



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

CESAJ-RDW-F

23 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),<sup>1</sup> SAJ-2024-01870

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 Florida due to litigation.

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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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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, approximately 0.91-acre, 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 1.4-acre parcel is located at 4236 16th Avenue SE, Parcel Identification Number (41101440007), Lat: 26.200463°E Long: -81.520942°W central coordinates, Naples, Collier County Florida.

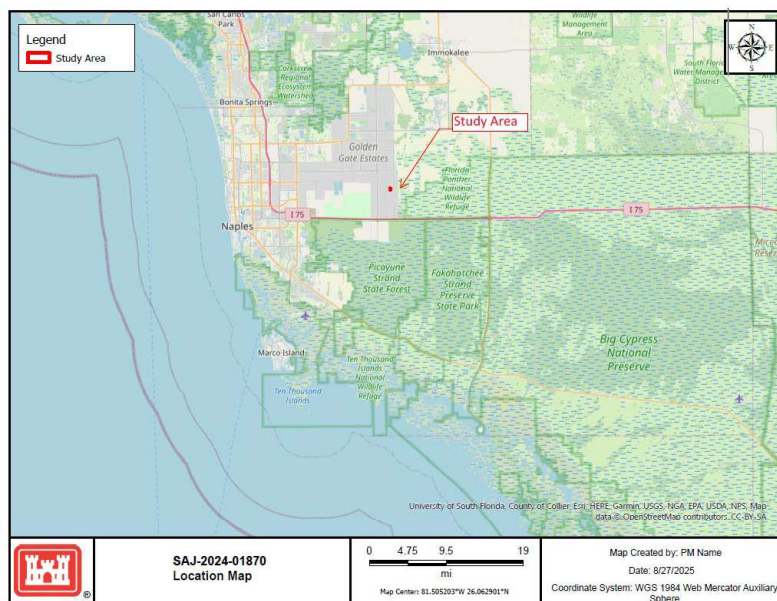


Figure 1: Location Map

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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 to the project site is Florida Bay, located approximately 27.5 miles south of the project site.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. There is no flow path from the aquatic resources within the study area to a TNW. However, a roadside ditch, associated with the residential road in front of the study area conveys flow during rainfall events into the Faka Union Canal, located approximately 0.5 miles west of the study area. The Faka Union Canal provides a direct discharge into the Ten Thousand Islands National Wildlife Refuge, which continues south and ultimately discharges into Florida Bay, a TNW.

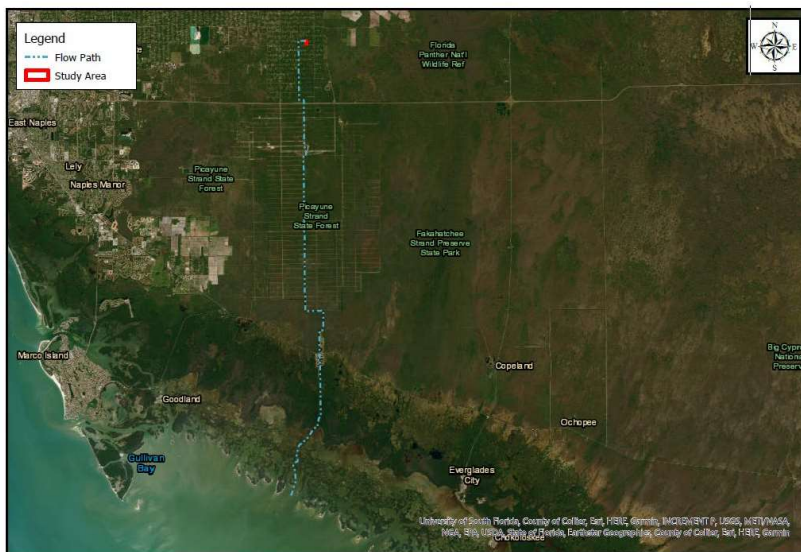


Figure 2: Flow Map

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

<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.

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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
- 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").<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>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.

<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).

Wetland (approximately 0.91-acre) is non-jurisdictional because it does not abut (touch) a requisite (a)(1)-(a)(6) water. Based on a review of resource information, including Lidar, soil survey, NWI, and aerial photographs, the onsite wetland continues offsite to the west, south, and east of the review area. The onsite wetland is part of a larger wetland that extends offsite; however, the larger wetland is surrounded by uplands and does not continue to the roadside ditch along 16th Avenue SE or the nearby Fraka Canal. In consideration of the above information, the onsite wetland, as part of the larger wetland that extends offsite, does not have a continuous surface connection, to and thus does not abut (touch) a requisite (a)(1)-(a)(6) water; therefore, the onsite wetland is non-jurisdictional.

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A roadside ditch, excavated between 2007 and 2008 in association with the construction of 16th Avenue SE, is located along the residential road in front of the study area. The front portion of the study area consists of a construction fill pad with a residence, while the onsite wetlands are located toward the back of the fill pad. These wetlands have no continuous surface connection to and thus do not abut (touch) the roadside ditch. The jurisdictional status of the roadside ditch is not being evaluated as part of this AJD review, as the ditch is located within the road right-of-way and outside the limits of the study area.



Figure 3: Aquatic Resources Map

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. GoogleEarth 7.3.3.7692. (26 January 1995, 5 January 2021, 29 September 2022, and 15 November 2024). Naples, Florida, Latitude 26.200698°N, Longitude -81.521326°W. Retrieved 27 August 2025, Eye Altitude: 2,093 feet from <http://earth.google.com>
  - b. Soils Map - National Layer in the National Regulatory Viewer for the South Atlantic Division. Retrieved 27 August 2025.
  - c. LiDAR - National Layer in the National Regulatory Viewer for the South Atlantic Division. Retrieved 27 August 2025.

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- d. National Hydrography Dataset Flowlines – Large Scale from National Layers in the National Regulatory Viewer for the South Atlantic Division. Retrieved 15 August 2025.
- e. Topographic Map - National Layer in the National Regulatory Viewer for the South Atlantic Division. Retrieved 27 August 2025.
- f. National Wetland Inventory Map - National Layer in the National Regulatory Viewer for the South Atlantic Division. Retrieved 27 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.

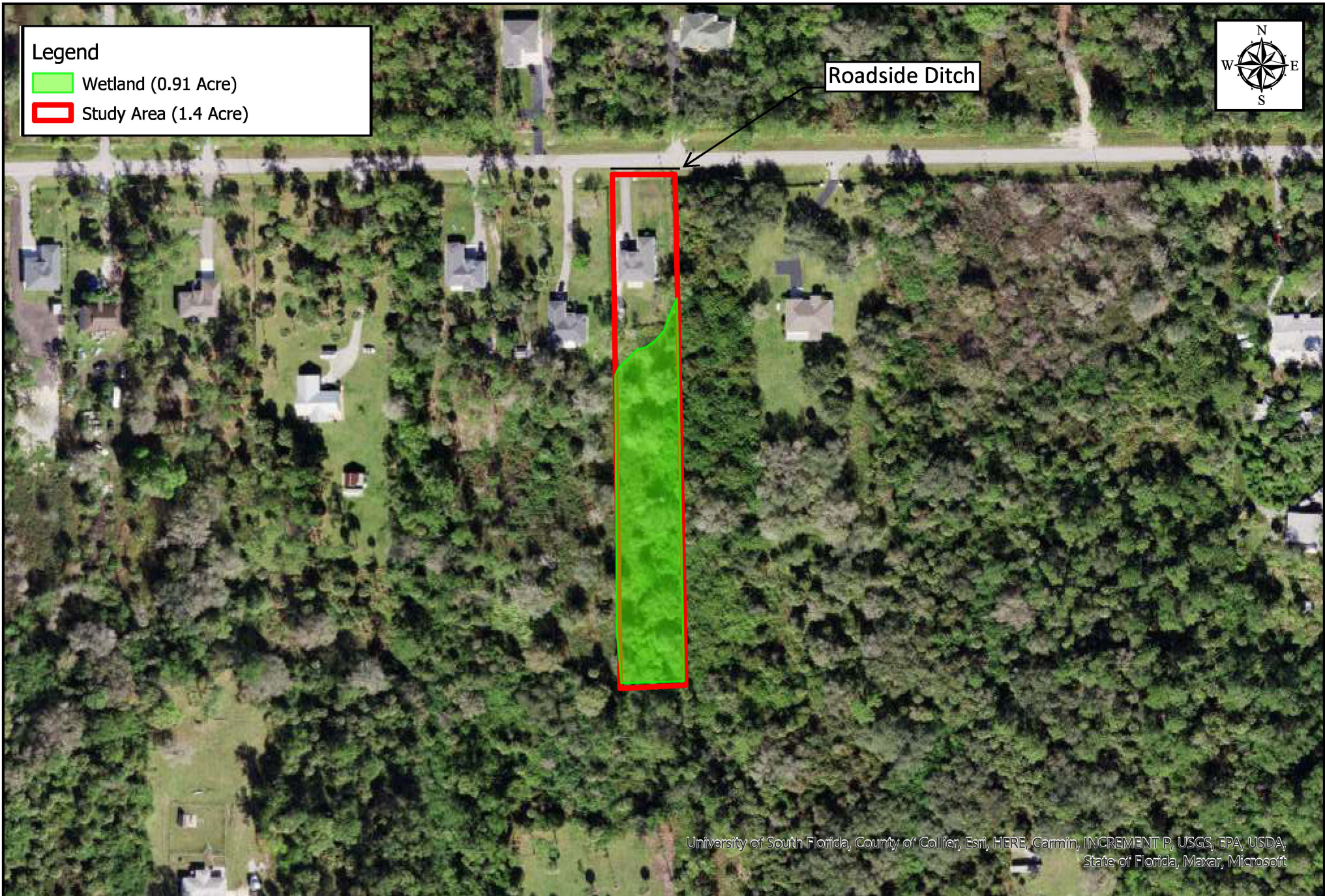
Legend

 Wetland (0.91 Acre)

 Study Area (1.4 Acre)



Roadside Ditch



University of South Florida, County of Collier, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, State of Florida, Maxar, Microsoft



**SAJ-2024-01870**  
**Aquatic Resources Map**

0 0.02 0.04 0.07



mi

Map Center: 81.521072°W 26.200645°N

Map Created by: PM Name

Date: 8/27/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere