



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
400 HIGH POINT DR.  
COCOA, FL 32926-6630

CESAJ-RD-NC  
SAJ-2025-02041

8 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*, 143 S. Ct. 1322 (2023),<sup>1</sup> SAJ-2025-02041, MFR 1 of 1<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

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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.

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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 Florida 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 (W1) (1.43 acres) – non-jurisdictional (Section 404) with an embedded surface water 1

## 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. Memorandum to the Field between U.S. Army Corps of Engineers and U.S. EPA concerning the proper implementation of “Continuous Surface Connection” under the definition of “Waters of the United States” under the Clean Water Act (March 12, 2025)

3. REVIEW AREA. The review area is located north of Stonewall Place and east of North Ronald Reagan Boulevard, in Section 22, Township 20 South, Range 30 Easy, Sanford, Seminole County, Florida, at 28.73400278 Latitude, -81.30196667 Longitude. The review area is approximately 3.80 acres in size and contains one on-site wetland with a surface water within the wetland boundary. The site is surrounded by additional industrial and commercial developments along with roadways. No previous jurisdictional determinations were made for this review area.

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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 Lake Jesup, which is located approximately

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1.35 miles southeast of the review area. <sup>6</sup> Lake Jesup is a freshwater non-tidal lake that is connected to Soldier Creek, and multiple other RPWs and TNWs.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Lake Jesup is located approximately 1.35 miles southeast of the review area. Lake Jesup is a Section 10 Lake that is freshwater and connects to multiple chains of lakes within central Florida and ultimately connects to the St. Johns River. The Corps has determined that the onsite wetland and surface water lack a continuous surface connection to Lake Jesup, as described in Section 8.f.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: N/A
7. SECTION 404 JURISDICTIONAL WATERS: N/A
  - 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): 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

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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.

<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.

to as “preamble waters”).<sup>8</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 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. Wetland 1: Pursuant to project research of soils maps, aerials, Lidar/Topo maps, FLUCCS/Veg maps, NWI maps, submitted data sheets, and desktop reviews conducted on 28 and 29 July 2025 and 26 August 2025, a determination was made that wetland 1 does not have a continuous surface connection to any jurisdictional water and is non-jurisdictional. The nearest potentially jurisdictional water to wetland 1 is a RPW to the east

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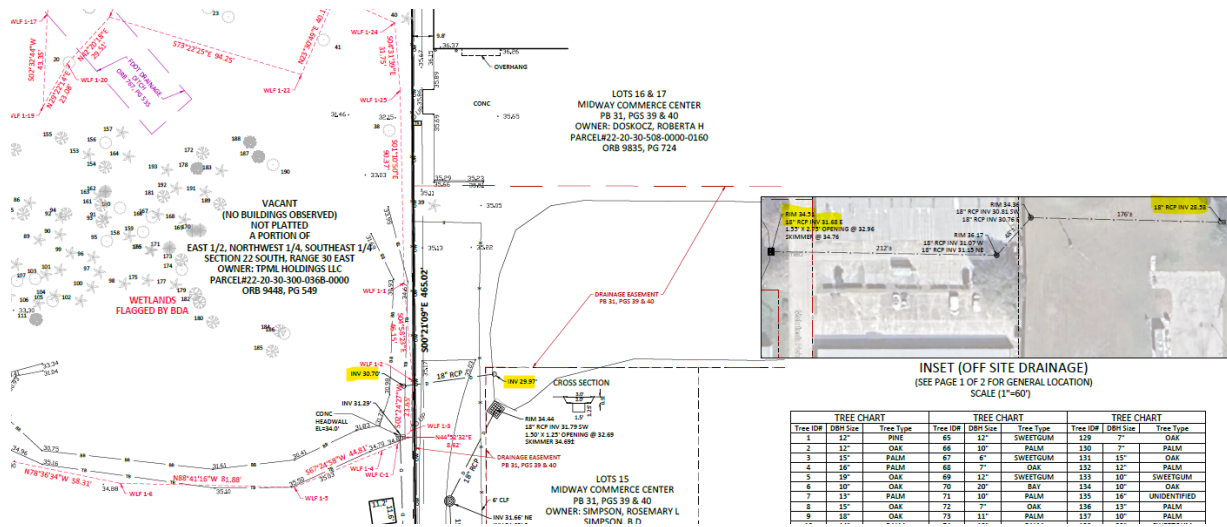
<sup>8</sup> 51 FR 41217, November 13, 1986.

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that flows south and directly connects to Lake Jesup. This RPW appears on LIDAR and NHD data. Wetland 1 can be categorized as a freshwater forested system. Wetland 1 also contains hydrologic indicators including saturation with muck presence and with an abundance of FACW and FAC species in the tree stratum. Within wetland 1, there is a surface water previously dug as a borrow pond (labeled surface water 1) back in the 1990s, based on aerial photos, that has two culvert connections. According to the submitted survey, those two on-site culverts within surface water 1 which is within wetland 1 do have off-site connections. The culvert to the west of surface water 1 connects to the existing stormwater pond to the southwest of the site underneath Stonewall PI. That stormwater pond is a closed system and does not connect elsewhere. The culvert to the east of the on-site surface water 1 connects via a culvert to the stormwater pond directly east of the site. The on-site culvert invert elevation is 30.70' and the off-site culvert invert elevation is 29.97'. That stormwater pond has a control structure on the far east side of the pond, that during high precipitation events, the overflow from the stormwater pond flows through the control structure and into an underground pipe. The control structure has a RIM elevation of 34.51' and the underground pipe extending off the control structure has an elevation of 31.68'. The underground pipe flows east and ultimately outfalls into off-site wetlands that directly abut the RPW that flows south into Lake Jesup. The ultimate outfall culvert invert elevation is 28.58'. The continuous surface water connection is severed at the control structure as there is a break of approximately 4' between the elevation of the of the culvert from the on-site surface water 1 and eastern stormwater pond and the control structure. These findings are based off elevation information provided via a survey submitted by the jurisdictional determination requestor. The ordinary high-water line does not continue through the entire system and the on-site wetland does not have a continuous surface connection to a RPW. In accordance with the 12 March 2025 EPA-Army memo, a wetland must directly abut a requisite water or that wetland to be a jurisdictional (a)(7) adjacent wetland. Wetland 1 does not physically touch or abut a jurisdictional water and is therefore non-adjacent and non-jurisdictional.

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Provided survey with elevations

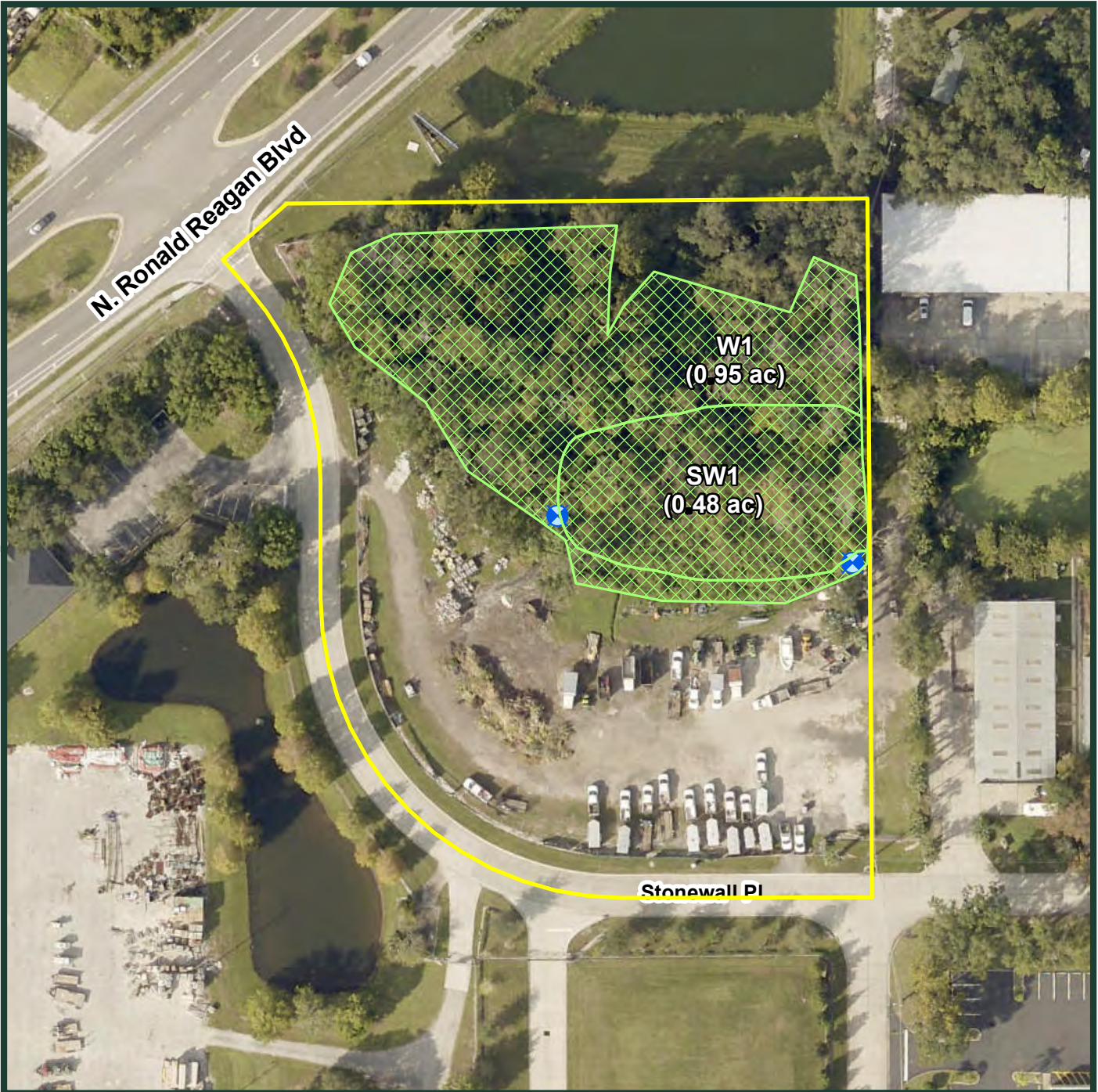


Control structure within the Stormwater pond to the East




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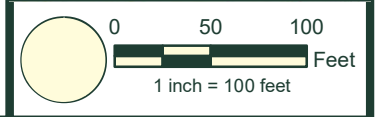
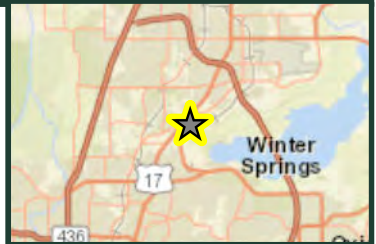
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Corps desktop review conducted 28 July 2025 and 29 July 2025 and 26 August 2025
  - b. Lidar, National Regulatory Viewer, last accessed 29 July 2025.
  - c. National Wetlands Inventory Map, National Regulatory Viewer, last accessed 29 July 2025
  - d. National Hydrography Data Set, National Regulatory Viewer, last accessed 29 July 2025.
  - e. Online meeting between the Corps and the AJD requestor to discuss site conditions, the provided survey, and potential conveyances conducted on 29 July 2025
  - f. Data sheets completed on 05 August 2025 by the agent and supplied to the Corps on 21 August 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.



**Legend**

-  Property (3.80 ac)
-  Wetlands and Surface Waters (1.43 ac)
-  Culverts

Source: Boundary provided by CivilCorp Engineering, Inc; 20250125. Wetland delineation by Breedlove, Dennis & Associates, Inc. Aerial streamed from ESRI.



**EXHIBIT 8B**  
**WATERS OF THE UNITED STATES (WOTUS) ON THE TOTAL PML PROJECT SITE,**  
**SEMINOLE COUNTY, FLORIDA.**

**BDA** BREEDLOVE, DENNIS & ASSOCIATES, INC.  
 Environmental Consultants  
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