



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
100 CANAL STREET
MOBILE, AL 36602-1901

CESAM-RD-M

October 2, 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 SAM-2021-00021-CSP, Kevin Jarvis, Jarvis Subdivision, 13.10-acre Parcel (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

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.

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 Mississippi 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).

Waters Name	Waters Size	Type Of Aquatic Resource	Geographic Authority
W-1	8.77 acres	NON-WOTUS-AJD, WETL NEGATIVE-A7	None

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. 2008 Rapanos Guidance

3. REVIEW AREA. The site is located along Daisy Vestry Road; Section 27, Township 6 South, Range 9 West; Latitude: 30.489388° North and Longitude: 88.868039° West; HUC-03170009 – Mississippi Coastal; in Vancleave, Jackson County, Mississippi. The site is 13.10 acres in size and has been recently cleared. Approximately 0.90 acre of fill has already been discharged into the wetlands. The applicant submitted an after-the-fact application for the construction of an 11-lot subdivision, but the application is currently withdrawn due to a lack of response to the Corps’ previous request for information. A residential home and undeveloped property border the property to the north, a driveway/residential home and pastureland borders the property to the south, a man-made drainage ditch and Daisy Vestry Road borders the property to the west, and a driveway/residential home borders the property to the east.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Tchoutacabouffa River is approximately 3.2 southwest of the site boundary. Tchoutacabouffa River is on the Mobile District's Section 10 Waters list and is therefore a TNW.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

W-1 generally flows toward the south. The wetland continues off-site to the southeast and southwest where the flow enters swales in the pastureland and continues south approximately 2,200 linear feet. It is at this point it appears the flowpath appears to bisect the nearest RPW. The flowpath continues southward and enters Cypress Creek where it flows westward and empties into the Tchoutacabouffa River.

6. 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
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

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.

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
- 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").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

⁹ 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 or enter rationale/discussion here.]
- 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 a pine savannah wetland 8.77 acres in size that extends outside of the review area but is eventually separated from any RPWs by uplands, such as roads, driveways, and previously filled residential homes. The wetland appears to extend off-site to the southeast, southwest, and east. Each direction is evaluated below:

W-1 continues off-site to the southeast and abuts a swale within the neighboring pastureland. Dating back to 1952, there are no historical topographic maps which depict wetlands or streams at the location of the pastureland and swale, which is south of the review area. The swale does not have a well-defined bed and bank nor does it have an ordinary high water mark (OHWM). The swale is heavily vegetated and did not have surface water during the agent's or Corps' site visits. According to the APT data, there were wetter than normal conditions during the agent's site visit and normal conditions during the Corps' site visit. Site access was unavailable to assess the swale for wetland conditions, but it bisects an area with Vancleave soil, typically found in uplands, approximately 175 feet south of the review area. The swale would be considered a non-jurisdictional feature under the Rapanos Guidance. The area further to the south has been disturbed by construction of residential homes and agriculture activities. Historical imagery depicts this area has been maintained as pastureland since at least the early 1990s. Aerials depict cattle within the pastureland throughout the years, which has likely compacted the soils. It appears mechanical disturbance of the soils from normal farming activities have also taken place, likely leading to even

further compaction of the soils. Historical imagery also depicts numerous dirt roads throughout this area that was likely maintained by fill. Based on a review of historic aerial photography, topographic maps, and the soil survey, the Corps concludes that the portion of W-1 that extends south outside the review area to the east intersects uplands and does not abut a requisite water.

W-1 continues off-site to the southwest and bisects an upland driveway. There is no culvert where the wetland bisects the driveway. It is unclear if the wetland continues south at this point because access was not granted. Even if the wetland does continue further south, it would abut another swale feature approximately 400 linear feet southwest of the project site boundary. This swale has been lined with rock but lacks a defined OHWM. Street view photographs from 2013 depict the swale before rock was installed. According to APT data, the street view photographs were taken during normal conditions. The swale did not have a well-defined bed and bank, no OHWM, no surface water, and was heavily vegetated. APT data also indicated that there was wetter than normal conditions during the agent's site visit and normal conditions during the Corps' site visit, which both depicted no surface water within the swale. Dating back to 1952, there are no historical topographic maps which depict wetlands or streams where the pastureland and swale are located to the south of the review area. Based on a review of historic aerial photography, topographic maps, and the soil survey, the Corps concludes that the portion of W-1 that extends south outside the review area to the west intersects uplands and does not abut a requisite water.

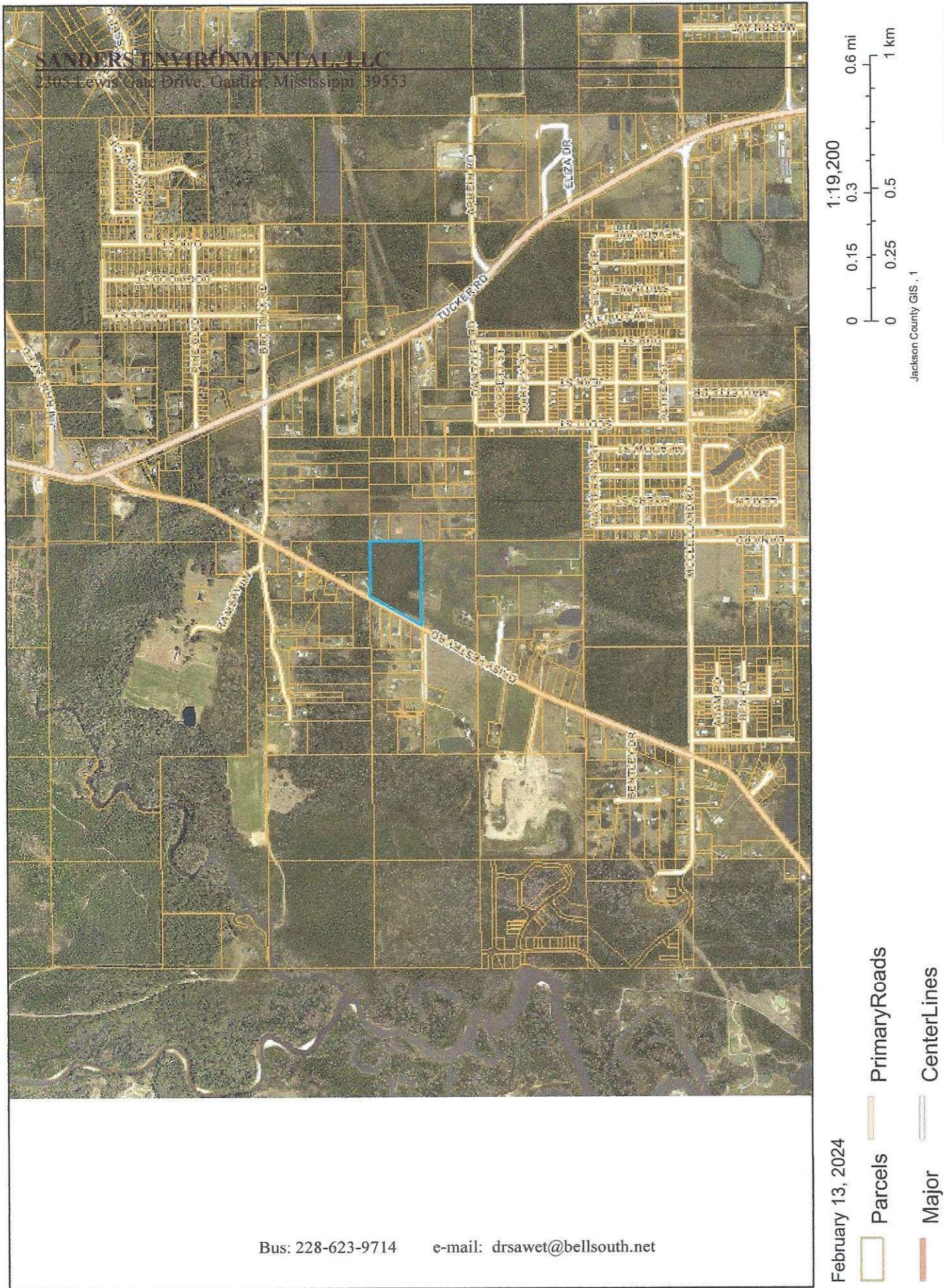
W-1 continues off-site to the east and is bisected by an upland driveway. There is no culvert where the driveway bisects the wetland. The wetland does continue further east, but the wetland is interrupted by uplands and does not appear to directly abut any tributaries. The historical topographic maps do not depict any wetlands or streams in this off-site area. Elevation maps depict an upland ridge just to east of the review area and soil maps indicate this ridge has Escambia soil, which is typically found in uplands.

W-1 continues off-site to the north but is cut off by an existing upland residential home and does not directly abut any tributaries. Soil maps indicate this off-site area has Escambia soil, which is typically found in uplands.

For the reasons listed above, W-1 does not directly abut, nor does it have a continuous surface connection to a TNW, interstate water, relatively permanent impoundment, RPW, or territorial seas. Therefore, W-1 is not an adjacent wetland.

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. Sanders Environmental, LLC's Individual Permit Application Package, Part I and Part II dated February 14, 2024
 - b. Sanders Environmental Services, LLC's Request for a Non-Jurisdictional Wetland Consideration dated June 17, 2025
 - c. Corps LiDAR Elevations and Hillshade, NHD Map, Topographic Maps, NWI Map, 2-ft Contour Map, and the Section 10 Waters Map accessed using the National Regulatory Viewer
 - d. Google Earth Pro Aerial Imagery and Street View Photographs
 - e. Corps site visit photographs dated May 2, 2023
10. OTHER SUPPORTING INFORMATION.
 - a. 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.
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.

FIGURE 1. SITE LOCATION MAP FOR KEVIN JARVIS PROPERTY



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SANDERSEN ENVIRONMENTAL LLC
2505 Lewis Gate Drive, Gautier, Mississippi 39553

RIVERS...

Daisy Vestry Rd

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COOK

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GUYEN

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Daisy Vestry Rd

JARVIS KEVIN

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ZETTEL EDWARD J JR



Danutzer Rd

BA

JR

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e-mail: drsawet@bellsouth.net

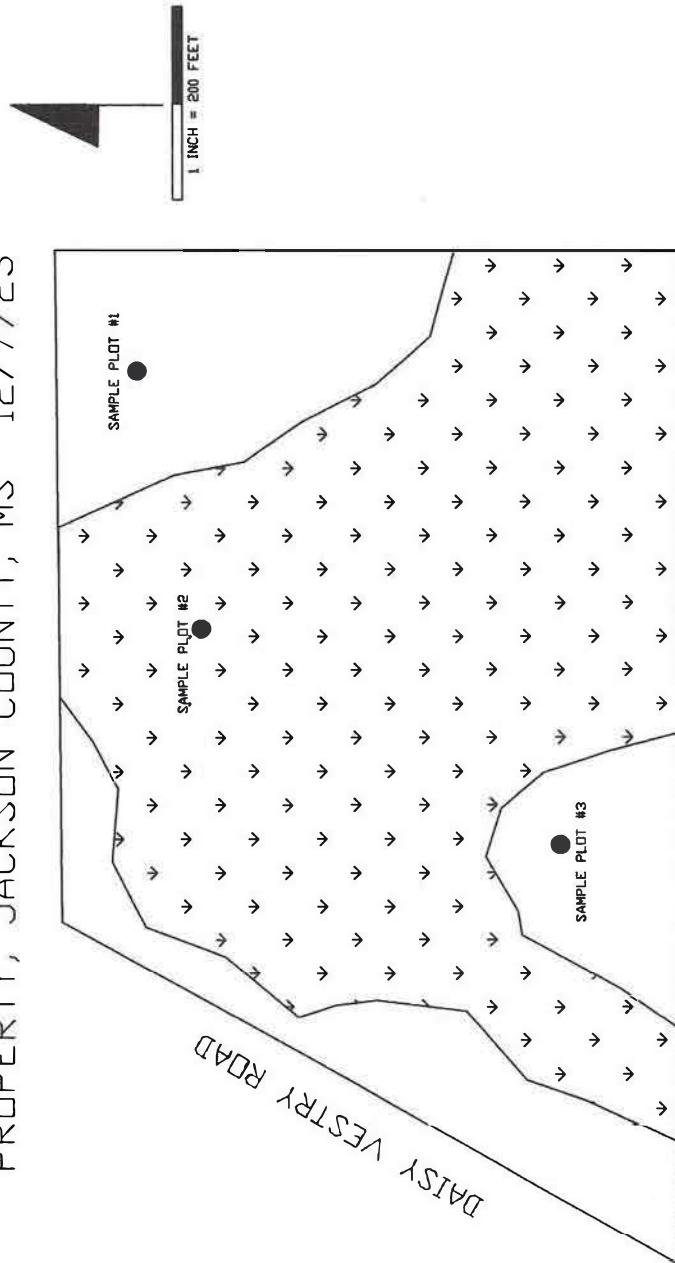
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WETLAND DELINEATION MAP FOR KEVIN JARVIS
PROPERTY, JACKSON COUNTY, MS 12/7/23



NONWETLAND - 4.33 ACRES

(W-1) WETLAND - 8.77 ACRES

DELINERATION BY DANA SANDERS