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 17 November 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-2025-00838-AKG, MFR 1of 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

[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.

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 in 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. Wetland 1, non-jurisdictional, without a continuous surface connection to a requisite water.

        ii. Pond 1, non-jurisdictional, preamble 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 an approximately 22.7-acre parcel located along Pike Road in the Town of Pike Road, Montgomery County, Alabama. The center coordinates are Latitude 32.2825, Longitude -86.1025 and located in the Mount Meigs 8-digit hydrologic unit code (HUC) 03150201. The attached figures depict the review area. Approximately 85% of the review area is developed within an existing public recreational park and includes permanent buildings, paved and unpaved transportation corridors and parking lots, and residential and commercial structures. Much of the surrounding land use is agriculture.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Wetland 1 and Pond 1 are not connected to a TNW, interstate or territorial seas.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetland 1 and Pond 1 are not connected to a TNW, interstate or territorial seas.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7] 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): N/A

    e. Tributaries (a)(5): N/A

    f. The territorial seas (a)(6): N/A

[6] 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.
[7] 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.

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").[8] 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 the waters of the U.S.: Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.

      Pond 1 is a 0.18-acre pond centered at Latitude 32.282766, Longitude -86.104959. Pond 1 appears to have been created in uplands for local recreational use associated with the park. Historic Google Earth aerial images show that there was no pond in the area until after September 2011. The USDA soil survey indicates the soil type in this area is Sucarnoochee silty clay and identified as 5 % partially hydric soil. Additionally, aerial and topographic maps do not depict a stream in the location of where the pond is located today. The current USGS topographic and National Hydrography Dataset maps show a blue line stream along the southeastern boundary but outside of the review area. For these reasons, it was determined Pond 1 was constructed in uplands and is therefore 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 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

[8] 51 FR 41217, November 13, 1986.

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).

Wetland 1 is a 0.07-acre scrub-shrub wetland adjacent to Pond 1. Wetland 1 is contained within the boundary of Pond 1 waterbottoms. Wetland 1 was determined to be non-jurisdictional because it does not abut a TNW, territorial seas, interstate water, relatively permanent tributary or jurisdictional impoundment, thereby lacking a continuous surface connection to a requisite water.

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 November 5, 2025.

b. Figures, photos and data forms in BioResources, LLC's Wetland and Stream Evaluation, dated 11/19/2024 and updated 11/17/2025.

c. United States Geologic Survey. Topographic Map NRV Layer. Accessed 11/04/2025.

d. United States Geological Survey. National Hydrography Dataset NRV Layer. Accessed through National Regulatory Viewer 11/04/2025.

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.

