



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
00 VESTAVIA PARKWAY, SUITE 203
THE SHELBY BUILDING
VESTAVIA HILLS, AL 35216

CESAM-RD-N

6 October 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-2025-00196-MH9, MFR 1 of 1²

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

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.

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AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Alabama 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).
 - i. Pond 1, non-jurisdictional, preamble waters.
 - ii. Pond 2, non-jurisdictional, preamble waters.
 - iii. Wetland 2, jurisdictional impoundment.
 - iv. EPH1, non-jurisdictional, non-relatively permanent waters.
 - v. EPH2, non-jurisdictional, non-relatively permanent waters.
 - vi. EPH3, non-jurisdictional, non-relatively permanent waters.
 - vii. EPH4, non-jurisdictional, non-relatively permanent waters.
 - viii. EPH5, non-jurisdictional, non-relatively permanent waters.

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 review area for this AJD is limited to the features identified as Pond 1, Pond 2, Wetland 2, EPH1, EPH2, EPH3, EPH4, and EPH5 within an approximately 168-acre forested tract located in Forestdale, Jefferson County,

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Alabama. The center coordinates are Latitude 33.620380, Longitude -86.892630 and located in the Locust 8-digit hydrologic unit code (HUC) 03160111. The attached figures depict the review area. Features INT1, INT2, INT3, INT4, INT5, INT6, PER1, Wetland 1, Wetland 3, and Wetland 4 are being reviewed under a PJD.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶ Locust Fork, approximately 6.85 miles northwest of the review area, is the nearest TNW to which the aquatic resources are connected. Locust Fork is on the Mobile District's Section 10 waters list and is therefore a TNW. Locust Fork becomes a Section 10 water near river mile 22.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

Pond 1 is located in the southcentral portion of the property boundary. Pond 1 drains into a swale-like feature that drains to Wetland 2. Desktop review of the 3DEP Hillshade layer indicate that Wetland 2 drains through a breach in the berm on its northern boundary, then flows into INT5, which flows through Wetland 1. INT5 flows for approximately 153 linear feet within Wetland 1, where its channel diffuses into Wetland 1. The channel is re-established at the northern boundary of Wetland 1 where it drains through a culvert and flows north for approximately 155 linear feet, then exits the property boundary. INT5 continues its flow path for 35.5 linear feet, then drains into Fivemile Creek. Fivemile Creek meanders generally northwest for 19.6 miles, then drains into Locust Fork near river mile 27. Locust Fork becomes a designated Section 10 water near river mile 22.

Wetland 2 is a 0.4-acre impoundment that drains into INT5 through a breach in the berm (INT6) on its northern boundary and follows the flow path as described above.

Pond 2 is located in the southcentral portion of the property boundary, approximately 140 linear feet east of Pond 1. Pond 2 is surrounded by a berm that does not have an outlet; therefore, Pond 2 does not have a flow path to a TNW, interstate water or territorial seas.

EPH1 is a non-relatively permanent tributary that is located in the northern section of the project site. EPH1 flows northwest for 816 linear feet, then converges with

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.

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PER1. PER1 flows southwest for approximately 418 linear feet, then exits the project boundary. PER1 continues to flow generally southwest for approximately 371 linear feet, then re-enters the project site and flows southwest for 57 linear feet, then exits the project site. The flow path of PER1 continues offsite, flowing generally southwest for approximately 75 linear feet, and re-enters the project site and flows southwest for 91 linear feet, then exits the project site. PER1 continues its south by southwest flow path for 213 linear feet, re-enters the project site and flows southwest for 170 linear feet, then exits the site and drains into Fivemile Creek. Fivemile Creek meanders generally northwest for approximately 19.1 miles, then converges with Locust Fork near river mile 27. Locust Fork becomes a designated Section 10 water near river mile 22.

EPH5 is a non-relatively permanent tributary that is located in the northern section of the project site. EPH5 enters the project site on its eastern border, flows northwest for approximately 316 linear feet and then drains into EPH1. EPH1 continues its flow path as described above.

EPH2 is a non-relatively permanent tributary that is located in the west-central section of the project site. EPH2 flows northwest for approximately 175 linear feet, exits the project boundary, then drains into Fivemile Creek. Fivemile Creek meanders generally northwest for approximately 19.37 miles, then converges with Locust Fork near river mile 27.

EPH3 is a non-relatively permanent tributary that is located in the east-central section of the project site. EPH3 enters the project site on the eastern border and flows southwest for approximately 256 linear feet then exits the project boundary on its southern border. EPH3 continues flowing southwest off-site for approximately 135 linear feet, then drains into Fivemile Creek. Fivemile Creek flows south for approximately one mile, then bends to the north for approximately 1.5 mile, then meanders generally northwest for approximately 19.65 miles before it converges with Locust Fork near river mile 27.

EPH4 is a non-relatively permanent tributary that is located in the east-central section of the project site. EPH4 flows generally south for approximately 515 linear feet, then drains into with EPH3. EPH3 continues its flow path as described above.

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 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):

Wetland 2 is a 0.40-acre impoundment centered at Latitude 33.61701, Longitude -86.8967. A berm is present on the northern boundary of this feature, and field observation indicated that a leak in the berm carries flow through INT6 and into INT5. The berm's breach is also apparent on the 3DEP Hillshade layer. This feature is depicted on the USGS topo maps as a pond. Due to the presence of a relatively permanent tributary and wetlands immediately downstream of the

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.

berm, it was concluded that this is a jurisdictional impoundment (impoundment of relatively permanent waters).

- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).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.

In accordance with the preamble to the 1986 regulations, the agencies generally do not consider the following waters to be waters of the U.S.: Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States (see 33 CFR 328.3(a)).

Pond 1 is a 0.82-acre pond centered at Latitude 33.61709, Longitude -86.8959. The USDA soil survey indicates the soil type in this area is Sullivan-State complex, which are not hydric soils. United States Geologic Survey (USGS) topographic maps and historic aerial imagery indicate that Pond 1 was created in uplands incidental to historic mining operations; therefore, Pond 1 is not jurisdictional.

Pond 2 is a 0.07-acre pond centered at Latitude 33.617495, Longitude -86.895163. The USDA soil survey indicates the soil type in this area is Palmerdale complex, which are not hydric soils. USGS topographic maps and historic aerial imagery indicate that Pond 2 was created in uplands incidental to historic mining operations; therefore, Pond 2 is not jurisdictional.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic

⁹ 51 FR 41217, November 13, 1986.

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).

