



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

CESAS-ZR

October 1, 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-2024-02425 (MFR 1 of 1)

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>1</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>2</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>3</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 due to litigation.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 33 CFR 331.2.

<sup>2</sup> Regulatory Guidance Letter 05-02.

<sup>3</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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- 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland (WL 1-) 0.17 acres)	Non-Jurisdictional	N/A

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. Presentation, “Updates for Tribes and States on “Waters of the United States””: [https://www.epa.gov/system/files/documents/2023-11/wotus-overview\\_tribesand-states\\_11-15-23\\_508.pdf](https://www.epa.gov/system/files/documents/2023-11/wotus-overview_tribesand-states_11-15-23_508.pdf).

3. REVIEW AREA.

- a. Project Are Size (in acres): 0.17 acres
- b. Location Description: The project/review area is located on a vacant parcel and consists of the existing and proposed right-of-way along Williams Road in Section 04, Township 47 South, Range 25 East, Estero, Lee County, Florida.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 26.420328      Longitude: -81.81255
- d. Nearest City or Town: Estero
- e. County: Lee
- f. State: Florida
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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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 the Estero River, which is located approximately 5,497 feet north of the review area boundary. The Estero River is a tributary to Estero Bay that is subject to the ebb and flow of the tide. The Estero River is a listed Section 10 water according to the Jacksonville District Navigable Waters List. Estero River is located outside of the review area.

**5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS**

The wetland in the project area (WL 1) does not have a flowpath to a TNW, interstate water, territorial sea, relatively permanent jurisdictional tributary, or relatively permanent jurisdictional impoundment.

**6. SECTION 10 JURISDICTIONAL WATERS<sup>4</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>5</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.

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<sup>4</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>5</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.

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- a. Traditional Navigable Waters (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>6</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

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<sup>6</sup> 51 FR 41217, November 13, 1986.

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- 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 W1 has been identified as a 0.17-acre palustrine system comprised of freshwater forested/shrub and emergent wetland components, as mapped by the National Wetlands Inventory (NWI). The wetland extends beyond the limits of the current project area and encompasses approximately 2.75 acres in total. Review of Hillshade LiDAR mapping confirms that Wetland W1 occupies a series of depressional landforms, which are surrounded by areas of higher elevation. Analysis of available topographic mapping indicates that no additional wetlands are present within the project boundaries beyond Wetland W1. Historical aerial imagery suggests that the wetland formerly extended further north, beyond the project area, including areas across Williams Road; however, due to changes in land use and hydrology, the wetland is no longer present.

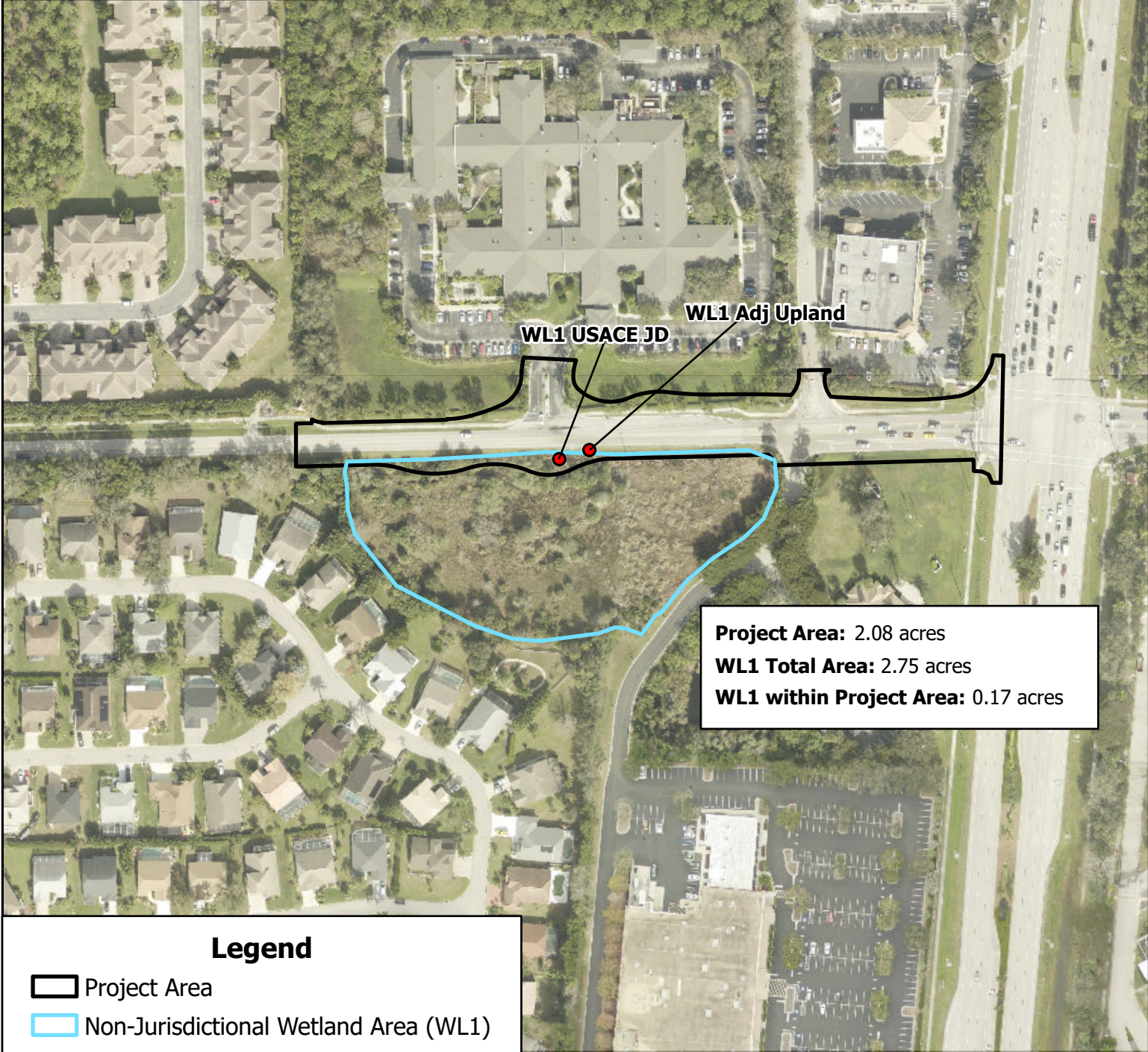
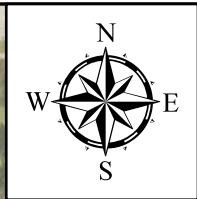
Site investigations, including aerial imagery, field observations, and review of topographic and hydrologic data, confirm that there are no discernible surface hydrologic pathways to connect the wetland to a downstream TNW. The wetland does not abut, is not adjacent to, and does not have a connection with TNW. A stormwater feature is located to the east of Wetland W1, outside the project boundary; however, this feature does not exhibit any direct surface water connection to a TNW.

The Corps confirmed the information described above through desktop surveys conducted on 15 August 2025 and 08 September 2025. Therefore, based on the information reviewed above, the Corps has determined that Wetlands W1 does not have a continuous surface with a traditional navigable water, interstate water, the territorial seas, a relatively permanent jurisdictional tributary, or a relatively permanent jurisdictional impoundment.

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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. Office (Desk) Determination: 8/15/2025, 9/8/2025  
Date(s) of Field Determination (if applicable): N/A
  - b. Data sources used to support this determination (included in the administrative record).
    - i. **Aerial Imagery Map**: prepared by agent
    - ii. **Topographic Map**: prepared by agent
    - iii. **NRCS Soils Map**: prepared by agent
    - iv. **Lidar**, National Regulatory Viewer: last accessed 15 August 2025
    - v. **National Wetlands Inventory Map**, National Regulatory Viewer: last accessed 15 August 2025
    - vi. **Historical imagery**: from years 1953, 1972, 1986, 1990, and 2008
    - vii. **Wetland determination field data sheets**: prepared by agent and dated 16 May 2025, USACE does not concur with all information in the datasheets and combined some of this information with other data sources, to inform the decision for this request.
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



**Project Area:** 2.08 acres  
**WL1 Total Area:** 2.75 acres  
**WL1 within Project Area:** 0.17 acres

**Legend**

- Project Area
- Non-Jurisdictional Wetland Area (WL1)



**Aerial Imagery 2025 Map**  
 Williams Road/Atlantic Gulf Boulevard  
 Intersection Improvement Project  
 Applicant: Steven Sarkozy, The Village of Estero  
 Lee County, Florida

