**DEPARTMENT OF THE ARMY**
**U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT**
**803 FRONT STREET**
**NORFOLK, VIRGINIA 23501**

CENAO-WRR-N February 12, 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] NAO-2024-01356 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

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[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 Virginia due to litigation.

1. SUMMARY OF CONCLUSIONS.

    a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). No wetlands or other aquatic resources were identified on the site. This determination is based on the onsite data collected by TNT Environmental, Inc. in March 2024, along with review of offsite information, including multiple years of aerial photographs.

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., 143 S. Ct. 1322 (2023)

    e. Corps of Engineers Wetlands Delineation Manual (1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0, April 2012)

3. REVIEW AREA. The area of review is approximately 1.0 acres located southwest of Broad Street (Route 7), southeast of Gordon Road, and north of the Washington and Old Dominion Trail in the City of Falls Church, Virginia.

    Approximate center coordinates of the review area: 38.892182 -77.188728.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A[6]

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

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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

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[6] This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

[7] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

[8] This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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. 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

[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). 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. USGS Quadrangle Map for Falls Church, Virginia

b. Natural Resources Conservation Service Soil Survey; USDA-NCSS Digital SSURGO and STATSGO Data

c. USFWS Digital Wetland and Riparian Data

d. Aerial Photographs: 1988, 2002, 2009IR, 2017IR, 2021IR, 2023

e. USGS Nationwide 3DEP Elevation (LIDAR) Data

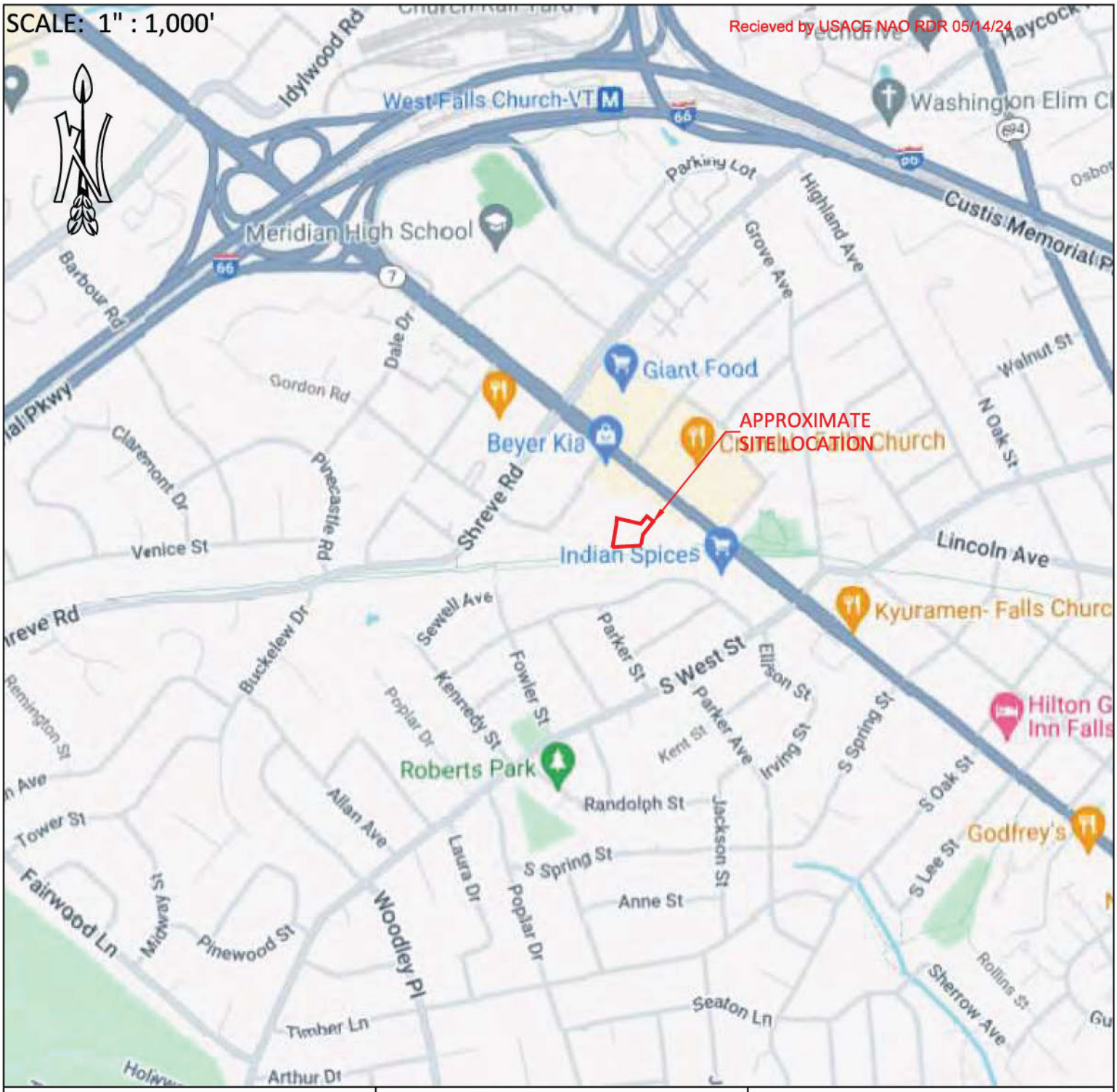
f. Data sheets prepared by TNT Environmental, Inc. Corps concurs with the data sheets/delineation report provided on May 14, 2024.