EPH1 is centered latitude 33.622607, longitude -86.892712 in the northern section of the project site and is approximately 897 linear feet in length. EPH1 was determined to be non-jurisdictional based observations during the June 16, 2025 site visit that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after rain events; bank features were lacking, and baseflow was not observed. Further, at the time of the site visit, leaf litter and rooted upland plants were observed in the subtle channel.

EPH2 is centered at latitude 33.618348, longitude -86.89497. EPH2 flows for approximately 175 linear feet from the west-central section of the project site to the property boundary. EPH2 was determined to be non-jurisdictional based on review of on-site photographs and descriptions by the Agent that provided

evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after rain events. For these reasons, EPH2 was determined to have non-relatively permanent flow regime.

EPH3 is centered at latitude 33.617424, longitude -86.887423. EPH3 flows for approximately 247 linear feet from the east-central section of the project site to the property boundary. EPH3 was determined to be non-jurisdictional based on review of on-site photographs and descriptions by the Agent that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after rain events. For these reasons, EPH3 was determined to have non-relatively permanent flow regime.

EPH4 is centered at latitude 33.618579, longitude -86.888185. EPH4 flows for approximately 515 linear feet from the east-central section of the project site to the property boundary. EPH4 was determined to be non-jurisdictional based on review of on-site photographs and descriptions by the Agent that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after rain events. For these reasons, EPH4 was determined to have non-relatively permanent flow regime.

EPH5 is centered at latitude 33.621755, longitude -86.891525. EPH5 flows for approximately 316 linear feet from the northern section of the project site to the property boundary. EPH5 was determined to be non-jurisdictional based on review of on-site photographs and descriptions by the Agent that provided evidence that the tributary is a non-relatively permanent water, lacking year-round flow or seasonal flow, and only flowing during and immediately after rain events. For these reasons, EPH5 was determined to have non-relatively permanent flow regime.

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 was conducted with a Mobile District project manager and the consultant (Grow Environmental Solutions) on June 16, 2025. In office evaluation using desktop resources was completed on October 2, 2025.
 - b. Site Maps 1-5 of Grow Environmental Solutions' "Jurisdictional Determination Report"; March 18, 2025.

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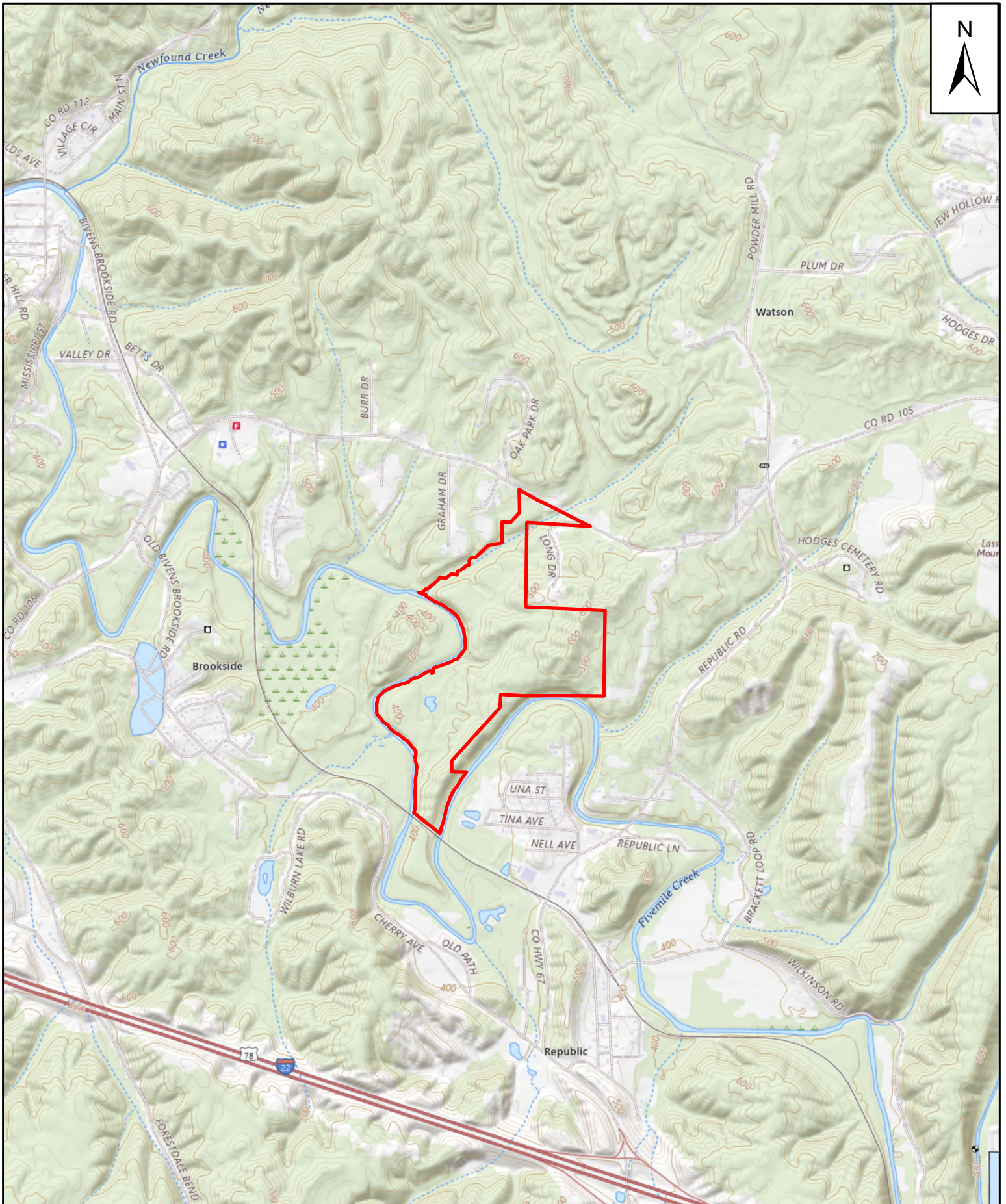
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2025-00196-MH9

- c. Grow Environmental Solutions' Updated Water Resource Maps; June 23, 2025.
- d. National Regulatory Viewer – USGS Topo map, National Hydrology Dataset, USFWS Wetlands Map, NRCS Soil Web Map, 3DEP: Hillshade, Digital Elevation Model, and 2-ft Contour; accessed September 26, 2025, September 29, 2025, and October 1, 2025.
- e. Alabama Maps, Historic aerial photography, <https://alabamamaps.ua.edu/aerials/Counties/Jefferson/Jefferson.html>; accessed September 29, 2025.
- f. United States Geological Survey, Adamsville Quadrangle, Alabama – Jefferson County, 7.5 Minute Series, 1993, 1:24,000; accessed October 2, 2025.

