANENT_IDENTIF	FDATE	Resolution	GNIS_ID	LENGTHKM	REACHCODE	FlowDir	WBAREA_PERMANEN	InNetwork	MainPath	VisibilityFilter	GLOBALID
Lickinghole Creek	StreamRiver	Stream/River: Hydrographic Category = Intermittent	135630171	March 10, 2012	High	01469416	1.45 0.90 miles/ 4752 feet	02080206000108	WithDigitized		Yes	Unspecified	Approximately 1:1,000,000 or Larger Scale	{E430BC5C-4C7B-11E1-BCF4-0021280458E6}

1 features 0 selected

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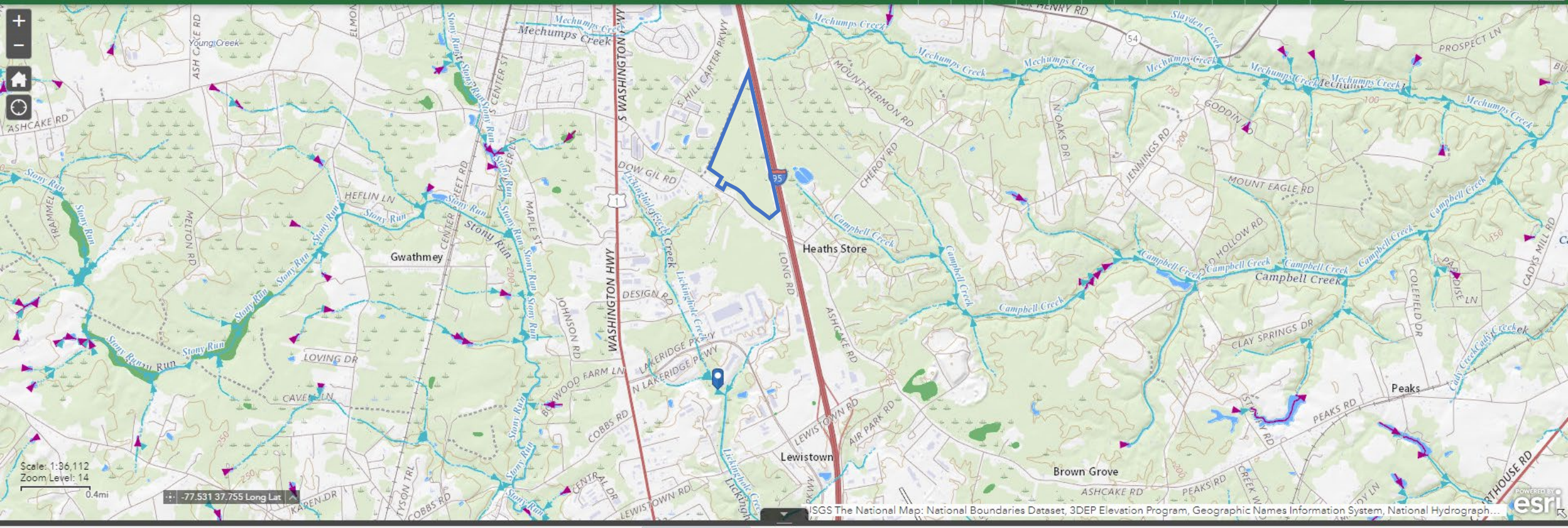

Point | Point Event | Line - Large Scale | Flow Direction | Flowline - Small Scale | Flowline - Small Scale (HI, PR, VI, Pacific Territories) | Flowline - Large Scale | Area - Small Scale | Area - Small Scale (HI, PR, VI, Pacific Territories) | Area - Large Scale | Waterbody - Small Scale | Waterbody - Small Scale (HI, PR, VI, Pacific Territories)

Options | Filter by map extent | Zoom to | Clear selection | Refresh

GNIS_NAME	FType	FCode	PERMANENT_IDEN	FDATE	Resolution	GNIS_ID	LENGTHKM	REACHCODE	FlowDir	WBAREA_PERMAN	Shape	InNetwork	MainPath	VisibilityFilter	SHAPE_Length	GLOBALID
Lickinghole Creek	StreamRiver	Stream/River: Hydrographic Category = Intermittent	135630172	March 10, 2012	High	01469416	0.19	02080206000108	WithDigitized			Yes	Unspecified	Approximately 1:1,000,000 or Larger Scale	237.68	{2BDDD45F-4C93-11E1-BCF4-0021280458E6}

