



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
100 CANAL STREET
MOBILE, AL 36602

South Mississippi Branch
Regulatory Division

25 September 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SAM-2022-01250-RCV, Cedar Lake Crossing, Biloxi, Mississippi (MFR 2 of 2)²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Aquatic Resource Name	Location	Water Size	Type of Aquatic Resource	Geographic Authority
W-1	30.43688° N, 88.93315° W	8.6 acres	A7. AJD WETLAND-WOTUS	Section 404

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States* & *Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

The approximately 12-acre site is located north of Brodie Road and east of Cedar Lake Road, within Section 9, Township 7 South, Range 18 West, Latitude 30.43688° North and Longitude 88.93315° West, Biloxi, Harrison County, Mississippi. The site is surrounded by Cedar Lake Road to the west, undeveloped land to the east, Brodie Road to the south, and a powerline easement to the north.

There was a previous AJD completed for this parcel in December 2024. The 2024 AJD indicated that the feature identified as W-1 is a water of the United States and therefore is subject to DA jurisdiction. The 2024 AJD was appealed by the agent in April 2025, then withdrawn after the appeal meeting concluded. A second AJD request was submitted in June 2025 and is the subject of this MFR.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Magnolia Bend/Back Bay of Biloxi, which is a TNW approximately 0.3 miles south of the review area. Magnolia Bend/Back Bay of Biloxi is on the Mobile District's Section 10 Waters list and is therefore a TNW.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

W-1 is a forested wetland that extends approximately 265 feet to the east, outside of the review area, onto the adjacent undeveloped parcel and abuts an unnamed relatively permanent tributary (RPW 1). RPW 1 flows south for approximately 200 feet before entering a culvert under Brodie Road. RPW 1 continues flowing south of Brodie Road, in a southern direction, for approximately 1,600 feet (0.3 mile) before flowing into Magnolia Bend/Back Bay of Biloxi (TNW).

Furthermore, W-1 appears to be part of a larger wetland complex that extends northeast through the adjacent powerline easement and to the north of it, where it abuts a second RPW near the east side of the Reunion Place Subdivision (RPW 2). RPW 2 flows south for approximately 1,400 feet before entering a culvert under Brodie Road. RPW 2 continues flowing south of Brodie Road, in a southern direction, for approximately 1,200 feet (0.2 mile) before flowing into Magnolia Bend/Back Bay of Biloxi (TNW).

6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A.

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A.
- b. Interstate Waters (a)(2): N/A.
- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5): N/A.
- f. The territorial seas (a)(6): N/A.
- g. Adjacent wetlands (a)(7):

W-1 is an 8.6-acre forested wetland that continues eastward outside the review area and directly abuts an unnamed relatively permanent tributary (RPW 1). The District determined that the unnamed tributary east of the subject wetlands is 310 total linear feet. Utilizing information provided by the agent regarding hydrologic contributions from adjacent ditches at Brodie Road, it was determined that the tributary enters a higher order stream south of Brodie Road. The relevant reach was determined to be from Brodie Road northward. Flow characteristics observed downstream were determined to meet the relatively permanent standard. However, these characteristics were not representative throughout the entire evaluated tributary reach, particularly to the north where elevations differ. Field observations indicate that approximately 110 feet (35%) of the tributary is considered non-RPW while approximately 200 feet (65%) has been classified as an RPW. In its entirety, the

329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

majority of the tributary reach had characteristics of relatively permanent flow, therefore, the tributary (RPW 1) was classified as relatively permanent, since greater than 50% of the tributary reach had relatively permanent flow.

W-1 was determined to continue offsite to the east through desktop and field observations of similar elevation and soil types. A review of digital elevation model figures indicate that low elevations continue from W-1 eastward. USGS Web Soil Survey data as well as data from the agent's submitted wetland delineation indicate that Harleston series fine sandy loam and Poarch series fine sandy loam (predominantly non-hydric) exist on site and extend eastward to RPW 2; these series contain Bibb and Smithton soils, which are hydric. Plummer series loamy sand soils (predominantly hydric) are present directly north and east of the site as well.