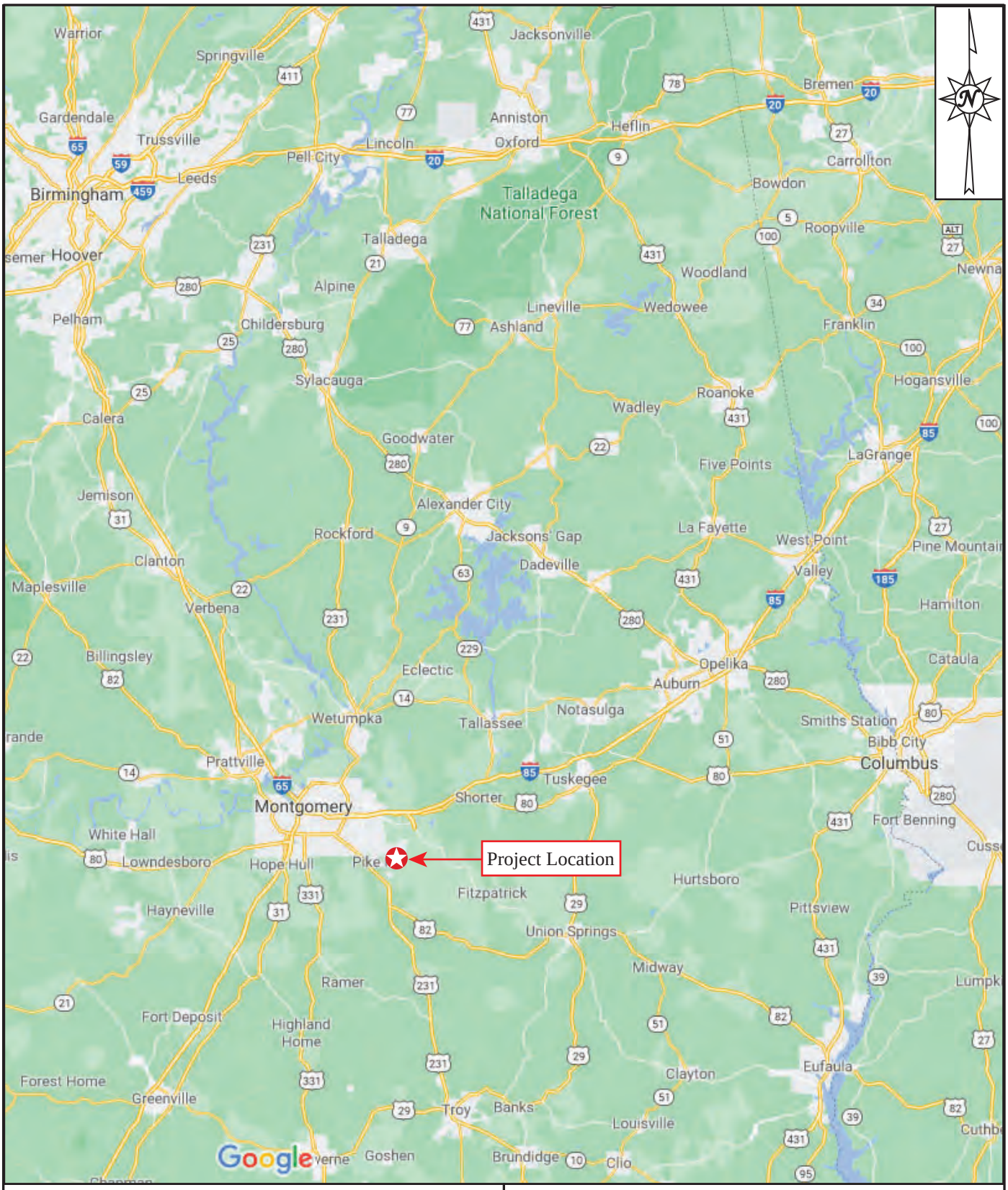

Figure 1: Vicinity Map
Pike Road Roundabout Site
Pike Road, Montgomery County, Alabama
Source: Google Maps
BioResources Project No. WL23-511
Approximate Scale: 1" = 25 miles

BioResources, LLC
2124 Moore's Mill Road, Suite 210
Auburn, Alabama 36830
(334) 821-5707
www.bioresourcesllc.net

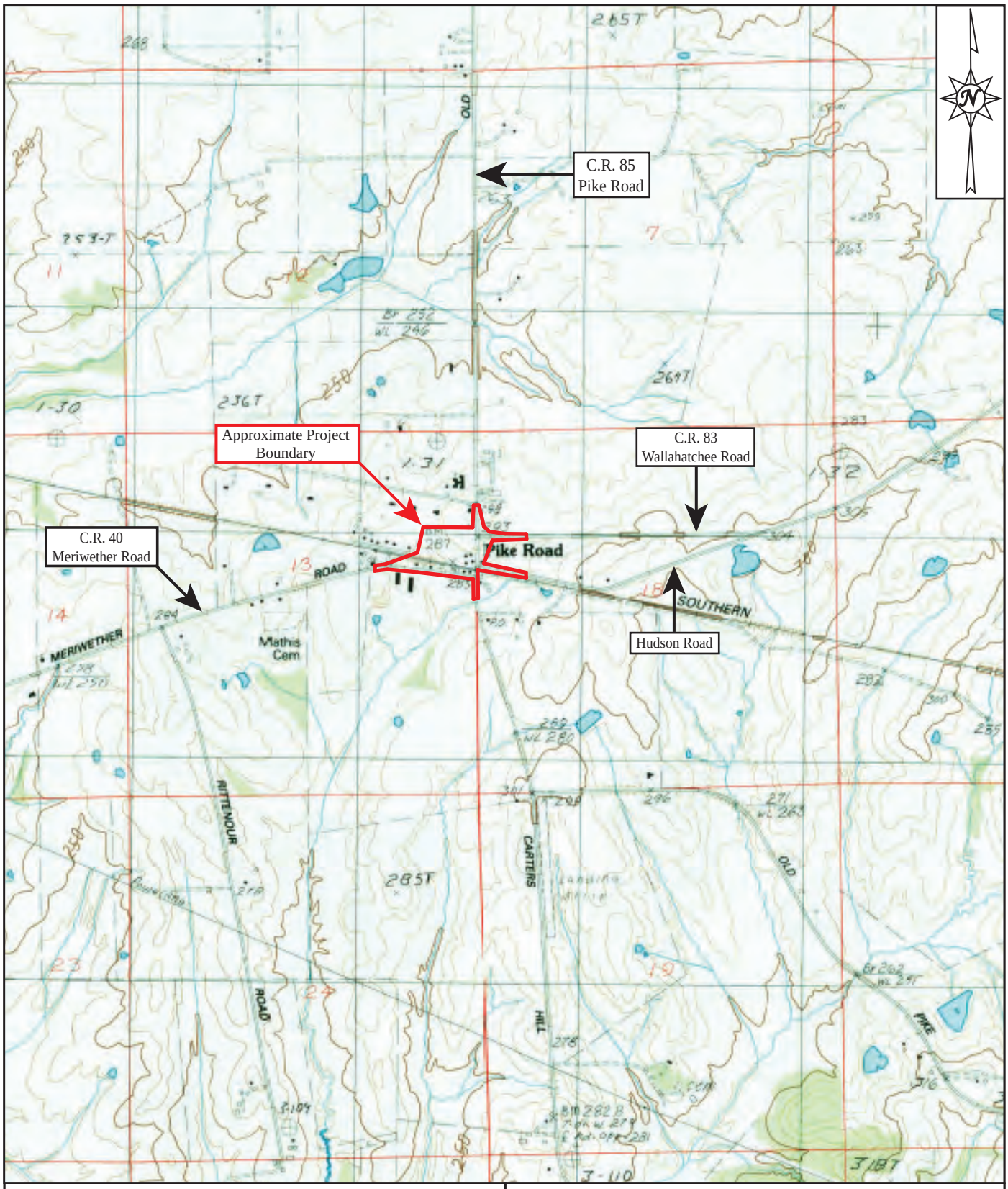

Figure 2: Site Location Map
Pike Road Roundabout Site
Pike Road, Montgomery County, Alabama
Mount Meigs, AL U.S.G.S. 7.5' Quad Maps
BioResources Project No. WL23-511
Scale: 1" = 2,000'

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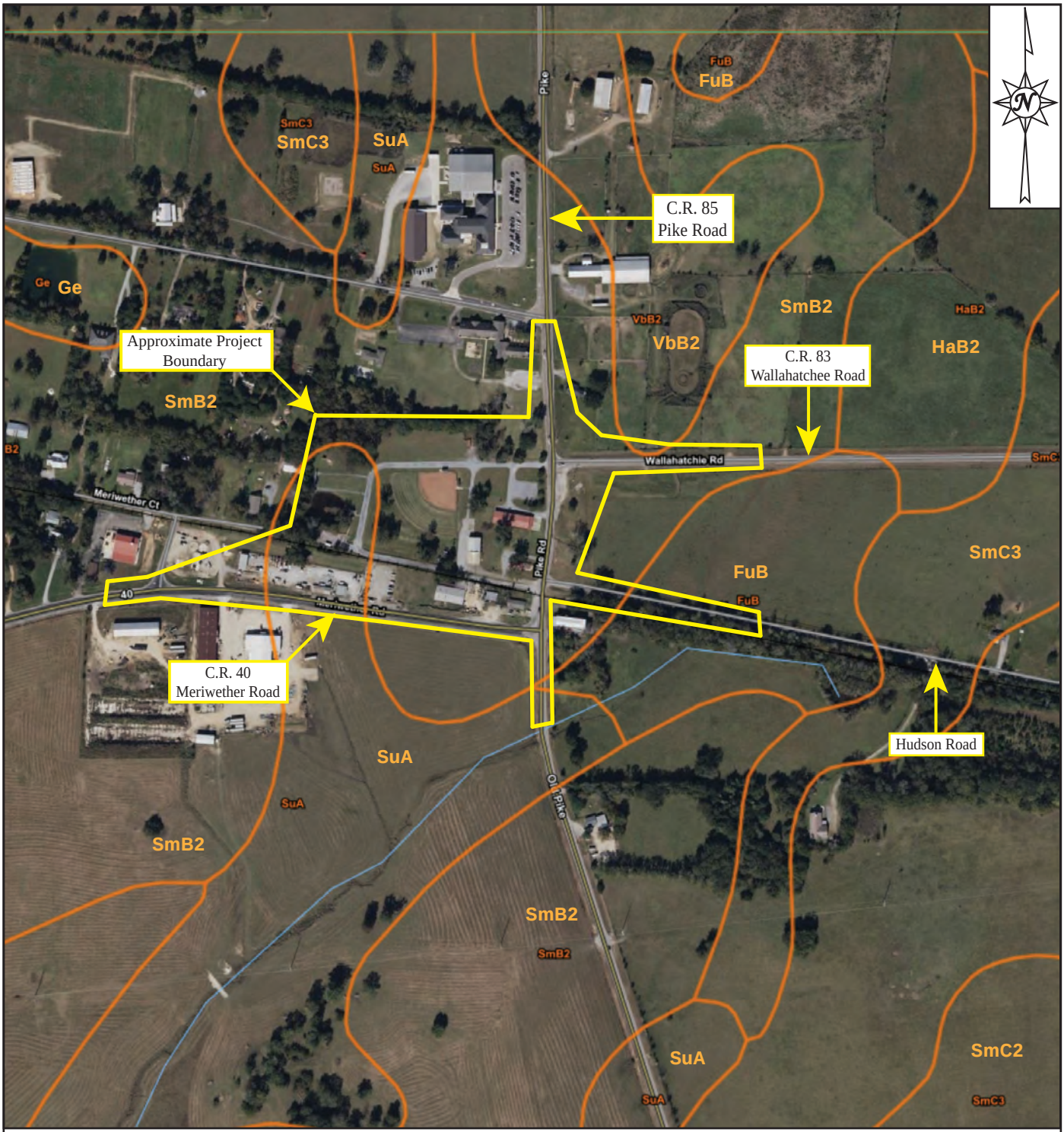

FuB - Faunsdale clay loam, 1-3% slopes
Ge - Gullied land, calcareous materials
HaB2 - Houston clay, eroded, nearly level phase
SmB2 - Sumter clay, eroded, nearly level phase
SmC2 - Sumpter clay, eroded, nearly level phase
SmC3 - Sumpter clay, severely eroded, nearly level phase
SuA - Sucarnoochee silty clay, 0-2% slopes, frequently flooded
VbB2 - Vaiden silty clay, eroded, nearly level phase

Figure 3: Soils Map
Pike Road Roundabout Site
Pike Road, Montgomery County, Alabama
Source: NRCS Web Soil Survey
BioResources Project No. WL23-511
Approximate Scale: 1" = 600'

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Figure 4: National Wetlands Inventory Map
Pike Road Roundabout Site
Pike Road, Montgomery County, Alabama
Source: USFWS Digital Wetland Mapper
BioResources Project No. WL23-511
Approximate Scale: 1" = 800'