0.12 miles/
633.6 feet

1 features 0 selected

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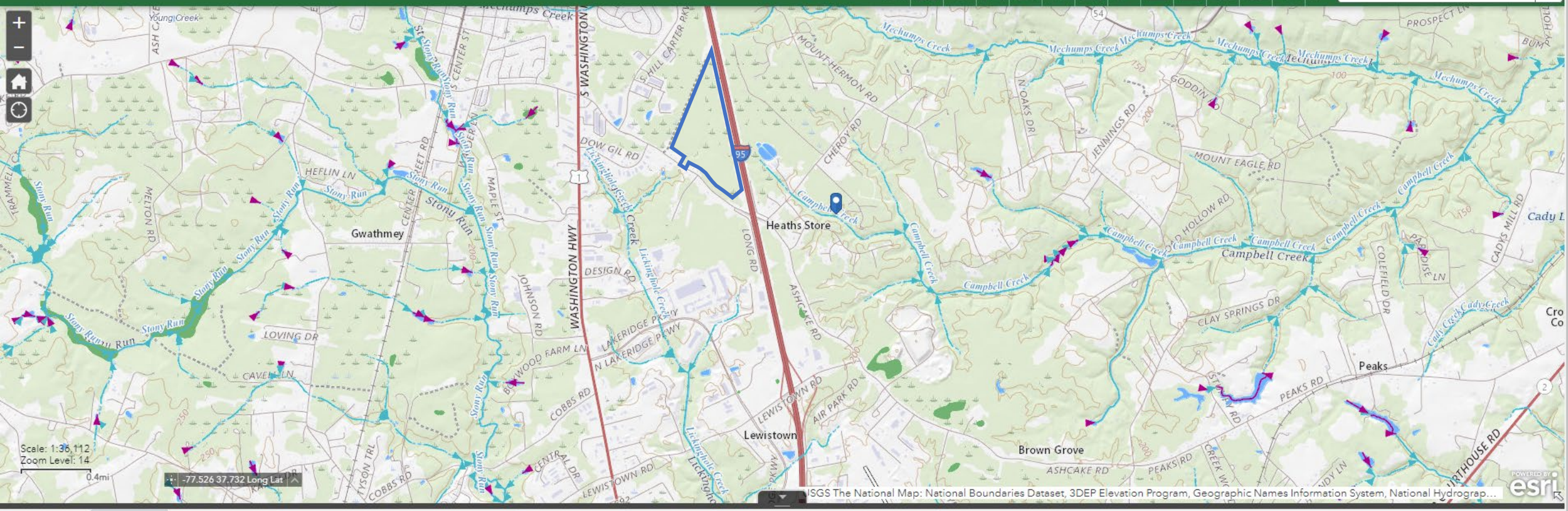

Line - Large Scale | Flow Direction | Flowline - Small Scale | Flowline - Small Scale (HI, PR, VI, Pacific Territories) | Flowline - Large Scale | Area - Small Scale | Area - Small Scale (HI, PR, VI, Pacific Territories) | Waterbody - Large Scale

Options | Filter by map extent | Zoom to | Clear selection | Refresh

GNIS_NAME	FType	FCode	PERMANENT_IDENTIF	FDATE	Resolution	GNIS_ID	LENGTHKM	REACHCODE	FlowDir	WBAREA_PERMANEN	InNetwork	MainPath	VisibilityFilter	GLOBALID
Campbell Creek	StreamRiver	Stream/River: Hydrographic Category = Intermittent	65084209	March 10, 2012	High	01464372	1.64 1.02 miles/ 5385.6 feet	02080106001678	WithDigitized		Yes	Unspecified	Approximately 1:1,000,000 or Larger Scale	{1F2A2919-4C8B-11E1-BCF4-0021280458E6}

