



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

CESAM-RD-N

14 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-2025-00674-MH9, (MFR 1 of 1)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 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. Non-JD1, non-jurisdictional wetland.

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 1.15-acre feature identified as Non-JD1, within an approximately 13-acre parcel in Montgomery, Montgomery County, Alabama. The center of the review area is Latitude 32.3811, Longitude -86.1069 and is located in the Lower Tallapoosa 8-digit hydrologic unit code (HUC) 03150110. The attached figures depict the review area. Feature W1, a wetland associated with an unnamed tributary to Hogans Creek, is being reviewed under a PJD.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to which the jurisdictional aquatic resource is connected is the Tallapoosa River. The Tallapoosa River is on the Mobile District's Section 10 list and is therefore a TNW.⁶

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.

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

Non-JD1 is located in the eastern portion of the property boundary. Non-JD1 is fed by several concrete flumes. Water from Non-JD1 drains through an upland riprap outfall and into W1 during high precipitation events. W1 extends east outside of the property boundary and abuts an unnamed tributary to Hogans Creek. The unnamed tributary flows north for approximately 0.79 mile and into Hogans Creek. Hogans Creek meanders northwest for approximately one mile then drains into Jenkins Creek. Jenkins Creek flows generally northwest for approximately 2.4 miles, then drains into the Tallapoosa River near river mile 20.

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

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.

- 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): 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.
- 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

⁹ 51 FR 41217, November 13, 1986.

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).

Non-JD1 is a 1.15-acre wetland centered at Latitude 32.3813, Longitude -86.1061. This feature was originally constructed in uplands as a detention pond as indicated on the engineering drawings for the building to the south (drawings were provided by the agent and are located in the administrative record). Non-JD1 has since ceased to operate as a detention pond since construction of the building was finalized sometime in 2014 (as estimated from Google Earth aerials) and now exhibits all three parameters (hydrology, hydrophytic vegetation, and hydric soil indicators) to be characterized and assessed as a wetland.

The USDA soil survey indicates the soil type in the review area is Flint fine sandy loam, which is not a hydric soil. Furthermore, historic aerial photography from 1964 and 2013 depicts this area as pasture with no visual indication of saturation at this location. These resources provide evidence that Non-JD1 was constructed in uplands and was not historically associated with the wetland system located to the east of the review area that abuts the unnamed tributary to Hogans Creek.

A riprap lined overflow drain separates Non-JD1 from W1 and was constructed as the discharge point for the detention pond. Uplands completely surround Non-JD1 as verified in the field by Corps personnel. Non-JD1 does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment and therefore lacks a continuous surface connection with these requisite waters and is non-jurisdictional.

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. In office evaluation using desktop resources was completed on October 8 and 10, 2025.
 - b. Appendix A (Figures 1-3) in Wildland Servies, LLC’s “Wetland/Stream Delineation Report”, August 5, 2025.

CESAM-RD-N

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- c. Appendix A (Figures 1-3) in Wildland Servies, LLC's revised Nationwide Permit and Jurisdictional Determination request letter, August 26, 2025.
- d. National Regulatory Viewer – USGS Topo map, aerial imagery, 3DEP Hillshade, 3DEP Digital Elevation Model; National Wetland Inventory, accessed September 15, 2025.
- e. Environmental Protection Agency Waters GeoViewer 2.0, accessed September 15 and October 8, 2025.

10. OTHER SUPPORTING INFORMATION.

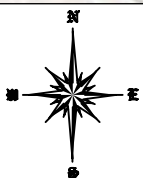
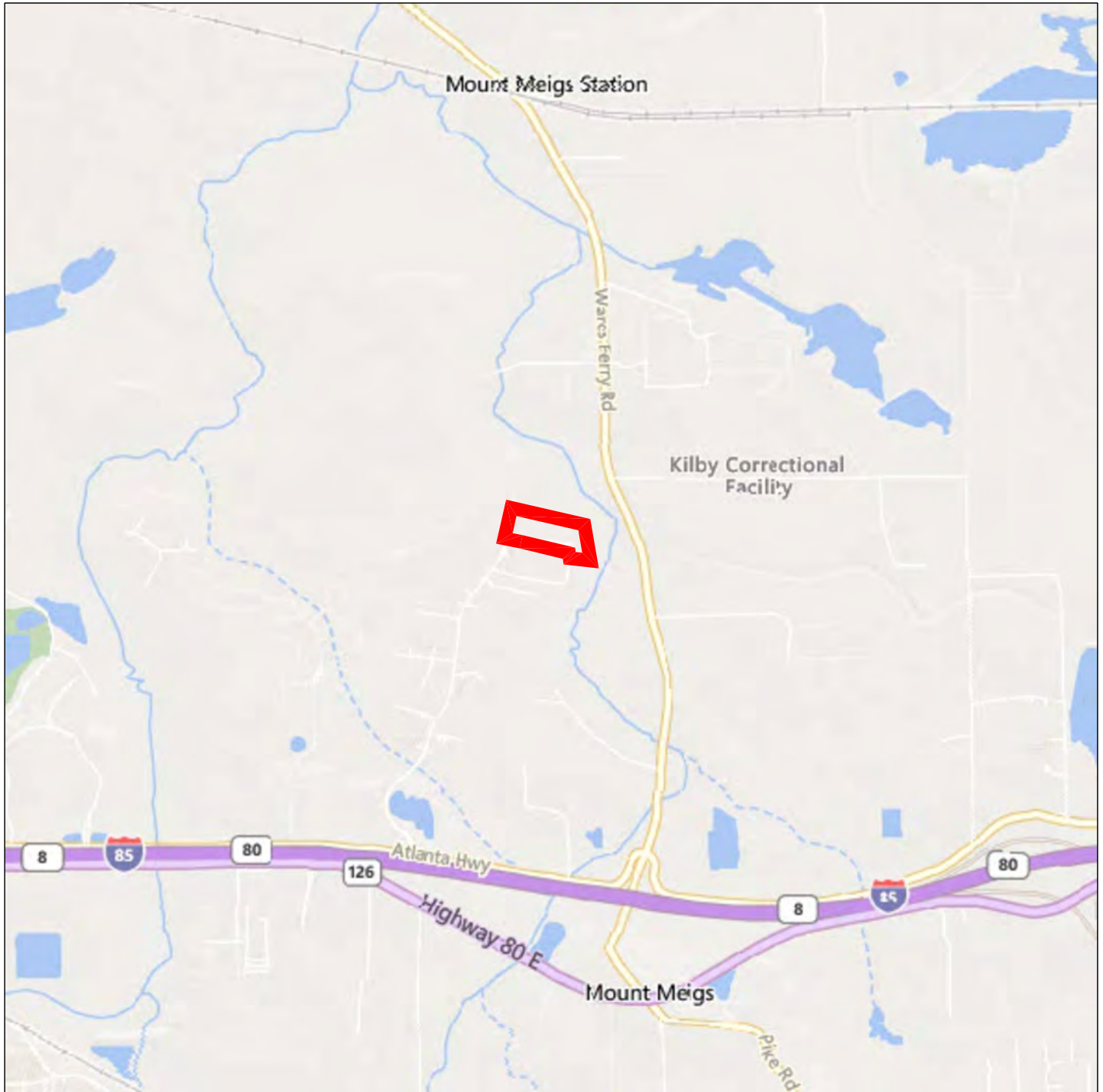
“Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of ‘Continuous Surface Connection’ Under the Definition of ‘Waters of the United States’ Under the Clean Water Act”, March 12, 2025.

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.



Drawing by: Mason Collins
334-391-2005 / www.wildlandservices.com

DAS MONTGOMERY
S12 T16N R19E
32.3811, -86.1069
MONTGOMERY, ALABAMA



7/22/2025

0' 1000' 2000' 3000'

LEGEND

Drawing Symbols

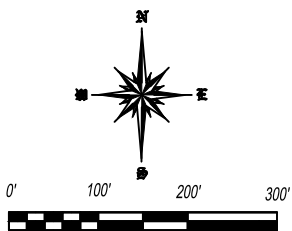
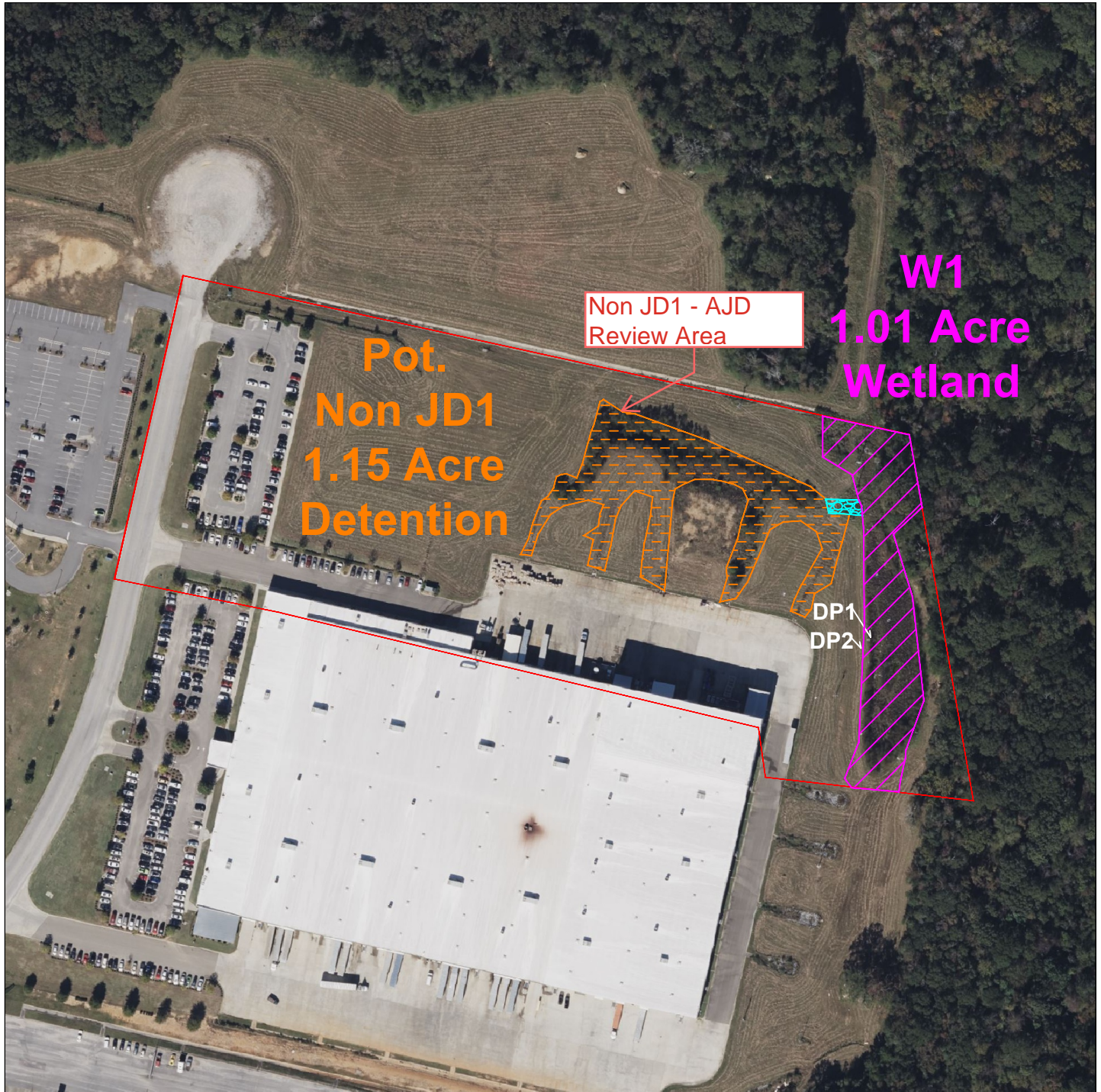
— Site Boundary

Figure 1
Site Location



Drawing by: Eric Clemmons
334-319-3255 / www.wildlandservices.com

DAS MONTGOMERY
S12 T16N R19E
32.3811, -86.1069
MONTGOMERY, ALABAMA



8/5/2025

Figure 2
Aerial with Delineation

LEGEND

Drawing Symbols

— Site Boundary

Wetland

Pot. Non-JD Detention

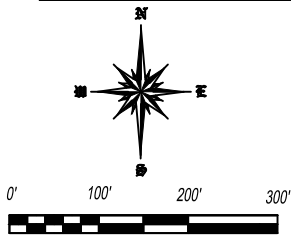
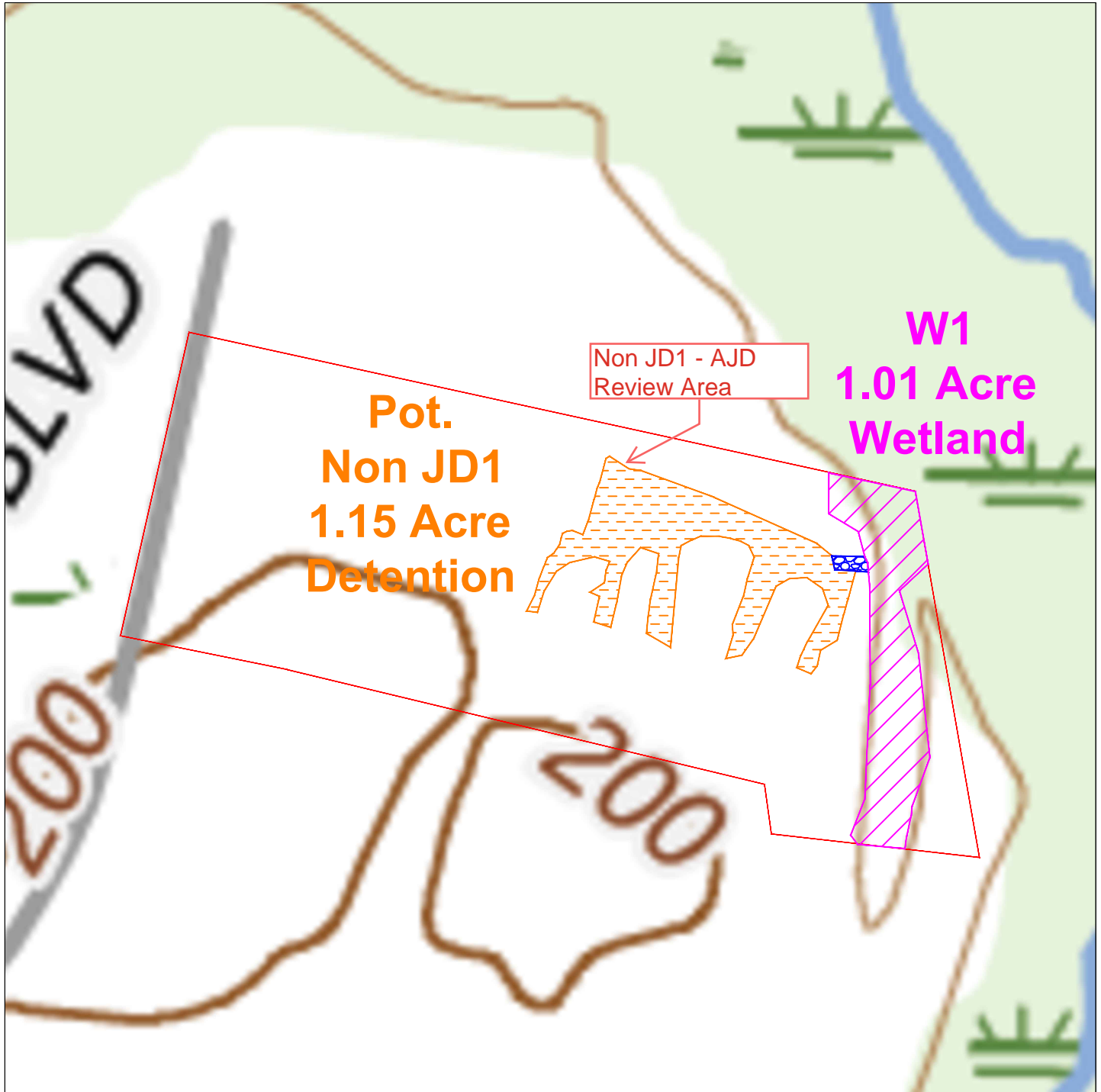
— Data Point

Upland Rip-rap Outfall



Drawing by: Eric Clemmons
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DAS MONTGOMERY
S12 T16N R19E
32.3811, -86.1069
MONTGOMERY, ALABAMA



8/5/2025

Figure 3
USGS Topo with Boundary

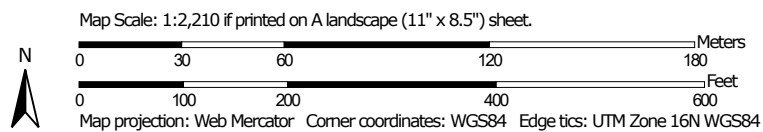
LEGEND

Drawing Symbols	
	Site Boundary
	Wetland
	Pot. Non-JD Detention
	Upland Rip-rap Outfall

Hydric Rating by Map Unit—Montgomery County, Alabama (DAS Montgomery)



Soil Map may not be valid at this scale.



Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

7/31/2025
Page 1 of 5



U.S. Fish and Wildlife Service


National Wetlands Inventory

DAS Montgomery

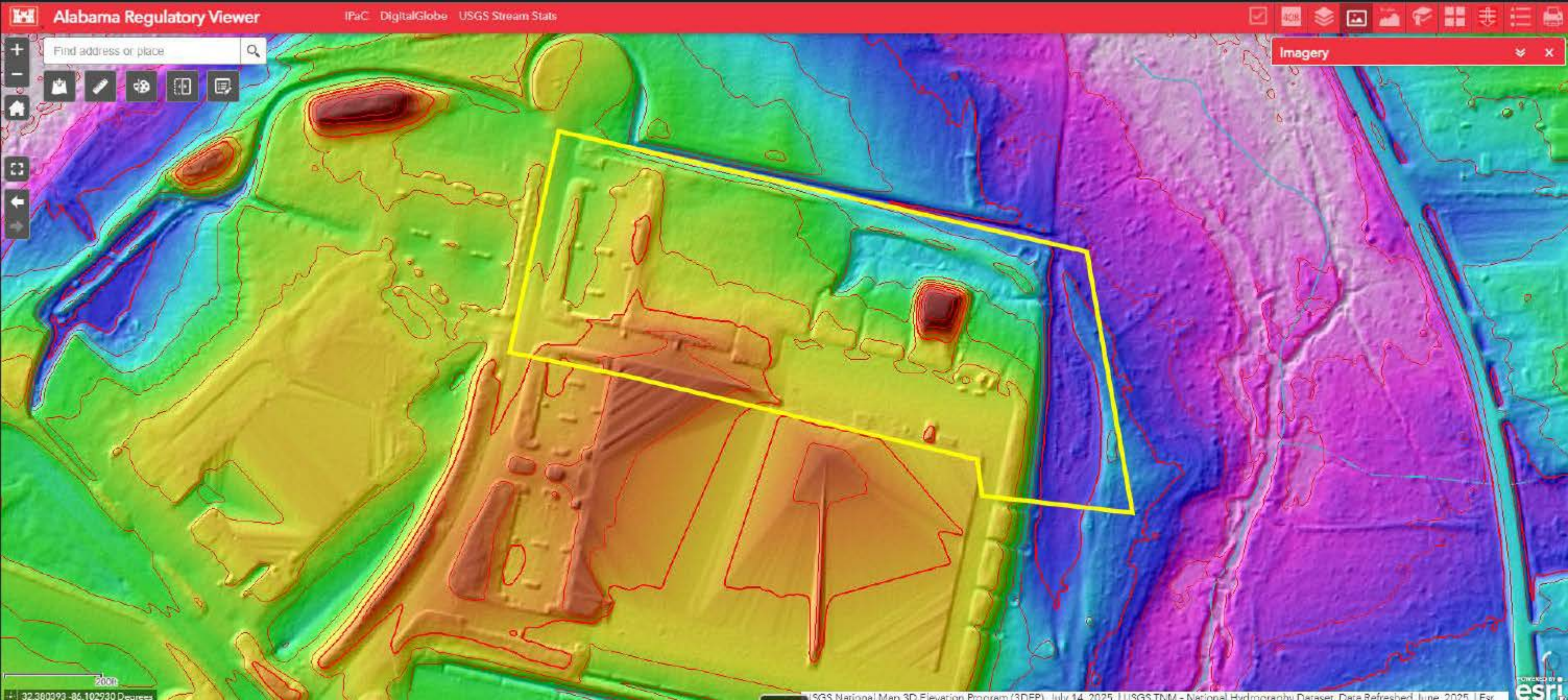


July 31, 2025

Wetlands

	Estuarine and Marine Deepwater		Freshwater Emergent Wetland		Lake
	Estuarine and Marine Wetland		Freshwater Forested/Shrub Wetland		Other
			Freshwater Pond		Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



2/2013

Premier Tech

2013

Industrial Park Blvd



11/2014

Premier Tech

2014

N

Industrial Park Blvd

5/2016

Premier Tech

2016

Industrial Park Blvd



11/2018

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2018



Industrial Park Blvd

1985 2/2020 2024

Premier Tech

2020

Industrial Park Blvd

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Google Earth

2013

