



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-08175

SAJ-2025-00841

October 16, 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-2025-00841] [MFR 1 of 1]²

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, the territorial seas, or interstate water 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, jurisdictional, 0.95 acres, 475 linear feet (LF), Section 404
 - ii. Pond, non-jurisdictional, 0.11 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 "Continuous Surface Connection" Under the Definition Of "Waters Of The United States" Under the Clean Water Act (March 12, 2025)

3. REVIEW AREA. The AJD review area is 18.41 acres in size. It is located at 29319 Hadlock Drive, in Section 20, Township 25 South, Range 23 East, Wesley Chapel, Pasco County, Florida. The approximate coordinates are Latitude 28.289762, Longitude -82.332935. The site has been used historically as undeveloped pasture and is currently used as an equestrian center and is proposed for residential development. No previous jurisdictional determinations have been issued for the review area and project boundary.

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Figure 1. Proposed residential community property where, showing the location of aquatic resources.

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

The Hillsborough River is the nearest TNW (HUC 8:03100205). The Hillsborough River is approximately 21 linear miles west from the subject aquatic resources.

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

The flow path for Wetland 1 heads west under Old Pasco Road and then south where the creek connects to an (a)(5) water, known as Cypress Creek. Cypress Creek continues south and connects to the Hillsborough River, which is a TNW. The distance from the creek onsite to connecting with the Hillsborough River is approximately 21 miles. Pond 1 has no connection to the downstream Hillsborough River it is surrounded by and excavated in uplands.

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6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): N/A
 - d. Impoundments (a)(2): N/A
 - e. Tributaries (a)(5): N/A
 - f. The territorial seas (a)(6): N/A

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 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.

g. Adjacent wetlands (a)(7): Wetland 1

Resource Name	Size	Rationale
Wetland 1	0.94 acres, 475 LF and 87 ft wide	<p>Wetland 1 is an extension of Cypress Creek that is a tributary connected to the Hillsborough River (TNW). At the time of the visit conditions were in a mild drought based on the Antecedent precipitation tool (APT) and there was still flowing water. Historical aerials as far back as 1951 show water within the stream.</p> <p>Under the pre-2015 Regulatory Regime, Post Sackett, waterbodies that flow directly or indirectly into TNWs and meet the relatively permanent standard, are regulated waters of the United States. To meet the relatively permanent standard, waters must have flow or standing water year-round or at a minimum, seasonally. Wetland 1 is an (a)(5) tributary and is jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a)</p>

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”).⁸ 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

⁸ 51 FR 41217, November 13, 1986.

- 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).


Resource Name	Size	Rationale
Pond 1	0.11 acres	<p>Is an artificial pond dug out of uplands. It is not directly abutting a TNW and is separated from the nearest potentially jurisdictional water by 1,052 feet of uplands with no physical conveyances or discrete features between the two resources. Use of the hill shade layer in the NRV and LiDAR elevation maps showed no connection to any other aquatic resources.</p> <p>This pond was excavated between 2022 and 2023 based on historical aerials taken from GoogleEarth, Historical Aerials website, and aerials provided by the agent showing it was created wholly out of uplands and used as a livestock pond.</p> <p>Based on these findings, it can be concluded that Pond 1 is an artificial pond with no outfall. It therefore qualifies to be an excluded feature that is not jurisdictional under Section 404 of the Clean Water Act.</p>