1 features 0 selected

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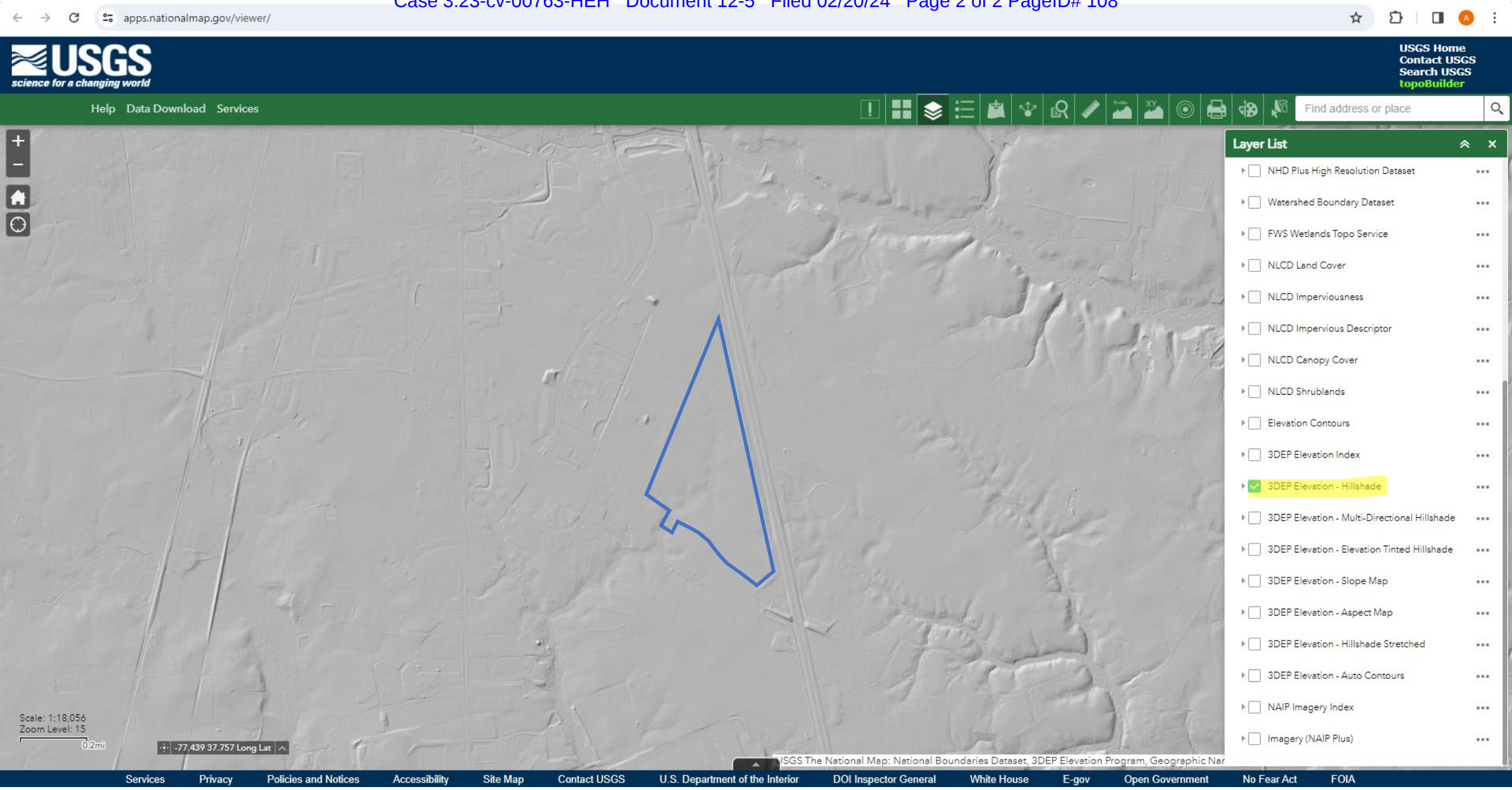
Exhibit E

