



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
701 SAN MARCO BOULEVARD  
JACKSONVILLE, FLORIDA 32207-8175J

CESAJ-RD

October 3, 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> SAJ-2024-04150 (MFR 1 of 1)

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 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.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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- 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
  - ii. Wetland 2 – Non-Jurisdictional
  - iii. Wetland 3- Jurisdictional (Section 404)
  - iv. Wetland 4 – 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, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area consists of approximately 311.80 acres and is located at 5500 CR 208 in Sections 9 and 39, Township 7 South, Range 28 East, in St Augustine, Florida.

Latitude: 29.91204

Longitude: -81.50234

- a. Wetland Delineation Information: The wetland data sheets were completed by the consultant on June 1, 2025.
- b. Site History: No previous Corps jurisdictional determinations or issued permits.

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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 St Johns River, which is approximately 6 miles from the review area.

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

Wetlands 1, 2 and 4 do not flow to an (a)(1)-(a)(6) water. Wetland 3 continues offsite to the west and flows to Sixmile Creek, which flows to the St. Johns River, the TNW.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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

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<sup>5</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>6</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.

- 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):

i. Wetland 3: Wetland 3 is approximately 196.34 acres in size and is part of a large contiguous wetland system that continues offsite towards the west. Based on a review of Google Earth photos and NWI Maps, Sixmile Creek, an (a)(5) tributary, flows through the wetland system. Therefore, the wetland system, which includes the onsite Wetland 3, has a continuous surface connection with the tributary as the wetland system abuts (touches) the tributary. Sixmile Creek is a named tributary, is a natural waterbody, is visible in Lidar and Google Earth images, is identified as a perennial stream by National Hydrographic Dataset, is shown as a blue line tributary on USGS Topographic Maps, and flows directly into a TNW (St Johns River). Therefore, Sixmile Creek, which is located outside of the review area, is relatively permanent and is determined to be an (a)(5) Tributary. In consideration of the above, the wetland system, which includes Wetland 3, is an (a)(7) Adjacent Wetland of the offsite (a)(5) tributary of Sixmile Creek and is jurisdictional.

## 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>7</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

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<sup>7</sup> 51 FR 41217, November 13, 1986.

- 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 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).
  - i. Wetland 1: Wetland 1 is approximately 3.08 acres in size. Based on a review of Google Earth photos, Lidar and Web Soil survey information, Wetland 1 appears to extend offsite to the north. Wetland 1, including the offsite portion, appears to be surrounded by uplands and does not abut (touch) an (a)(1)-(a)(6) water. Therefore, Wetland 1 is not an (a)(7) adjacent wetland and is non-jurisdictional.
  - ii. Wetland 2: Wetland 2 is 1.19 acres in size and is located wholly within the review area. It is surrounded by uplands and does not abut (touch) an (a)(1)-(a)(6) water. Therefore, Wetland 2 is not an (a)(7) adjacent wetland and is non-jurisdictional.

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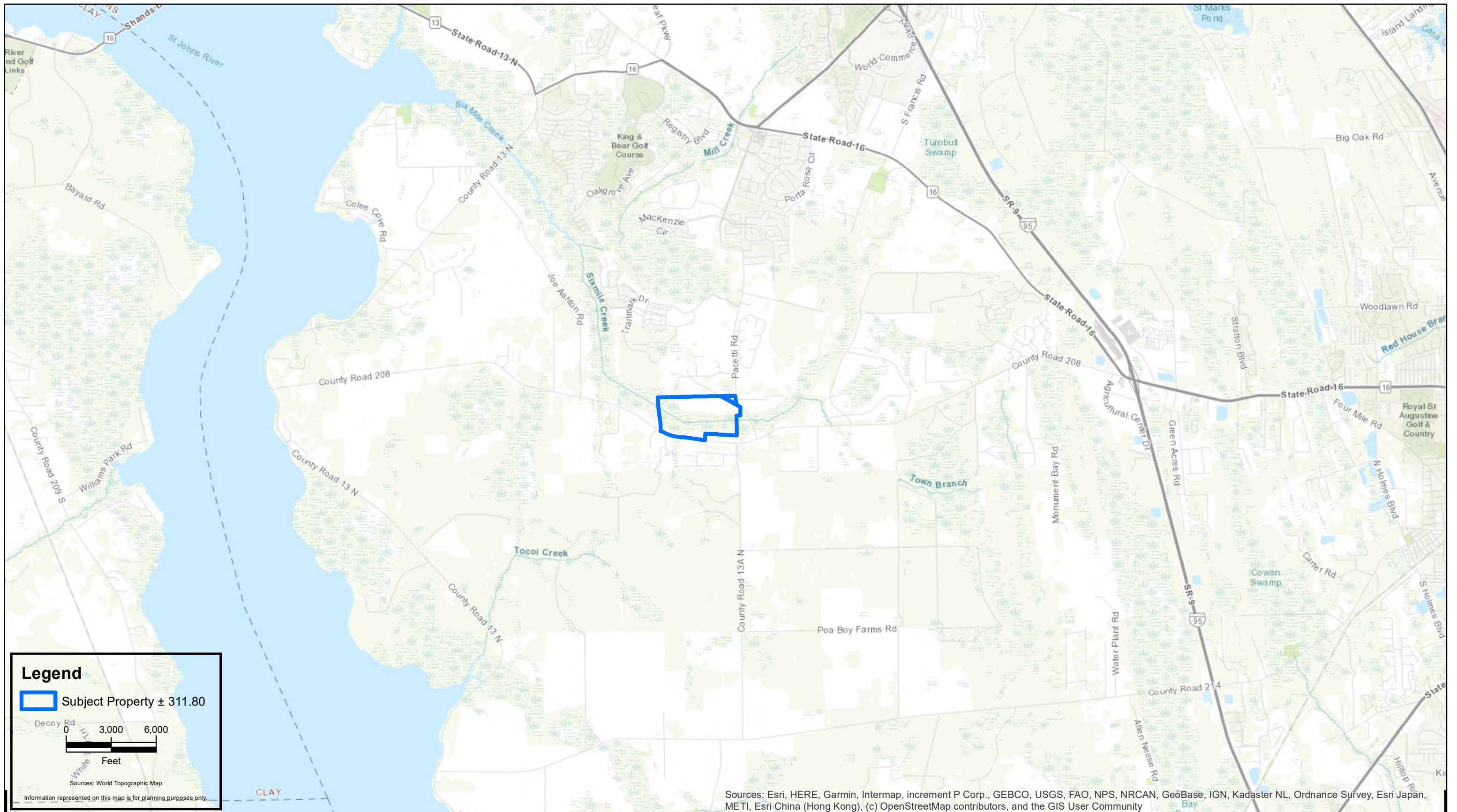
iii. Wetland 4: Wetland 4 is 0.43 acre in size. The wetland continues offsite to the north. Based on a review of resource information including Lidar, Google Earth aeriels and streetview photos, NWI and web soil survey information, the offsite portion of Wetland 4 is surrounded by uplands and does not abut (touch) an (a)(1)-(a)(6) water. Therefore, Wetland 4 is not an (a)(7) adjacent wetland and is non-jurisdictional.

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. Google Earth imagery dated 1999, 2016, 2018, and 2022.
- b. Wetland Delineation Sheets, dated June 1, 2025
- c. National Regulatory Viewer (NHD, LIDAR, NWI)
- d. Web Soil Survey

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.



**Legend**

Subject Property ± 311.80

0 3,000 6,000  
Feet

Sources: World Topographic Map  
Information represented on this map is for planning purposes only.

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

**CARTER ENVIRONMENTAL SERVICES, INC.**

**CES** 7 Waldo Street  
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Location Map  
**Cummer Tract**  
St. Johns County, Florida

Project:	5.17150
Date:	Jun 25 2024
Figure:	1



Subject Property ± 311.80  
**Jurisdictional Status**  
 ACOE Non-JD Wetlands ± 4.70 ac.  
 ACOE JD Wetlands ± 196.34 ac.  
**ACOE Data Form Points**  
◆ Upland Data Point  
◆ Wetland Data Point

0      250      500  
 Feet  
 Sources: ESRI Aerial Imagery  
 Information represented on this map is for planning purposes only.

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

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Relevant Features Map  
**Summer Tract**  
 St. Johns County, Florida

Project:	5.17150
Date:	Sep 16 2025
Figure:	7