During a site visit conducted by the Corps on August 18, 2025, approximately 6 inches of standing water, bed and bank characteristics, a defined channel, and ordinary high water mark (OHWM) were observed in RPW 1, directly east of the subject property. Gravel sorting and aquatic fauna including minnows and leopard frogs were also observed in the channel. Furthermore, iron-oxidizing bacteria was observed in the tributary, indicating the stream is partially fed by groundwater rich in iron, leading to the conclusion that the tributary flows more frequently than just in response to precipitation events. These site observations were made during normal antecedent rainfall conditions in a dry season. The last documented rainfall event (0.8 inches) was recorded on August 16, 2025. This further supports the conclusion that the tributary is not solely precipitation-driven and exhibits at least seasonal flow. Additionally, standing water can be observed through aerial imagery in the culvert north of Brodie Road, at RPW 1, in May 2013, June 2019, and April 2022 and the Corps observed standing water in the culvert on both sides of the road in October 2024 and August 2025. Additionally, 2020 and 2024 USGS Biloxi quadrangle topographic maps depict this feature as a solid blue line, indicating it has at least intermittent flow. Further, RPW 1 was described as an "offsite intermittent stream" in a now withdrawn permit application, submitted by Brown, Mitchell, and Alexander, Inc. (SAM-2022-01250-RCV, submitted October 26, 2022). This unnamed tributary is considered relatively permanent based on the desktop and field observations outlined above as well as an intermittent classification according to the North Carolina Methodology for Identification of Intermittent and Perennial Streams. While a rainfall event occurred within 48 hours prior to the site visit, the NC Stream Identification Methodology was still used as a guiding tool to assess the tributary's geomorphology, hydrology, and biological characteristics, all of which support its classification as a relatively permanent water. It is important to note that while recent rainfall may have temporarily influenced hydrological conditions, this does not alter

the overall conclusion regarding the stream's flow characteristics as the other factors evaluated still indicate more than ephemeral flow.

Further, field and desktop observations indicate that W-1 extends offsite to the east/northeast through the powerline easement and north of it, to abut a second RPW east of Reunion Place Subdivision (RPW 2). During a site visit conducted by the Corps on August 18, 2025, approximately 12 inches of flowing water as well as aquatic fauna including minnows, mosquito fish, and bass were observed in RPW 2. These observations were made at locations on the north and south sides of Brodie Road. This feature had a defined channel and OHWM. Additionally, standing water can be observed through aerial imagery in the culvert east of Reunion Place Subdivision (RPW 2), north and south of Brodie Road, in January 2008, May 2013, June 2019, and September 2023 and the Corps observed flowing water in the culvert on both sides of the road in August 2025.

W-1 was determined to extend into the powerline easement through a review of similar elevations and soil types. A review of digital elevation model figures and hydric soils indicate that low elevations as well as hydric soils continue throughout the length of the powerline easement. The agent's submitted delineation, as well as delineations from an open permit application on parcel 1309D-01-005.000 and from the Reunion Place Subdivision indicate the easement contains wetlands. There is a small portion of the easement that was delineated as uplands from SAM-2015-00092, however topographic maps, hydric soil maps, and digital elevation models support the notion that the wetland extends to the north of the easement to abut RPW 2, east of Reunion Place Subdivision. Further, current topographic maps show a stream flowing across the easement and a 1924 Harrison County Soil Map depicts a linear drainage feature in this location.

Because W-1 is part of a larger offsite wetland which abuts two unnamed relatively permanent tributaries, it is jurisdictional because abutting indicates it has a continuous surface connection to a relatively permanent tributary.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A.

⁹ 51 FR 41217, November 13, 1986.

- b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A.
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A.
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "SWANCC," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with SWANCC. N/A.
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Site visit, August 18, 2025.
- b. Office evaluation, September 3-4, 2025.
- c. National Regulatory Viewer (NRV) Digital Elevation Models (DEM) and Hillshade maps, National Hydrography Dataset (NHD) and National Wetland Inventory

