



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
POST OFFICE BOX 867  
LITTLE ROCK, ARKANSAS 72203-0867  
www.swl.usace.army.mil

CESWL-RD

22 May 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),<sup>1</sup> **SWL 2025-00099** ¶<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 this state 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. Drain 1, jurisdictional, Section 404

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. 1987 Corps of Engineers Wetlands Delineation Manual, Atlantic and Gulf Coastal Plain Region

3. REVIEW AREA. The site is located in Section 33 T 2 N., R 12 W., North Little Rock in Pulaski County, Arkansas. The review area is an approximately 24.9-acre site labeled as "Delineation Bdy-approx 24.0 ac" on the attached maps. Approximate center coordinates for the review area are Lat. 34.766182, Long. -92.294023

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Arkansas River which is also a Section 10 Waterway<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Drain 1 enters the property

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<sup>6</sup> 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.

in the northern portion, from north to south, and exits the property flowing into the Arkansas River (TNW).

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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):
    - i. Drain 1 ~3 feet wide by 4 inches deep by 377 feet long 1<sup>st</sup> order RPW. Per the delineation report the feature possesses an OHWM with defined bed and banks. Waterflow indicators including the absence of leaf litter, the absence of

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<sup>7</sup> 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.

<sup>8</sup> 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.

vegetation below the OHWM, organic debris lines, and a presence of base flow were also noted

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”).<sup>9</sup> 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 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

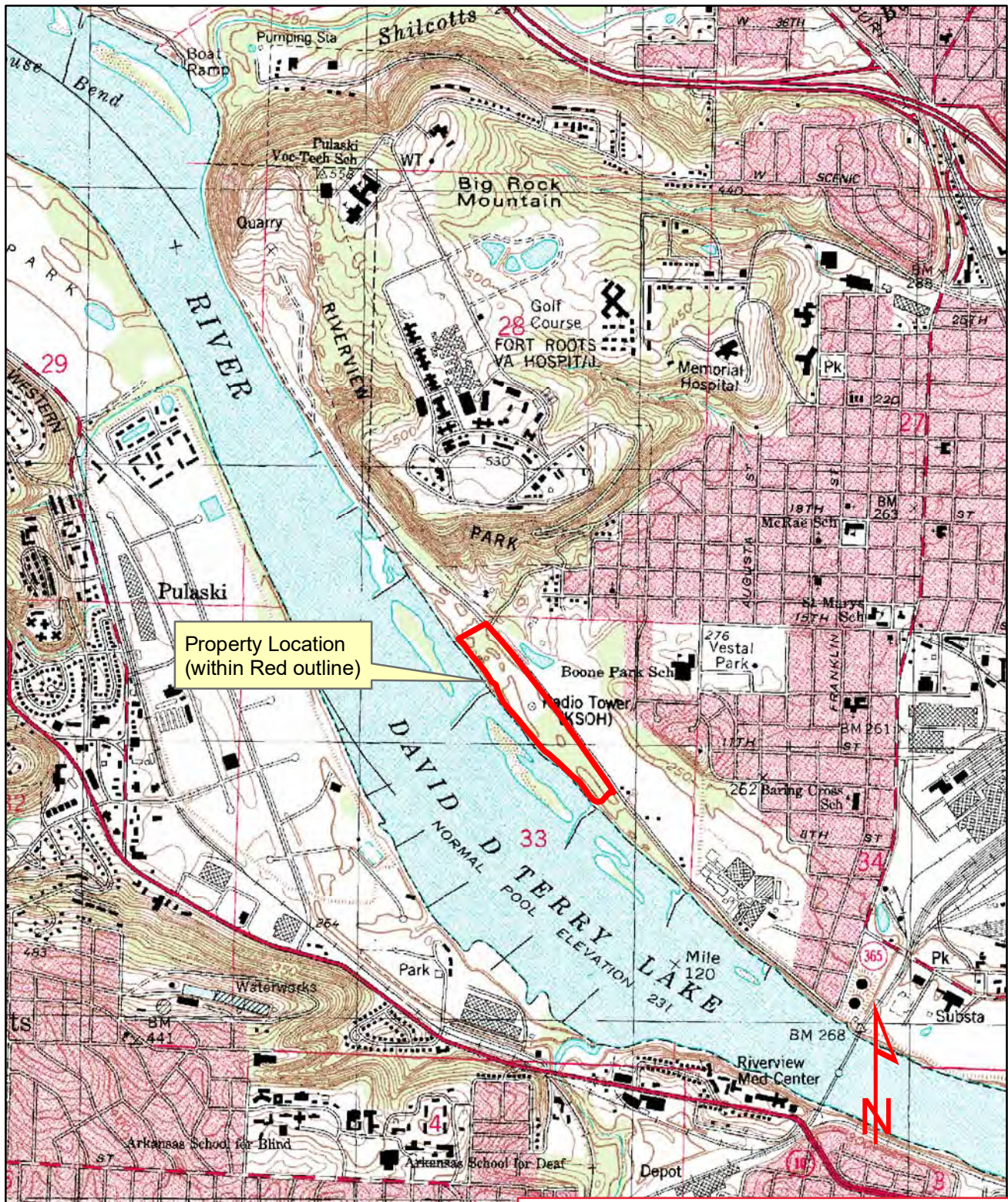
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<sup>9</sup> 51 FR 41217, November 13, 1986.