USGS National Map with 3DEP Elevation - Hillshade

https://apps.nationalmap.gov/viewer/

Maps shown at Level 15/0.2-mile scale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Layer List
NHD Plus High Resolution Dataset
Watershed Boundary Dataset
FWS Wetlands Topo Service
NLCD Land Cover
NLCD Imperviousness
NLCD Impervious Descriptor
NLCD Canopy Cover
NLCD Shrublands
Elevation Contours
3DEP Elevation Index
3DEP Elevation - Hillshade
3DEP Elevation - Multi-Directional Hillshade
3DEP Elevation - Elevation Tinted Hillshade
3DEP Elevation - Slope Map
3DEP Elevation - Aspect Map
3DEP Elevation - Hillshade Stretched
3DEP Elevation - Auto Contours
NAIP Imagery Index
Imagery (NAIP Plus)
Scale: 1:18,056
Zoom Level: 15
0.2mi
-77.439 37.757 Long Lat
USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Nar
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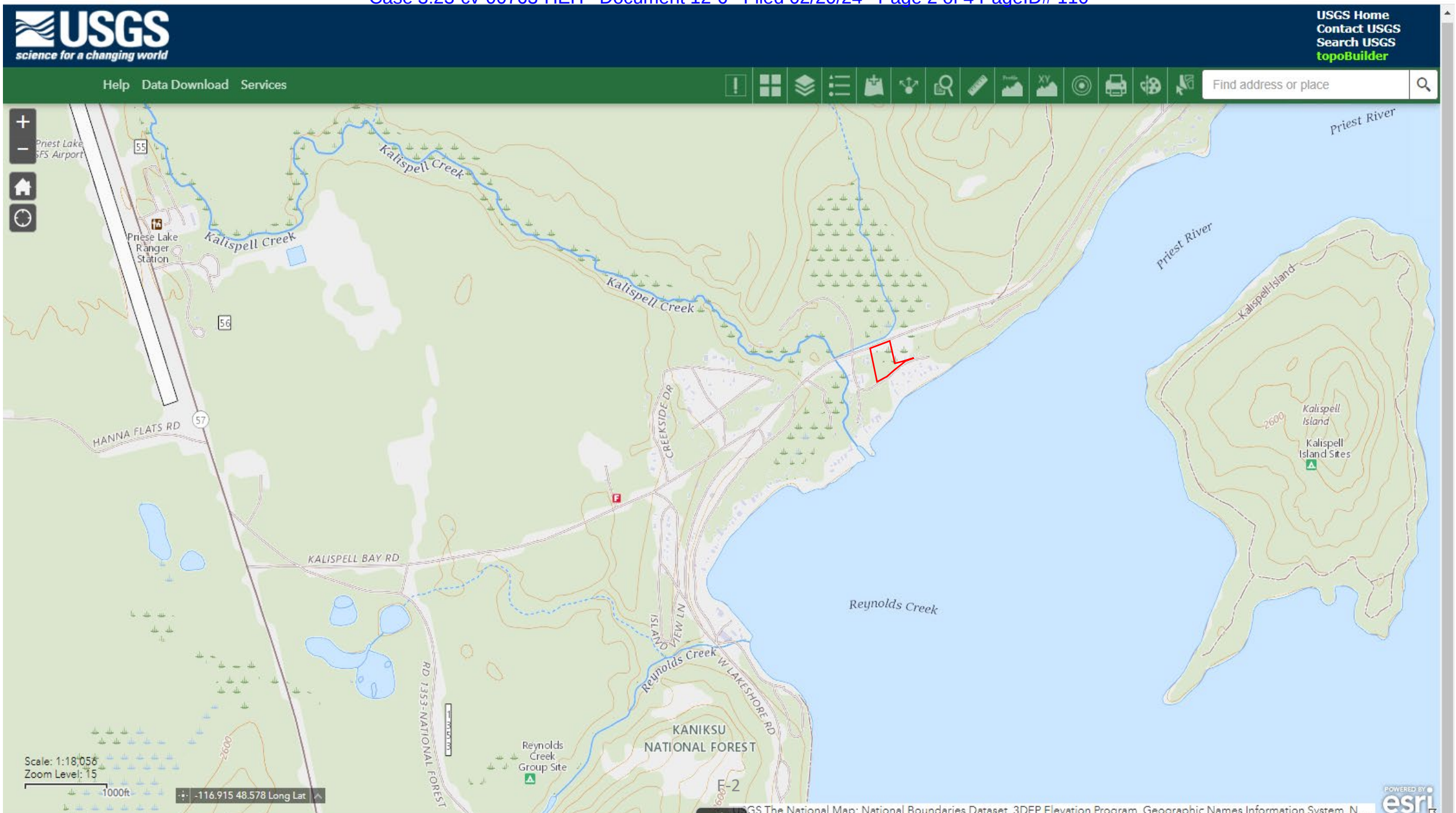
Exhibit F

USGS National Map

https://apps.nationalmap.gov/viewer/

Sacketts – Bonner County, Idaho
1604 Kalispell Bay Road
Maps shown at Level 15, 16
1000-foot, 600-foot scale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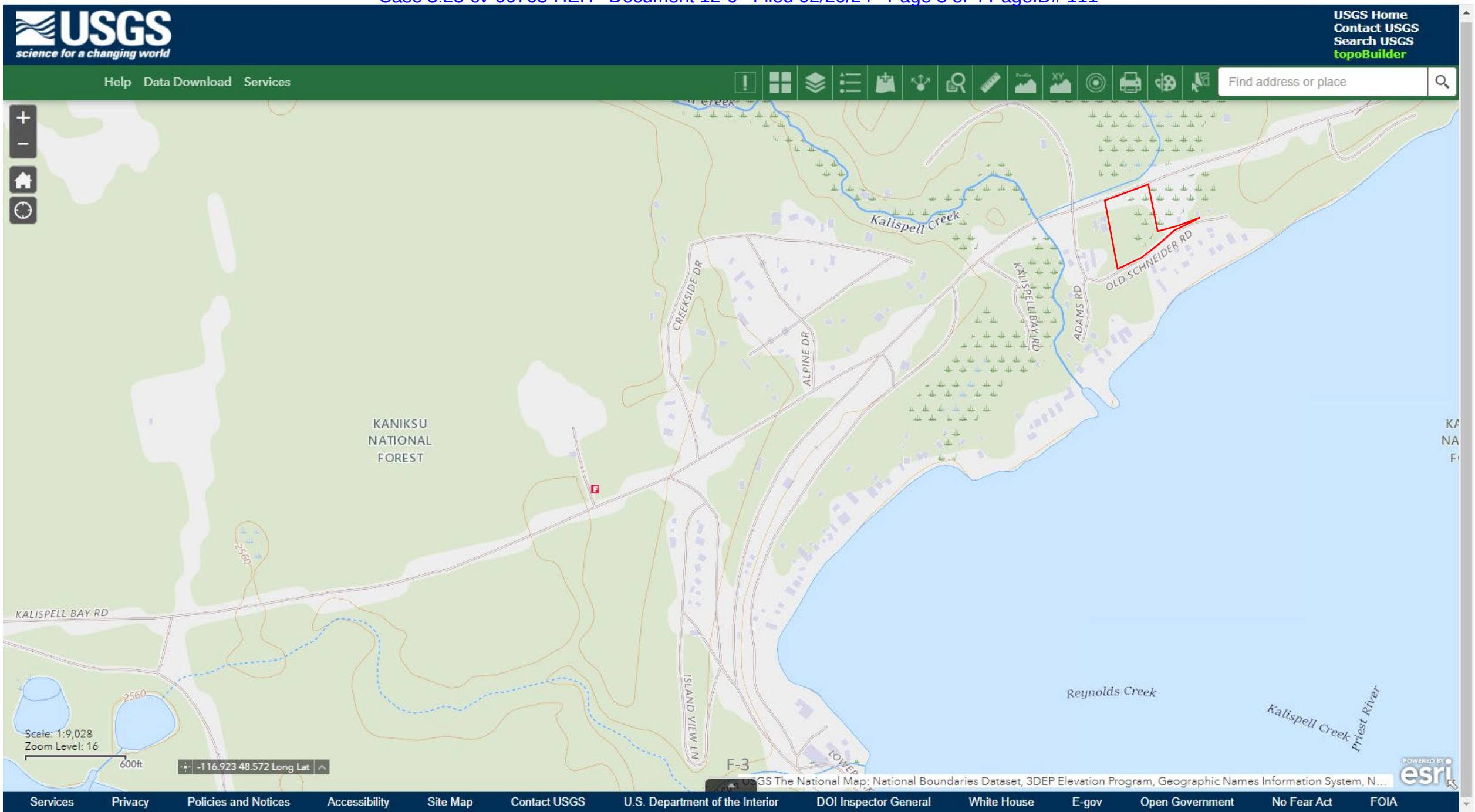
Priest Lake SFS Airport
Priest Lake Ranger Station
Kalispell Creek
Priest River
Kalispell Island
Kalispell Island Sites
HANNA FLATS RD
KALISPELL BAY RD
CREEKSIDE DR
ISLAND VIEW LN
W LAKESHORE RD
RD 1353-NATIONAL FOREST
Reynolds Creek
Reynolds Creek Group Site
KANIKSU NATIONAL FOREST
F-2
Scale: 1:18,056
Zoom Level: 15
1000ft
-116.915 48.578 Long Lat
esri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Kalispell Creek
CREEKSIDE DR