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. 'Training: 2025 Continuous Surface Connection Guidance'; Office of the Assistant Secretary of the Army and United States Environmental Protection Agency (April 29, 2025)

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.



LEGEND

 PROJECT BOUNDARY

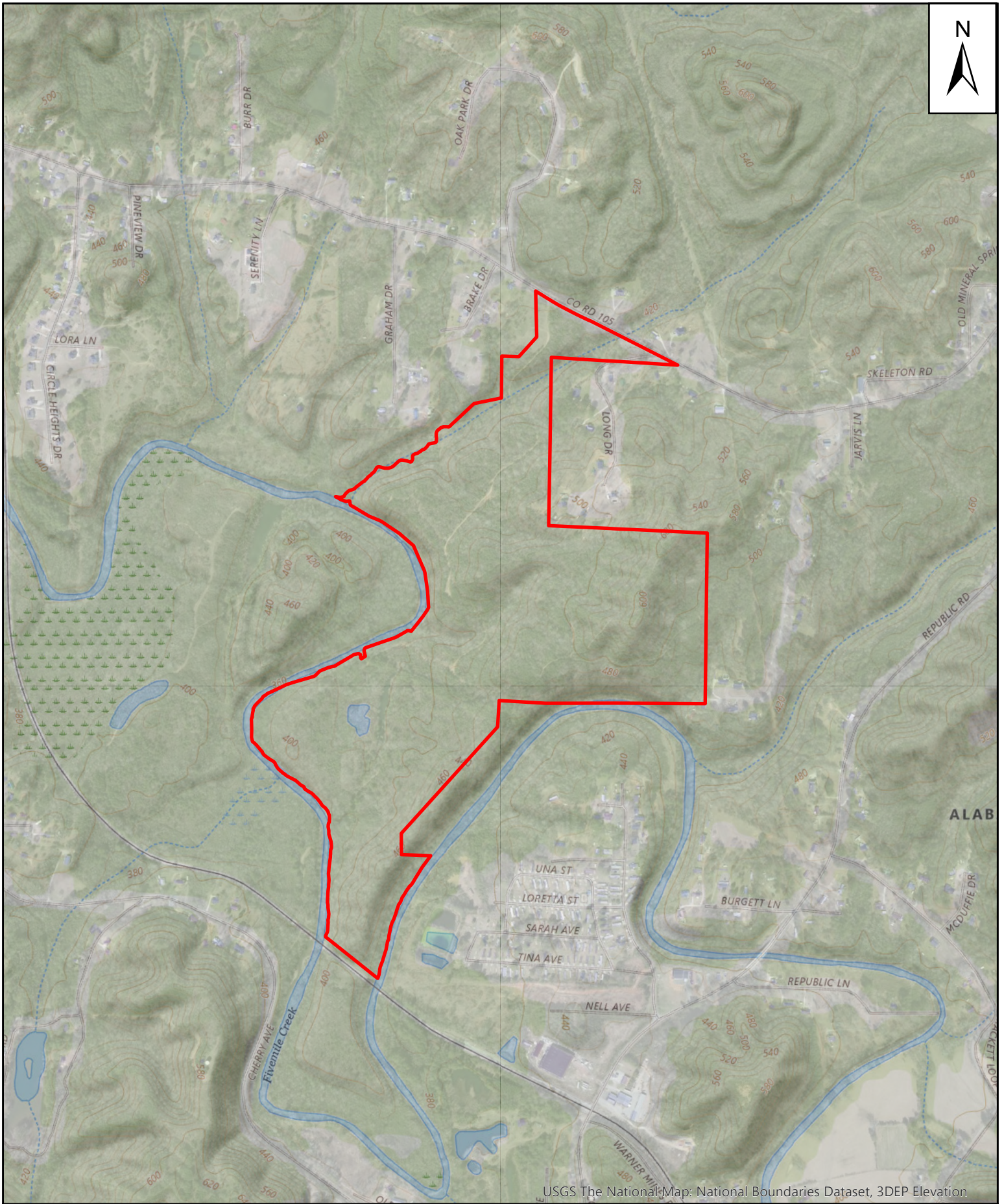
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SCALE IN FEET