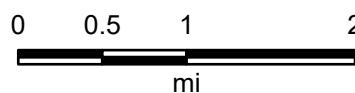
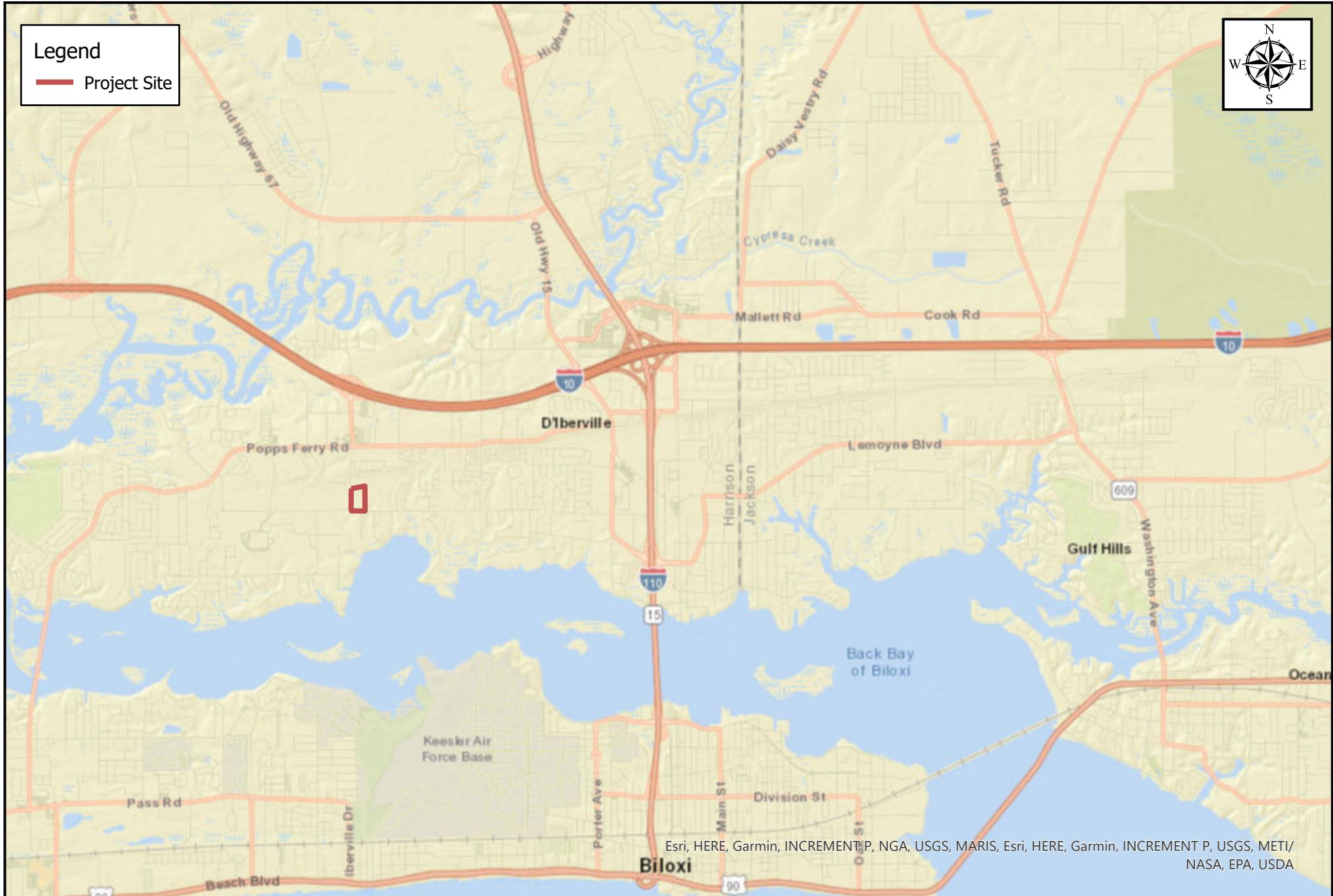
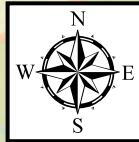
(NWI) data, Web Soil Survey Maps, Historic aerial imagery from Google Earth, TopoView topographic maps, and USGS StreamStats.

- d. Antecedent Precipitation Tool (APT) output from August 18, 2025 site visit.
- e. Wetland delineation report prepared by Brown, Mitchell, & Alexander on July 7, 2022.
- f. Permit application, wetland delineation, decision document, and issued permit from Reunion Place Subdivision (SAM-2015-00092).
- g. Site photos and permit application information from open permit action on eastern adjacent parcel (SAM-2024-00660).