0 200 400 800

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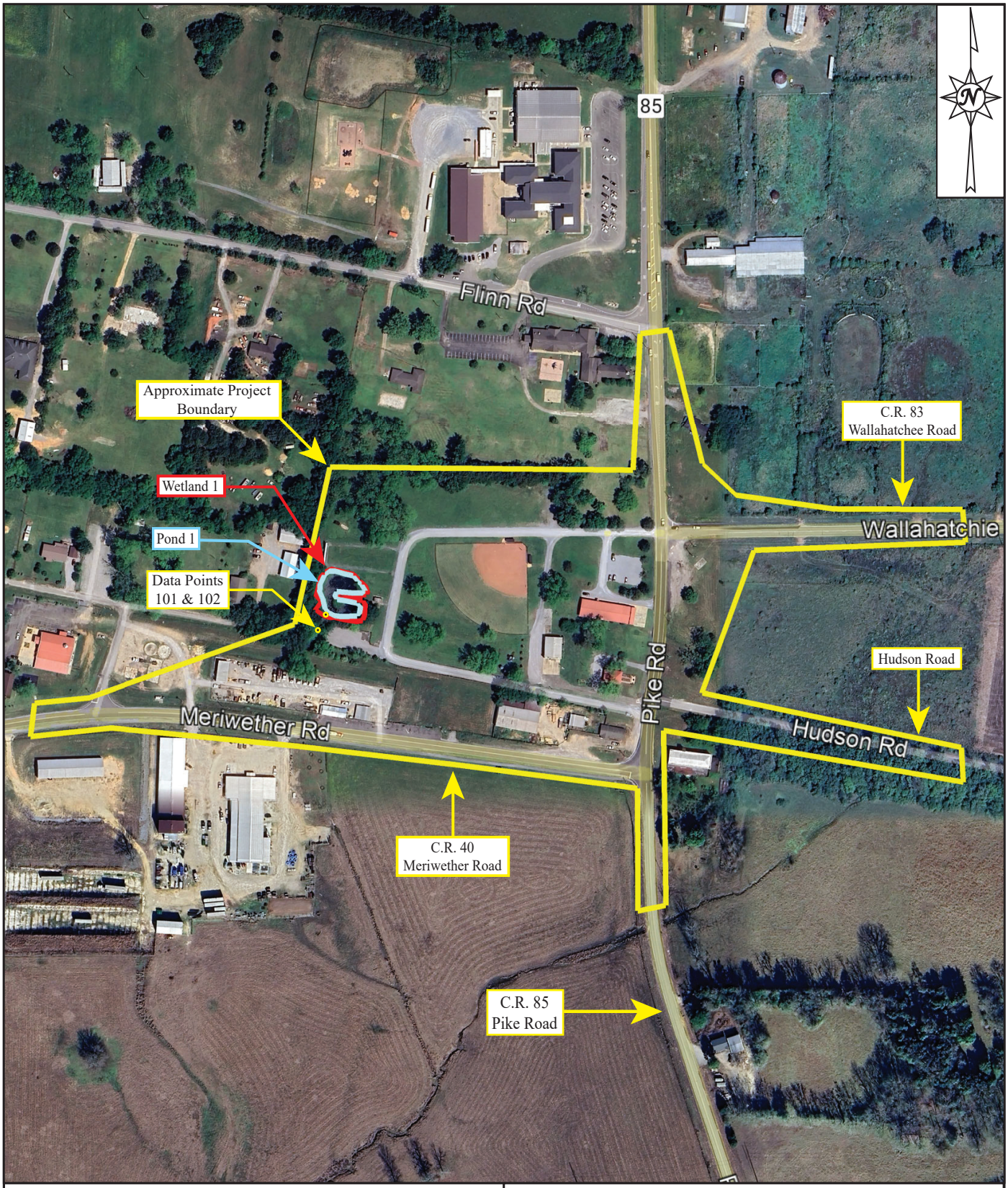

Figure 5: Features Map
Pike Road Roundabout Site
Pike Road, Montgomery County, Alabama
Source: Google Earth 2024
BioResources Project No. WL23-511
Approximate Scale: 1" = 300' 0 150 300

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