



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
JACKSONVILLE PERMITS SECTION
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-8137

SAJ-2024-02188

02 December 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-2024-02188 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

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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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: 1.14 acres – non-jurisdictional

2. REFERENCES.

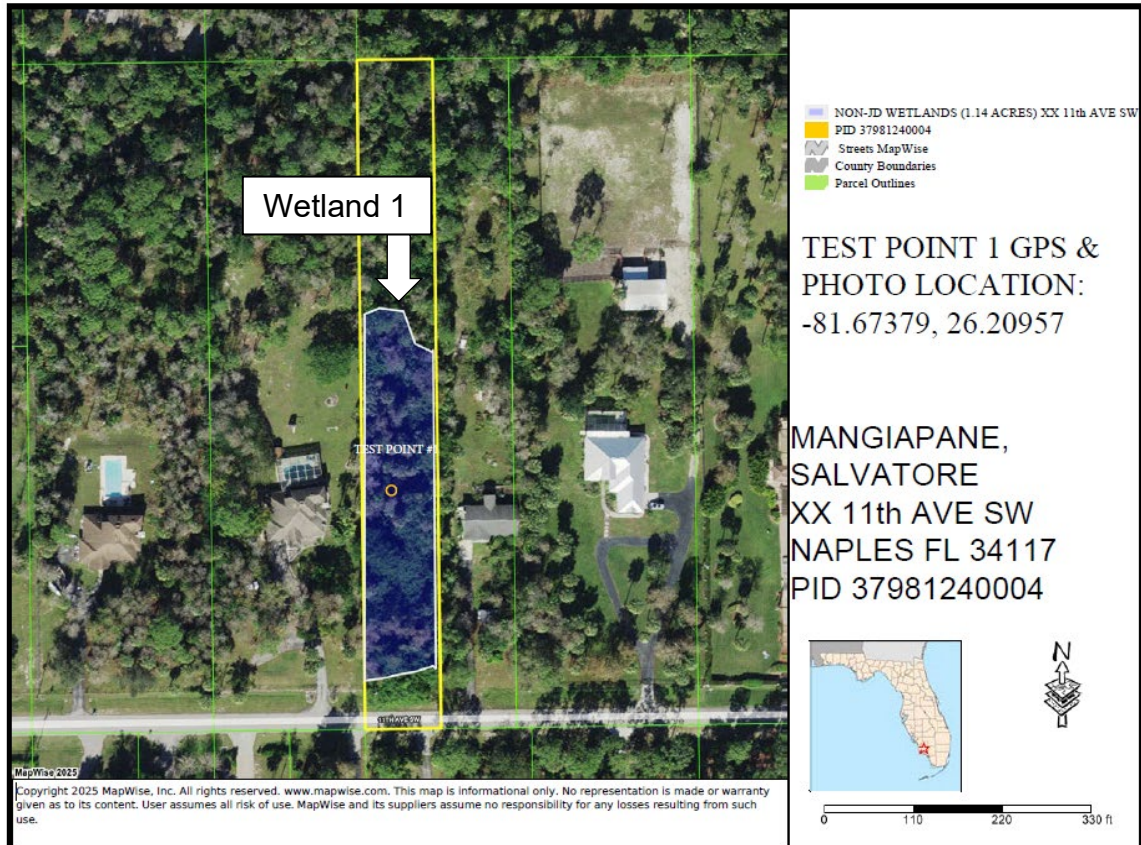
- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos 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.”

3. REVIEW AREA. The review area is 2 acres and includes the 1.14 acres of wetland (see Section 1a). The review area is located at 11th Avenue Southwest in Section 14, Township 49 South, Range 26 East, in Naples, Florida 34120 (Latitude 26.2098, longitude -81.673705). There are no Corps actions associated with the review area. The review area is depicted in Figure 1.

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Aquatic Resource Map



4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Gordon Pass, a section 10 water, and is approximately 48,369.6 feet south from the review area.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

The flow path from the wetland is as follows: Wetland 1 is abutting a roadside swale that runs 950 feet to the east into the Cypress Canal, which flows south for 3,415 feet and enters the Golden Gate Main Canal, which finally flows into the Gordon River/Gordon Pass after a distance of 58,830 feet.

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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
 - 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

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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- 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
- 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).

⁸ 51 FR 41217, November 13, 1986.

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Wetland 1 (1.14 acres): The review area is 2 acres and consists entirely of one wetland. This wetland is palustrine forested, non-tidal. The front of the property located along 11th Avenue SW, the wetland abuts a roadside swale. The roadside swale runs from the wetland on site 950 feet to the east into the nearest requisite water, Cypress 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 result, the lack of consistent inundation and/or flow indicates that the swale 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 eastern pathway.

Per the LiDAR and Hillshade layers and also the National Wetlands Inventory layer, the wetland continues west 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 canal (CR951) that conveys waters south to the Golden Gate Main Canal. After reaching the Golden Gate Main Canal, the waters take the same path as wetlands located on the eastern side of the review area. Therefore, the wetland is not abutting any a(1-6) water on the west 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 NWP-2003-60436 Wetlands Divided by Artificial Structures, 19 December 2023, a single wetland may be died 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. However, based on topographic maps, aerial imagery, National Wetland Inventory Maps (NWI), and LiDAR data, 11th Avenue SW and 39th Street SW 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

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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. Review area: Aerial imagery provided by the applicant on 24 June 2025 (figure 1)
 - b. Aerial Imagery: Current Conditions aerial image with project area, prepared by the USACE, as informed by the applicant, via Google Earth, dated 11 April 2024.
 - c. LIDAR: Digital Elevation Model and Hillshade imagery accessed via National Regulatory Viewer, accessed 9 October 2025.
 - d. USAD NHD: Hydrographic dataset provided by the applicant and verified by USACE, dated 24 June 2025.
 - e. USFWS NWI maps: NWI online mapping layer, accessed 9 October 2025.
 - f. Topographic map: National Regulatory Viewer via WGS 1984 Web Mercator Auxiliary Sphere, accessed on 09 October 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.