Coordinate System: NAD 1983 (2011)
State Plane Alabama West

SITE LOCATION MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





LEGEND



PROJECT BOUNDARY

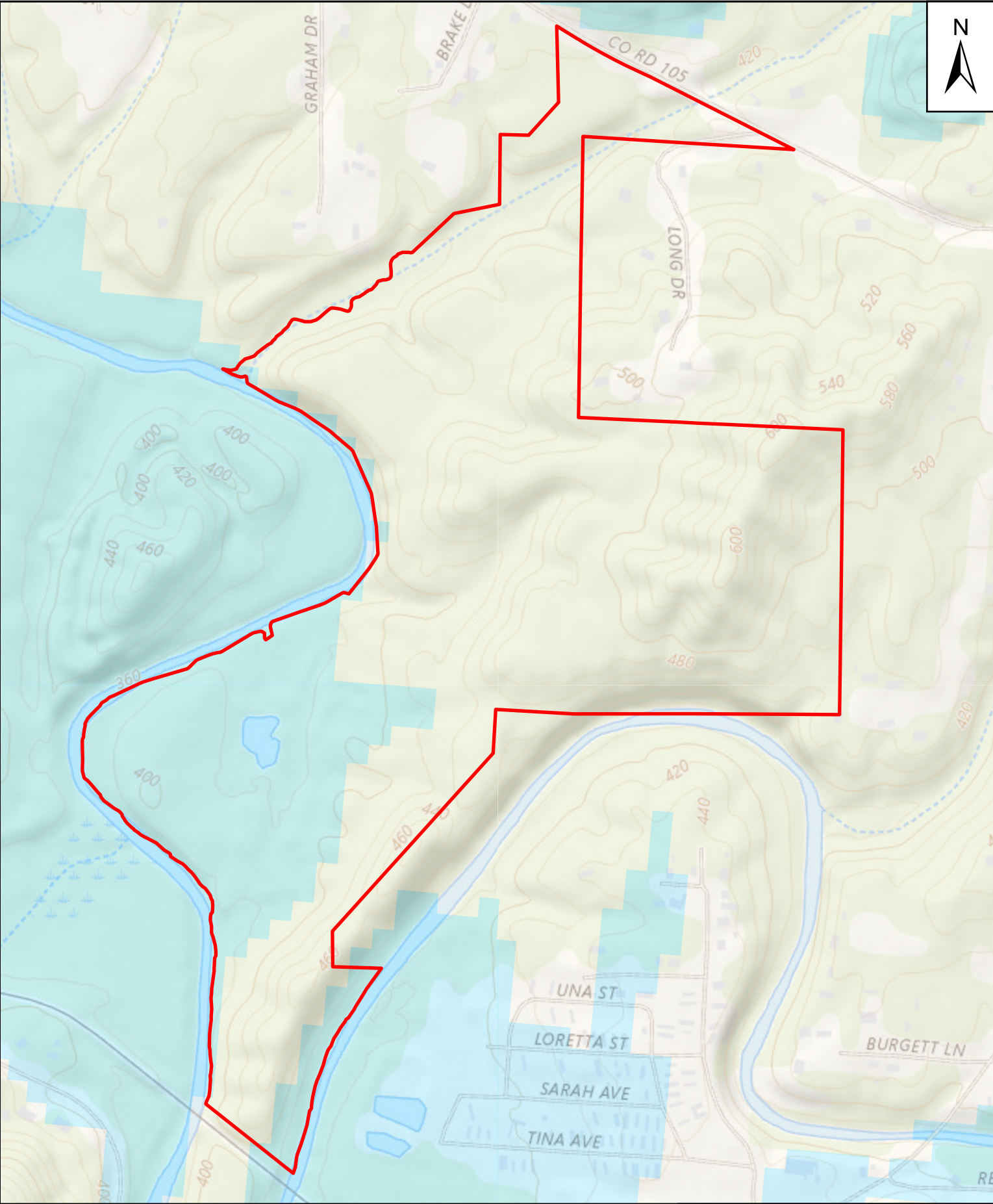
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SCALE IN FEET

Coordinate System: NAD 1983 (2011)
State Plane Alabama West

SITE VICINITY MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





LEGEND

USA SSURGO - Soil Hydric Class
ClassName

- Not Hydric
- Partially Hydric (1 - 25%)
- Partially Hydric (26 - 50%)
- Partially Hydric (51 - 75%)
- Partially Hydric (76 - 95%)
- All Hydric

PROJECT

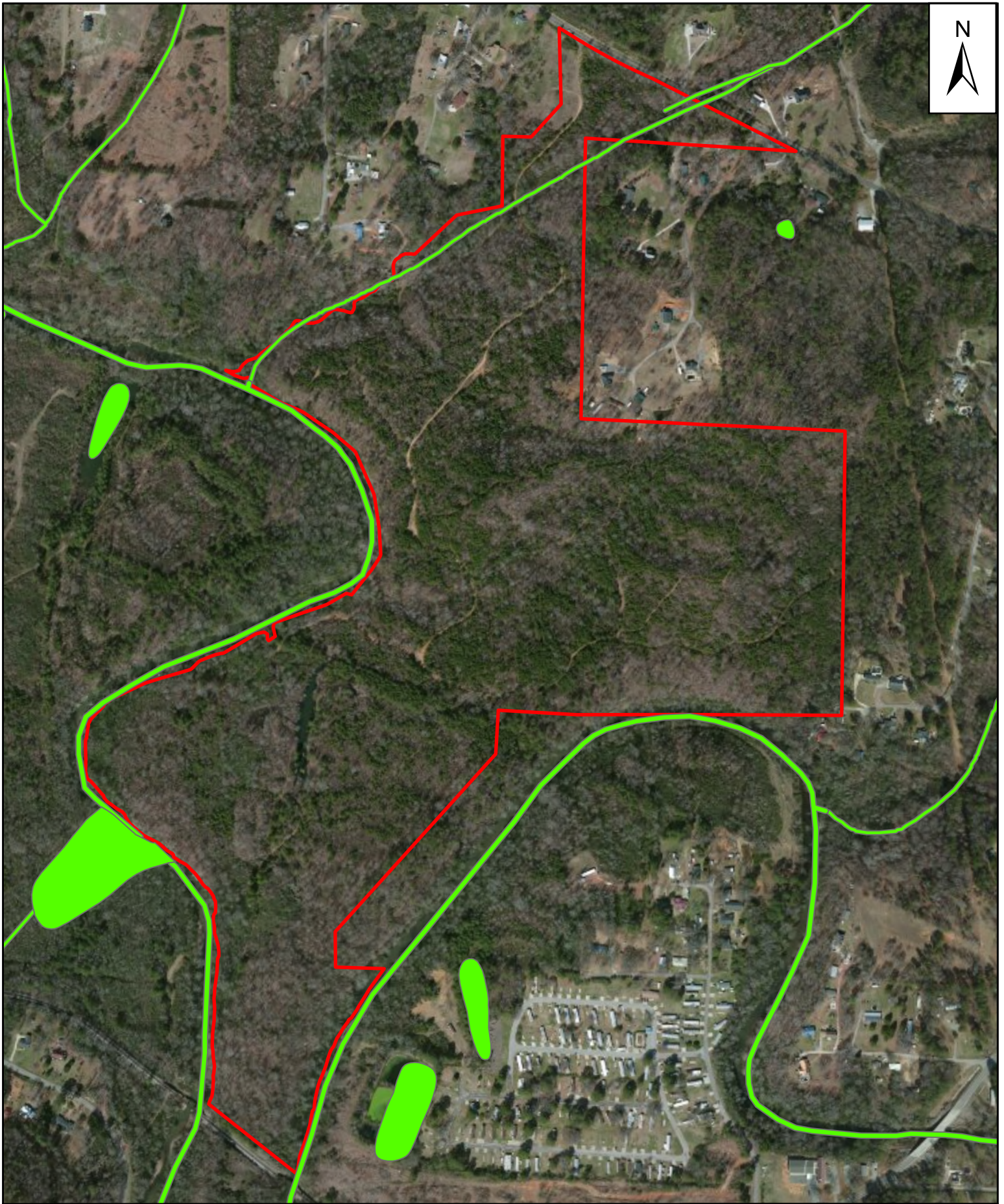
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SCALE IN FEET



Coordinate System: NAD 1983 (2011)
State Plane Alabama West

HYDRIC SOIL MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





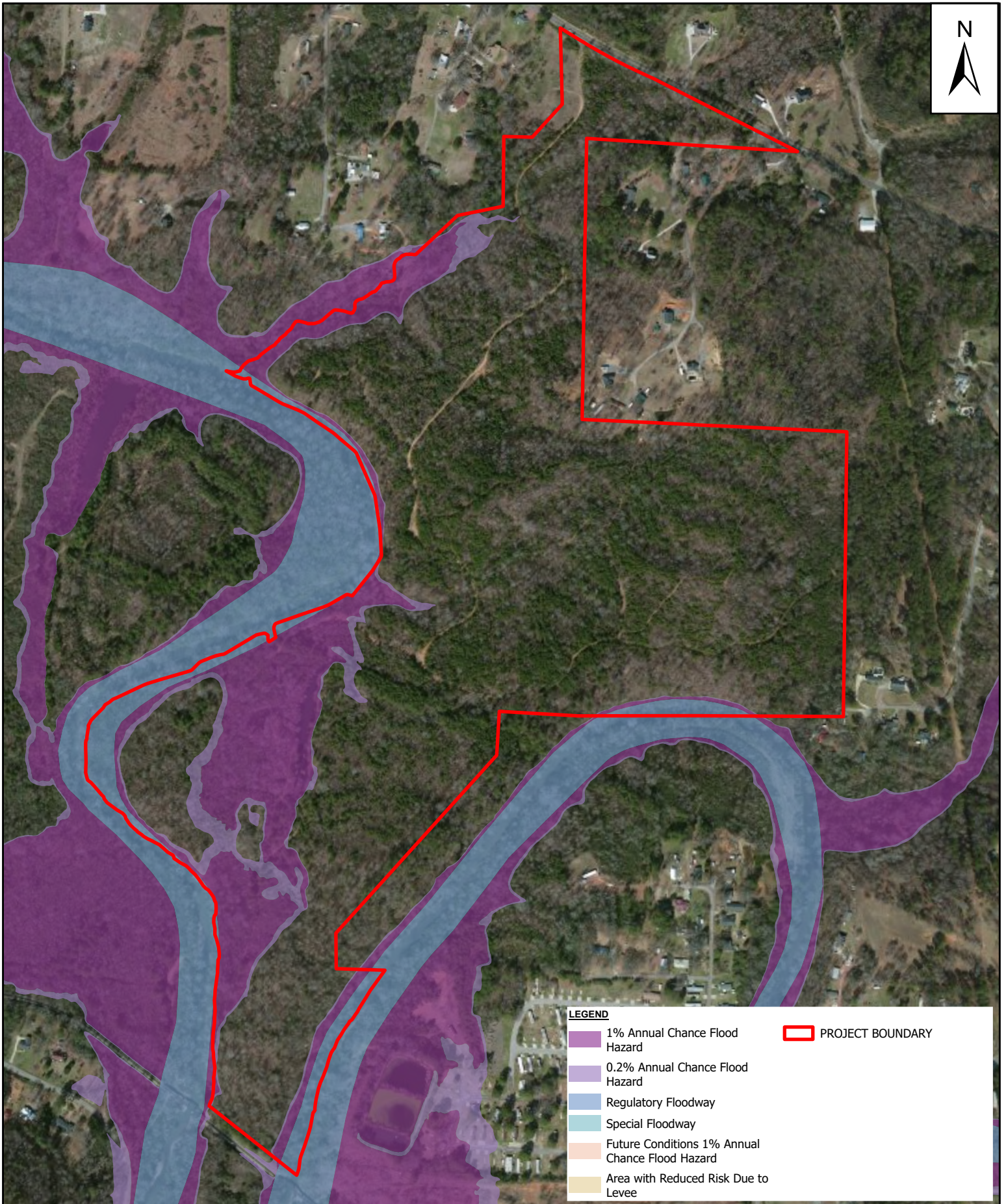
LEGEND

-  HU8_03160111_Wetlands
-  PROJECT BOUNDARY

0 600 1,200
SCALE IN FEET
Coordinate System: NAD 1983 (2011)
State Plane Alabama West

NATIONAL WETLAND INVENTORY MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





LEGEND

- 1% Annual Chance Flood Hazard
- 0.2% Annual Chance Flood Hazard
- Regulatory Floodway
- Special Floodway
- Future Conditions 1% Annual Chance Flood Hazard
- Area with Reduced Risk Due to Levee
- PROJECT BOUNDARY

0 600 1,200
SCALE IN FEET
Coordinate System: NAD 1983 (2011)
State Plane Alabama West

FLOOD HAZARD MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





LEGEND

- UPLAND POINT
- WETLAND POINT
- EPHEMERAL STREAM
- STREAM
- ▨ WETLAND
- ▨ POND
- ▬ PROJECT BOUNDARY

0 600 1,200

SCALE IN FEET

Coordinate System: NAD 1983 (2011)
State Plane Alabama West

WATER RESOURCE MAP
BROOKSIDE COALBURG RD
JEFFERSON COUNTY, ALABAMA
2025





Find address or place



Basemap Gallery



Graysville

Daisey City

Adamsville

Mineral
Springs

Birmingham

Birmingham

0.3mi



Find address or place



Graysville

Daisey City

Adamsville

Mineral
Springs

Birmingham

Birmingham

Up
Coa



Find address or place



33.673588 -86.767768 Degrees



Find address or place



Reference Layers



Grayeville

Daisey City

Adamsville

Mineral
Springs

Birmingham

Birmingham

Upper
Coalbur

Black

0.3mi

33.631238 -86.913101 Degrees

Source: USDA NRCS, Esri | Maxar | Esri, HERE, Garmin, iPC

POWERED BY
esri



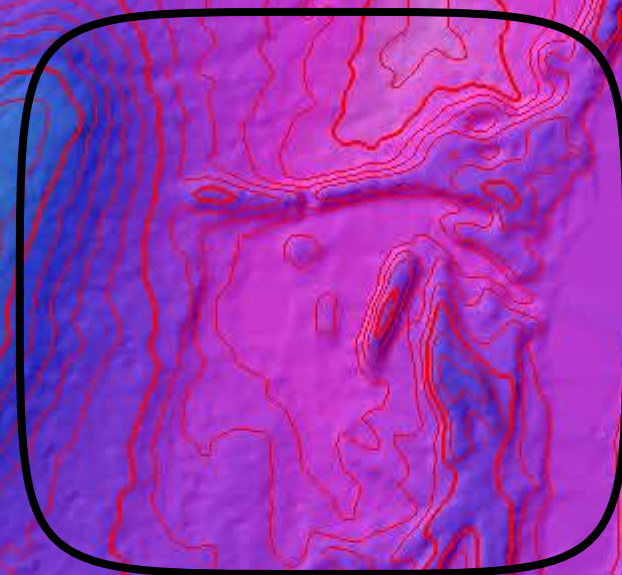
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Find address or place



