



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
4400 PGA BLVD. SUITE 500
PALM BEACH GARDENS, FL 33410

CESAJ-RDS-P

26 September 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-2024-01535

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. SUMMARY OF CONCLUSIONS.

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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- 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. Pond (0.11 acres), Section 404, 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: This parcel is a 5.01-acre site State Tax Parcel ID # 503935010170, located adjacent to SW 208th Lane in Southwest Ranches, FL 33332, Latitude: 26.048284 Longitude: -80.424903, Section 15, Township 50 Range 39, in Broward County, Florida.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED: N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: The Pond does not have a connection to an (a) (1-6) water.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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

⁵ 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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ 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

- 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").⁷ 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

⁶ 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.

⁷ 51 FR 41217, November 13, 1986.

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- 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*.

Pond 1 is (0.11 acres).

A field investigation by the Corps was conducted on 26 August 2025, using the methodology in the 1987 Wetlands Delineation Manual (1987 Manual) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010 (Regional Supplement). The collected background and desktop data helped the Corps to narrow and identify representative areas to focus the site inspection. Prior to the site visit, the National Regulatory Reviewer LiDAR layer with hillshade and current and historic Google earth images along with historic images provided by the applicant was reviewed. This preliminary information indicated the Pond was a relatively permanent water that was surrounded by significantly higher ground. Data Point 2 (adjacent to Pond 1) did not have hydrophytic vegetation, hydric soil or wetland hydrology and therefore was not considered a wetland. Pond 1 is surrounded by uplands; therefore, the Corps has determined Pond 1 is non-jurisdictional.

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- 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).

N/A

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. Office Evaluation conducted on April 16, 2025.
- b. Field Inspection 26 August 2025 and Site Visit Report including the Site Visit Data forms and Pictures. Florida Regulatory Viewer, accessed on April 16, 2025.
- c. Application Figures received by applicant on 01 October 2024, Project Location and acreage of fill.
- d. Request for Additional Information Response received on 02 June 2025 which included a Location map, an Aquatic Resources Map, LiDAR Map, NRCS Soil Map, Southwest Ranches Drainage Plan, and the applicant's data sheets.
- e. U.S. Army Corps of Engineers. Corps of Engineers Wetland Delineation Manual. January 1987
- f. U.S. Army Corps of Engineers, Engineer Research and Development Center. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010.
- g. U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Web Soil Survey, Hydric Rating by Map Unit, accessed on 25 August 2025, <https://websoilsurvey.nrcs.usda.gov/app/>
- h. USDA, NRCS, Field Indicators of Hydric Soils in the United States, version 9.0, <https://www.nrcs.usda.gov/resources/guides-and-instructions/field-indicators-of-hydric-soils>
- i. Google Earth aerial imagery (Attachement 2),(30 December 1985, 14 January 1994, 31 November 2001, 31 December 2003, 28 February 2006, 05 April 2006, 19 January 2007, 07 May 2007, 26 March 2011, 18 January 2014, 15 December 2014, 23 January 2016, 20 November 2016, 16 December 2018, and 06 March 2025).
- j. U.S. Army Corps of Engineers, Antecedent Precipitation Tool (APT), v. 2.9: accessed on 29 August 2025.
- k. U.S. Army Corps of Engineers, National Regulatory Viewer, Light Detection and Ranging (LiDAR), Hill Shade, National Hydrogeography Dataset (NHD), accessed on 25 August 2025.

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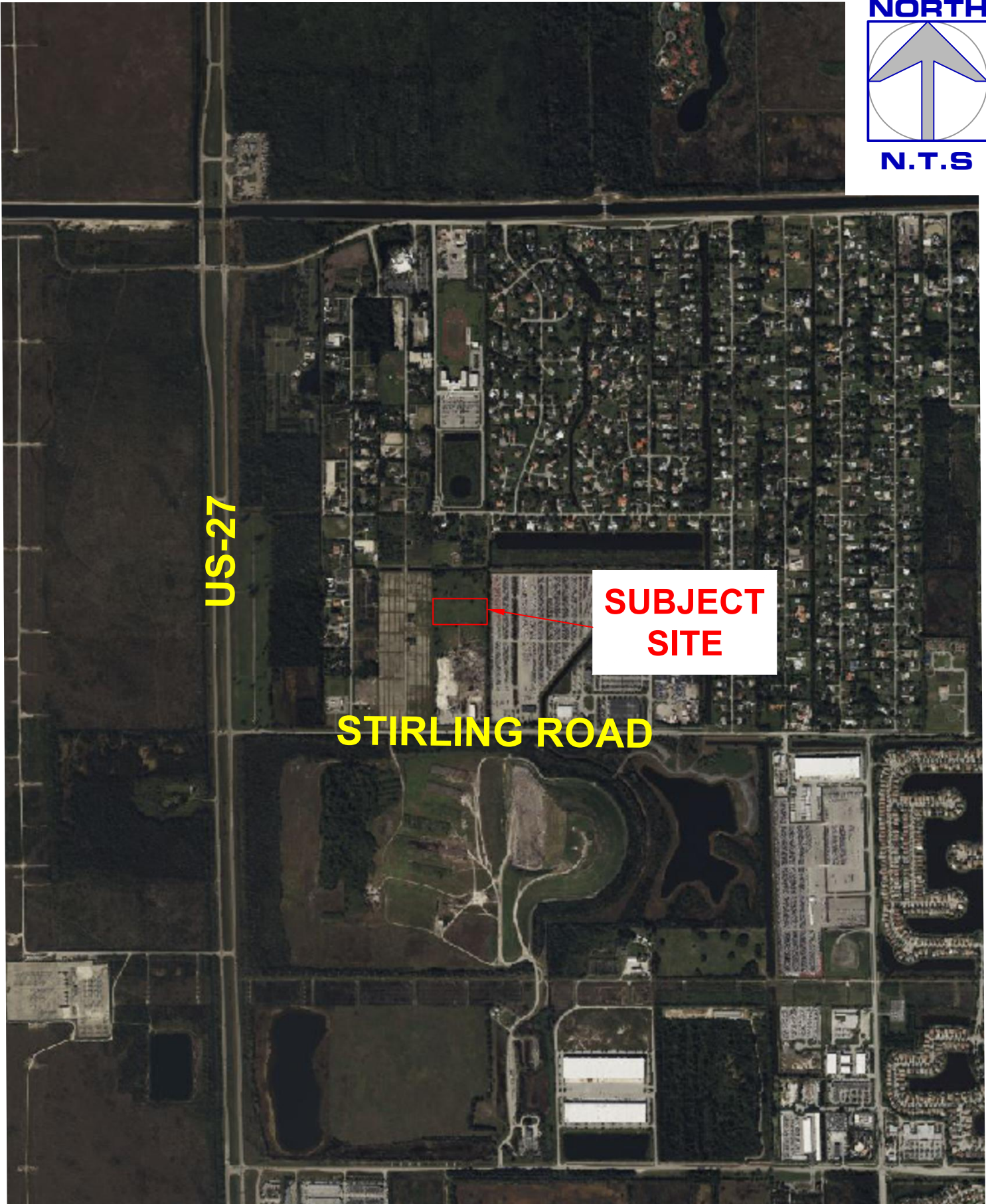
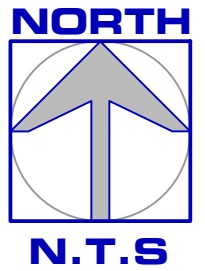
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10. OTHER SUPPORTING INFORMATION. On 26 August 2025, a site visit was conducted by the Corps. The Corps collected a total of three data points (Attachment 2) at locations shown in Figure 4 below, using the methodology in the 1987 Wetlands Delineation Manual (1987 Manual) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010 (Regional Supplement). The collected background and desktop data helped the Corps to narrow and identify representative areas to focus the site inspection. Data Point 1 did not have hydrophytic vegetation, had hydric soil and did not have wetland hydrology and therefore was not considered a wetland. Data Point 2 (adjacent to Pond 1) did not have hydrophytic vegetation, hydric soil or wetland hydrology and therefore was not considered a wetland. Data Point 3 did have hydrophytic vegetation, but did not have hydric soil or wetland hydrology and therefore was not considered a wetland. Normal conditions were not present on site during the site inspection and were noted on all of the data points collected by the Corps. Normal conditions are not defined by the regulations, however the Regulatory Guidance Letter 90-7 defines “normal circumstances” as “the soil and hydrologic conditions that are normally present, without regard to whether or not the vegetation has been removed,” (RGL 90-7, 26 Sep. 90; HQUSACE, 7 Oct. 91). “Normal circumstances” is a term that is specific to wetlands and is also a term that is only used to describe an area that has not been altered. An area that has an alteration for anthropogenic purposes (ie. canals, ditches or agriculture) ceases to meet “normal conditions”.

As condition on site were not normal, use of Chapter 5 from the Regional Supplement for Difficult Wetland Situations in the Atlantic and Gulf Coastal Plain was considered, but ultimately not used as Data Point 1 was the only data point with hydric soil and Data Point 3 had hydrophytic vegetation none of the points had hydrology or more than one indicator of wetland status.

Based on the preliminary desktop evaluation and the data collected during the site inspection, the Corps determined that the land within the review area are uplands and the cow pond on-site is isolated. The project site is landlocked to the south and does not contain wetlands that run off-site to adjacent ditches.

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.



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SUBJECT SITE

STIRLING ROAD

THE Chappell GROUP INC.
 714 East McNab Road
 Pompano Beach, Florida 33060
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www.thechappellgroup.com

- Environmental Consultants
- Marina & Wetland Permitting
- Mitigation Design & Monitoring
- T&E Species Surveys
- Tree Surveys/ Appraisals

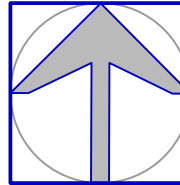
SW 208TH LANE PARCEL

PREPARED FOR:
BERGERON SW RANCHES, LLC

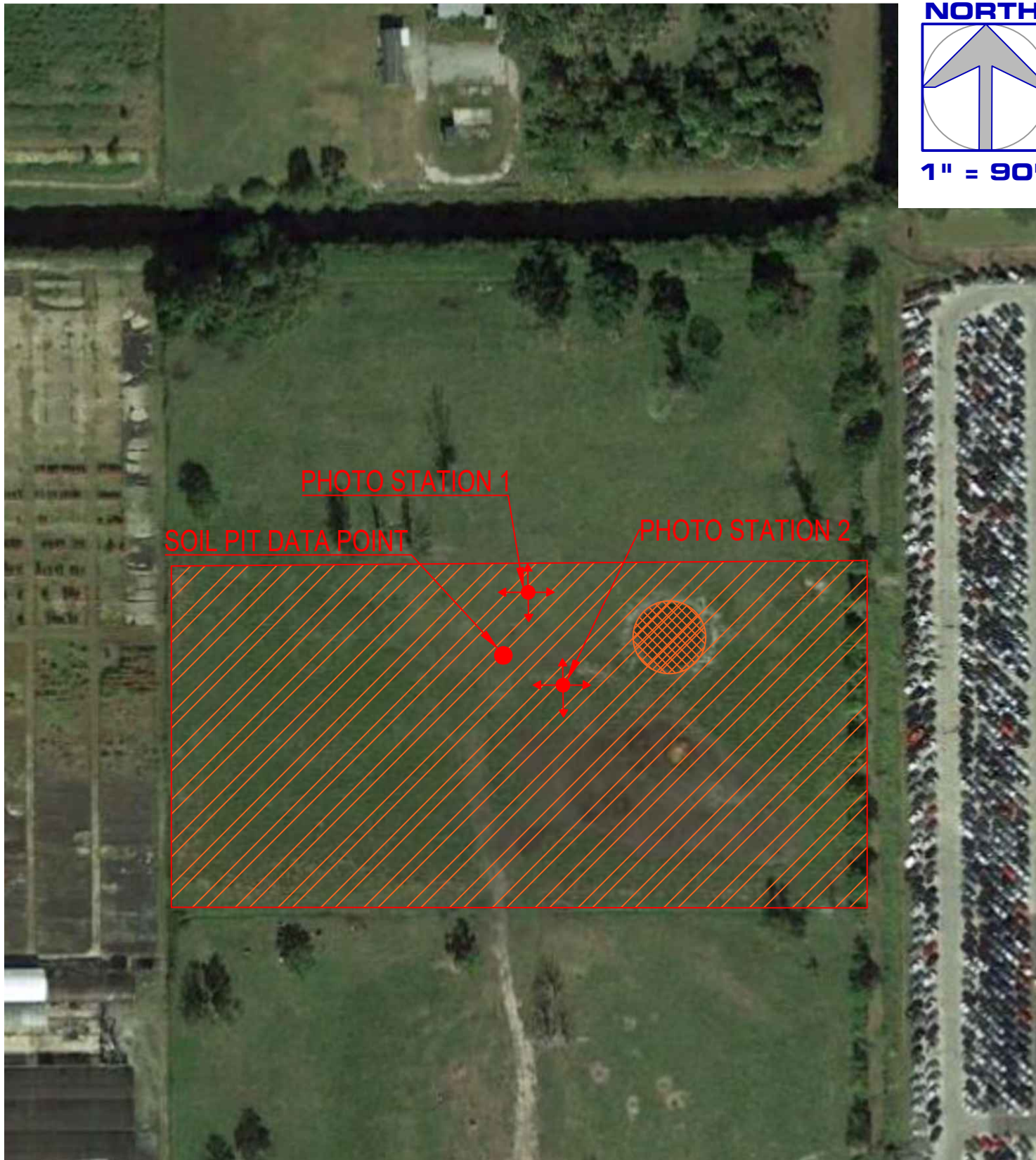
LOCATION MAP

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| Date: 6/18/2024 | Sheet : 1 | of : 1 |
| Proj No.: 18-0076 | | |

NORTH



1" = 90'



LEGEND:



SUBJECT SITE 5.01 AC



AQUATIC RESOURCE: POND (0.11 AC)



AQUATIC RESOURCE: PREVIOUS WETLAND (4.89 AC)

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SW 208TH LANE PARCEL

PREPARED FOR:
BERGERON SW RANCHES, LLC

AQUATIC RESOURCE DELINEATION MAP

| | | |
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| Date: 5/28/2025 | Sheet : 1 | of : 1 |
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