10. OTHER SUPPORTING INFORMATION.

- a. "Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of 'Continuous Surface Connection' Under the Definition of 'Waters of the United States' Under the Clean Water Act", March 12, 2025.
- b. "Memorandum on MVS-2023-00288"

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Map Center: 88.892557°W 30.442127°N



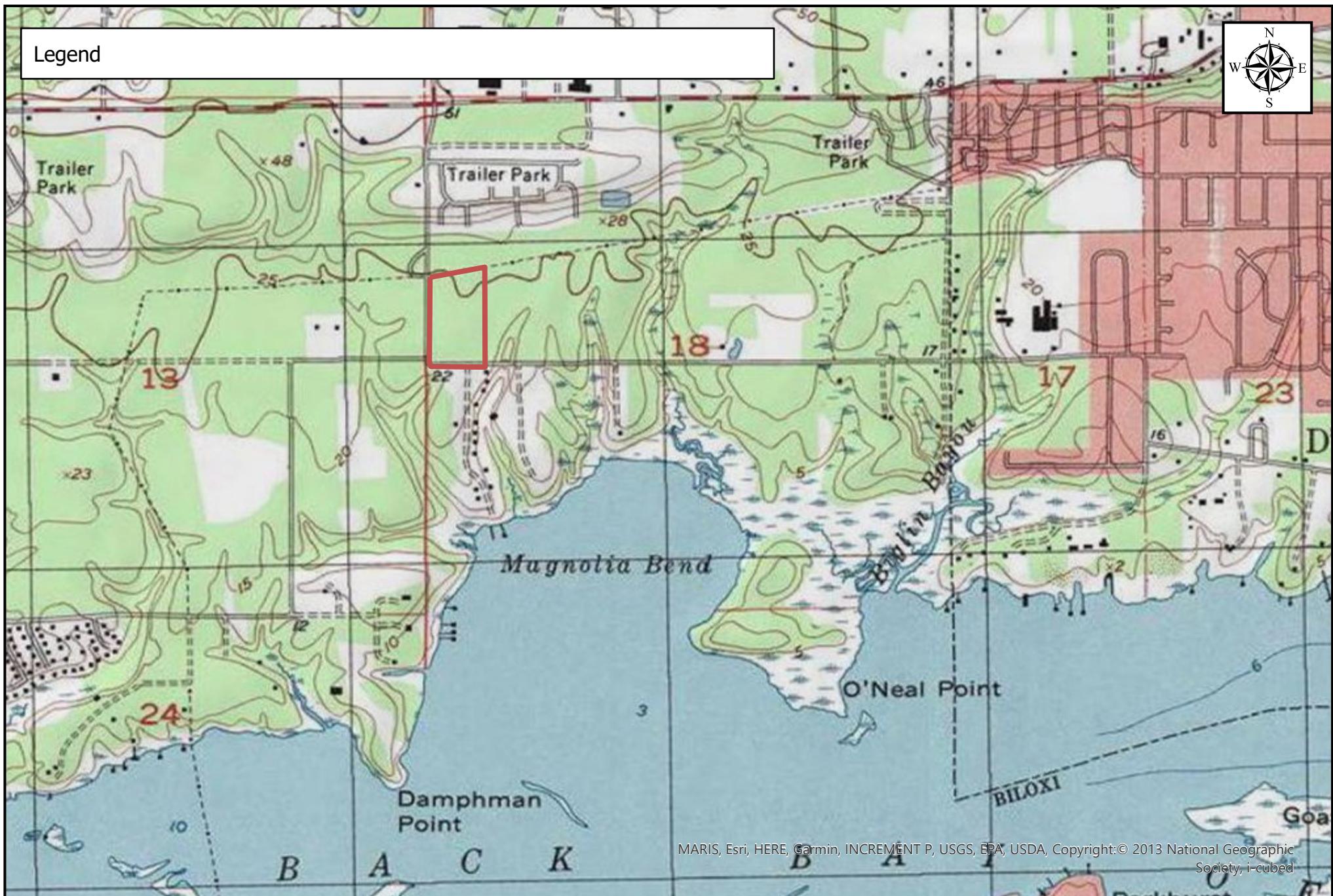
SAM-2022-01250 Vicinity Map

Map Created by: Sarah M. Piesco

Date: 10/18/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

Legend



MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Copyright © 2013 National Geographic Society, i-cubed



SAM-2022-01250 Topo Map

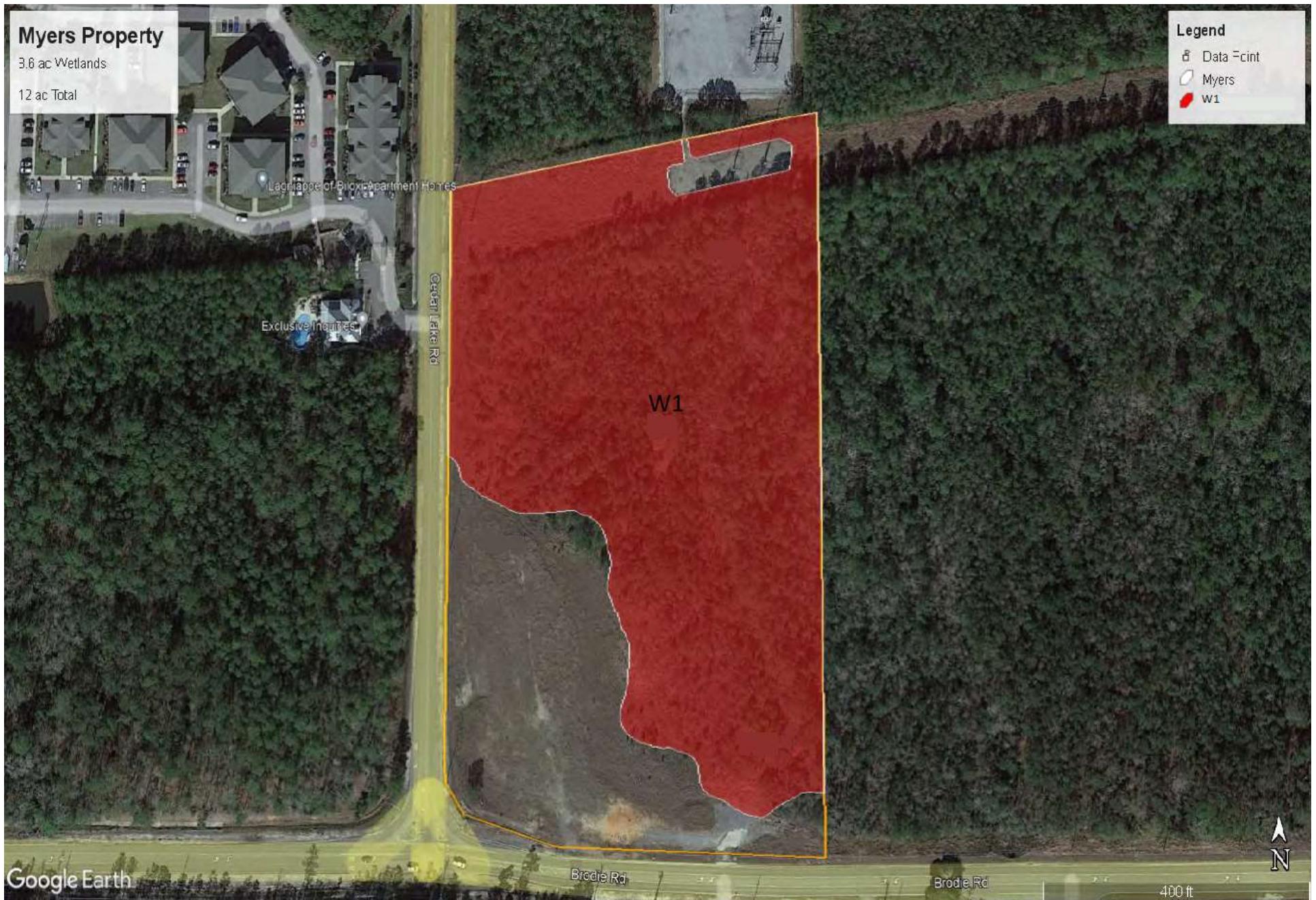
0 0.13 0.25 0.5
mi

Map Center: 88.926314°W 30.432969°N

Map Created by: Sarah M. Piesco

Date: 10/18/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



SAM-2022-01250-RCV Aerial Site Map

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

Mississippi



Find a place

Help

IDENTIFY A STUDY AREA ▾

SELECT SCENARIOS ▾

BUILD A REPORT ▾

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Exploration Tools

General

Measure Tool

Elevation Profile Tool

Show Your Location