Imagery



Wetland 2
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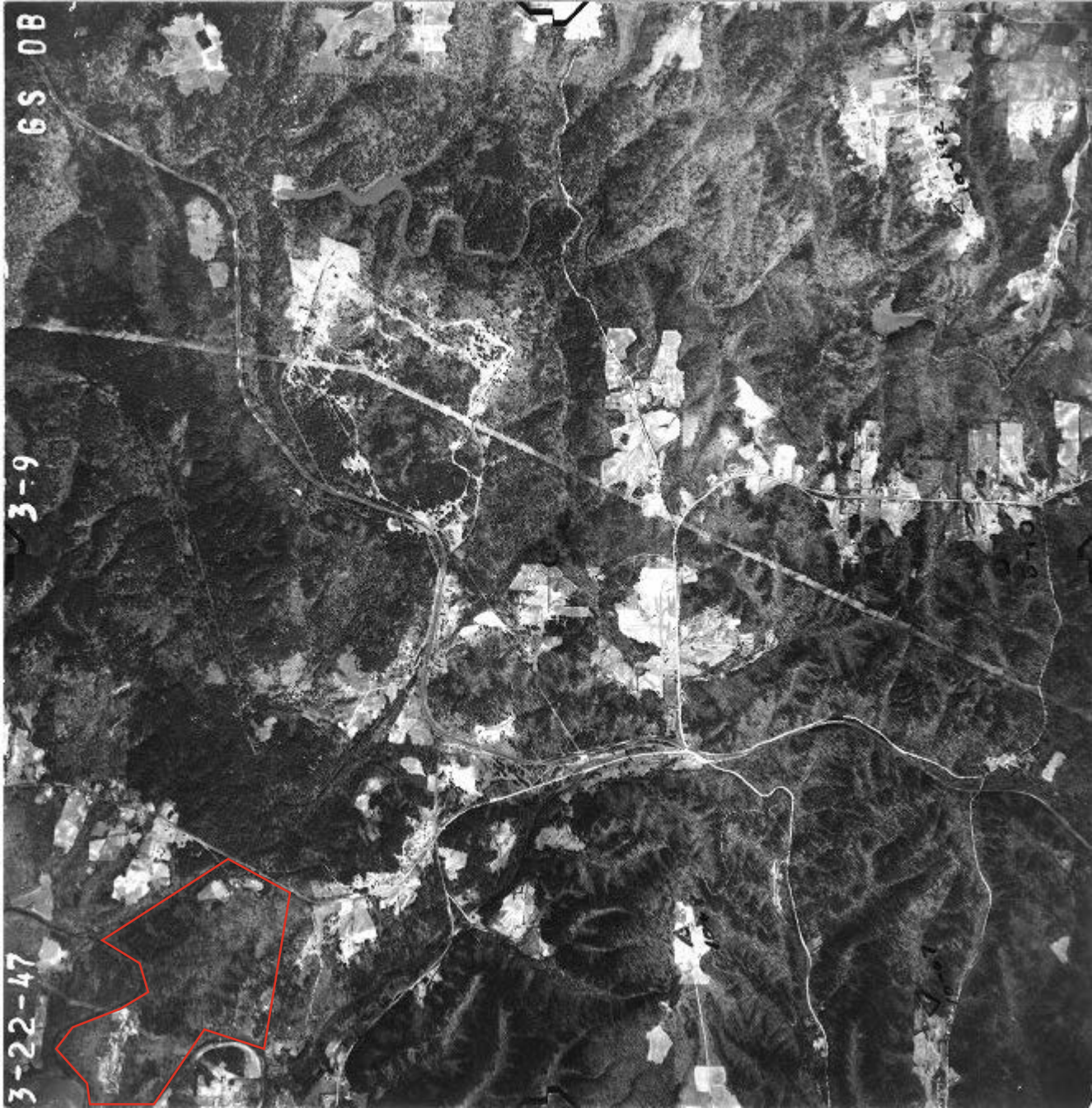
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33.618208 -86.896031 Degrees

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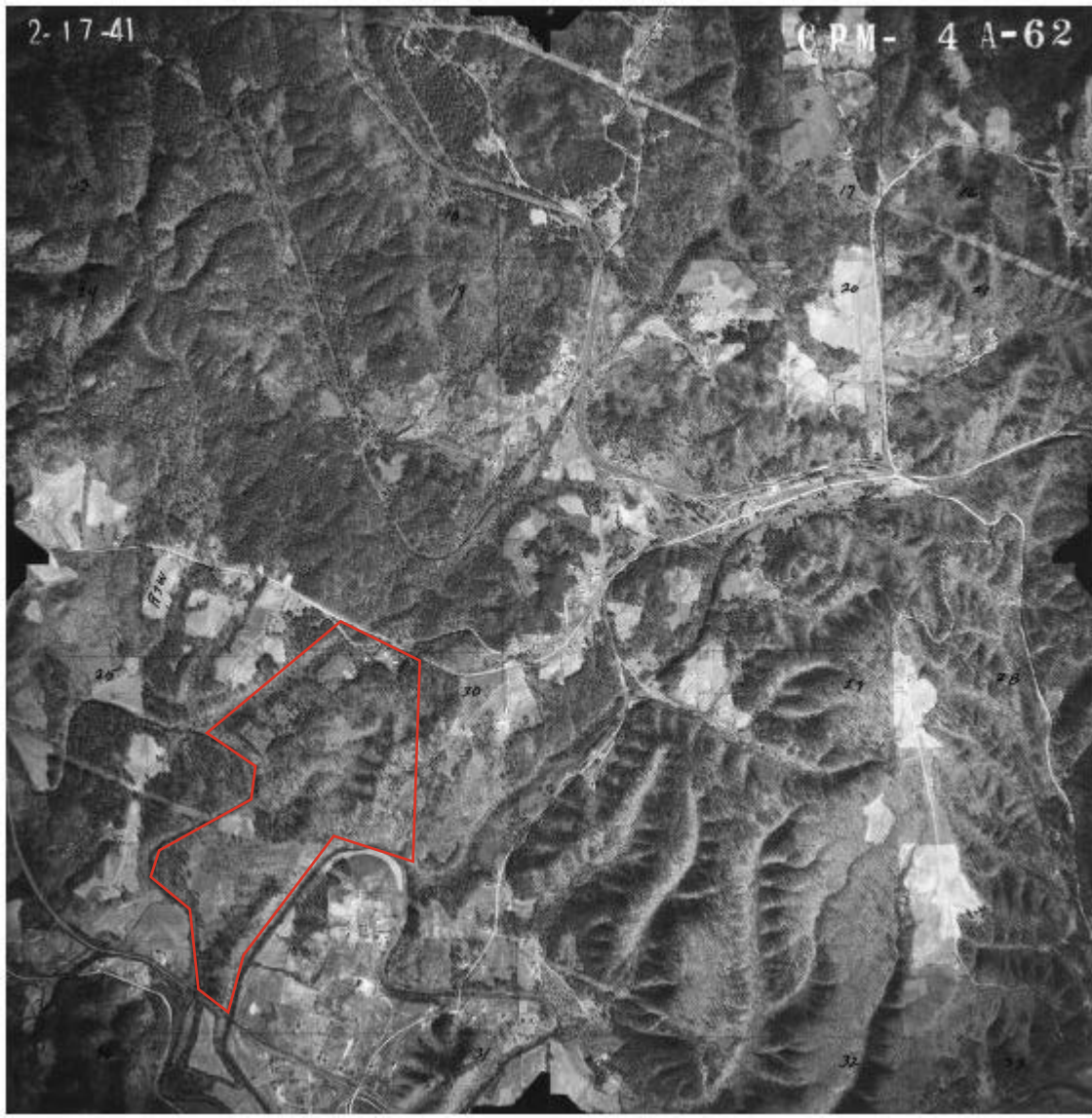
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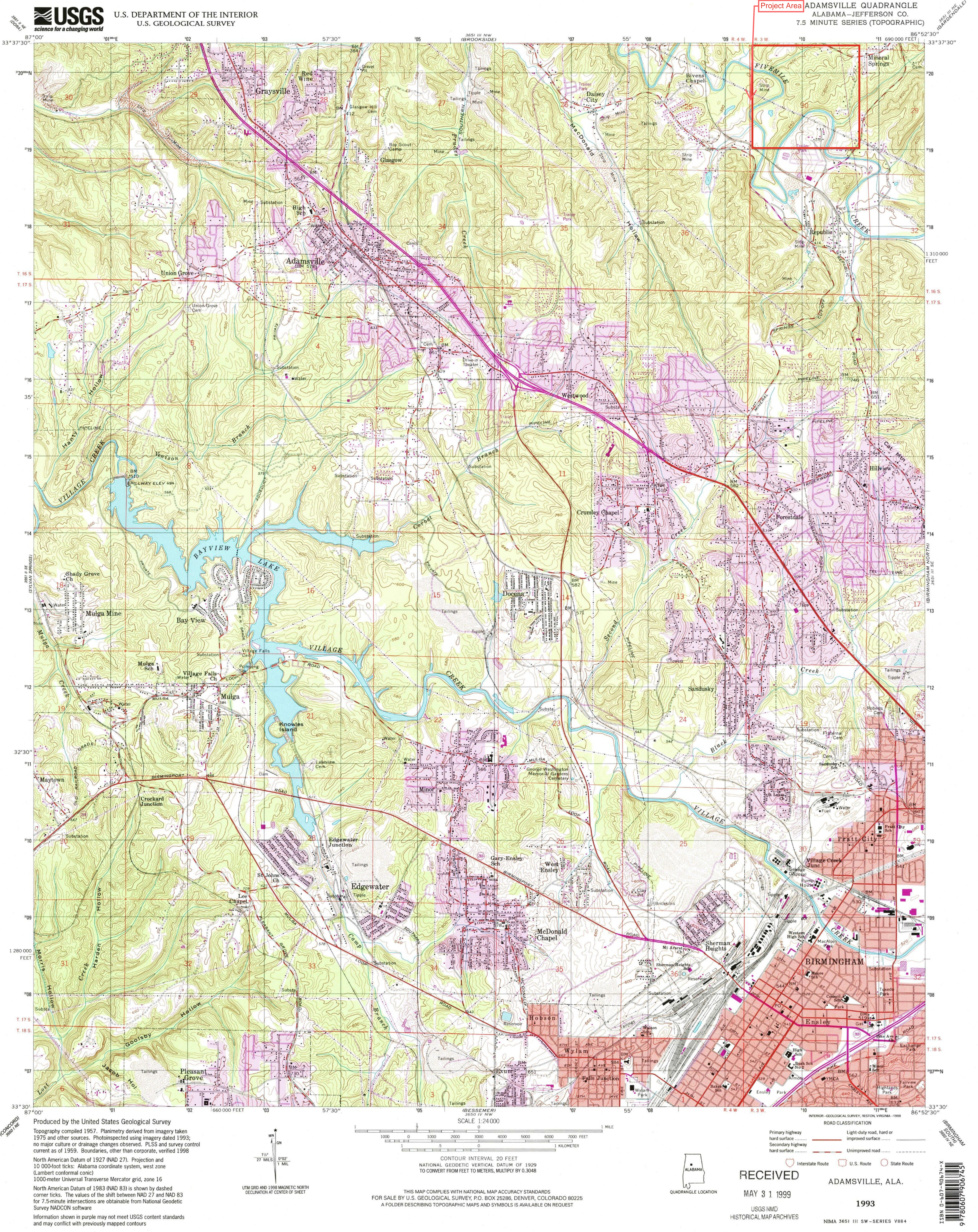
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USGS
science for a changing world

U.S. DEPARTMENT OF THE INTERIOR
U.S. GEOLOGICAL SURVEY

Project Area
ADAMSVILLE QUADRANGLE
ALABAMA-JEFFERSON CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

Produced by the United States Geological Survey
Topography compiled 1957. Planimetry derived from imagery taken 1975 and other sources. Photoinspected using imagery dated 1993; no major culture or drainage changes observed. PLSS and survey control current as of 1959. Boundaries, other than corporate, verified 1998
North American Datum of 1927 (NAD 27). Projection and 10 000-foot ticks: Alabama coordinate system, west zone (Lambert conformal conic)
1000-meter Universal Transverse Mercator grid, zone 16
North American Datum of 1983 (NAD 83) is shown by dashed corner ticks. The values of the shift between NAD 27 and NAD 83 for 7.5-minute intersections are obtainable from National Geodetic Survey NADCON software
Information shown in purple may not meet USGS content standards and may conflict with previously mapped contours

UTM GRID AND 1998 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET

SCALE 1:24 000
1 1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
1 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100 METERS
CONTOUR INTERVAL 20 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929
TO CONVERT FROM FEET TO METERS, MULTIPLY BY 0.3048

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, P.O. BOX 25286, DENVER, COLORADO 80225
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



RECEIVED
MAY 31 1999
USGS NMD
HISTORICAL MAP ARCHIVES

ADAMSVILLE, ALA.

1993

NIMA 3651 III SW - SERIES V884

ISBN 0-607-00574-X
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U.S. Army Corps of Engineers (USACE) PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) For use of this form, see Sec 404 CWA, Sec 10 RHA, Sec 103 MPRSA; the proponent agency is CECW-COR.						Form Approved - OMB No. 0710-0024 Expires 2024-04-30
DATA REQUIRED BY THE PRIVACY ACT OF 1974						
Authority	Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.					
Principal Purpose	The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the review area that may be subject to federal jurisdiction under the regulatory authorities referenced above.					
Routine Uses	This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice or FOIA request as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in any resulting jurisdictional determination (JD), which may be made available to the public on the District's website and/or on the Headquarters USACE website.					
Disclosure	Submission of requested information is voluntary; however, if information is not provided, the request for a JD cannot be evaluated nor can a PJD be issued.					
The Agency Disclosure Notice (ADN)						
The public reporting burden for this collection of information, 0710-0024, is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil . Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.						
SECTION I - BACKGROUND INFORMATION						
A. REPORT COMPLETION DATE FOR PJD: 2025-10-06						
B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Grow Environmental Solutions LLC, Attention: David Davis 1530 Chambliss Lane, Hoover Alabama						
C. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAM-RD-N; SAM-2025-00196-MH9, T.E. Stevens Company, Inc. - Brookside residential development						
D. PROJECT LOCATION AND BACKGROUND INFORMATION: (USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)						
State: <u>Alabama</u>		County/Parish/Borough: <u>Jefferson</u>		City: <u>Forestdale</u>		
Center coordinates of site (lat/long in degree decimal format): Latitude: <u>33.62148</u> ° Longitude: <u>-86.89342</u> °						
Universal Transverse Mercator: _____						
Name of nearest waterbody: <u>Fivemile Creek</u>						
E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): <input checked="" type="checkbox"/> Office (Desk) Determination. Date: <u>2025-10-01</u> <input checked="" type="checkbox"/> Field Determination Date(s): <u>June 16, 2025</u>						
TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.						
	Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
	INT1	33.623228	-86.891471	334 lf	non-wetland	Section 404

	Site Number	Latitude (<i>decimal degrees</i>)	Longitude (<i>decimal degrees</i>)	Estimated amount of aquatic resource in review area (<i>acreage and linear feet, if applicable</i>)	Type of aquatic resource (<i>i.e., wetland vs. non-wetland waters</i>)	Geographic authority to which the aquatic resource "may be" subject (<i>i.e., Section 404 or Section 10/404</i>)
	INT2	33.620984	-86.890501	1635 lf	non-wetland	Section 404
	INT3	33.620072	-86.891473	1340 lf	non-wetland	Section 404
	INT4	33.614603	-86.896956	173 lf	non-wetland	Section 404
	INT5	33.617955	-86.896526	310 lf	non-wetland	Section 404
	INT6	33.617437	-86.896713	48 lf	non-wetland	Section 404
	Wetland 1	33.617708	-86.896202	0.61 ac	wetland	Section 404
	Wetland 3	33.62149	-86.8934	0.12 ac	wetland	Section 404
	Wetland 4	33.61885	-86.8932	0.05 ac	wetland	Section 404
	PER1	33.6244	-86.891435	1875 lf	non-wetland	Section 404

1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD or no JD whatsoever, which do not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the USACE has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD or reliance on no JD whatsoever; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of USACE permit authorization based on a PJD or no JD whatsoever constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the USACE will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

F. SUPPORTING DATA. Data reviewed for PJD (*check all that apply*)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:

Map: Water Resources Map, Hydric Soil Map, Wetland Inventory Map, and Flood Hazard Map

☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

Rationale: _____

☐ Data sheets prepared by the USACE:

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

☒ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name:

United States Geological Survey, Adamsville Quadrangle, Alabama – Jefferson County, 7.5 Minute Series, 1993, 1:24,000.

☐ USDA Natural Resources Conservation Service Soil Survey.

Citation: accessed through National Regulatory Viewer, October 1, 2025.

☒ National Wetlands Inventory map(s).

Cite Name: accessed through National Regulatory Viewer, September 26, 2025.

☐ State/Local Wetland Inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: _____. (National Geodetic Vertical Datum of 1929)


☒ Photographs: ☒ Aerial (*Name & Date*): accessed through National Regulatory Viewer, September 26, 2025.

or ☒ Other (*Name & Date*): Site Photographs, Grow Environmental Solutions' "Jurisdictional Determination Report", March 18, 2025.

☐ Previous determination(s). File no. and date of response letter:

☐ Other information (*please specify*):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the USACE and should not be relied upon for later jurisdictional determinations.

Name of Regulatory Staff Member Completing PJD Molly Hacker	Date 2025-10-06	Signature of Regulatory Staff Member Completing PJD Molly Hacker  Digitally signed by Molly Hacker Date: 2025.10.06 12:11:44 -05'00'
Name of Person Requesting PJD	Date	Signature of Person Requesting PJD (<i>REQUIRED, unless obtaining the Signature is Impracticable</i>)

¹ Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: T.E. Stevens Company, Inc.	File Number: SAM-2025-00196-MH9	Date: 10/06/25
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL WITHOUT PREJUDICE	C
	PERMIT DENIAL WITH PREJUDICE	D
X	APPROVED JURISDICTIONAL DETERMINATION	E
X	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:
Molly Hacker
Project Manager
U.S. Army Corps of Engineers – Mobile District
Regulatory Division, North Branch
600 Vestavia Parkway, Suite 203
The Shelby Building
Vestavia Hills, Alabama 35216
(205) 603-2832

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:
Jessica Comeaux
Acting Regulatory Review Officer
South Atlantic Division
60 Forsyth St SW, Floor M9
Atlanta, Georgia 30303-8803
Jessica.C.Comeaux@usace.army.mil
(251) 508-4266

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Email address of appellant and/or agent:

Telephone number: