



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

Special Projects Branch
Mobile District, Regulatory Division

March 25, 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-2025-00134-STB Memorandum For Record²

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 Alabama due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

Rationale: Review of the application packet submitted by the applicant's agent (United Consulting), dated February 17, 2025, provided wetland data forms from an onsite wetland delineation of the property. The wetland data forms indicated the property lacked at least one of the three wetland classification parameters consistent with the USACE definition of a wetland. Notably, the site lacked consistent hydrology at both sample locations, which were representative of the lower and higher topographic elevations within the subject property. The USACE project manager conducted a remote desktop analysis on March 18, 2025, to confirm and identify any potential discrepancies that may indicate the presence of any aquatic features at the subject site. The PM reviewed historical topographic maps (1960, 2014, and 2024), USDA Soil Reports, 3DEP Hillshade Imagery and Digital Elevation Models, and historical aerial imagery (1953, 1968, and 2009); these resources did not indicate the presence of any existing aquatic resources on the premise and further support the applicant's original submission.

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)

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3. REVIEW AREA. The project area is a 4.84 acre parcel (Parcel Number 26 04 20 3 001 017.00), approximately 400 feet east of North Main Street in Atmore, Escambia County, Alabama. The central geographic coordinates for the property are 31.033182 North and -87.491910 West; in Section 20, Township 1 North, Range 6 East.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED..⁶ N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS : N/A
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
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant

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

references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A; There are no TNWs within the proposed project area. The entire proposed project area consists of uplands.
- b. Interstate Waters (a)(2): N/A; There are no Interstate Waters within the proposed project area. The entire proposed project area consists of uplands.
- c. Other Waters (a)(3): N/A; There are no Other Waters within the proposed project area. The entire proposed project area consists of uplands.
- d. Impoundments (a)(4): N/A; There are no Impoundments within the proposed project area. The entire proposed project area consists of uplands.
- e. Tributaries (a)(5): N/A; There are no Tributaries within the proposed project area. The entire proposed project area consists of uplands.
- f. The territorial seas (a)(6): N/A; There are no territorial seas within the proposed project area. The entire proposed project area consists of uplands.
- g. Adjacent wetlands (a)(7): N/A; There are no adjacent wetlands within the proposed project area. The entire proposed project area consists of uplands.

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
- 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

⁹ 51 FR 41217, November 13, 1986.

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. Supplied application packet from the applicant’s agent (United Consulting), dated February 17, 2025. Contents include National Wetland Inventory (NWI) analysis, location maps, soil survey map, soil sample point locations, associated USACE wetland data forms, and soil survey photosets.
 - b. National Regulatory Viewer (NRV), accessed on March 18, 2025; NRV assessment includes evaluation of 3DEP Hillshade Imagery and Digital Elevation Models. Figures are retained in the applicable administrative record.
 - c. Historical aerial imagery was obtained through the University of Alabama’s imagery database (<https://alabamamaps.ua.edu/aerials.html>); accessed on March 18, 2025). Figures are retained in the applicable administrative record.

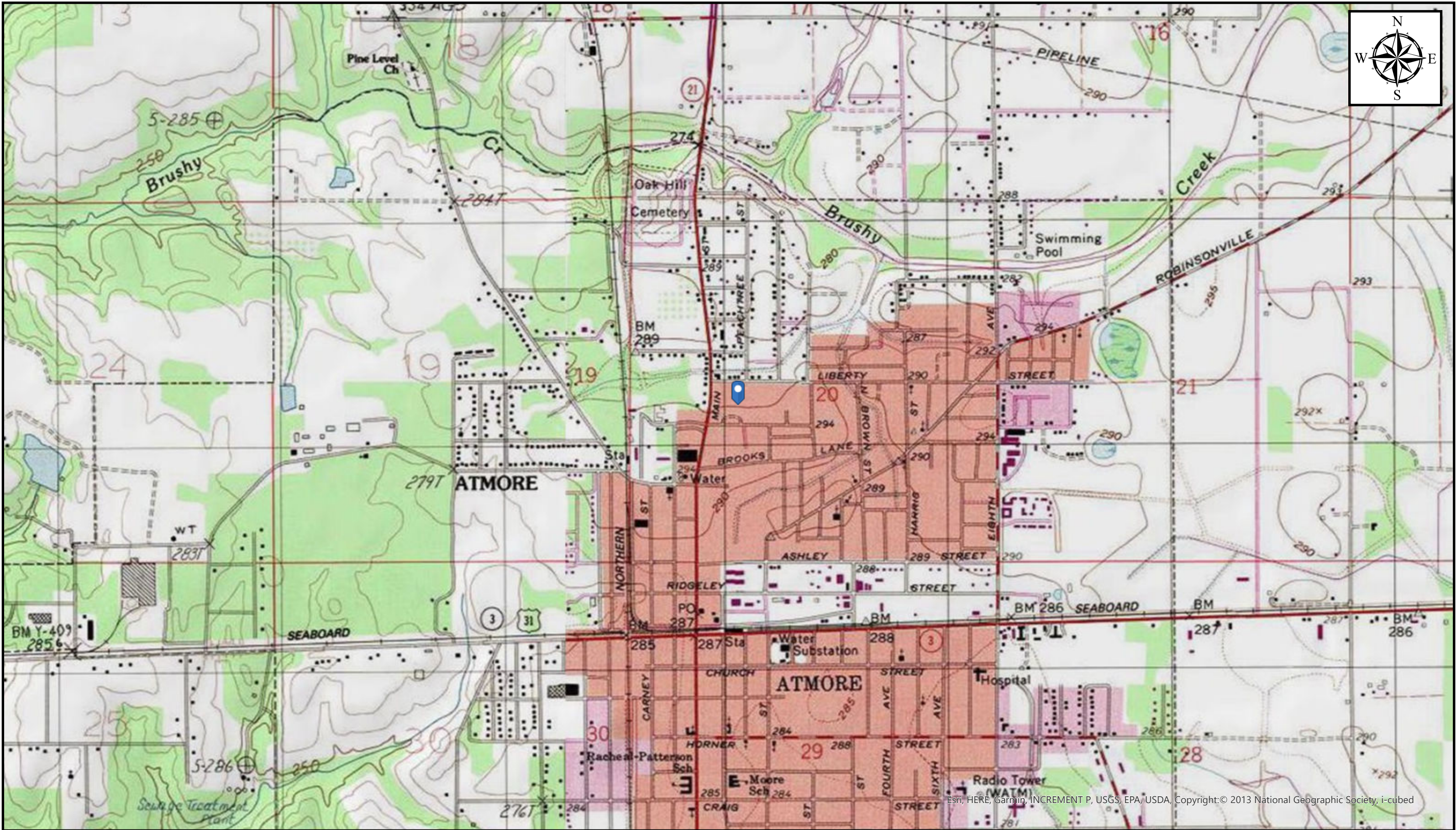
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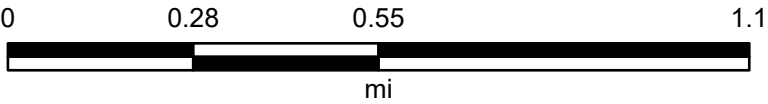
- d. Historical topographical imagery was obtained through TopoView (<https://ngmndb.usgs.gov/topoview/viewer/>; accessed on March 18,2025). Figures are retained in the applicable administrative record.

10. OTHER SUPPORTING INFORMATION. N/A

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



SAM-2025-00134-STB // Location Map on USGS Topo //
Department of the Army



Map Center: 87.492351°W 31.032697°N

Map Created by: Samuel T. Barber
Date: 3/18/2025

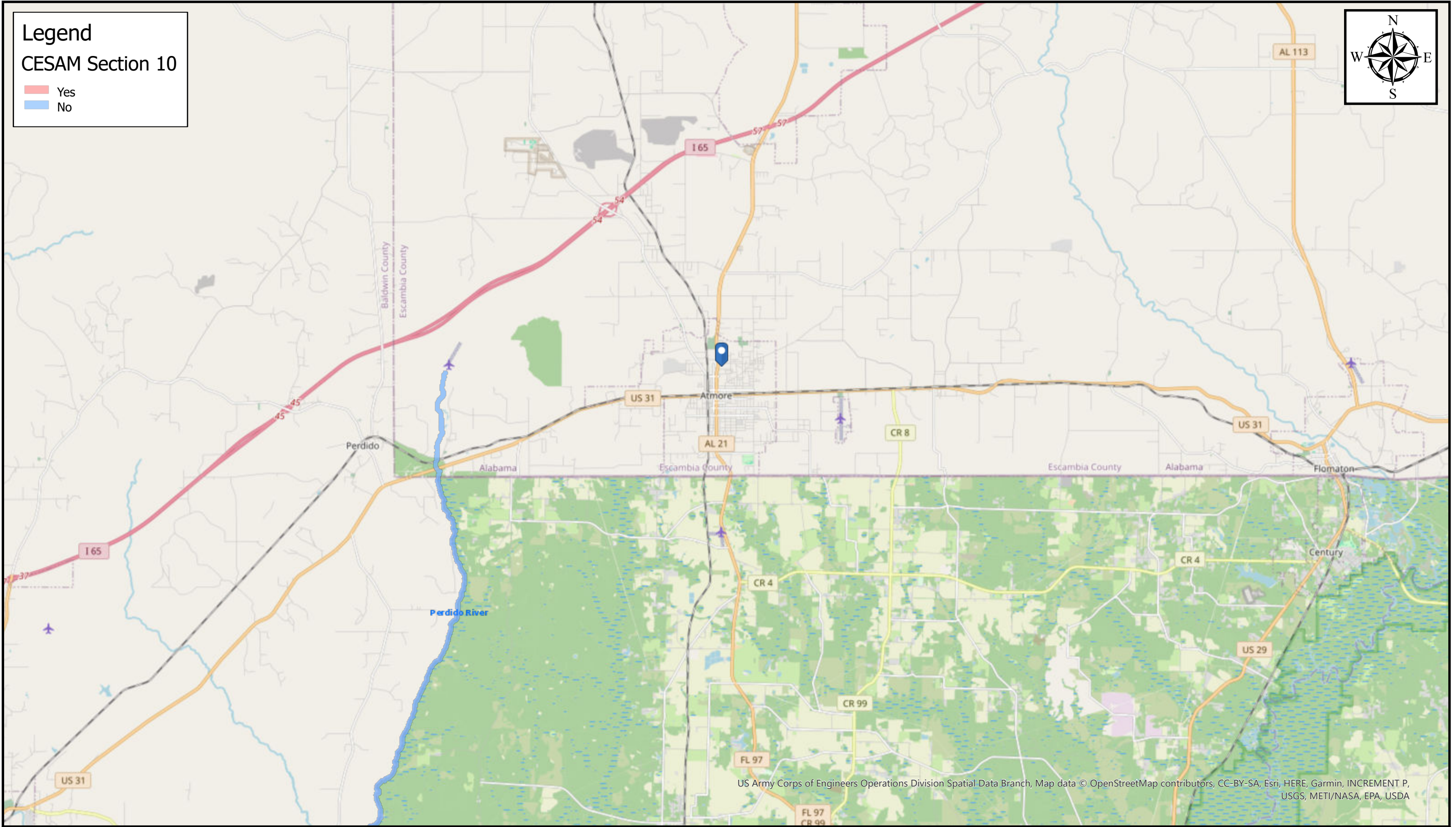
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

Legend

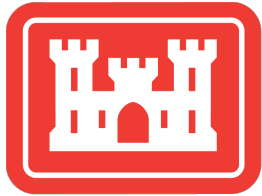
CESAM Section 10

Yes

No



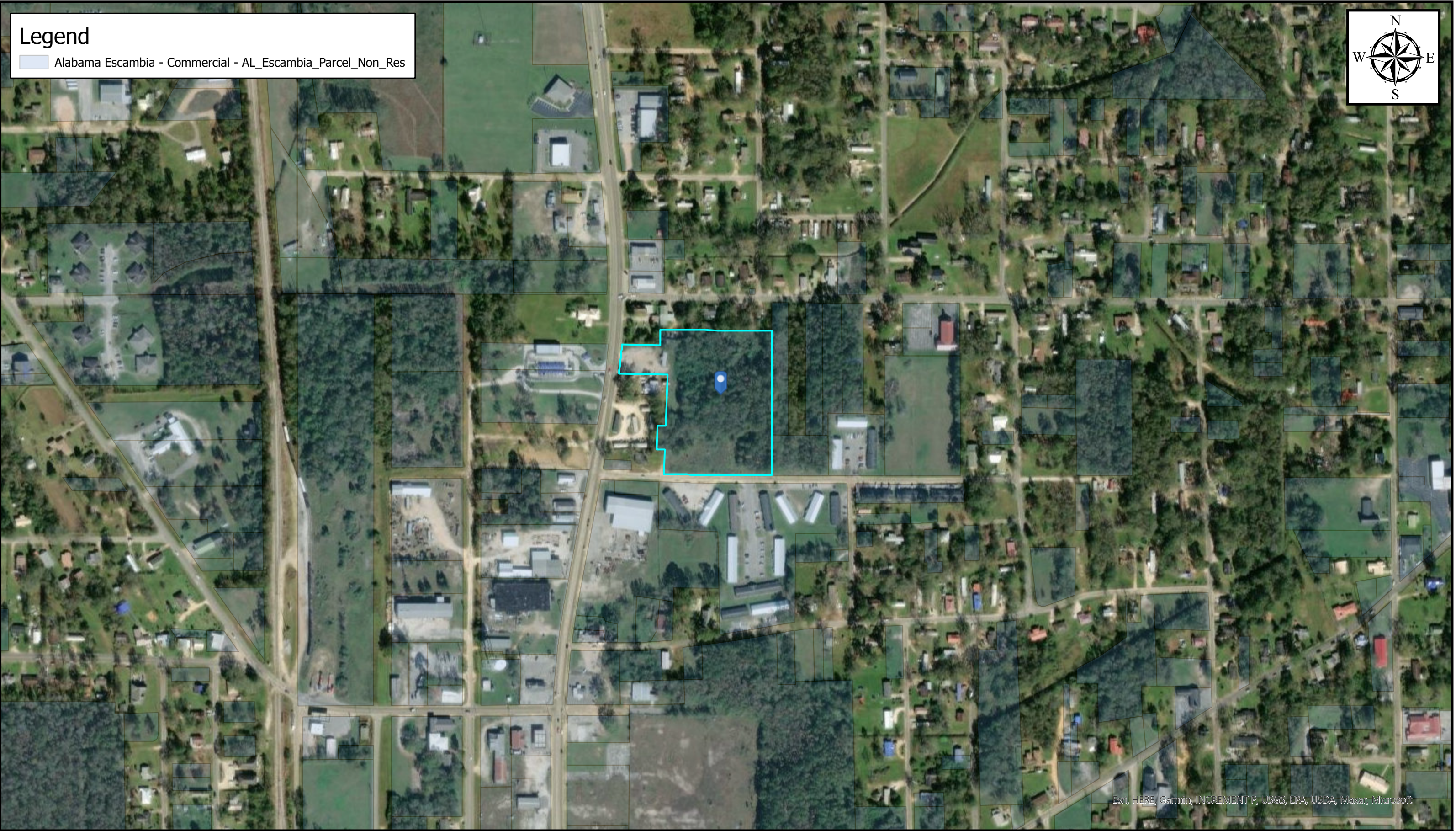
US Army Corps of Engineers Operations Division Spatial Data Branch, Map data © OpenStreetMap contributors, CC-BY-SA, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA



SAM-2025-00134-STB // Location Map with CESAM Section 10 Waters // Department of the Army



Map Created by: Samuel T. Barber
Date: 3/18/2025
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

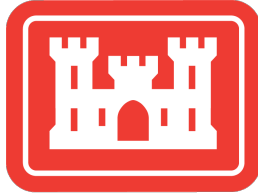


Legend

Alabama Escambia - Commercial - AL_Escambia_Parcel_Non_Res

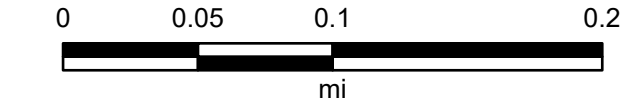


Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Maxar, Microsoft



®

**SAM-2025-00134-STB // Parcel Map // Parcel Number 26 04 20
3 001 017.000; Atmore, Escambia County, Alabama //**
Department of the Army



Map Center: 87.491848°W 31.032965°N

Map Created by: Samuel T. Barber

Date: 3/18/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere




UNITED
CONSULTING

Prepared:	LSAS	Title:	Soil Survey Map
Checked:	DPH	Project:	Main Street Crossing
Date:	2/17/2025	Project No.	INVIC-24-AL-09037-01
Scale:	See Above	Client:	Main Street Crossing, LLC

FIG. 4

SAM-2025-00134-STB // Department of the Army



 <div>UNITED CONSULTING</div>	<div>Figure Scale</div> <div><div><div>N</div><div>0150300</div></div><div>1 inch = 200 feet</div></div>	Prepared:	MA	Title:	Plot Sample Locations	FIG. 5
		Checked:	DH	Project:	Main Street Crossing	
		Date:	02/17/25	Project No.	INVIC-24-AL-09037-01	
				Client:	Main Street Crossing, LLC	

31.033182, -87.491910



Subject Site //
Hillshade and
3DEP Imagery

SAM-2025-00134-STB //
Department of the Army