Network Navigation

Flow (Raindrop) Path

Network Path

Network Trace

Other

PROSPER Tool

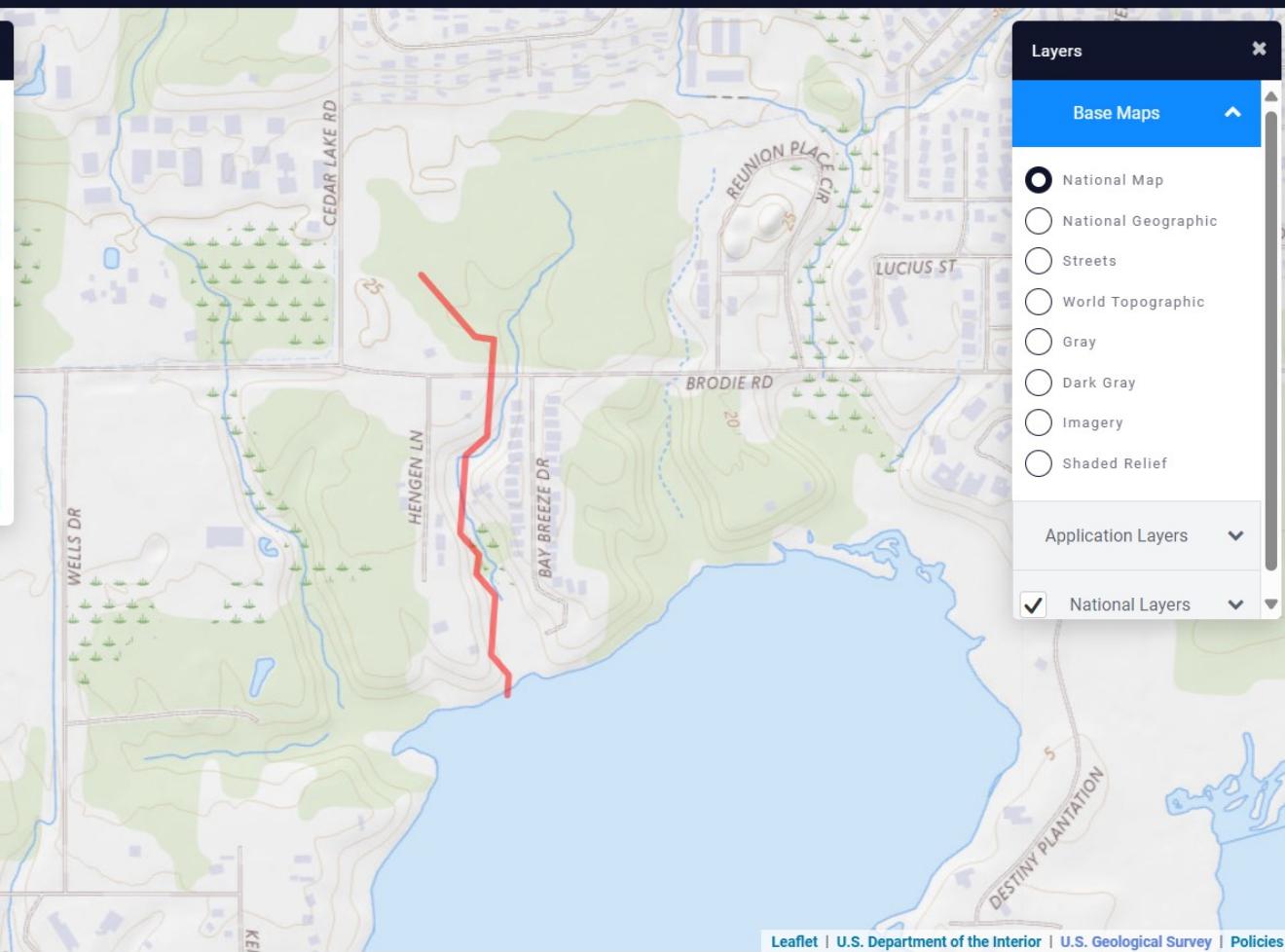
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Map Scale: 1:9,027
Lat: 30.4307, Lon: -88.9370

200 m

500 ft

200 m

500 ft



Layers

Base Maps

- National Map
- National Geographic
- Streets
- World Topographic
- Gray
- Dark Gray
- Imagery
- Shaded Relief

Application Layers

- National Layers

Legend

Project Site

CESAM Section 10

Yes

No

Yes

No

• Miles

National Hydrography Dataset (NHD)