g. Map entitled "Massoud Property – Surveyed Wetlands & Waters Map", prepared by TNT Environmental, Inc., dated April 24, 2024, and Corps date stamped as received on May 14, 2024.

h. Site photographs provided TNT Environmental, Inc. in above-referenced report.

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.

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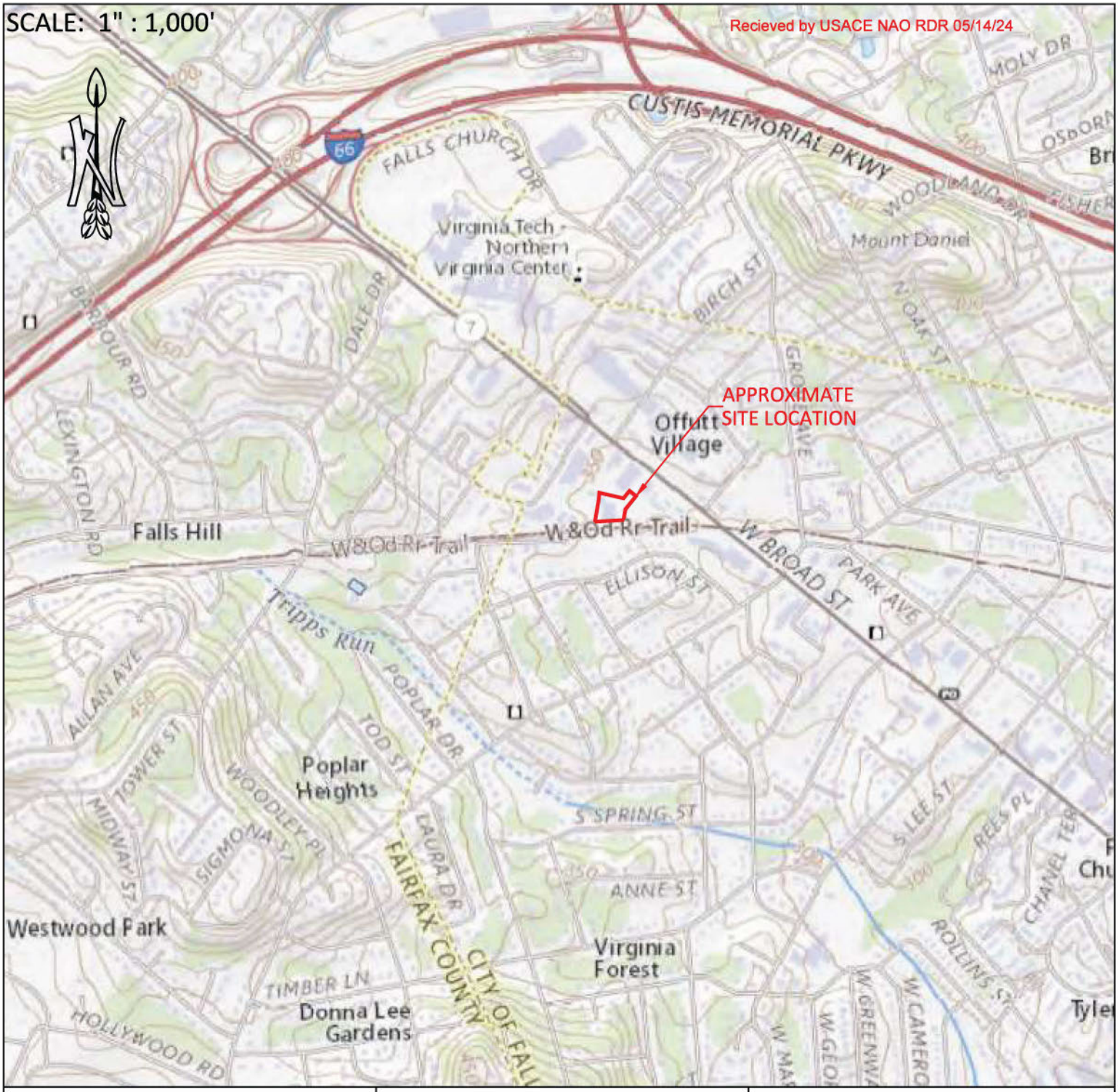
| WETLAND DELINEATION REPORT<br><br>MASSOUD PROPERTY<br><br>CITY OF FALLS CHURCH, VA<br><br>APRIL 2024 | ENVIRONMENTAL<br>**4455 BROOKFIELD CORPORATE DRIVE, SUITE 100 CHANTILLY, VIRGINIA 20151** | **FIGURE 1**<br><br>SITE LOCATION MAP<br><br>SOURCE: GOOGLE MAPS<br><br>TNT PROJECT NO: 3594 |

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| WETLAND DELINEATION REPORT<br><br>MASSOUD PROPERTY<br><br>CITY OF FALLS CHURCH, VA<br><br>APRIL 2024 | ENVIRONMENTAL<br>**4455 BROOKFIELD CORPORATE DRIVE, SUITE 100 CHANTILLY, VIRGINIA 20151** | **FIGURE 2**<br><br>FALLS CHURCH, VA USGS TOPOGRAPHIC MAP<br><br>SOURCE: USGS *THE NATIONAL MAP* (2021)<br><br>TNT PROJECT NO: 3594 |

LEGEND

- OFFSITE PERENNIAL WATERS (R3)
- STUDY AREA
- *SITE-SPECIFIC RESOURCE PROTECTION AREA (RPA)
- APPROX. DATAPOINT LOCATION

NOTES:

1. THE WETLAND DELINEATION WAS CONDUCTED BY TNT ENVIRONMENTAL, INC. (TNT) IN MARCH 2024. EXISTING CONDITION, TOPOGRAPHY AND WETLAND FLAGS WERE SURVEYED BY WALTER L. PHILLIPS, INC.

2. THE WETLAND AND OTHER WATERS BOUNDARIES DEPICTED HEREON ARE PRELIMINARY UNTIL CONFIRMED DURING A JURISDICTIONAL DETERMINATION WITH THE US ARMY CORPS OF ENGINEERS (USACE).

3. *THE STREAM CLASSIFICATIONS AND SITE-SPECIFIC RESOURCE PROTECTION AREA (RPA) BOUNDARY SHOWN HEREON SHOULD BE CONSIDERED PRELIMINARY UNTIL APPROVED BY THE CITY OF FALLS CHURCH.

4. THIS DELINEATION WAS PERFORMED PER THE *CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL*, TECHNICAL REPORT Y-87-1 (1987 MANUAL) AND SUBSEQUENT GUIDANCE AND MODIFICATION BY THE *REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: EASTERN MOUNTAINS AND PIEDMONT REGION* (VERSION 2.0) DATED APRIL 2012 [or] *ATLANTIC & GULF COASTAL PLAIN REGION* [VERSION 2] DATED NOVEMBER 2010. THE STUDY AREA IS APPROXIMATELY 1 ACRE; AS SUCH THE ROUTINE ON-SITE WETLAND DETERMINATION METHOD FOR SITES LESS THAN 5 ACRES WAS USED.