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

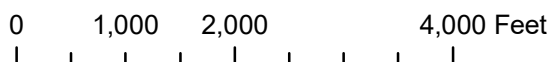
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Office review by Corps personnel was conducted on 24 April 2025.
  - b. Lyrata Consulting, LLC Delineation Report dated, April 07, 2025
  - c. USGS Stream Stats accessed, April 24, 2025
  - d. USGS topoView Alexander, AR 1:24K accessed, April 24, 2025
  - e. Google Earth Pro. (1994-2021 Imagery) accessed, April 24, 2025
  - f. USDA Natural Resources Conservation Service Web Soil Survey Pulaski County assessed, April 24, 2025
  - g. NHD data accessed on National Regulatory Viewer accessed, April 24, 2025
  - h. Historic Aerials via <https://www.historicaerials.com/viewer> accessed, April 24, 2025
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.





# VICINITY MAP

USGS Topographic Map

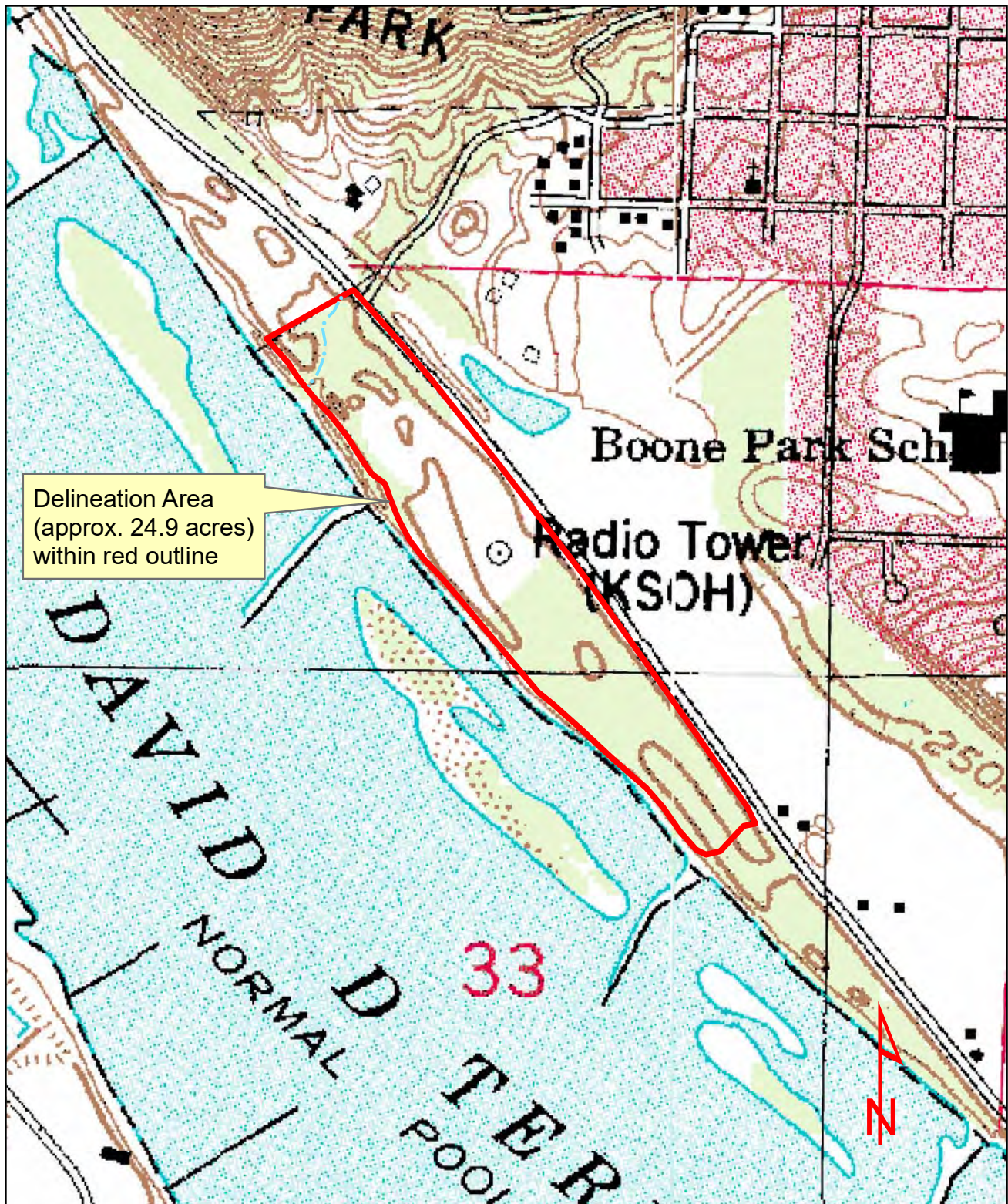


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**2700 River Road Project**  
**Approved Jurisdictional Determination**  
**Sec. 33, T. 2 N., R. 12 W.**

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### SITE MAP

USGS Topographic Image

0 250 500 1,000 Feet

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## SAMPLING POINT LOCATIONS

2021 Aerial Photograph

0 250 500 1,000 Feet

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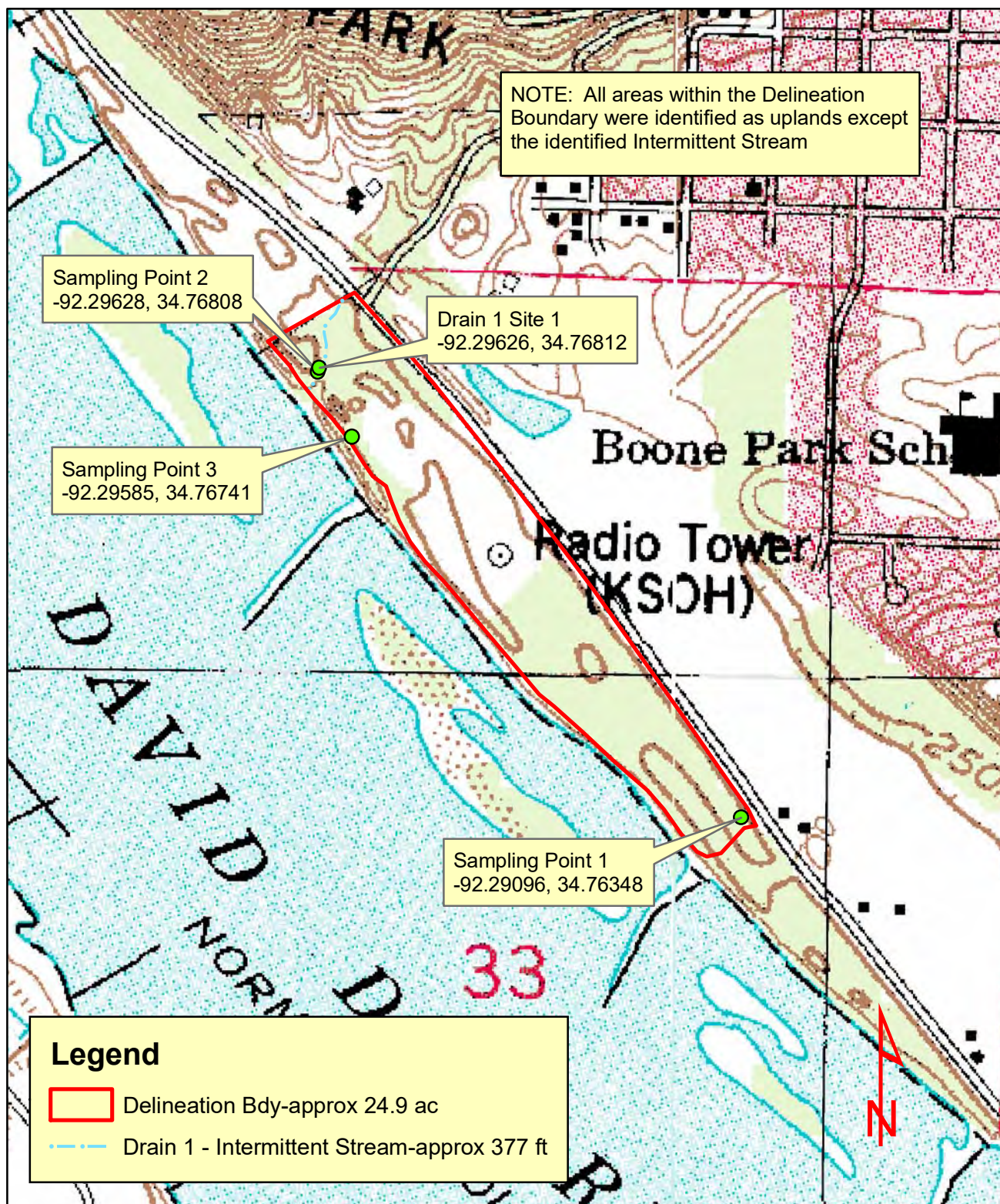
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## SAMPLING POINT LOCATIONS

USGS Topographic

0 250 500 1,000 Feet

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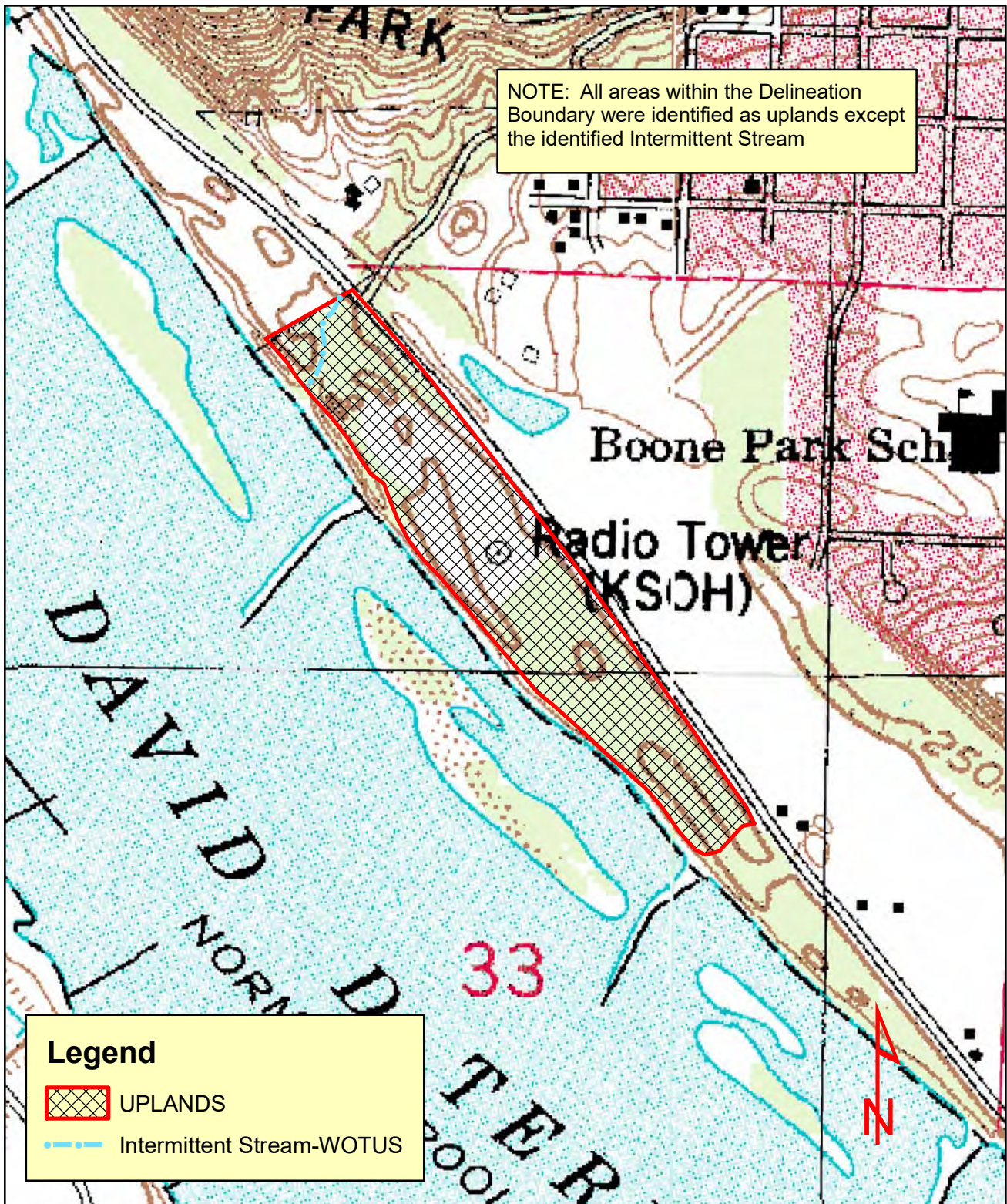
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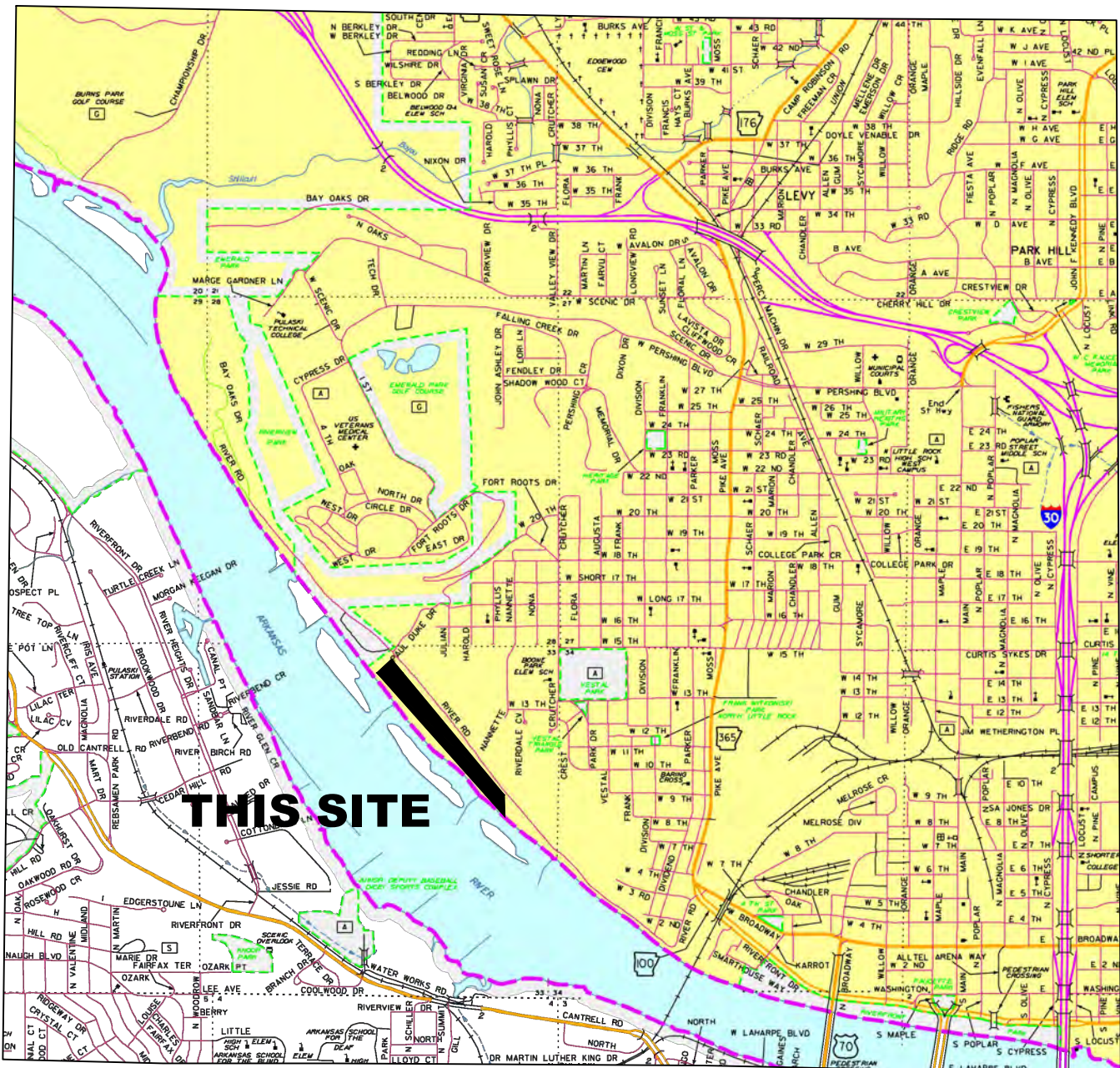
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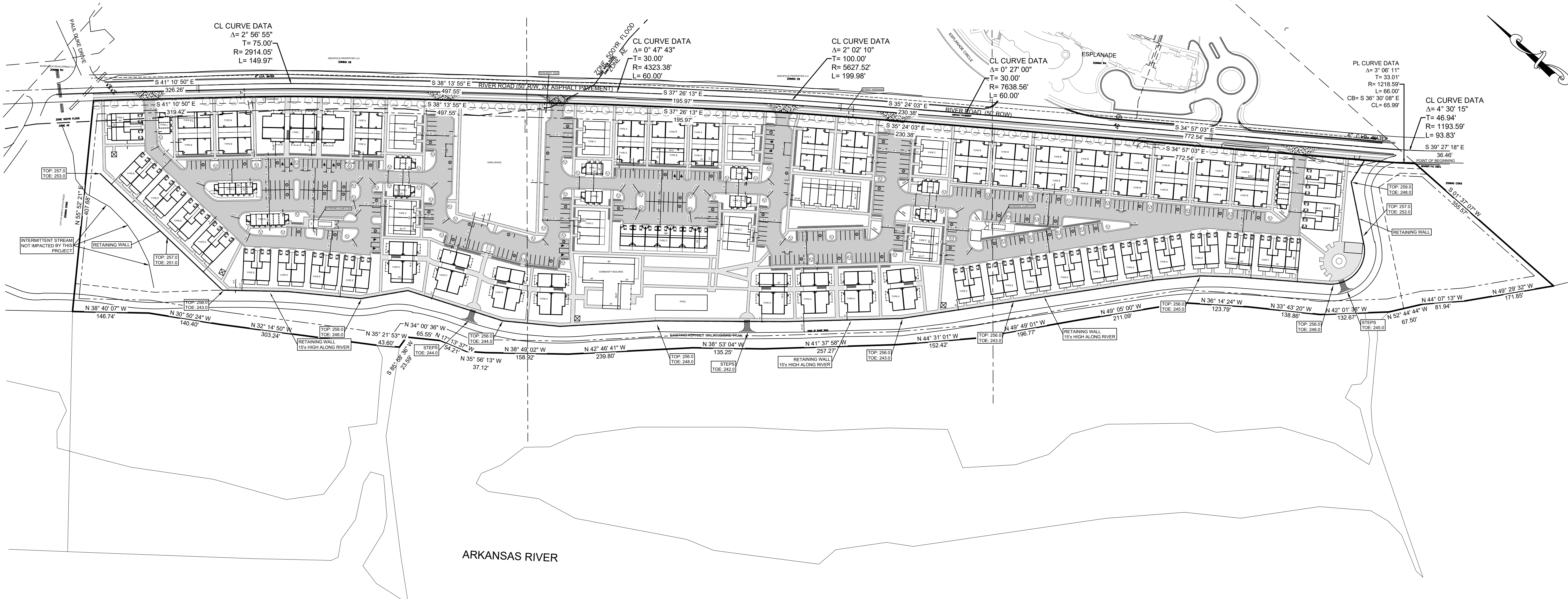


