



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

CESAJ-RD

23 October 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-2024-01608²

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.

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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. Ditch 1, non-jurisdictional, Section 404
 - ii. Ditch 2, non-jurisdictional, Section 404
 - iii. Ditch 3, non-jurisdictional, Section 404
 - iv. Pond 1, non-jurisdictional, Section 404
 - v. Pond 2, non-jurisdictional, Section 404
 - vi. Wetland 3, non-jurisdictional, Section 404
 - vii. Wetland 8, non-jurisdictional, Section 404
 - viii. Wetland 9, non-jurisdictional, Section 404
 - ix. Wetland 11, non-jurisdictional, Section 404
 - x. Wetland 12, non-jurisdictional, Section 404
 - xi. Wade Canal, non-jurisdictional, Section 404

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 review area consists of a 58.29-acre site located in a developing part of unincorporated Manatee County, Florida (latitude 27.5783°, longitude -82.4597°) (see attached maps). The review area is a long narrow area along the existing Erie Road right-of-way extending generally southwest to northeast. In addition to the existing roadway and related features, this area includes the edges of some rural residential development and open space. The review area is within the 11,796-acre Frog Creek watershed (HUC 031002060501) that drains to Tampa Bay/Gulf of America to the east of this site.

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The review area contains a number of aquatic resources, including roadside ditches, ponds, and portions of forested and unforested wetlands. Within the middle portion of the review area, Wade Canal crosses under Erie Road from southeast to northwest, terminating in agricultural fields just north of the review area. This canal shows perennial stream characteristics based on aerial reviews showing the appearance of surface water and associated vegetation along with information from the National Wetlands Inventory.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A. ⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. From the review area, the only aquatic resource that flows downstream and off-site is Wade Canal. Wade Canal terminates in a system of agricultural ditches constructed in uplands to support agricultural operations that are located just north of the review area.
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

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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.

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”).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

⁹ 51 FR 41217, November 13, 1986.

the review area and describe how it was determined to be a waste treatment system. N/A.

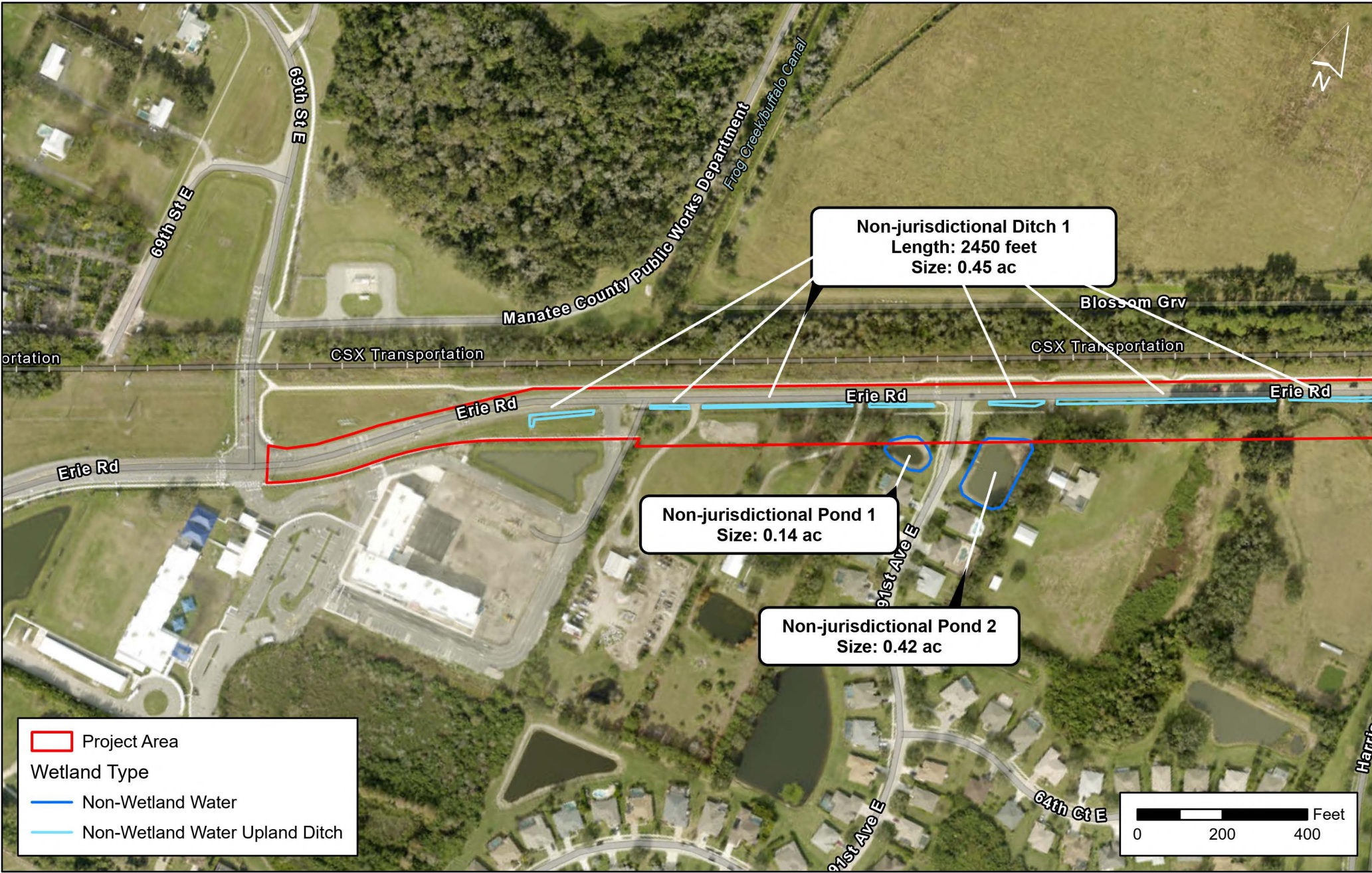
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. 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*. Ponds 1 and 2 are small isolated aquatic resources that do not have surface inlets or outlets. Because of their small size (0.14 and 0.42 acre each) and location on private properties for private use, the ponds do not have a nexus to interstate or foreign commerce.
- 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 following aquatic resources were reviewed and determined to be non-jurisdictional:
 - a. Ditches 1, 2, and 3: These ditches are constructed in uplands to provide roadside drainage for Erie Road and are considered non-jurisdictional.
 - b. Ponds 1 and 2: These features are non-jurisdictional for the reasons provided in Sec 8.e above.
 - c. Wade Canal: This canal presents itself as an RPW tributary within and in the vicinity of the review area. It appears to contain surface water for substantial periods and supports riparian vegetation. However, this canal terminates just north of the review area in an agricultural area, where water from the canal is routed through a network of non-jurisdictional ditches created in uplands that support agricultural operations. There is no downstream path from the off-site terminus of Wade Canal to the north of the review area and any downstream a(1) waters.
 - d. Wetlands 3, 8-9, 11-12: Five wetland areas were delineated within the review area. Each of these wetlands extend outside of the review area and were reviewed to determine whether they have a continuous surface

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connection to a jurisdictional water. No such connections exist for any of these wetland features.

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 investigation conducted in October 2025.
 - b. AJD Submittal materials (reports, maps, wetland forms, etc.) submitted by DRMP, Inc., the agent for the Applicant (Manatee County).
 - c. National Wetlands Inventory (U.S. Fish and Wildlife Service) accessed October 14-22, 2025.
 - d. National Hydrography Database (U.S. Geological Survey) accessed October 14-22, 2025.
 - e. Google Earth Pro. Version 7.3.3.7786 (32-bit). Accessed October 14-22, 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.



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 Orlando, FL 32814
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 Fax: 407-896-4836

Erie Road - West Segment Widening

Manatee County, FL

Aquatic Resource Map

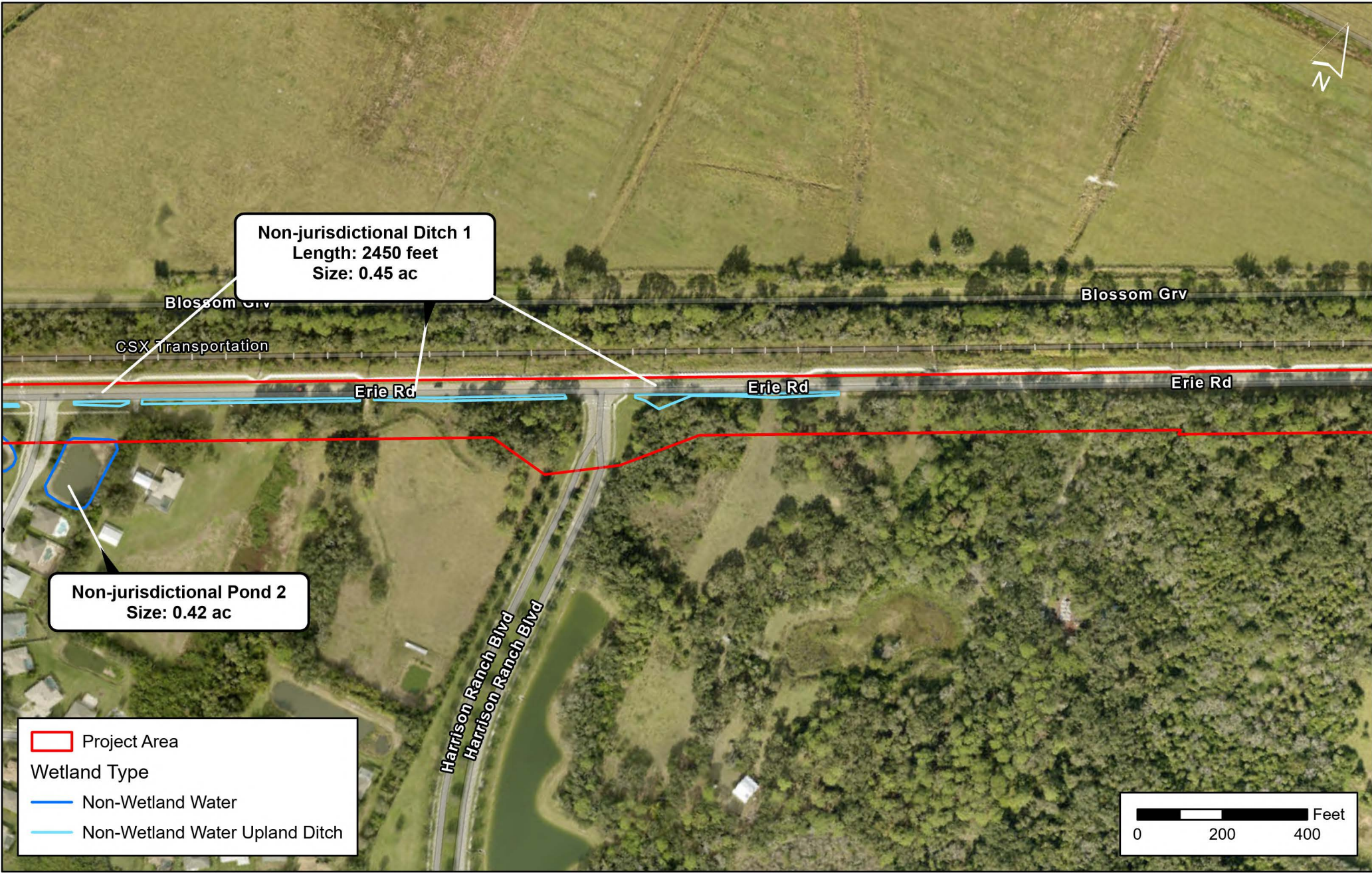
Figure
6-1

DATE:
 July 2025

DRAWN
 BY: BH

PROJECT NUMBER:
 21-0638.002

Date Source:
 Imagery: ESRI 2025
 Wetlands: DRMP 2025



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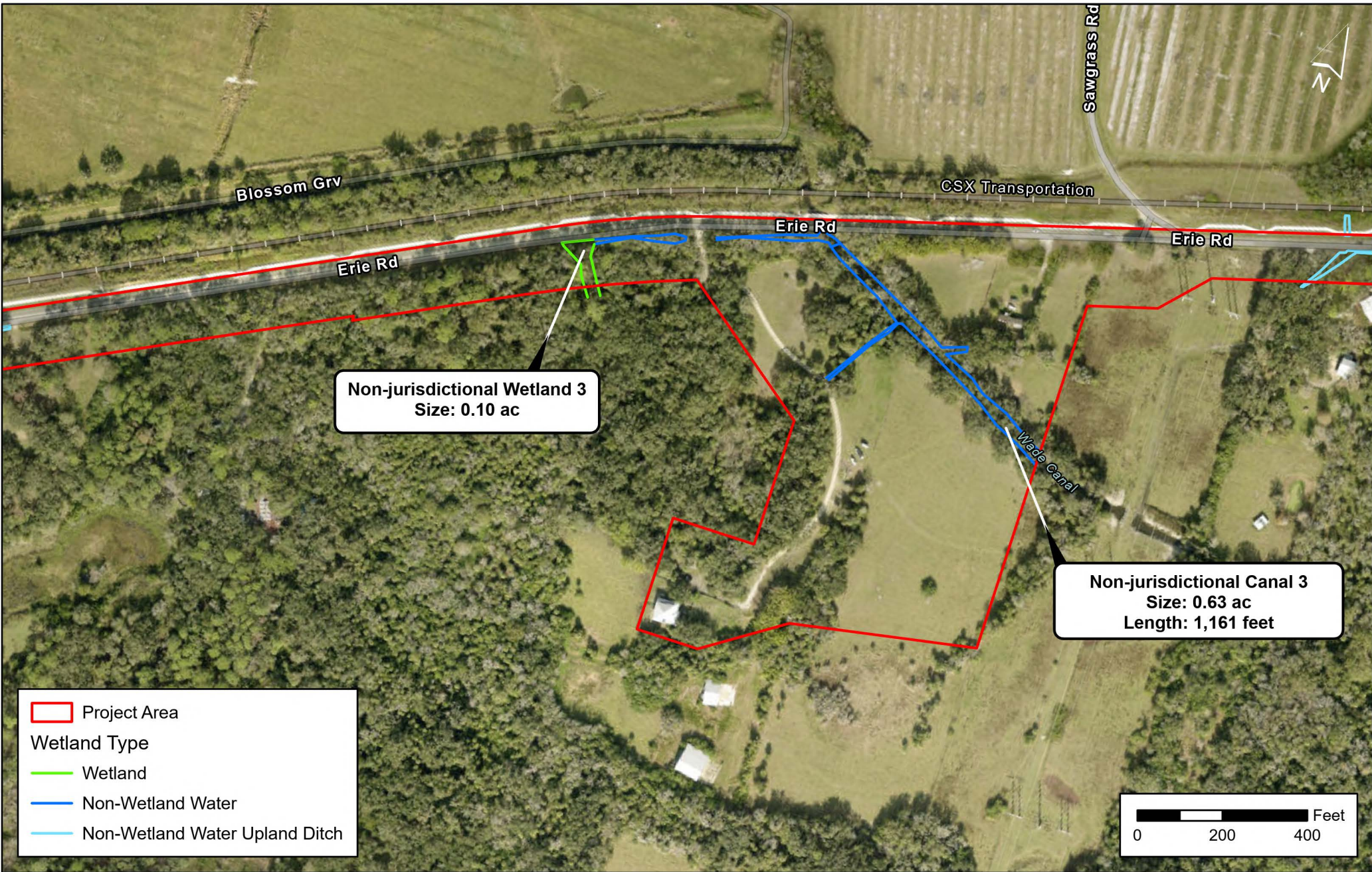
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6-2

DATE:
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 21-0638.002

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 Wetlands: DRMP 2025



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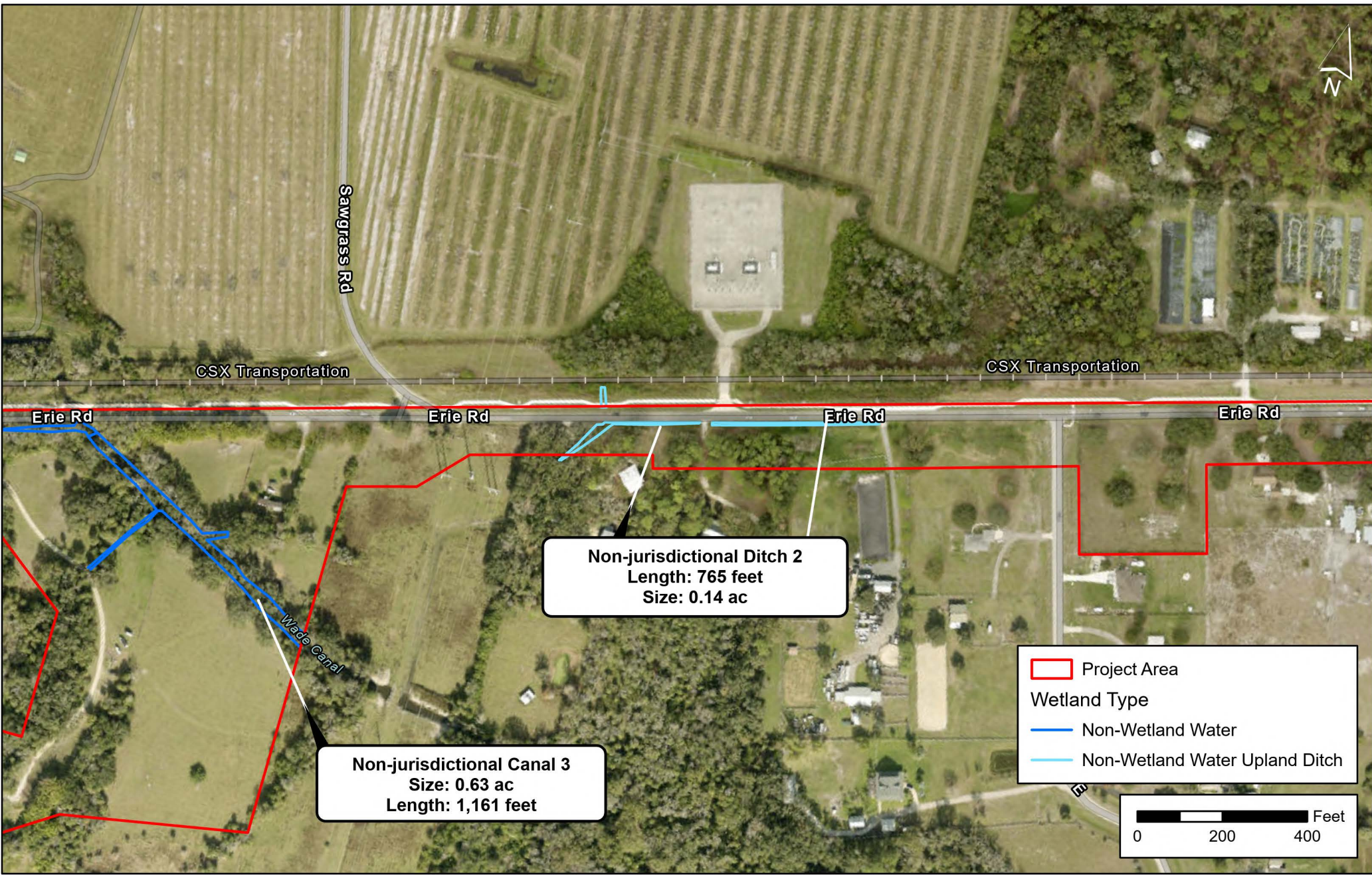
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6-3

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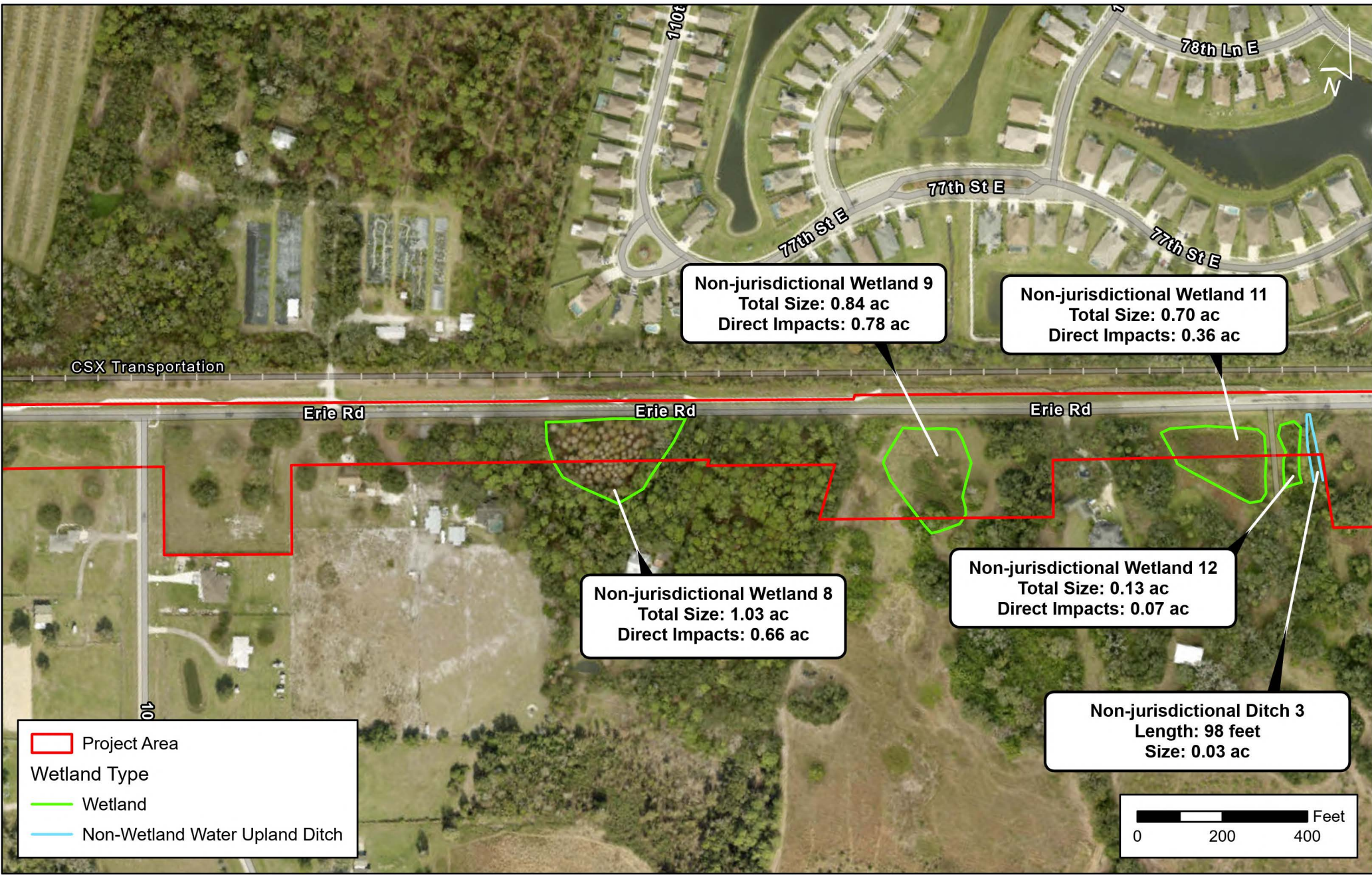
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6-4

DATE:
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Aquatic Resource Map

Figure
6-5

DATE:
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 Wetlands: DRMP 2025