



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

CESAJ-RDN-J

9 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-2005-03497<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 AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

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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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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable 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. Surface Water 1 (SW1), 1.02-acres / 2,095 linear feet- jurisdictional, Section 404
  - ii. Wetland 1 (W1), 17.16-acres, jurisdictional, Section 404
  - iii. Wetland 2 (W2), 0.66-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, 143 S. Ct. 1322 (2023)
- e. EPA and Army Joint Decision Memorandum to Re-Evaluate Jurisdiction for NOW-2003-60463

3. REVIEW AREA. The project is located along the eastern side of Sandy Creek Parkway (St. Johns County Property Appraiser – Parcel Identification Number 0267490110), in Section 40, Township 5 South, Range 28 East, St. Augustine, St. Johns County, Florida. The project site's approximate central coordinates are Latitude 30.060397°, Longitude -81.493124°. The project would affect aquatic resources associated with Sampson Creek. The review area includes a 65.24-acre parcel of land that consists of an overhead utility easement, pine plantation, and wetlands (further discussed in sections 7 and 8 below). There are no prior jurisdictional determinations for the review area.

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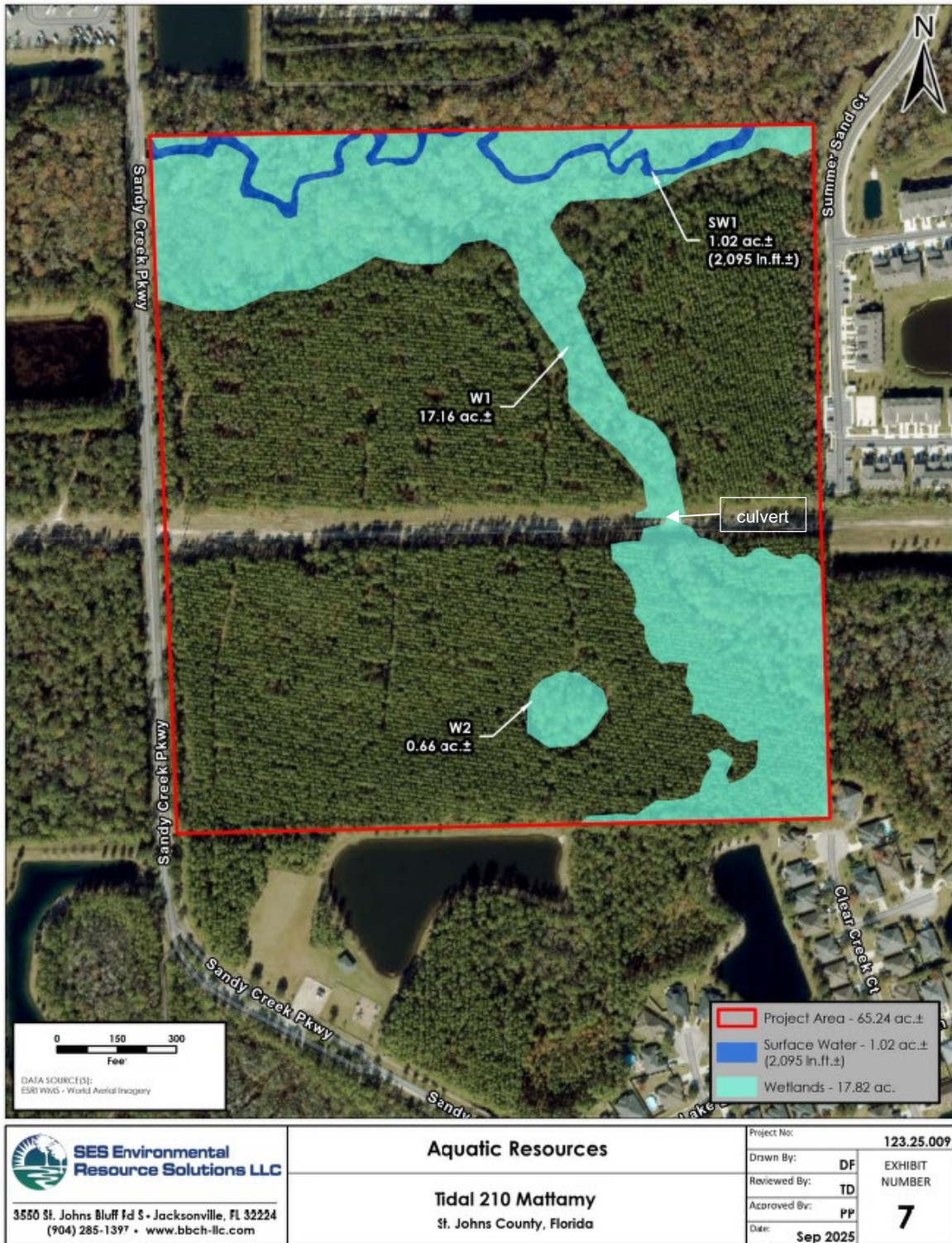


Figure 1- Aquatic resources within review area.

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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 Durbin Creek, located approximately 1.73 miles northwest of the review area.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. From the review area, the tributary of Sampsons Creek located on the northern portion of the review area would flow approximately 1.73 miles northwest directly into Durbin Creek.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</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>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.

<sup>8</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): SW1 (1.02-acres / 2,095 linear feet) – The aquatic resource is identified as Sampson Creek, a perennial stream surrounded by wooded marsh or swamp habitat. The tributary traverses the northern portion of the review area from east to west and flows directly into Durbin Creek to the northwest. Based on upstream Google Street View imagery, the tributary features inundation in all images from 2008 to 2024 and is considered to have a continuous flow at least seasonally. Additionally, the tributary features channelization, bed and bank, and relatively permanent waters. The National Wetland Inventory categorizes the area as Freshwater Forested/Shrub Wetland (PFO1C). The National Regulatory Viewer (NRV) digital elevation models LiDAR and Hillshade illustrate a lower elevation channel that meanders naturally in twists, turns, and oxbows as it flows to the west. The National Hydrography Dataset (NHD) and USGS topographic maps denote the feature as a named, perennial stream/river. The tributary flows directly into a TNW, which is Durbin Creek; however, it flows through culverts under Sandy Creek Parkway and Interstate 95 to the west, through a culvert under County Road 210 to the northwest, and under a logging road through multiple paths further northwest until its outfall into Durbin Creek. Whereas the western boundary has a road that Based on the information reviewed above, the Corps has determined that Sampson Creek at this location is an (a)(5) tributary jurisdictional to the Corps.
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wetland 1 (W1) (17.16-acres) – This aquatic resource directly abuts SW1, which is Sampson Creek, described in Section 7e above. The resource is located on the northern, eastern, and southeastern portions of the review area. A field investigation completed 7 August 2025 by the Agent 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 confirmed that the resource meets all three parameters (hydrology, vegetation, and hydric soils) to be considered a wetland. There is an overhead utility line and easement with a road running through the center of the property east to west, bisecting the wetland. Based on the blue/purple depiction in the National Regulatory Viewer (NRV) digital elevation models, the wetland is

considered low lying from the southeast corner of the review area all the way northwest to Sampson Creek. The wetland features very poorly, somewhat poorly, and poorly draining soils from the southeast to the northwest, to Sampson Creek. National Wetlands Inventory identifies the area as freshwater forested/shrub wetland (PFO1F). The wetland is separated by an existing low lying, dirt, utility easement that is culverted to allow a hydrologic connection. Additionally, the plant communities are similar on both sides of the culvert, the soils are hydric on both sides of the culvert, and the topography is the same. Lastly, based on historical imagery, the wetlands on both sides of the utility easement were one wetland system prior to the development of the easement. All of these factors indicate that the divided wetland is functioning as one wetland. Therefore, the Corps will analyze the site as one wetland per the EPA and Army Joint Decision Memorandum to Re-Evaluate Jurisdiction for NOW-2003-60463. Therefore, the Corps is assessing these wetlands for Clean Water Act jurisdiction under the pre-2015 regulatory regime consistent with *Sackett* as having a continuous surface connection to an (a)(5) tributary, Sampson Creek and the water is jurisdictional to the Corps.

## 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>9</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

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<sup>9</sup> 51 FR 41217, November 13, 1986.

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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).

Wetland 2 (W2) (0.66-acres) – This resource is a cypress dome located within the southern portion of the review area. A field investigation completed 7 August 2025 by the Agent 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 confirmed that the resource meets all three parameters (hydrology, vegetation, and hydric soils) to be considered a wetland. The resource is surrounded by a coniferous plantation vegetative community that does not meet all three parameters to be considered wetland; therefore, this indicates that the dome swamp is surrounded by uplands. The National Wetlands Inventory also indicates that the dome swamp is present (PFO1/2F) but surrounded by uplands. The Hydric Rating by Map Unit indicates the soils in this area are upland soils. The LiDAR and Hillshade mapping indicate this is an area of lower elevation surrounded by higher elevations, indicating that the dome swamp is surrounded by uplands with no continuous surface connection to any (a)(1) through (a)(6) waters. Therefore, W2 is not abutting any (a)(1) through (a)(6) waters and is therefore, not within the Corps jurisdiction.

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. Site inspection completed on 7 August 2025 by SES Energy Services LLC. Data provided to the Corps on 22 August 2025.

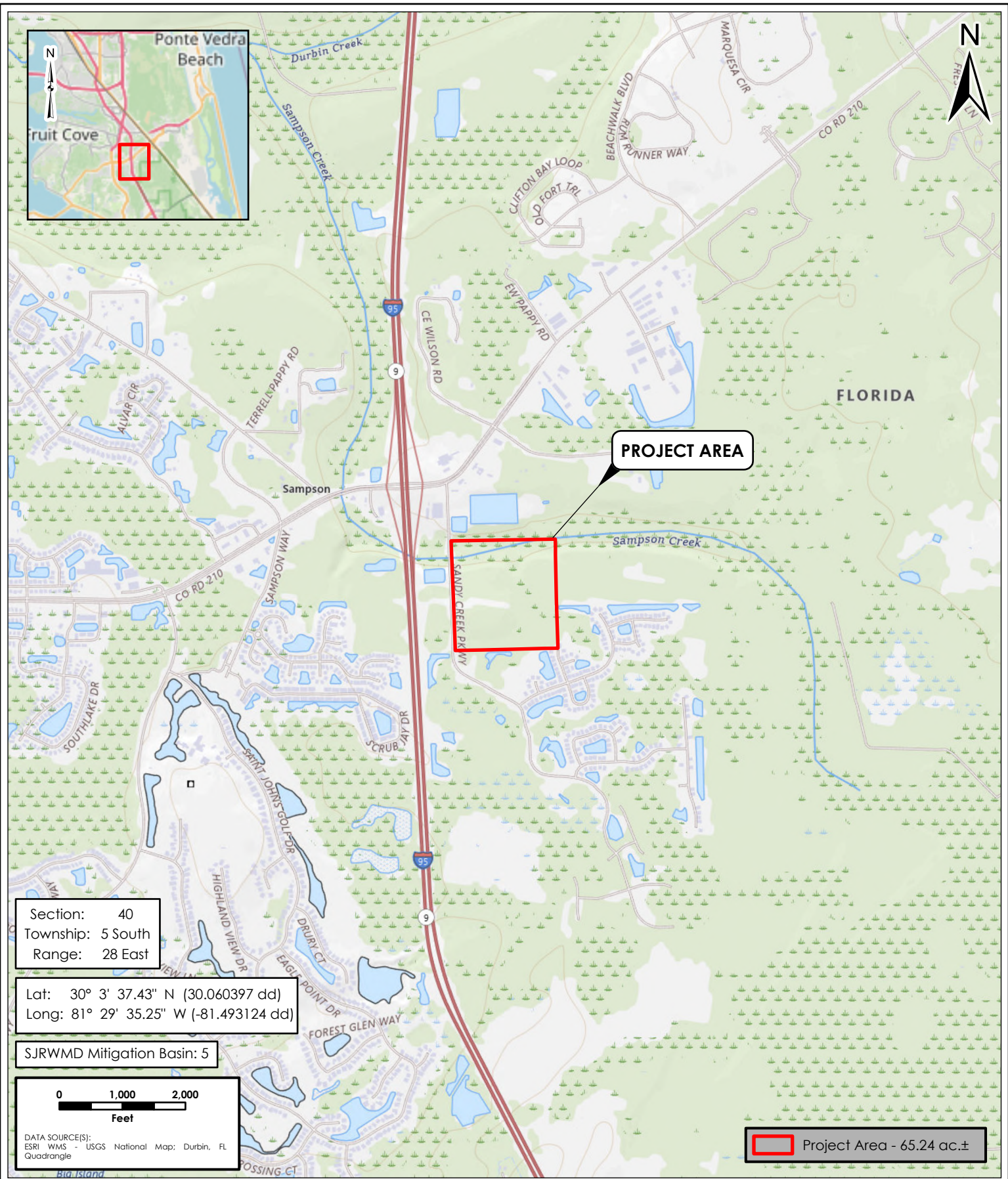
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- b. The National Regulatory Viewer, internal Corps system, 26 August 2025
  - i. USGS Topographic Map
  - ii. National Wetlands Inventory (NWI) Mapper
  - iii. Florida Land Cover Classification System (FLUCCS)
  - iv. National Hydrography Dataset (NHD)
  - v. Digital Elevation Model (DEM)
  - vi. Hillshade Elevation Model
- c. Google Street View Imagery, 30 September 2025
- d. Historicaerials.com, 30 September 2025
- e. NRCS Web Soil Survey and Hydric Soils Map, 26 August 2025,  
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

10. OTHER SUPPORTING INFORMATION. N/A

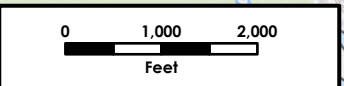
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.




Section: 40  
 Township: 5 South  
 Range: 28 East

Lat: 30° 3' 37.43" N (30.060397 dd)  
 Long: 81° 29' 35.25" W (-81.493124 dd)

SJRWMD Mitigation Basin: 5



DATA SOURCE(S):  
 ESRI WMS - USGS National Map; Durbin, FL  
 Quadrangle

 Project Area - 65.24 ac.±



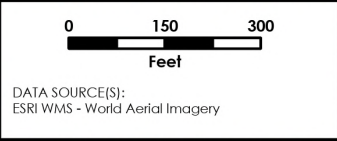
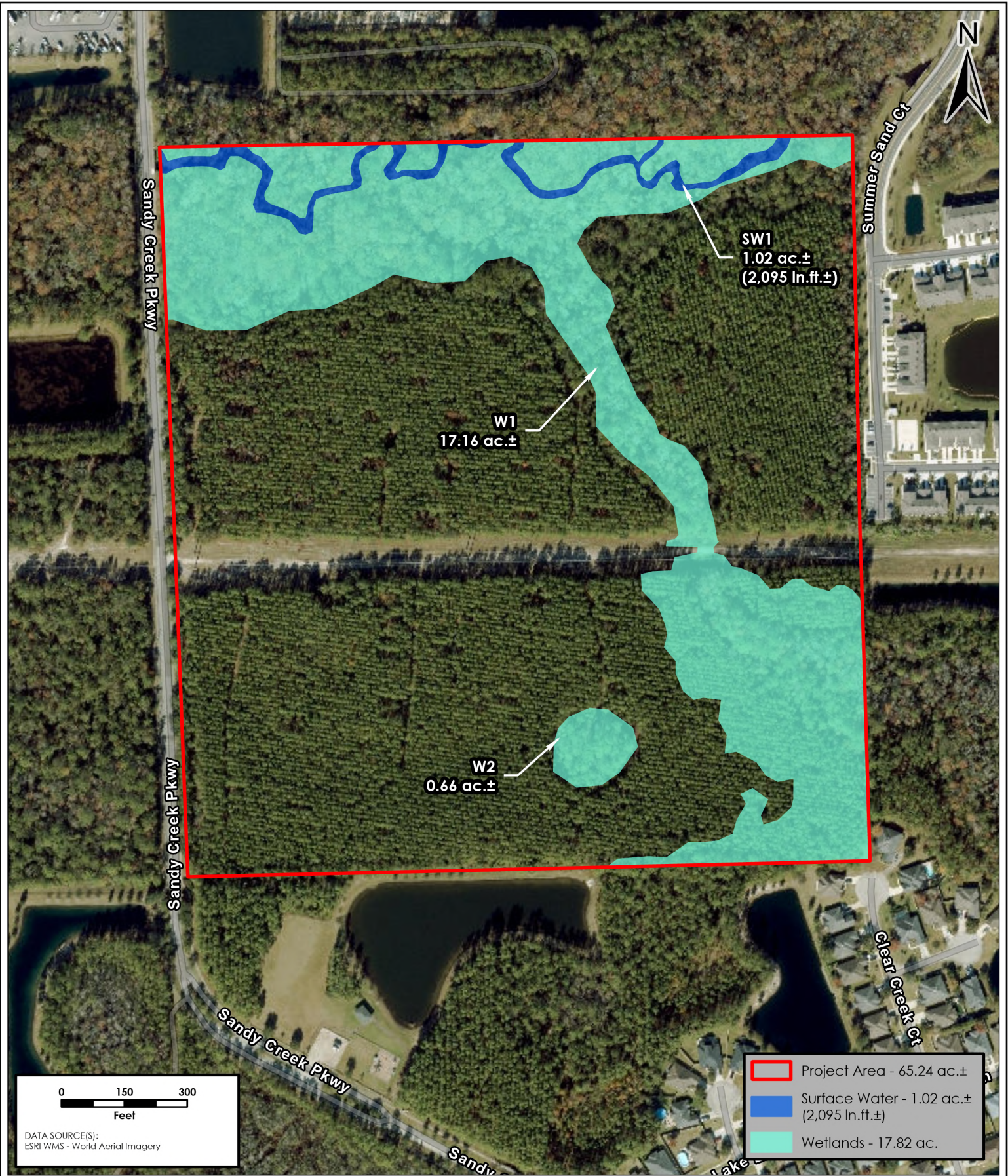
**SES Environmental Resource Solutions LLC**

3550 St. Johns Bluff Rd S • Jacksonville, FL 32224  
 (904) 285-1397 • www.bbch-llc.com

## Topographic Site Location

**Tidal 210 Mattamy**  
 St. Johns County, Florida

Project No:	<b>123.25.009</b>	
Drawn By:	<b>DF</b>	<b>EXHIBIT NUMBER  1</b>
Reviewed By:	<b>TD</b>	
Approved By:	<b>PP</b>	
Date:	<b>Aug 2024</b>	



<span style="border: 1px solid red; display: inline-block; width: 15px; height: 10px;"></span>	Project Area - 65.24 ac.±
<span style="background-color: blue; display: inline-block; width: 15px; height: 10px;"></span>	Surface Water - 1.02 ac.± (2,095 ln.ft.±)
<span style="background-color: cyan; display: inline-block; width: 15px; height: 10px;"></span>	Wetlands - 17.82 ac.



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**Aquatic Resources**

**Tidal 210 Mattamy**  
 St. Johns County, Florida

Project No:	<b>123.25.009</b>	
Drawn By:	<b>DF</b>	<b>EXHIBIT NUMBER  7</b>
Reviewed By:	<b>TD</b>	
Approved By:	<b>PP</b>	
Date:	<b>Sep 2025</b>	