



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
PENSACOLA REGULATORY OFFICE
41 NORTH JEFFERSON STREET, SUITE 301
PENSACOLA, FLORIDA 32502

SAJ-RDN-L

October 15, 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 SAJ-2024-01455.

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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 A, jurisdictional. Section 404, 0.09-acres and Section 10, 0.04-acres
 - ii. Wetland B, non-jurisdictional, 0.14-acres

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)

3. REVIEW AREA. The review is located 14124 River Road, Section 14, Township 03 South, Range 32, Escambia County, Florida, Parcel ID 14-3S-32-1001-040-140 and 14-3S-32-1001-030-139 (reference Figure 1 and 2 below). The approximate central coordinates are Latitude 30.308994°, Longitude -87.438441°. The 0.62-acre site is adjacent to a developed residential lot to the southwest, an undeveloped lot to the northeast and bound by River Road to the southwest. The undeveloped lot to the northeast has been mechanically cleared and appears to have fill placed on the property.

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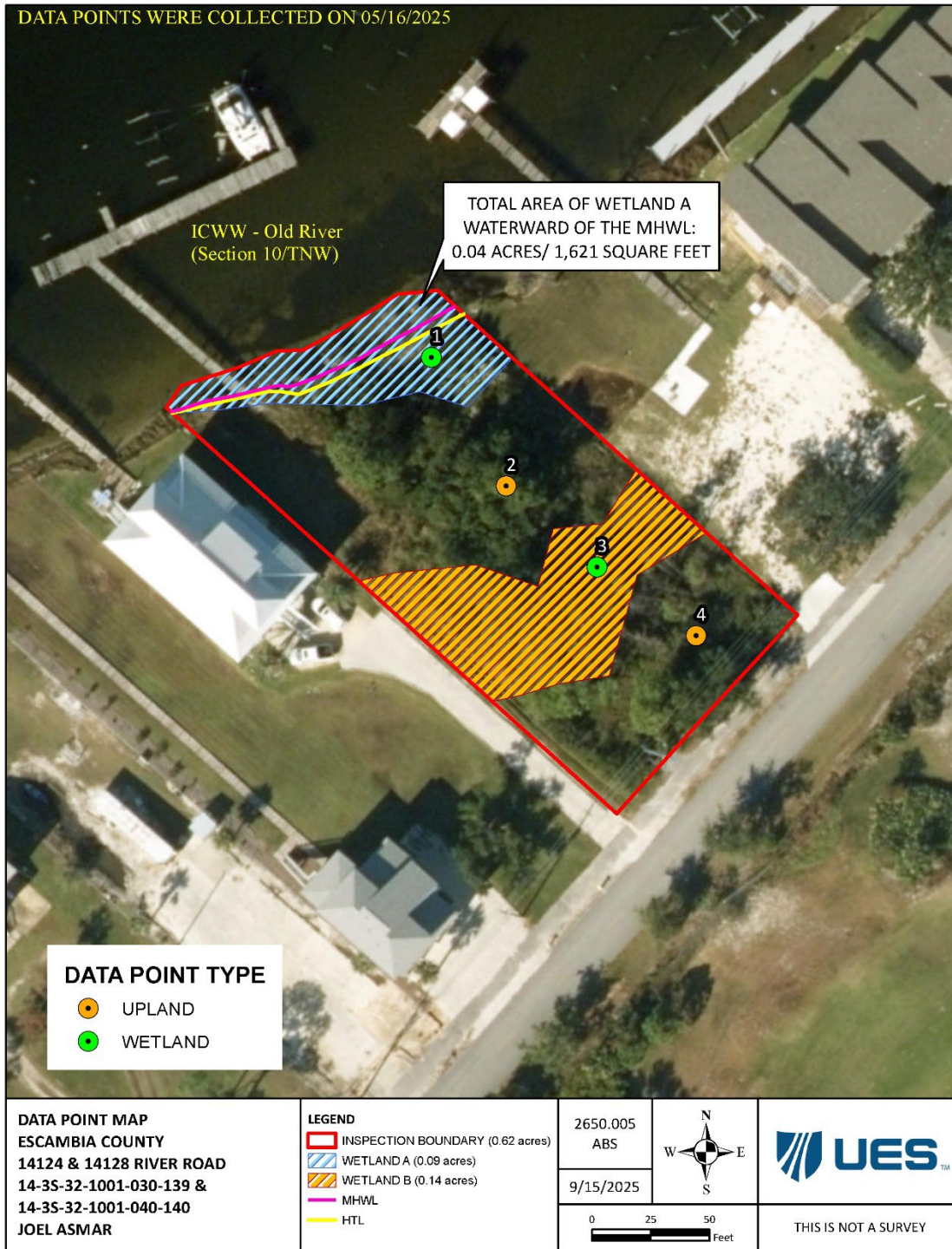


Figure 1. Review Area and Aquatic Resource Delineation Figure

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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 traditional navigable water (TNW) is the Old River/ Intracoastal Waterway (ICWW), located northwest and adjacent to the review area. It is subject to the ebb and flow of the tide.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: The northwestern portion Wetland A is subject to the ebb and flow of the tide of the TNW, the Old River/ ICWW. The mean high water line (MHWL) and the High Tide Line (HTL) are located within the boundaries of Wetland A.
6. SECTION 10 JURISDICTIONAL WATERS: The northwest portion Wetland A is partially located waterward of the MHWL. The 0.04-acre portion of Wetland A, identified on Figure 1 below, positioned waterward of the MHWL is within Section 10 Jurisdictional Waters.
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): ICWW is currently used in interstate commerce, is a Section 10 water, and therefore a TNW.
 - 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

- g. Adjacent wetlands (a)(7): The northwestern portion Wetland A is subject to the ebb and flow of the tide of the TNW, the Old River/ ICWW. The mean high water line (MHWL) and the High Tide Line are located within the boundaries of Wetland A. A field investigation was completed by UES on 16 May 2025, using the federal delineation methodology provided in the 1987 Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers wetland delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010. The Federal Wetland Data sheets indicate that Wetland A (Sample point 1), 0.09-acre, meets all three wetland parameters, including three primary indicators of hydrology (A2, A3, B9), passed the dominance test for hydrophytic vegetation and contained hydric soil indicators for S5-Sandy Redox and S7-Dark Surface. Evaluation of the Antecedent Precipitation Tool (APT) analysis show that the data points were taken in wetter than normal conditions during a mild drought, according to the Palmer Drought Index. The Corps conducted a field inspection on 31 July 2024 and 30 April 2025, and verified the agent's wetland data forms. The review area is located on Perdido Key, a highly developed barrier island with a relic interdunal/swale landscape. A Corps review of Light Detection and Ranging (LiDAR) imagery and hill shade layer, via the National Regulatory Viewer, supports the finding of low elevation within the area of Wetland A. Therefore, the Corps has determined that based on the field investigations, wetland data forms, desktop tools, and direct observation that 0.09 acres of wetland A have a continuous surface water connect and directly abut an (a)(1) water and qualifies as a jurisdictional (a)(7) Section 404 water of the U.S.

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").⁵ 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

⁵ 51 FR 41217, November 13, 1986.

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- 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 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).

A field investigation was completed by the agent on 16 May 2025, using the federal delineation methodology provided in the 1987 Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers wetland delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010. The Federal Wetland Data sheets indicate that Wetland B (Sample point 3), 0.14-acre, meets two primary indicators of wetland hydrology for Saturation, A3 and Water-Stained Leaves, B9, passed the dominance test confirming hydrophytic vegetation is present, and contained the hydric soil indicator for Sandy Redox, S5. Evaluation of the Antecedent Precipitation Tool (APT) analysis show that the data points were taken in wetter than normal conditions during a mild drought, according to the Palmer Drought Index. The Corps conducted a field inspection on 30 April 2025, and verified the agent’s preliminary copy of the data forms. The review area is located on Perdido Key, a highly developed barrier island with a relic interdunal/swale landscape. A Corps review of Light Detection and Ranging (LiDAR) imagery overlaid with hill shade layer, via the National Regulatory Viewer, supports the finding of low elevation within the area of Wetland B. A review of the National Hydrography Dataset

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(NHD), via the National Regulatory Viewer did not display any onsite conveyances. -The finalized data forms include two upland data points, Sample point 2 and Sample point 4. The Federal Wetland Data Sheets for Sample point 2 indicate that the area meets one secondary hydrology indicator, Geomorphic Position, D2, passed the dominance test confirming hydrophytic vegetation (54.5% dominance for OBL, FACW, FAC dominant) is present and did not observe any hydric soil indicators. This sampled area severs jurisdictional connection from Wetland A to Wetland B with no continued surface connection or relative permanent water located in the sampled area. The Corps confirmed during the field investigation on 30 April 2025 that Wetland B is surrounded entirely by uplands and lacks a continuous surface connection to (a)(1) through (a)(6) water and does not directly abut a traditional navigable water (TNW) or a relatively permanent water (RPW).

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. Information and data submitted by the JD requester reviewed 22 July 2024, 18 March 2025 and 14 August 2025.
 - b. LiDAR and Hill shade layer, National Regulatory Viewer, accessed 22 July 2024 and 14 August 2025.
 - c. U.S. Geological Survey National Hydrography Dataset layer, National Regulatory Viewer, accessed 22 July 2024.
 - d. U.S. Fish and Wildlife Service National Wetlands Inventory Mapper, accessed 25 August 2025. <https://www.fws.gov/apps/program/national-wetlands-inventory>
 - e. Google Earth Pro, accessed 22 July 2024 and 14 August 2025.
 - f. U.S. Department of Agriculture, Natural Resources Conservation Service (NRSC) Web Soil Survey, accessed 25 August 2025. <https://www.nrcs.usda.gov/resources/data-and-reports/web-soil-survey>
 - g. Field investigations conducted on 31 July 2024, 30 April 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.

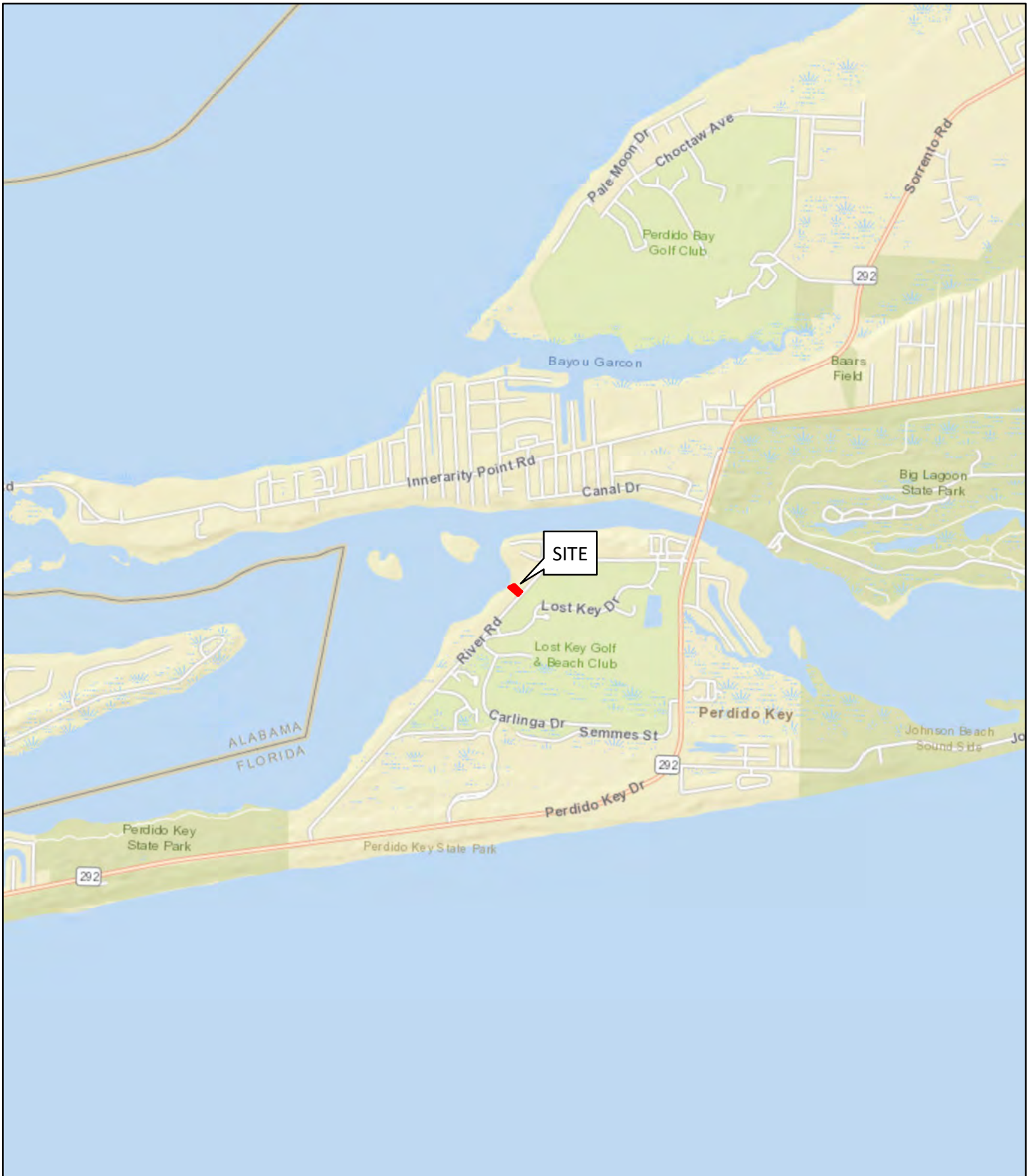

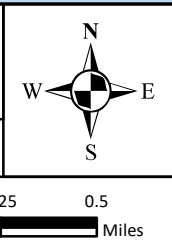


EXHIBIT 1
SITE LOCATION MAP
 ESCAMBIA COUNTY
 14124 & 14128 RIVER ROAD
 14-3S-32-1001-030-139 &
 14-3S-32-1001-040-140
 JOEL ASMAR

LEGEND
 INSPECTION BOUNDARY

2650.005
 ABS
 5/8/2024



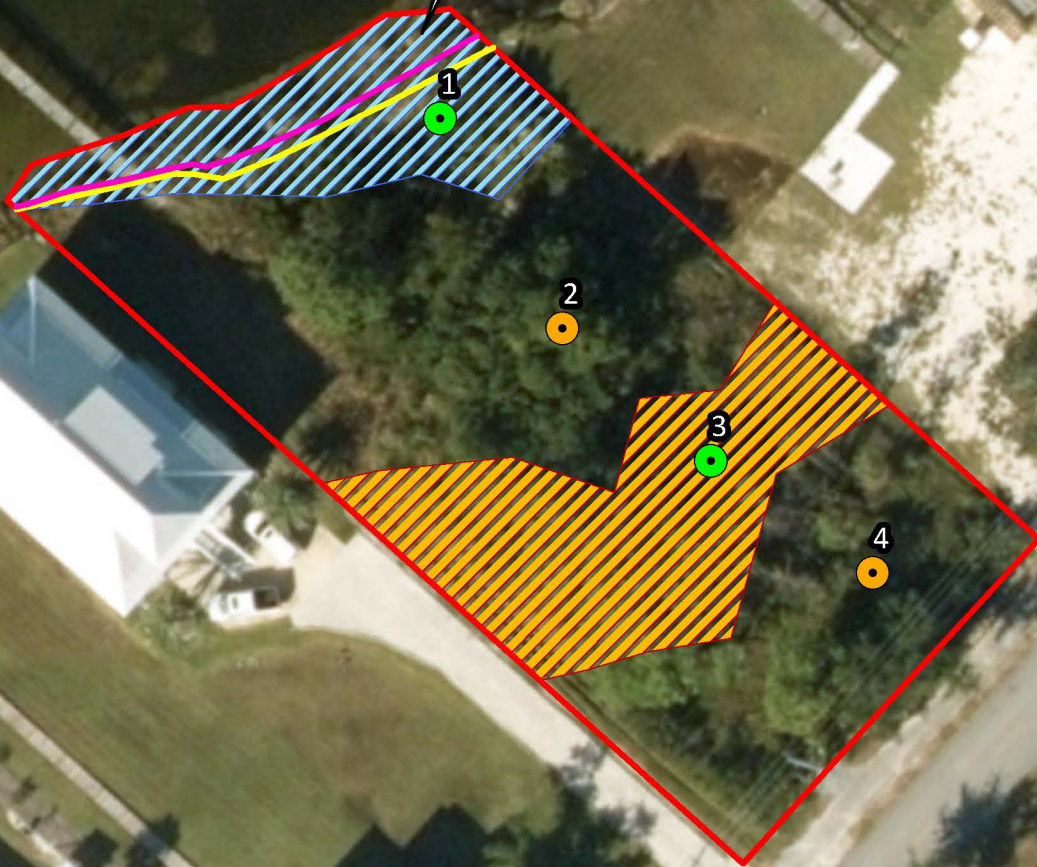
biome
 Consulting Group
 A UES Company

THIS IS NOT A SURVEY

DATA POINTS WERE COLLECTED ON 05/16/2025

ICWW - Old River
(Section 10/TNW)

TOTAL AREA OF WETLAND A
WATERWARD OF THE MHWL:
0.04 ACRES/ 1,621 SQUARE FEET



DATA POINT TYPE

- UPLAND
- WETLAND

DATA POINT MAP
ESCAMBIA COUNTY
14124 & 14128 RIVER ROAD
14-3S-32-1001-030-139 &
14-3S-32-1001-040-140
JOEL ASMAR

LEGEND

- INSPECTION BOUNDARY (0.62 acres)
- WETLAND A (0.09 acres)
- WETLAND B (0.14 acres)
- MHWL
- HTL

2650.005
ABS
9/15/2025

0 25 50
Feet

UES™

THIS IS NOT A SURVEY