



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

SAJ-2025-01072

November 18, 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-2025-01072] [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 B, non-jurisdictional, 0.21 acres
 - ii. Wetland C, non-jurisdictional, 2.67 acres
 - iii. OSW 15C/15D, non-jurisdictional, 0.42 acres, 707 linear feet (LF)

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 the southern portion of the approximately 58 acres project boundary. It is located at Oak Trails, north of Moccasin Wallow Road, in Section 13 and 24, Township 33 South, Range 18 East, Parrish, Manatee County, FL. The approximate coordinates are Latitude 27.600416, Longitude - 82.462053. Historically the site has been undeveloped. No previous jurisdictional determinations have been issued for the review area and project boundary. A PJD was evaluated and completed just north of the review area stating that wetland D is jurisdictional.

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Figure 1. AJD review area (limited to the area outlined in pink), showing the locations of aquatic resources.

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

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The Little Manatee River is the nearest TNW. Little Manatee River is approximately 4 linear miles south from the subject aquatic resources.

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

There is no flow path from Wetland B, Wetland C, OSW 15C or OSW 15D to a TNW, as discussed in Section 8.f. below.

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

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.

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- d. Impoundments (a)(2): 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”).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
- 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

⁸ 51 FR 41217, November 13, 1986.

- 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
Wetland C	2.89 acres	<p>According to the submitted wetland delineation, Wetland C is surrounded by uplands. It does not directly abut any (a)(1)-(a)(6) water. Review of the National Regulatory Viewer (NRV) Hill Shade layer and the LiDAR elevation layer indicates that the surrounding area is higher in elevation with Wetland C being the lowest in elevation. In addition, the wetland is surrounded by soils that are rated only partially hydric (1%-25%).</p> <p>South of the wetland is Moccasin Wallow Road and another wetland. Moccasin Wallow Road was installed prior to 1940. Based on available resources, it does not appear that Wetland C and the wetland south of Moccasin Wallow Road were historically one wetland that was later divided. The agent reports and historical aerials show no features connecting the two (2) wetlands. Therefore, Wetland C and the wetlands south of Moccasin Wallow Road are not considered one wetland for the purpose of determining wetland adjacency.</p> <p>The Corps has determined that Wetland-C does not directly abut an (a)(1)-(a)(6) water and is therefore not jurisdictional to the Corps under Section 404 of the Clean Water Act.</p>
Wetland B	0.21 acre	<p>Wetland B directly abuts ditch OSW 15C/15D, which was excavated through Wetland B as part of a network of ditches dug to drain the area to convert it into agriculture land. OSW 15C/15D is non-jurisdictional, per the discussion below. Wetland B does not directly abut any (a)(1)-(a)(6) water; therefore, it does not meet the criteria for an (a)(7) adjacent wetland and is non-jurisdictional.</p>
OSW 15C/15D	770 Linear feet	<p>Based on a review of available aerial imagery, topo maps, and LiDAR, OSW 15C/15D is a man-made ditch historically dug out of wetlands (including Wetland C) and uplands to drain wetlands. Based on historical aerials, the ditch was part of a larger network of ditches to the east/northeast until it was cut off from the rest of the ditch network by a farm road and a residential development. Current aerials and the National Hydrography Dataset suggest that the ditch flows south through a culvert under Moccasin Wallow Road to a roadside swale along the south side of Moccasin Wallow Road. This is supported by</p>

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		photos provided by the agent. After this point, the water from the ditch either flows through a culvert to a stormwater pond in the residential development to the south, or percolates through the roadside swale. Because the ditch does not have an observable, definitive flowpath to a downstream TNW, this ditch does not meet the criteria for an (a)(5) tributary and is not jurisdictional to the Corps under Section 404 of the Clean Water Act.
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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. Information submitted by, or on behalf of, the Applicant/Consultant on October 16, 2025 including:
 - a. Mclure Eisenhower Project Site wetland Map prepared by Ardurra
 - b. Field photos
 - c. Wetland Delineation Sheets
 - d. Soils Map
 - e. Location and aerial map
 - f. National Wetland Inventory (NWI)
 - g. USGS Topo map: 300 and 800 scale
 - h. Wetland delineation and KMZ file
 - i. Antecedent precipitation tool (APT)

