



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BLVD
JACKSONVILLE, FL 32207

CESAS-ZR

21 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*, 598 U.S. 651 (2023),¹
SAJ-2024-03613 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 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.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable 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: 2 acres – non-jurisdictional

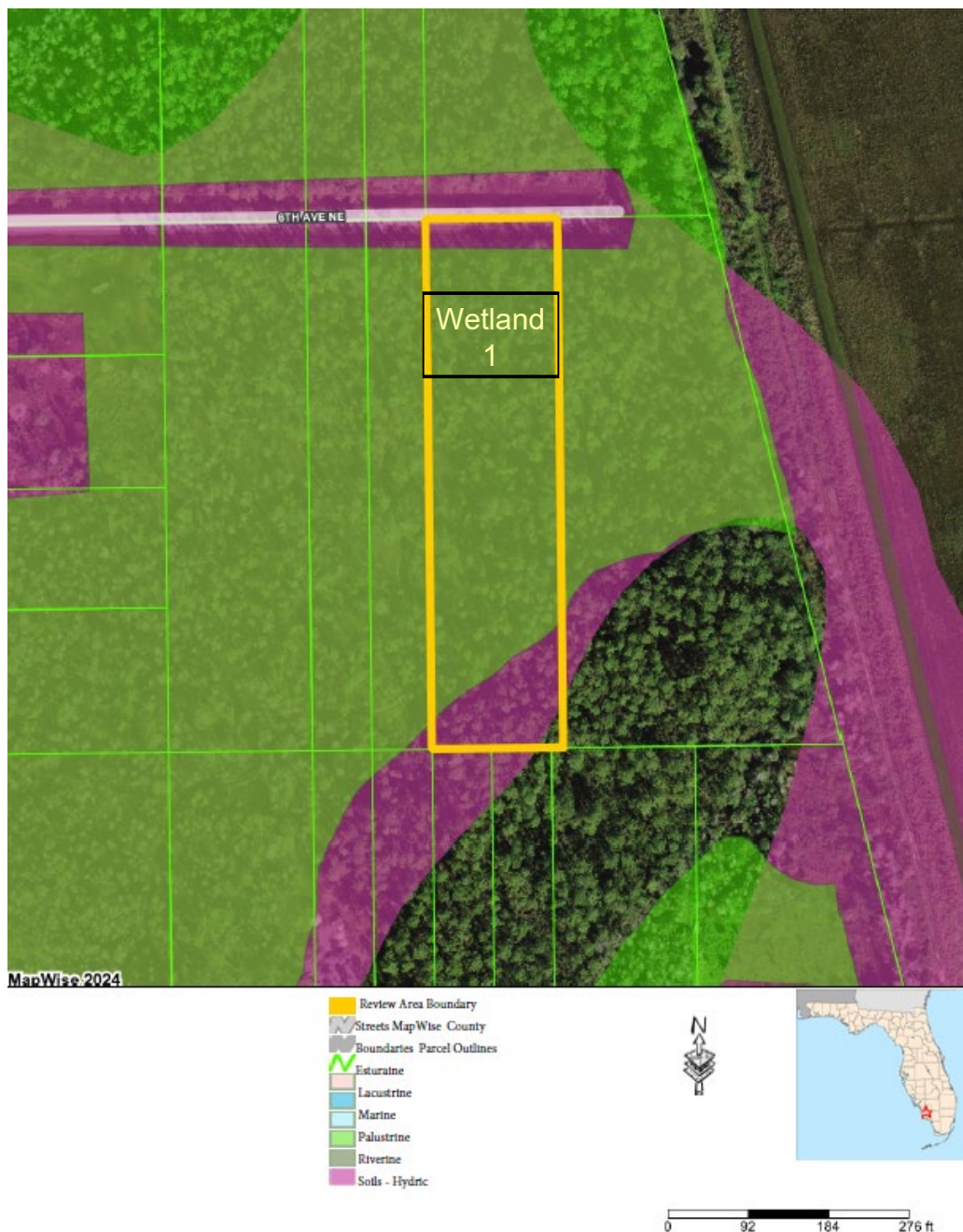
2. REFERENCES.

- 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 (2023)
- e. 12 March 2025 EPA-Army Memorandum to the Field Concerning the Proper Implementation of "Continuous Surface Connection."
- f. Joint Decision Memo NWO-2003-60436 Wetlands Divided by Artificial Structures, 19 December 2023.

3. REVIEW AREA. The review area is 2.50 acre and includes 2 acres of wetland (see Section 1a). The review area is located at 4720 6th Avenue Northeast in Section 48, Township 48 South, Range 28 East, in Naples, Florida 34120. (Latitude 26.24151, Longitude -81.51184). There are no previous Corps actions associated with the review area. The review area is depicted in Figure 1.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Faka Union River, a section 10 water located approximately 115,873 feet south of the project area. Faka Union River is found on the "Jacksonville District Navigable Waters Lists" document.

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

The flow path from the wetlands is as follows: Wetland 1 is abutting a roadside swale that runs 5,423 feet to the west into the Faka Union Canal, which flows south for 115,873 feet and enters the Faka Union River, which finally flows into Faka Union Bay after a distance of 11,293.9 feet.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

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.

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- 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”).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. 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

⁸ 51 FR 41217, November 13, 1986.

- 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 (2 acres): The review area is 2.50 acres and consists entirely of one wetland. This wetland is palustrine forested, non-tidal. At the front of the property along 4720 6th Avenue NE, the wetland abutting a roadside swale. The roadside swale runs from the wetlands on site 5,556 feet to the west into the nearest requisite water, Faka Union Canal, which is an a(5) tributary. The roadside swale is a discrete feature that does not contain a bed and bank, change in vegetation, or any other indicators that would indicate flow or establish an Ordinary High Watermark (OHWM). Additionally, several years of aerial imagery were reviewed between 1995 to present, which indicates water is only present in the ditches during hurricanes. The National Hydrography Dataset (NHD) does not indicate there is a ditch or canal at the location of this swale. Also, the US Geological Survey Topography Mapping does not show a swale or ditch in this area. As a result, the lack of consistent inundation and/or flow indicates that the ditch does not meet the Relatively Permanent Water (RPW) standard of having standing water or continuous flow, at least seasonally. Because this roadside swale does not meet the RPW standard and is not an a(5) water, per the pre-2015, post-Sackett regulatory regime and following the March 12, 2025, memo for Continuous Surface Connections (CSC), the wetland is not jurisdictional to the Corps on the western pathway.

Per the LiDAR and Hillshade layers and also the National Wetlands Inventory layer, the wetland continues east outside of the review area. Therefore, the Corps evaluated this side of the property for jurisdiction. Based on Google Earth Aerial imagery and LiDAR and Hillshade layers, there is a north/south berm separating the wetland from a canal that is 304-feet to the east. Additionally, whereas the roadside swale that flows east on the south side of 4720 6th Avenue NE, the swale ends at the berm and there are no culverts that reach the eastern canal. Whereas the wetland continues north around the 6th Avenue NE roadway, the wetland ends prior to reaching another canal to the north and has uplands on the east and north side of this wetland. Therefore, the wetland is not abutting any a(1-6) water on the east side of the Review Area and would therefore, not be jurisdictional to the Corps on this side of the Review Area.

The Corps also considered along the south, southwest, and west side of the Review Area as Wetland 1 continues off site. Based on the Joint Decision Memo

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NWO-2003-60436 Wetlands Divided by Artificial Structures, 19 December 2023, a single wetland may be divided by ditches, berms, and road crossings; therefore, it is often necessary to utilize multiple pieces of evidence to assess whether divided wetlands are separate, distinct wetlands or are functioning as one wetland. The Corps utilized remote sensing tools to evaluate connections from wetland one to any requisite a(1-6) water. Historically, Wetland 1 was part of Clewis Swamp, which was connected to Thirty-One Swamp and a large mosaic of wetlands that most likely connected to Picayune Strand, which flowed into the Gulf of America. However, based on topographic maps, aerial imagery, National Wetland Inventory Maps (NWI), and LiDAR data, Desoto Boulevard North and 4th Avenue Northeast bisect the one wetland on the west and southern borders and there are no culverts along these roads at the locations of the wetlands. Therefore, the connection is severed, and Wetland 1 is not abutting any requisite water because of these roads and cannot be evaluated as one wetland under the Joint Decision Memo NWO-2003-60436 Wetlands Divided by Artificial Structures, 19 December 2023. Therefore, Wetland 1 is not a jurisdictional water.

Based on this case specific analysis of the wetland contained within the review area, this resource is not jurisdictional under current regulations and applicable guidance.

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. Aerial Imagery: Current Conditions aerial image with project area, prepared by the USACE, as informed by the applicant, via Google Earth, dated 1 January 1999 (Figure 3); 1 April 2010 (Figure 4), and 5 August 2025 (Figure 2).
 - b. Review area: Aerial imagery provided by the applicant on 22 August 2024 (figure 1)
 - c. USAD NRCS Soil Survey: Online Soil Mapper, dated 10 October 2025 (Figure 6)
 - d. USFWS NWI maps: NWI online mapping layer, accessed 7 October 2025 (Figure 7)
 - e. LIDAR: Digital Elevation Model and Hillshade imagery accessed via National Regulatory Viewer, accessed 7 May 2025 (Figure 5)

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- f. USGS National Hydrography Dataset mapped as 1:24,000 scale accessed on 7 October 2025.
- g. Topographic map: National Regulatory Viewer via WGS 1984 Web Mercator Auxiliary Sphere, accessed on 07 October 2025 (Figure 8)

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.