SCALE (IN FEET)
20 10 0 20

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# MASSOUD PROPERTY

CITY OF FALLS CHURCH

## SURVEYED WETLANDS & WATERS MAP

REVISIONS:

| DATE | COMMENTS |
|---|---|
| | |

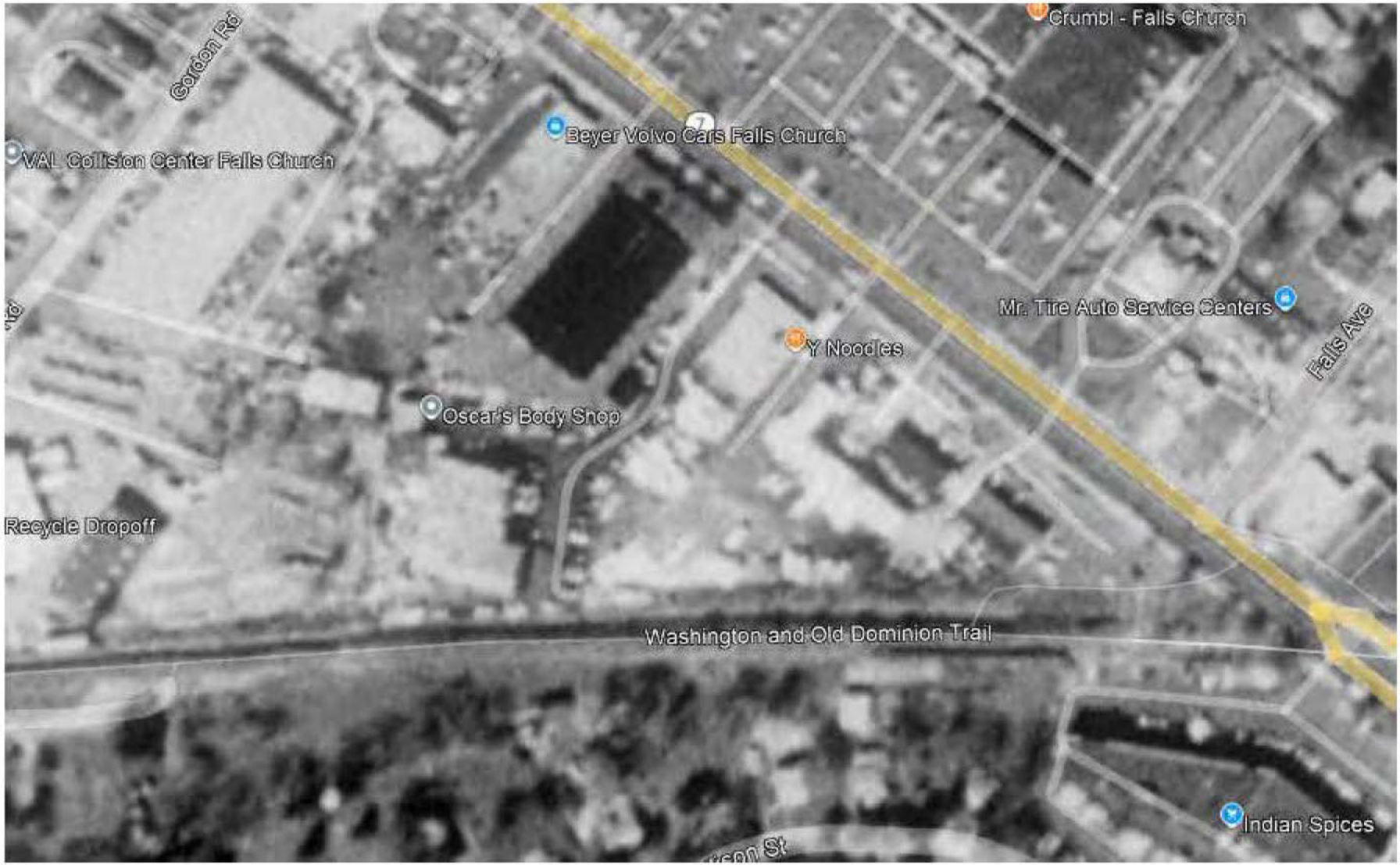
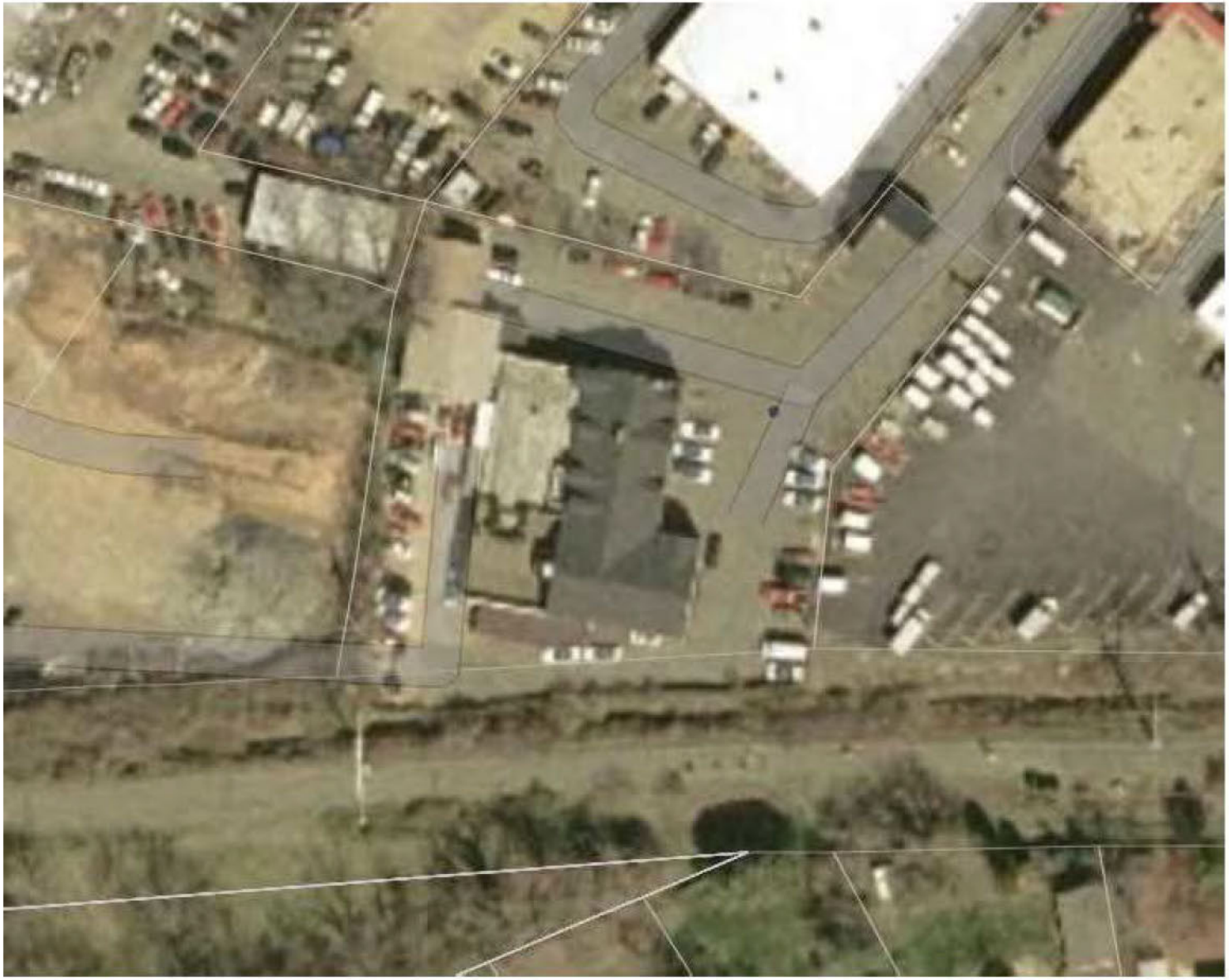
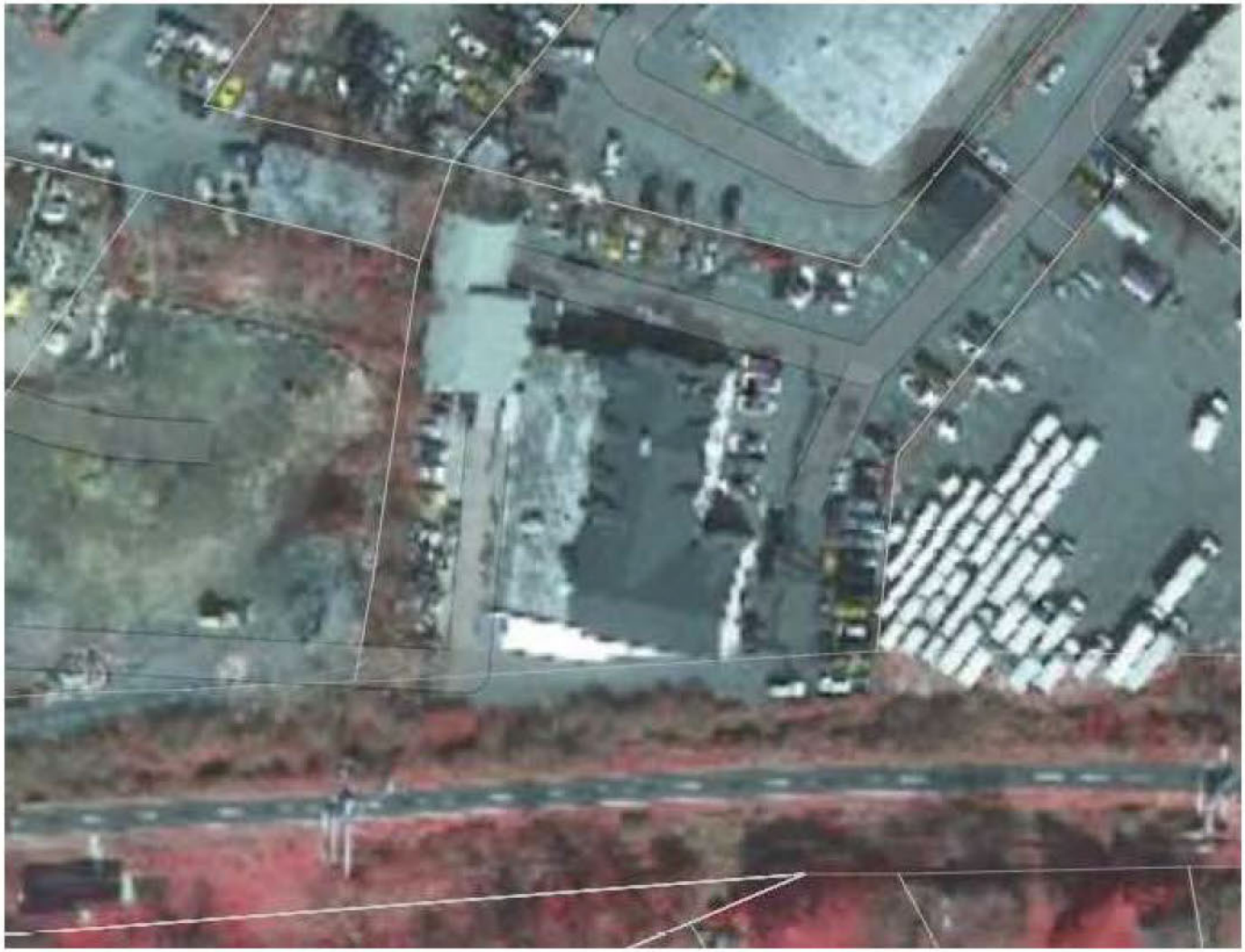
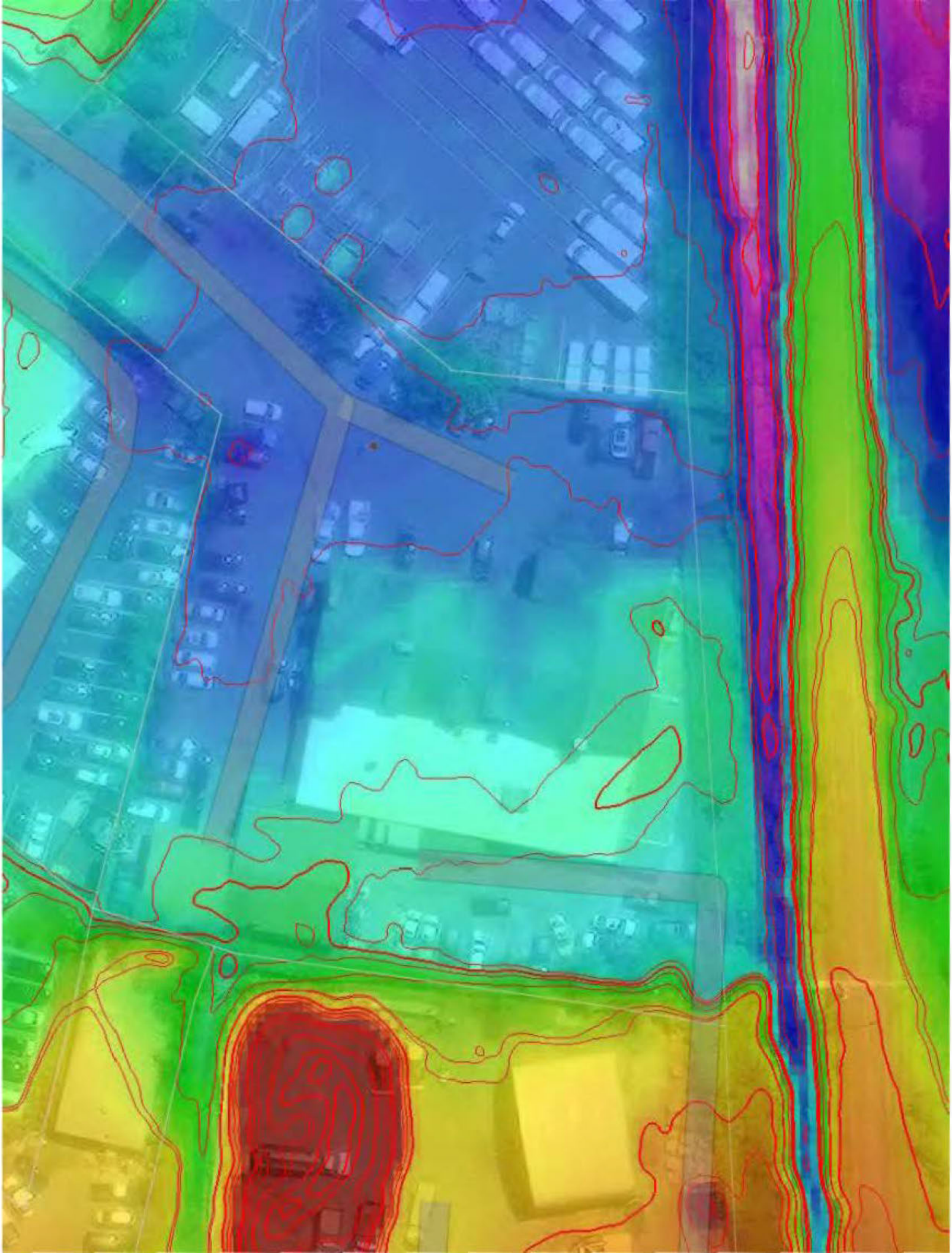
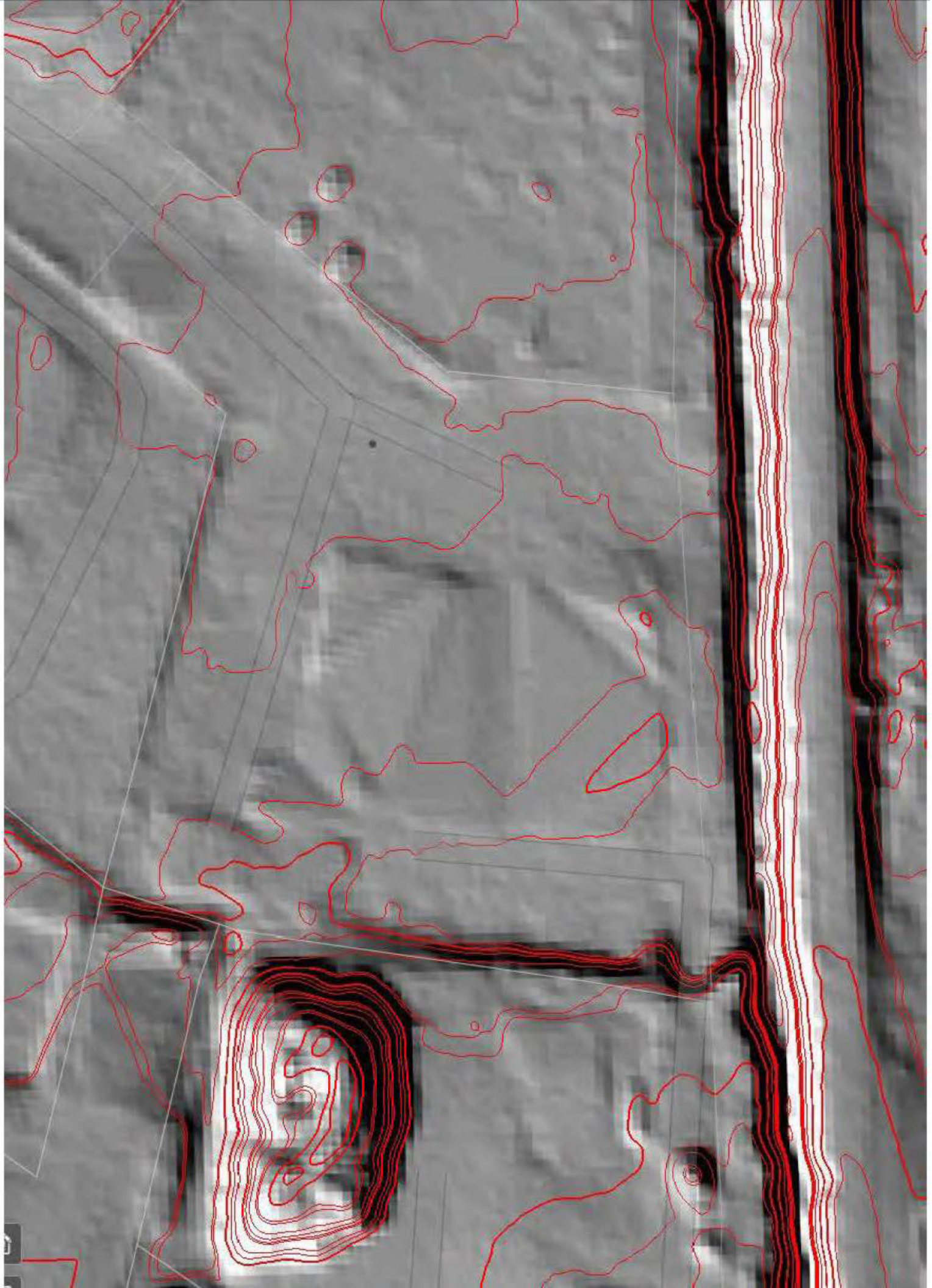
SHEET 1 OF 1

SCALE: 1" = 20'

PROJECT DATE: 4/24/2024

DRAFT: AAB | CHECK: AMS

FILE NUMBER: 3594


Crumbl - Falls Church
Gordon Rd
Beyer Volvo Cars Falls Church
VAL Collision Center Falls Church
Mr. Tire Auto Service Centers
Y Noodles
Falls Ave
Oscar's Body Shop
Recycle Dropoff
Washington and Old Dominion Trail
Indian Spices