



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
400 HIGH POINT DR., STE. 600
COCOA, FL 32926-6630

SAJ-2025-02262

20 November 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-2025-02262, 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 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 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.

CESAJ-RD-NC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2025-02262

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 – 404 (0.66 acres) – non-jurisdictional
 - ii. Pond 1 – 404 (0.46 acres) – non-jurisdictional

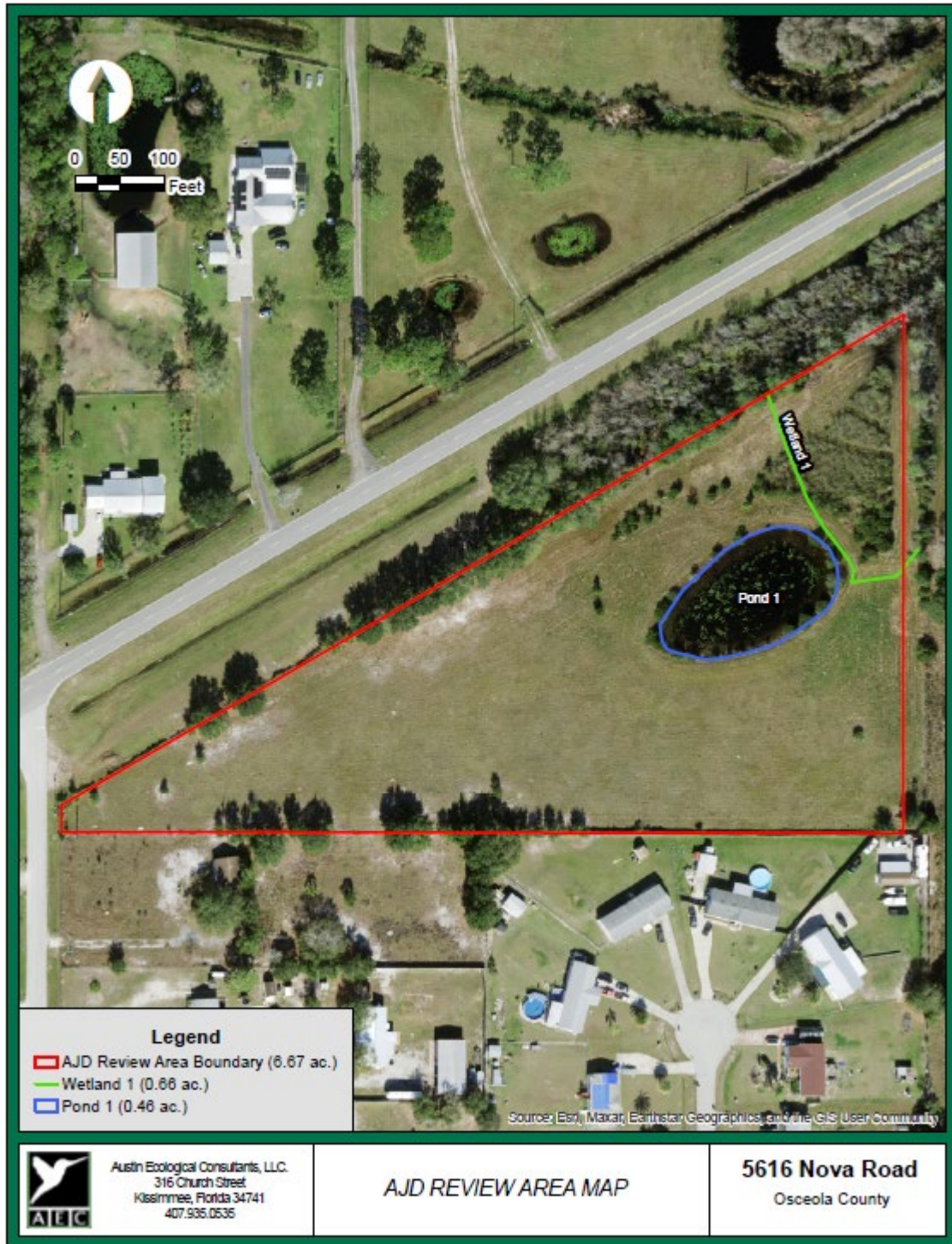
2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Revised Definition of Waters of the United States; Conforming 88 FR 61964 (Sept. 8, 2023).
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- 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 approximately 6.67 acres in size and is limited to the specified review area depicted in the figure below. The project/review area is located at 5616 Nova Road in Section 04, Township 26S, Range 31E; at Latitude 28.25309 and Longitude -81.21201; in St. Cloud, Osceola County, Florida.

CESAJ-RD-NC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2025-02262



CESAJ-RD-NC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2025-02262

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Lake Center, which is located approximately 1.75 miles northeast of the review area (but which is *not* connected to any aquatic resource within the review area).⁶ Lake Center is a Section 10 intrastate freshwater lake measuring approx. 400 acres in size. It is listed on the Jacksonville District Navigable Waters List.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. (None)
6. SECTION 10 JURISDICTIONAL WATERS⁷: N/A.⁸
7. SECTION 404 JURISDICTIONAL WATERS:
 - 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

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.

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 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*.

Pond 1 – 404 (0.46 acres) – non-jurisdictional

Pond 1 is an 0.46-acre pond located within the easterly section of the parcel and is surrounded by uplands. A site inspection by the Corps and agent on 25 August 2025 using the federal delineation methodology found in the Corps’ 1987 delineation manual and 2010 regional supplement indicated the lack of the three necessary parameters to classify the areas circumferential to the pond as

⁹ 51 FR 41217, November 13, 1986.

CESAJ-RD-NC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2025-02262

wetlands (this information is also reflected on the submitted data sheets). Based on site inspection findings, and desktop review that included aerial photographs, Lidar, Hillshade, Pond 1 is an isolated water 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):

Wetland 1 (0.66 acres)- non-jurisdictional

Wetland 1 is a 0.66-acre wetland bounded by uplands on the southerly and westerly side and by wetlands leading off site on the northerly and easterly sides. A site inspection by the Corps and agent on 25 August 2025 using the federal delineation methodology found in the Corps' 1987 delineation manual and 2010 regional supplement indicated the presence of the three necessary parameters to classify Westland 1 as a wetland: at least one primary hydrologic indicator, satisfaction of the dominance test for hydrophytic vegetation, and identification of at least one hydric soil indicator. However, the wetland areas adjacent to Wetland 1 that lead off site lack any connection to a downstream TNW. Specifically, the wetlands located on the parcel to the east connect to the roadside ditch on the south side of Nova Road, but that ditch loses any relatively permanent features just east of Mathis Road (which is located west of the subject parcel) and just west of the driveway at 5700 Nova Road (which is the property just east of the subject parcel). The ditch also terminates at a driveway approximately 620 feet north of the review area and 512 feet south of the review area. This was observable on site and in aerials. Furthermore, there is an underground culvert (approx. coordinates of culvert location: 28.25442, -81.21116) that appears to connect the southerly roadside ditch to the roadside ditch on the north side of Nova Road. However, the northerly roadside ditch loses any relatively permanent features and terminates at Druliner Rd to the south and terminates at Bay Breeze Drive to the north. This was also observable on site and in aerials. In addition, there is no connection between the northerly ditch and the linear surface water to the west that is located at 5645 Nova Road. A site inspection search failed to locate a culvert or any type of conveyance between these two resources. Further, the wetland located on the easterly side of the same parcel appears to abut the roadside ditch, but it is separated by an upland berm and does not connect with the linear surface water to its west. Again, a site inspection failed to locate a culvert or other conveyance between the two resources. Therefore, based on site inspection findings, and desktop review that

CESAJ-RD-NC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2025-02262

included aerial photographs, Lidar, Hillshade, Wetland 1 does not abut any a(1-6) water, and therefore does not meet the definition of a WOTUS

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. Corps site visit was conducted on 25 August 2025.

b. AJD package that includes:

- 1) Location Map*
- 2) AJD review area map*
- 3) Soils map*
- 4) FLUCCS map*
- 5) Lidar map#
- 6) NWI map#
- 7) Hillshade map#
- 8) APT report *
- 9) Data points location map*
- 10)Wetland/ upland data sheets and photos (data gathered by agent in November 2024)*

**provided by agent August 2025*

provided by USACE August 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.