- b. USACE National Regulatory Viewer Layers accessed September 11, 2025
 - a. National Wetland Inventory
 - b. National Hydrography Dataset
 - c. USA Soils Map Units and Soils Hydric Class
 - d. 3DEP Digital Elevation Model
 - e. 3DEP Hill Shade
 - f. Florida Land use and Cover Classification System (FLUCCS)
 - g. Historic aerials: 1940, 1957, 1969, 1982, 2007, 2021, September 2025
 - h. Google earth street view; 2023

10. OTHER SUPPORTING INFORMATION.

- a. Preliminary Jurisdictional Determination for SAJ-2025-01072

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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

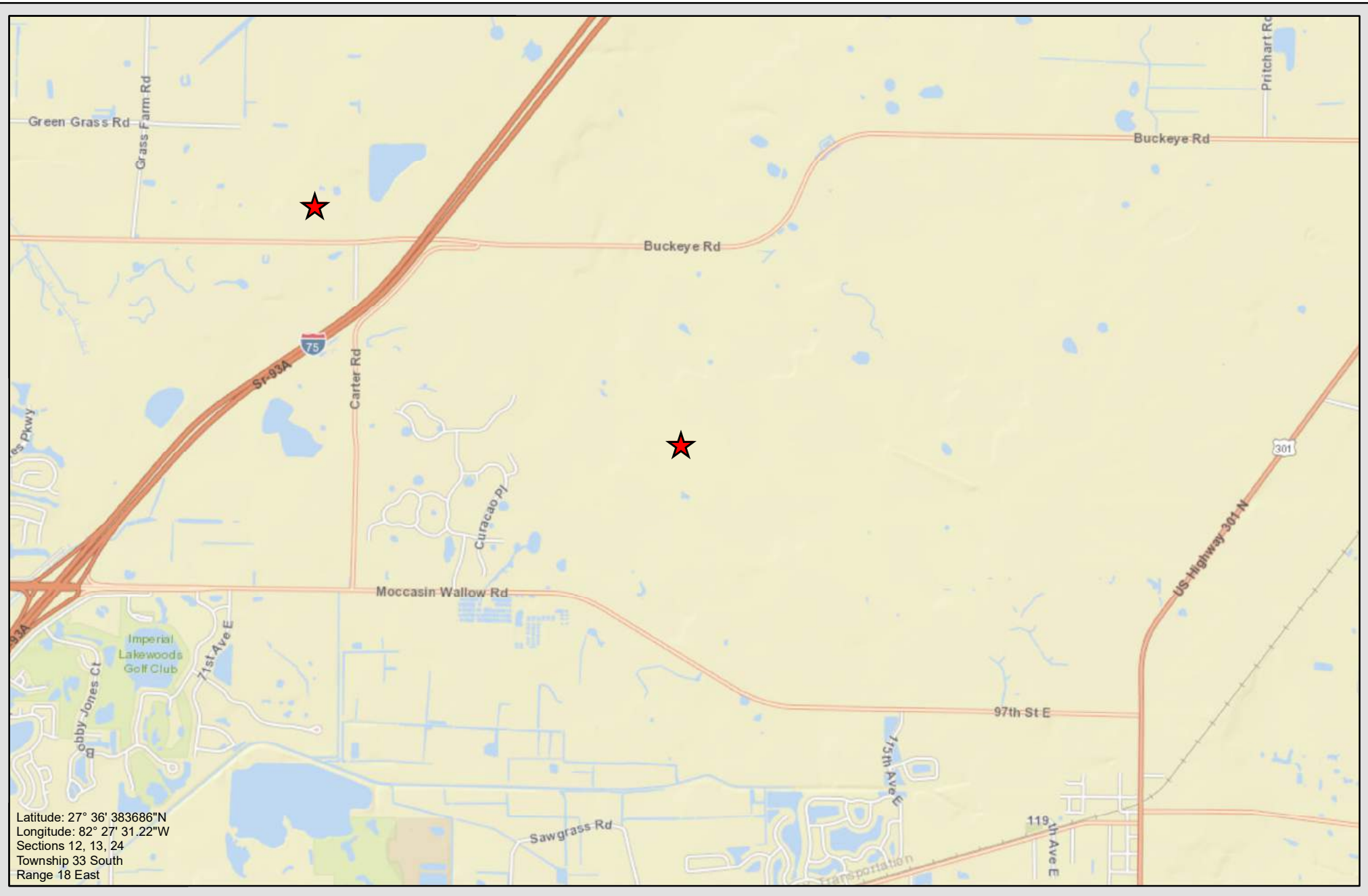
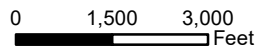


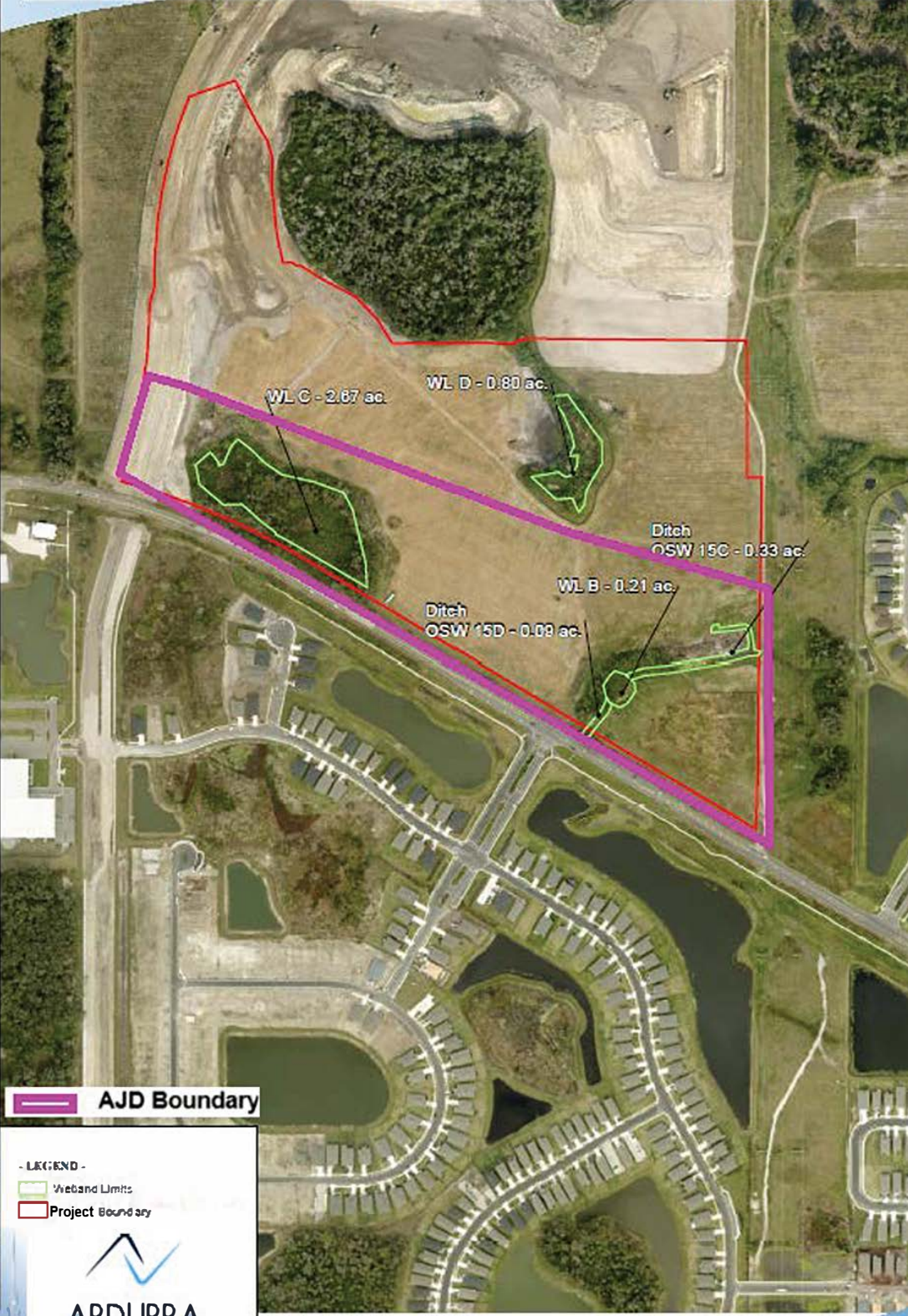
Image Source: ESRI 2021
 Date: 5-18-21





Location Map
 McClure Properties LTD
 Manatee County, Florida



WWW.ATLANTICECO.COM
 904-347-9133 | jody@atlanticeco.com
 201 Basque Rd | St. Augustine, FL 32080



 **AJD Boundary**

- LEGEND**
-  Wetland Limits
 -  Project Boundary



SCALE - FEET

0 310 620