ALPINE DR
KALISPELL BAY RD
ADAMS RD
OLD SCHNEIDER RD
KANIKSU
NATIONAL
FOREST
KALISPELL BAY RD
ISLAND VIEW LN
Reynolds Creek
Kalispell Creek
Priest River
2560
F-3
Scale: 1:9,028
Zoom Level: 16
600ft
-116.923 48.572 Long Lat
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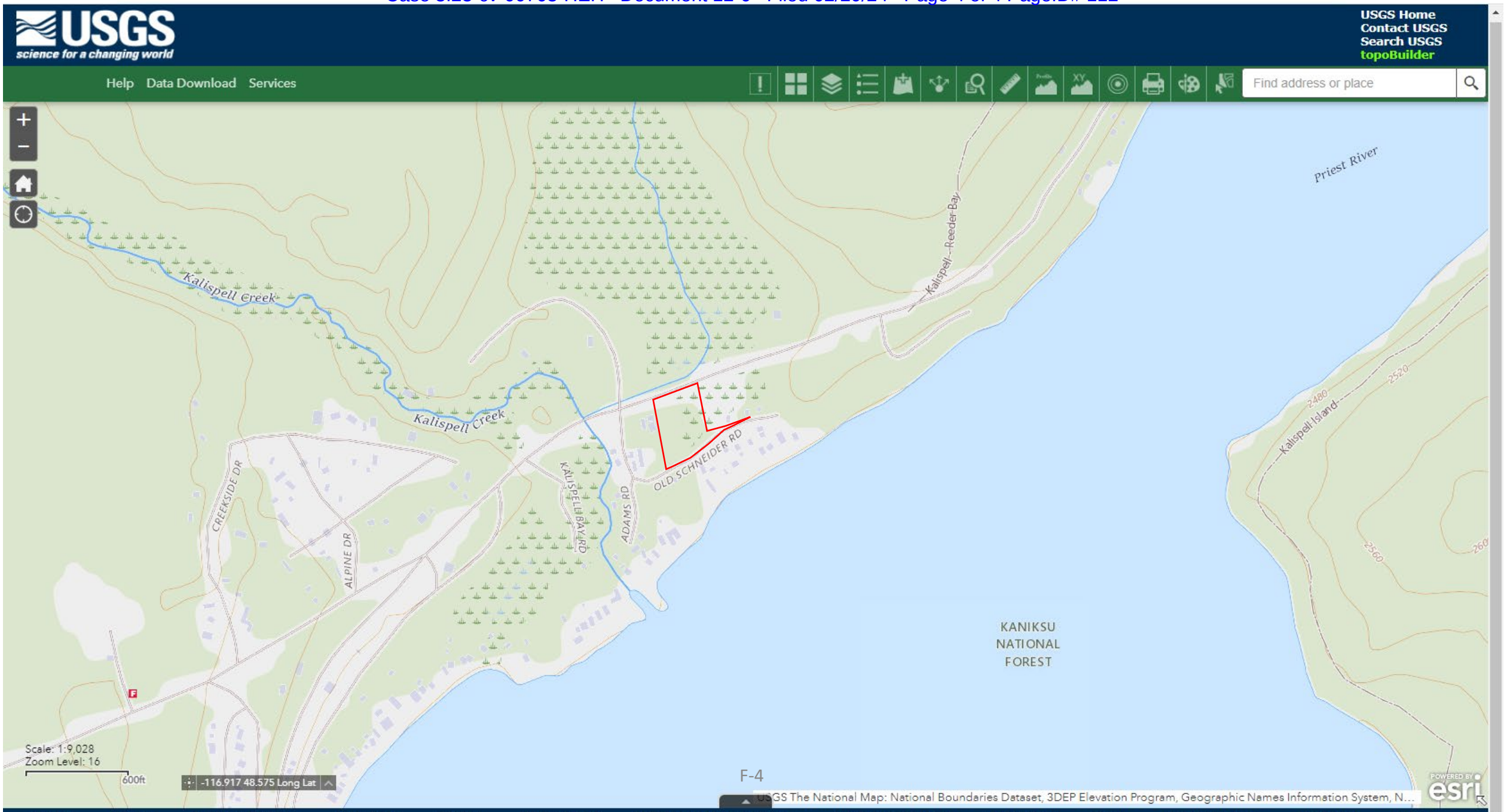
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Kalispell Creek
Kalispell Creek
Kalispell--Reeder Bay
Priest River
Kalispell Island
2480
2520
2560
OLD SCHNEIDER RD
KALISPELL BAY RD
ADAMS RD
CREEKSIDE DR
ALPINE DR
KANIKSU
NATIONAL
FOREST
Scale: 1:9,028
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-116.917 48.575 Long Lat
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