



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

CESAJ-RD-NJ

September 4, 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-2025-01480, MFR 1 of 1²

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 Florida 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 1, non-jurisdictional, 3.65 acres
 - ii. Ditch 1, non-jurisdictional, 930.32 linear feet
 - iii. Ditch 2, non-jurisdictional, 149.88 linear feet
 - iv. Pond 1, non-jurisdictional, 1.96 acres

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. *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 the "Continuous Surface Connection" under the Definition of the "Waters of the United States" under the Clean Water Act* dated March 12, 2025

REVIEW AREA. The review area is an approximate 22.55-acres in size, which is located at 2630 State Road 207 (Latitude 29.816531° / Longitude -81.384425°, in Section 9 and 10, Township 8 South, Range 29 East, St. Johns County, St. Johns, Florida (Reference Figure 1).

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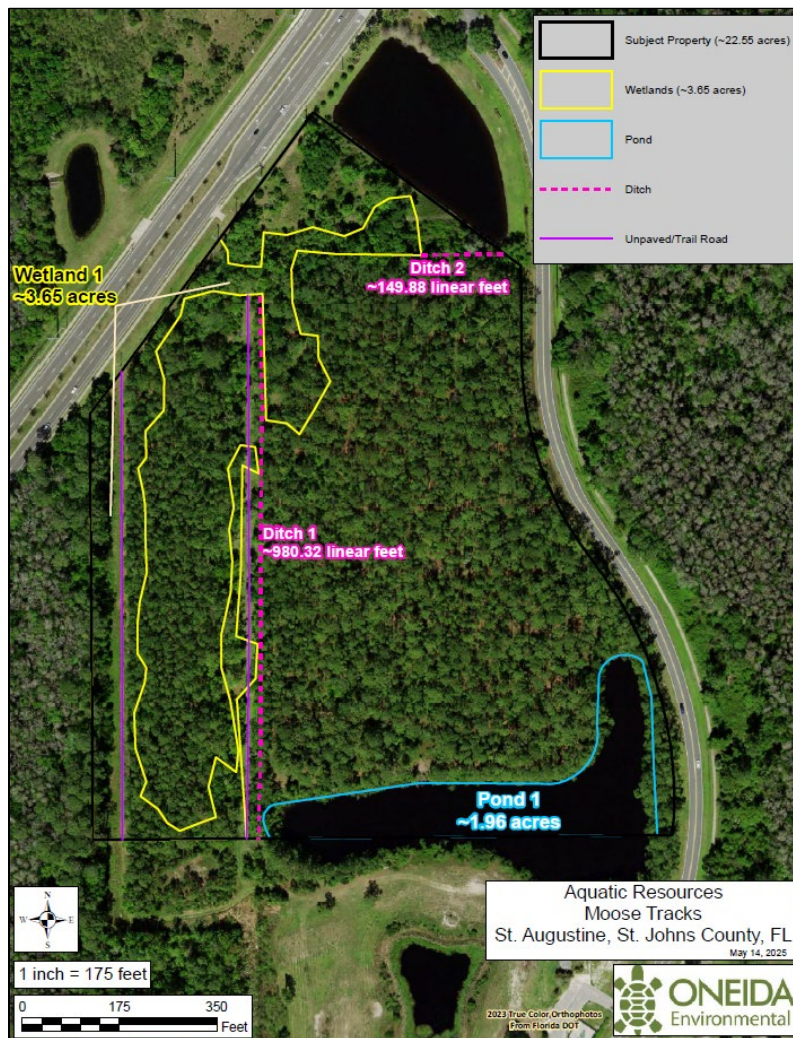


Figure 1. Project Review Area

Wetland Delineation Information: Wetland data sheets were completed on 13 May 2025 by applicant's agent. An Antecedent Precipitation Tool (APT) report was run for the day of the site visit which showed normal conditions with a mild drought (Reference Figure 2).

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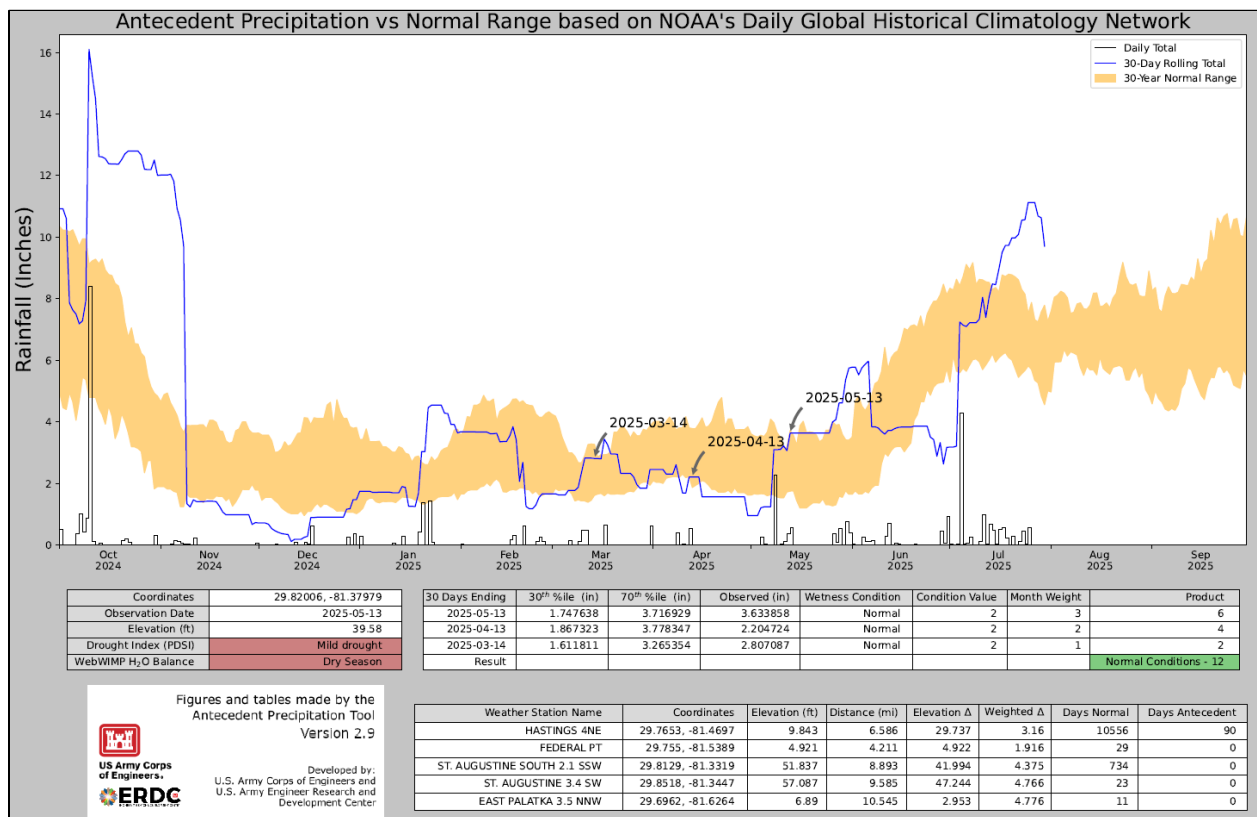


Figure 2. APT Results

Site Description: The review area is bordered to the north by County Road 207, to the east by Cypress Links Boulevard, to the west by undeveloped land, and to the south by single family residences. No previous AJD's have been issued for the review area.

Site LiDAR: A review of Light Detection and Ranging (LiDAR) obtained from the Corps National Regulatory Viewer on 10 June 2025 indicated that W1 is surrounded to the east by higher elevations, to the west by wetlands, to the north by County Road 207, and to the south by wetlands.

- NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is an unnamed tributary of Moultrie Creek located 1.36 miles east of the review area that flows north 3.47 miles into the St. Johns River. The St. Johns River flows 6.74 miles Northeast to the Atlantic Ocean. Moultrie

Creek is a Section 10 water based on the Jacksonville District Navigable Waters List.⁶

4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS For Wetland 1, Pond 1, Ditch 1, and Ditch 2, there is no flow path to Moultrie Creek due to roads to the north and the south of the review area that severs connection.
5. 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
6. 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

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.

- 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

7. 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 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

⁹ 51 FR 41217, November 13, 1986.

resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC.

Pond 1 (P1): Pond 1 is a total of 1.96 acres in size and is surrounded entirely by uplands. In addition to the on-site delineation, a review of the hill shade NRV layer and the LiDAR layer shows a pink signature for Pond 1 indicating lower elevations. Surrounding Pond 1 are red and yellow signatures that indicate higher elevations. The NWI layer documents Pond 1 as a Freshwater Pond and the area surrounding as upland. Since Pond 1 is surrounded by uplands, the Corps has determined Pond 1 is a non-jurisdictional, isolated pond in accordance with SWANCC.

- 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).

- f. Wetland 1 (W1): Wetland 1 is a total of 3.65 acres in size. A field investigation completed on 13 May 2025 by the Agent using the federal delineation methodology provided in the 1987 Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0, November 2010. The data sheet completed for Wetland 1 (WP1) document the presence of wetland hydrology, hydrophytic vegetation, and hydric soils. A review of the hill shade NRV layer and the LiDAR NRV layer shows blue, green, and pink which could indicate lower elevations that could be wetlands. The pink area to the north and west appears to be a large wetland system and the red signatures to the north and east indicate higher elevations where the wetlands may end. The NWI layer in the NRV documents these wetlands as uplands. Based on a field investigation conducted by the Corps on 2 July 2025 and online resources, Wetland 1 directly abuts two ditches (Ditch 1 and Ditch 2) which are non-jurisdictional waters discussed below. In consideration of the *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 the “Continuous Surface Connection” under the Definition of the “Waters of the United States” under the Clean Water Act* dated March 12, 2025, Ditch 1 and Ditch 2 are discrete features and that do not establish a continuous surface connection from Wetland 1 to an (a)(1)-(a)(6) water. In addition, Wetland 1 is a part of a large wetland system that extends offsite to the north and south.

However, the connection is severed due to roads to the north and the south for entire wetland (both onsite and offsite). Therefore, Wetland 1 is non-jurisdictional.

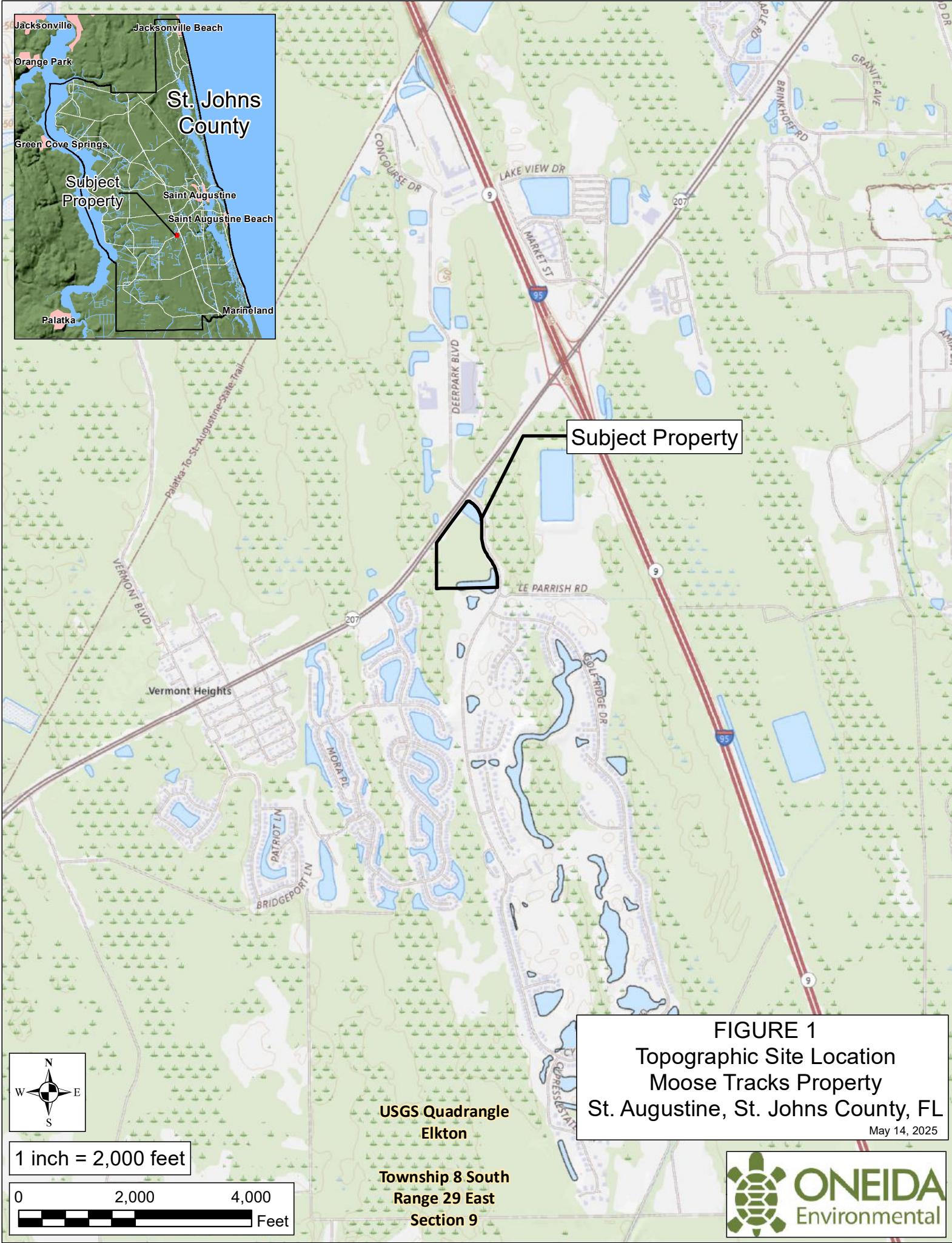
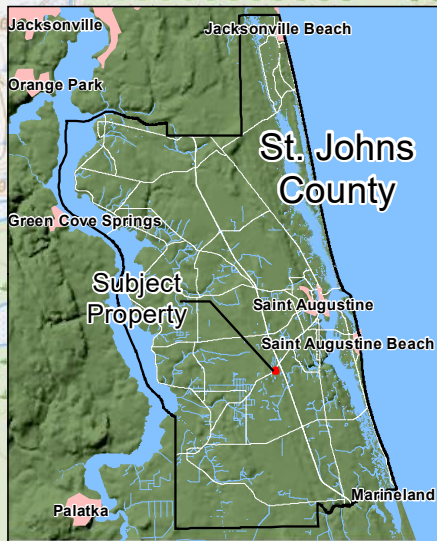
- a. Ditch 1 (D1): Ditch 1 is a total of 980.32 linear feet in size and located to the east of Wetland 1. During a site visit conducted by the Corps on 2 July 2025 during normal conditions (with a slight drought), indicators of an Ordinary High Watermark (OHWM) and flowing water were not observed. The soils within the ditch were saturated, and areas of shallow ponding were observed within the ditch, but not what is considered relatively permanent standing water. During the field review, the Corps noted that Wetland 1 directly abuts Ditch 1. Based on a review of available desktop resources such as aerial images, LiDAR and hill shade, Ditch 1 extends south outside of the review area and terminates in uplands. Because Ditch 1 does not have relatively permanent flow and does not connect to downstream TNW, it is not an (a)(5) tributary. Therefore, Ditch 1 is considered non-jurisdictional.
 - b. Ditch 2 (D2): Ditch 2 is a total of 149.88 linear feet in size and located to the east of Wetland 1 in the northeast portion of the review area. During a site visit conducted by the Corps on 2 July 2025 during normal conditions (with a slight drought), indicators of an Ordinary High Watermark (OHWM) and flowing water were not observed. The soils within the ditch were saturated, and areas of shallow ponding were observed within the ditch, but not what is considered relatively permanent standing water. During the field review, the Corps noted that Ditch 2 flows directly into an offsite stormwater pond to the east where the flow path appears to end as it does not connect to a downstream TNW. Wetland 1 directly abuts Ditch 2. Because Ditch 2 does not have relatively permanent flow and does not connect to a downstream TNW, it is not an (a)(5) tributary. Therefore, Ditch 2 is considered non-jurisdictional.
8. 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 evaluations: 10 June 2025
 - b. Regulatory Viewer: Aerial photographs, National Hydrography Dataset (NHD), National Wetland Inventory (NWI) Maps, LiDAR, Hill Shade, Topographic maps viewed 10 June 2025
 - c. Natural Resources Conservation Service (NRCS) Hydric Soils by Map Unit
 - d. Antecedent Precipitation Tool (APT): 13 May 2025 and 2 June 2025

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9. OTHER SUPPORTING INFORMATION. N/A

10. 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.

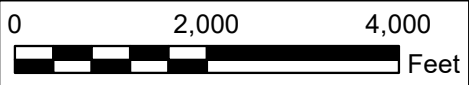


Subject Property

FIGURE 1
 Topographic Site Location
 Moose Tracks Property
 St. Augustine, St. Johns County, FL
 May 14, 2025








1 inch = 2,000 feet



USGS Quadrangle
 Elkton

Township 8 South
 Range 29 East
 Section 9



	Subject Property (~22.55 acres)
	Wetlands (~3.65 acres)
	Pond
	Ditch
	Unpaved/Trail Road

Wetland 1
~3.65 acres

Ditch 2
~149.88 linear feet

Ditch 1
~980.32 linear feet

Pond 1
~1.96 acres



Aquatic Resources
Moose Tracks
St. Augustine, St. Johns County, FL
May 14, 2025

2023 True Color Orthophotos
From Florida DOT

