



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
PALM BEACH GARDENS PERMITS SECTION
4400 PGA BOULEVARD, SUITE 500
PALM BEACH GARDENS FLORIDA 33410

CESAS-ZR

October 6, 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-2025-01722 (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, 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
SAJ-2025-01722 SW-1 (34.16 acres)	Non-Jurisdictional	N/A
SAJ-2025-01722 W-1 (Freshwater Forested/Shrub Wetland (17.21 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_tribes-and-states_11-15-23_508.pdf

3. REVIEW AREA.

- a. Project Area Size (in acres): 80 acres
- b. Location Description: The project/review area is located at 8535 S State Road 7 (US-441) within Section 12, Township 045S, Range 041E; in Lake Worth, Palm Beach County, Florida.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 26.559170 Longitude: -80.217590
- d. Nearest City or Town: Lake Worth
- e. County: Palm Beach

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- f. State: Florida
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

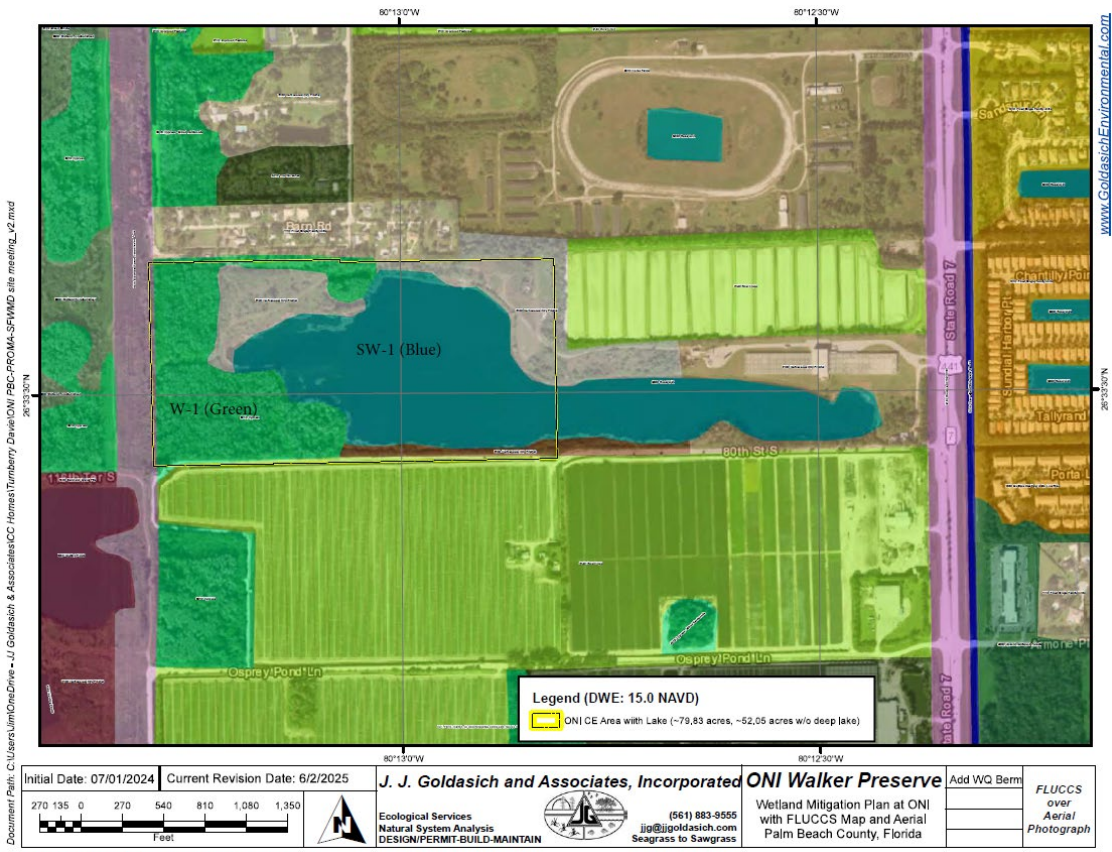


Figure 1 Review Area Map

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

N/A

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

N/A

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6. SECTION 10 JURISDICTIONAL WATERS⁶: N/A

7. SECTION 404 JURISDICTIONAL WATERS:

- 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”).⁷ 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

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 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*.

The unnamed lake (SW-1), as identified in Figure 1 above and is approximately 34.16 acres in size. The polygon is an estimated boundary, completed remotely as a Level 1 delineation. SW-1 was previously constructed when the area was utilized as a borrow site. After material was extracted, it was abandoned. The lake does not share a hydrologic connection with a requisite water and remains isolated on the landscape. The lake has no public utility (public boat ramp, fishing pier, etc.), and as a result, there is no nexus to interstate or foreign commerce. W-1 is adjacent to this lake and is evaluated for adjacency criteria in Section 8(f) below. SW-1 is not a Water of the United States and meets criteria identified in the 2001 Supreme Court decision in “*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).

W-1 is located on the west side of the review area and surrounds the shallower end of SW-1 identified in 8(e) above. During initial review, the requestor provided polygons indicating W-1 wraps around that west portion of the review area and has been drained, no longer possessing the necessary criteria. USACE requested data points in the polygon to assess it for wetland criteria identified in the 1987 Wetland Delineation Manual and the Atlantic Gulf Coast Regional Supplement. It was determined that some criteria were lacking; however, due to the area being heavily manipulated, the original polygon that was developed with remote tools (Level 1 Delineation) by the requestor (see Figure 1), was sufficient to establish the approximated boundaries for consideration of jurisdiction. A site visit was then conducted, confirming the manipulated wetland and its proximity to

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potential connections with requisite waters. Based on information from the consultant, aerial imagery, and the Corps site visit on 2 September 2025, W-1 does not have a valid continuous surface connection as identified in current policy or guidance, that continues outside the review area. Therefore, the Corps has determined that W-1 is not adjacent to any requisite waters. W-1 is not a Waters of the United States.

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: 8/26/2025
Date(s) of Field Determination (if applicable): 9/2/2025
 - b. Data sources used to support this determination (included in the administrative record).
 - i. Corps site visit conducted on 2 September 2025
 - ii. Lidar, National Regulatory Viewer, last accessed 26 August 2025
 - iii. Hillshade, National Regulatory Viewer, last accessed 26 August 2025
 - iv. National Wetlands Inventory Map, National Regulatory Viewer, last accessed 26 August 2025
 - v. National Hydrography Data Set, National Regulatory Viewer, last accessed 26 August 2025
 - vi. USA Soils Hydric Class, National Regulatory Viewer, last accessed 26 August 2025
 - vii. Wetland data sheets completed by the agent on 11 August 2025 (A field aquatic resource delineation was not completed, after confirming a lacking CSC with requisite waters outside the review area)
 - viii. Sampling location map
 - ix. Wetland survey map
 - x. Google earth historical imagery dating back to 1995
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.