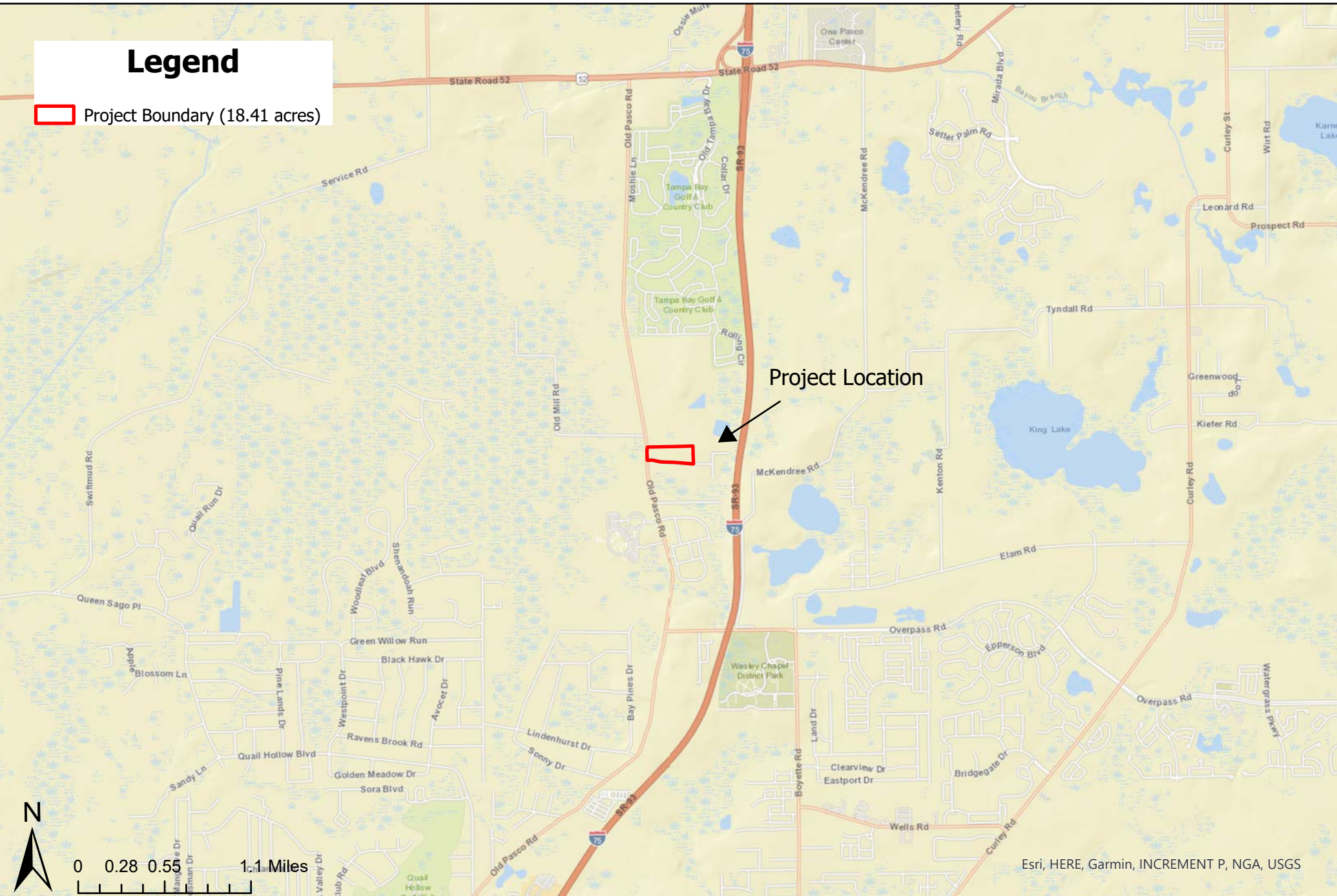
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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. U.S. Army Corps of Engineers. July 25-28, 2025. Office Evaluation.
 - b. Untitled Delineation Information prepared by Naylor Environmental Solutions, Dated September 9, 2023.
 - c. 1941, 1995, 2001, and 2007 historical aerials provided by the agent on August 6, 2025.
 - d. National Regulatory Viewer for Florida, USA Soils Hydric Class, Hillshade, 3DEP Digital Elevation Model, National hydrography dataset, and National Wetland Inventory Layers, Accessed on July 25, 2025.
 - e. NRCS Custom Soil Report, prepared by Ian Vincent & Associates Environmental Consulting Services August 26, 2024
 - f. 1951 historical aerials: July 28, 2025. Collected from Historical Aerials website (<https://www.historicaerials.com/viewer#>).
 - g. 1995, 2022 and 2023 historical aerials: July 28, 2025. Collected from GoogleEarth.
 - h. Antecedent precipitation tool ran on July 28, 2025 for site visit dated February 12, 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

 Project Boundary (18.41 acres)



Project Location

Esri, HERE, Garmin, INCREMENT P, NGA, USGS

Prepared by:



Source: Aerial(ESRI)
Parcel Boundary (Pasco Co.),
Date: 03/10/25
By: Naylor Environmental Solutions



**Figure 1. Location
Hadlock Townhomes
20-25-20-0000-00500-0057
29319 Hadlock Drive
Pasco County, FL**

Prepared for:



**DRB
DRB GROUP**

Legend

-  Project Boundary (18.41 acres)
-  Wetland/OSW Pond

Wetland 1

OSW Pond



0 0.01 0.02 0.04 Miles



Esri, HERE, Garmin, iPC, State of Florida, Maxar, Microsoft

Prepared by:



Source: Aerial(ESRI)
Parcel Boundary (Pasco Co.),
Date: 10/16/25
By: Naylor Environmental Solutions

Aquatic Resources
Hadlock Townhomes
20-25-20-0000-00500-0057
29319 Hadlock Drive
Pasco County, FL

Prepared for:

