



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

[CESAJ-RD-SM]

September 29, 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-2024-05156²

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 AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

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.

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

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.

- 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 (W-1): 6.36 acres, non-jurisdictional
 - ii. Wetland (W-2): 0.20 acres, non-jurisdictional
 - iii. Wetland (W-3): 0.13 acres, non-jurisdictional
 - iv. Wetland (W-4): 0.13 acres, non-jurisdictional
 - v. Wetland (W-5): 0.12 acres, non-jurisdictional
 - vi. Wetland (W-6): 0.11 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. U.S. EPA, Memorandum to the Field between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (March 12, 2025)

3. REVIEW AREA. The review area is approximately 18 acres in size, immediately east to U.S. Rte 1 located at 11 SE 1st Avenue, in Section 30, Township 57 South, Range 39 East, Florida City, Miami-Dade County, Florida, at 25.4464195, -80.4738861. Figure 1 below illustrates the AJD review area, which includes the 7.05 acres of non-jurisdictional depressional palustrine wetlands listed in Section 1a. No other previous JDs have been completed for this review area.

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

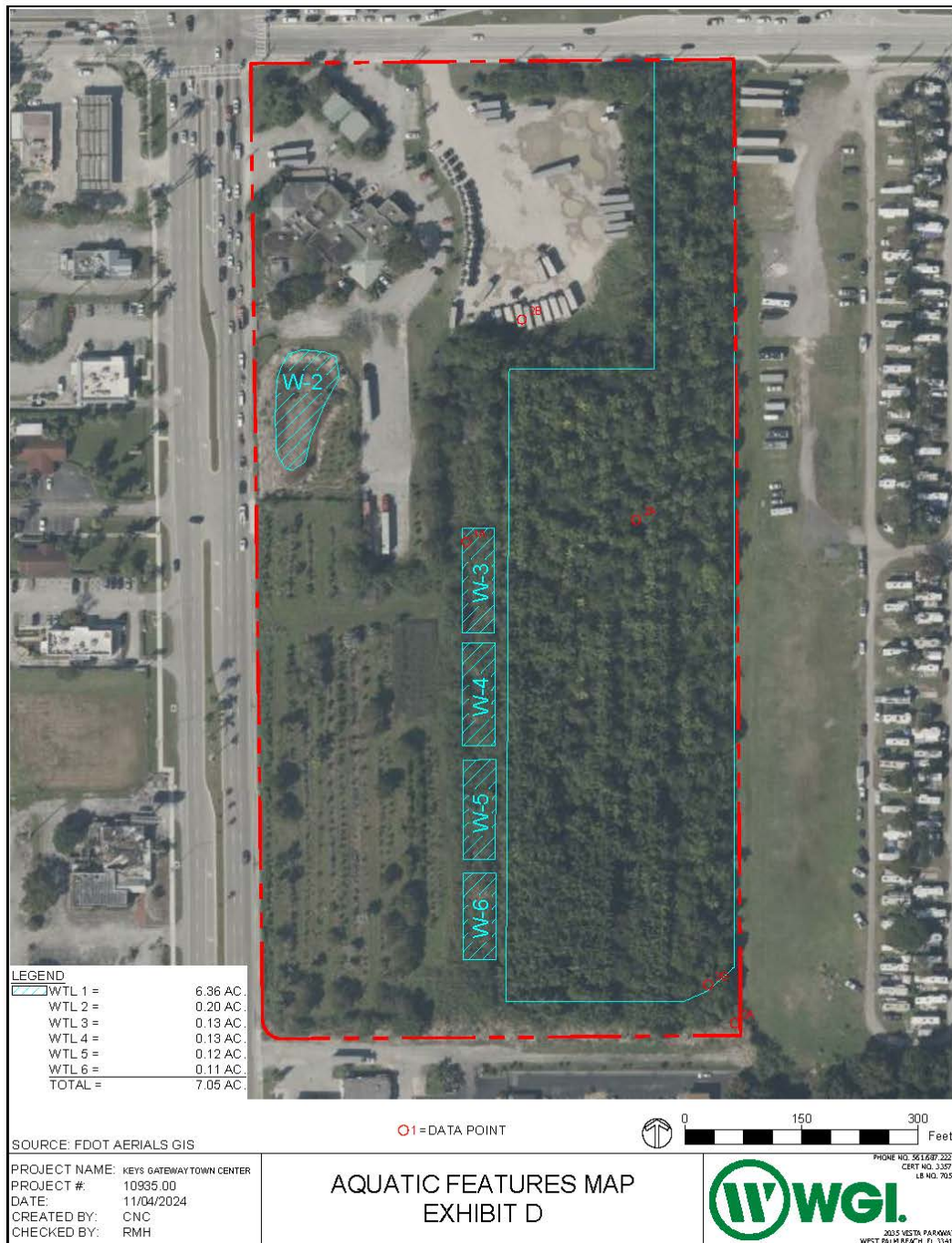


Figure 1. Review Area outlined in red.

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

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

The nearest TNW is Biscayne Bay located east of the review area. However, the subject aquatic resources are not connected to nor do they directly abut a requisite jurisdictional water, as discussed in Section 8.f.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetlands 1-6 lack a physical connection to Florida City Canal which is located north of the review area. Florida City canal has direct hydrological connection to Biscayne Bay, the review area has no direct connection to the Florida City Canal, therefore a flowpath does not exist.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

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 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.

⁸ 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.

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

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”).⁹ 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

⁹ 51 FR 41217, November 13, 1986.

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

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).

The review area consists of non-jurisdictional wetlands labeled W1-W6. The wetlands are non-tidal and do not have a continuous surface connection to an (a)(1)-(a)(6) water. Per the March 12, 2025 Memorandum to the Field between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act, a wetland must directly abut a jurisdictional water for it to be considered an adjacent (a)(7) wetland.

- i. Wetland (W-1): 6.36 acres, non-jurisdictional
- ii. Wetland (W-2): 0.20 acres, non-jurisdictional
- iii. Wetland (W-3): 0.13 acres, non-jurisdictional
- iv. Wetland (W-4): 0.13 acres, non-jurisdictional
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Aerial imagery (Google Earth 1994, 1999, 2001, 2013, 2017, 2021, 2024, and 2025) was reviewed for the site, however, the wetlands are non-adjacent due to physical separation by natural uplands and/or upland berms. The National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) were reviewed for the project. The NWI did not map any of the subject wetland areas of review and did not indicate a continuous surface connection to a jurisdictional water. The NHD indicated one flowline to the north of the review area, known as Florida City Canal, which connects to a downstream jurisdictional water

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

(Biscayne Bay). However, SW 344th Street and E Palm Drive is located between all on-site wetlands with no outfall or ditch connection structures. According to the National Resources Conservation Service (NRCS) Web Soil Survey, the site contained hydric soils, such as Pennsuco Marly Silt Loam (67). However, sample points with corresponding data sheets were documented for all wetlands on-site. The sample points (1A, 2A, and 3B) were taken within the wetland areas, while sample points (2B and 3A) show that uplands are present in between wetlands and other resources. The data forms (1A, 2A, and 3B) within the wetland features onsite sample points show that there were hydric soils, hydrology indicators and wetland vegetation. The data forms (2B and 3A) did not have hydrophytic vegetation, hydric soils, nor wetland hydrology present; therefore, they were determined to be upland data points severing any potential connection the onsite isolated depressional areas (wetlands) may have to an abutting potentially jurisdictional water.

Additionally, the South Florida Water Management District spatial dataset was utilized to determine nearby waterbodies and wetland features. No waterbodies or features were indicated to be within the review area. A marsh area was located south-southeast from the review area (approximately 0.11 miles). Data form 3A was taken outside the review area to indicate separation from offsite marshes.

Based on the information reviewed above, the Corps determined that Wetlands W1-W6 do not have a continuous surface connection to Florida City Canal (approximately 0.27 miles from the AJD review area) or the marsh area that is located southeast of the review area (approximately 0.11-miles from the AJD review area), the nearest TNW ((a)(1) water), nor any other (a)(1)-(a)(6) water; and are therefore considered non-jurisdictional.

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. Wetland Data Sheets: Wetland data sheet (1A, 2A and 2B) completed by the applicant's consultant on October 24, 2024, Wetland data sheets (3A and 3B) completed on August 22, 2025.
 - b. U.S. Fish and Wildlife Service, National Wetland Inventory, accessed on August 27, 2025.
 - c. Florida Regulatory Viewer, August 21, 2025
 - a. LiDAR, Satellite Imagery, National Hydrography Dataset, National Wetlands Inventory, Hydric Soils Class, Land Cover

[CESAJ-RD-SM]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-05156

- d. Google Earth Imagery; 1994, 1999, 2001, 2013, 2017, 2021, 2024, and 2025, accessed on August 21, 2025.
- e. US Department of Agriculture, Natural Resources Conservation Service; Web Soil Survey – Hydric Map accessed August 27, 2025.
- f. South Florida Water Management District, Canals / Streams, Flow directions, accessed September 29, 2025.
- g. Reference wetland and data points map from the applicant

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.