VICINITY MAP

SURVEY DESCRIPTION

A PARCEL OF ACCRETION LAND IN THE N1/2 OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 12 WEST. LYING NORTH OF THE ARKANSAS RIVER, NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A PK NAIL AT THE NORTHEAST CORNER OF SAID SECTION 33;  
THENCE N 87° 52' 00" W ALONG THE NORTH LINE OF SAID SECTION 33 FOR 912.46 FEET;  
THENCE S 01° 37' 07" W FOR 2080.78 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RIVER ROAD (50' R/W) AND THE POINT OF BEGINNING;  
THENCE CONTINUE S 01° 37' 07" W FOR 355.95 FEET TO THE ORDINARY HIGH WATER MARK OF THE ARKANSAS RIVER;  
THENCE ALONG THE MEANDERS OF SAID ORDINARY HIGH WATER MARK THE FOLLOWING COURSES:  
N 49° 29' 32" W FOR 171.85 FEET;  
N 44° 07' 13" W FOR 81.94 FEET;  
N 52° 44' 44" W FOR 67.50 FEET;  
N 42° 01' 38" W FOR 132.67 FEET;  
N 33° 43' 20" W FOR 138.86 FEET;  
N 36° 14' 24" W FOR 123.79 FEET;  
N 49° 05' 00" W FOR 211.09 FEET;  
N 49° 49' 01" W FOR 196.77 FEET;  
N 44° 31' 01" W FOR 152.42 FEET;  
N 41° 37' 58" W FOR 257.27 FEET;  
N 38° 53' 04" W FOR 135.25 FEET;  
N 42° 46' 41" W FOR 239.80 FEET;  
N 38° 49' 02" W FOR 158.92 FEET;  
N 35° 56' 13" W FOR 37.12 FEET;  
N 17° 13' 37" W FOR 54.21 FEET;  
N 34° 00' 36" W FOR 65.55 FEET;  
S 85° 58' 36" W FOR 23.59 FEET;  
N 35° 21' 53" W FOR 43.60 FEET;  
N 32° 14' 50" W FOR 303.24 FEET;  
N 30° 50' 24" W FOR 140.40 FEET;  
N 38° 40' 07" W FOR 146.74 FEET;  
THENCE LEAVING SAID ORDINARY HIGH WATER MARK N 55° 52' 21" E FOR 407.15 FEET TO THE WESTERLY RIGHT OF WAY LINE OF SAID RIVER ROAD;  
THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING COURSES:  
S 41° 03' 49" E FOR 384.61 FEET;  
S 38° 00' 08" E FOR 935.91 FEET;  
S 35° 21' 43" E FOR 558.98 FEET;  
S 34° 58' 10" E FOR 603.53 FEET TO THE BEGINNING OF A CURVE;  
ALONG SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 02° 29' 55", HAVING A RADIUS OF 1506.45 FEET, AND WHOSE LONG CHORD BEARS S 36° 24' 27" E FOR 65.69 FEET TO THE POINT OF BEGINNING.  
CONTAINING 1,085,707 SQUARE FEET OR 24.924 ACRES, MORE OR LESS.



SITE PLAN REVIEW NOTES

1. SITE CONTAINS MIXED MULTI-FAMILY BUILDINGS.
2. BASIS OF BEARINGS: ARKANSAS STATE PLAIN, 1983, NORTH ZONE.
3. THE PROPERTY IS SHOWN IN THE 100 YEAR FLOOD PLAIN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NUMBER 050182 0343G DATED JULY 6, 2015.
4. THIS PROPERTY IS ZONED R4.
5. SETBACKS FOR R4 ZONING:  
25' FRONT  
10' SIDE (25' WHEN NEXT TO PUBLIC ROW)  
25' REAR
6. DATE OF SURVEY: 11/23/21
7. DUMPSTER TO HAVE MASONRY SCREENING ON THREE SIDES WITH AN OPAQUE GATE ENCLOSURE.
8. 100 YEAR FLOOD ELEVATION VARIES ON THIS SITE FROM 256 TO 257.
9. SITE CONTAINS 85 STREET TREES AND 66 PARKING LOT TREES. SEE SHEET 4 FOR LANDSCAPING INFORMATION.
10. MINIMUM FIRST FLOOR ELEVATION IS 259.0
11. THE MAXIMUM BUILDING HEIGHT IS 42.75 FEET. THE TALLEST BUILDING IS THREE STORIES.
12. THE 2 DUMPSTERS ARE 40 CUBIC YARD COMPACTORS AND ARE SUFFICIENT FOR THE 288 RESIDENTIAL UNITS.

PARKING

REGULAR	381 SPACES
ACCESSIBLE	12 SPACES
GARAGE	133 SPACES
TOTAL	526 SPACES
REQUIRED	432 SPACES (1.5 SPACES/ UNIT X 288 UNITS)

BUILDING DATA

NUMBER	TYPE	BUILDING DESCRIPTION	STORY	BEDROOMS	SQ. FT.
10	A	2 UNIT DUPLEX	1-STORY	(2)1-BR	1,480 NRSF
22	B	2 UNIT DUPLEX	1-STORY	1-1BR 1-2BR	1,831 NRSF
8	C	4 UNIT TOWNHOUSE	2-STORY	2-BR	5,064 NRSF
1	D	7 UNIT TOWNHOUSE	2-STORY	2-BR	8,845 NRSF
20	E	2 UNIT DELUXE TOWNHOUSE	2-STORY	4-BR	3,737 NRSF
1	F	3 UNIT DELUXE TOWNHOUSE	2-STORY	4-BR	5,604 NRSF
1	G	7 UNIT TUCKUNDER TOWNHOUSE	2-STORY	2-BR	8,806 NRSF
8	H	12 UNIT MULTI FAMILY	3-STORY	(6)1-BR (6)2-BR	10,602 NRSF
1	I	24 UNIT MULTI FAMILY	3-STORY	(12)1-BR (12)2-BR	21,204 NRSF
9	J	1 UNIT CARRIAGE BUILDING	2-STORY	1-BR	854 NRSF
3	K	2 UNIT CARRIAGE BUILDING	2-STORY	1-BR	1,708 NRSF

OWNER & DEVELOPER:  
TERRAFORMA OPPORTUNITY ZONE FUND, LLC  
P O BOX 13437

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