FType, FCode

Perennial

Intermittent

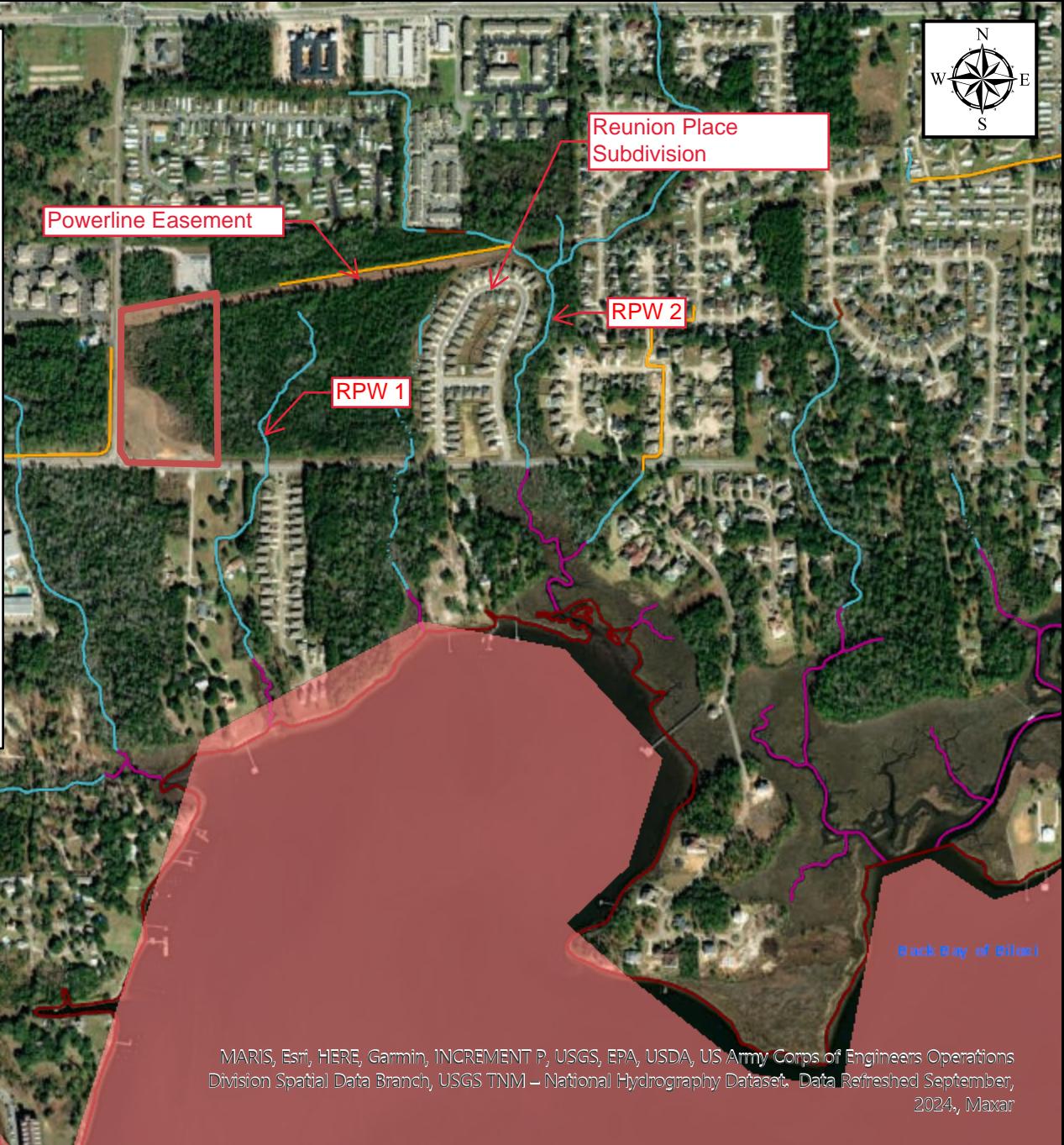
Artificial Path

Canal Ditch

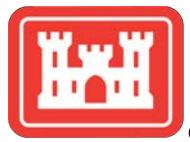
Coastline

Connector

Pipeline



MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, US Army Corps of Engineers Operations Division Spatial Data Branch, USGS TNM – National Hydrography Dataset. Data Refreshed September, 2024, Maxar



SAM-2022-01250 NHD

0 0.1 0.2 0.4
mi

Map Center: 88.932411°W 30.433698°N

Map Created by: Sarah M. Piesco

Date: 10/30/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere