



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
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MOBILE, AL 36628-0001

South Mississippi Branch
Regulatory Division

3 JULY 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-2024-00842-SMP, Mayfair Lane Lot, Biloxi, Mississippi (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.

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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).

Aquatic Resource Name	Location	Water Size	Type of Aquatic Resource	Geographic Authority
W-1	30.482002°N, -88.953768°W	0.21-acre	A7. AJD WETLAND- WOTUS	Section 404

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).

3. REVIEW AREA. The approximately 0.75-acre parcel is located at 13438 Mayfair Lane; within Section 35, Township 6 South, Range 10 West; Latitude 30.4820° North and Longitude 88.9538° West; Biloxi, Harrison County, Mississippi. Immediately to the north and west of the parcel are subdivision roads and to the south is a single-family home. East of the property are forested wetlands and an intermittent stream (as indicated in the original subdivision permit SAM-2015-00262-MGS). This stream is visible in aerial imagery dating back to at least 2010. The parcel consists of approximately 0.21-acre of forested wetlands located on the east side of the property, behind the existing fence on the property. The subject parcel is located in the existing Glen Jordan Subdivision.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Tchoutacabouffa River, which is a TNW approximately 1.35 miles southeast of the parcel. 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 is a forested wetland that extends to the east outside of the review area onto the adjacent undeveloped parcel for approximately 90 feet and directly abuts an unnamed relatively permanent tributary. The unnamed relatively permanent tributary flows into a culvert on Glen Eagle Drive and maintains a consistent flow in a S/SE direction for approximately 915 feet before meeting a manmade ditch (30.47917, -88.95137) which runs E/W, north of Sparrow Drive. This ditch is visible through aerial photography as well as digital elevation models and Hillshade maps. The E/W ditch connects to a N/S ditch which allows water to flow for approximately 350 feet before flowing into a culvert at Sparrow Drive. Flow from the culvert follows a defined channel for approximately 900 feet emptying into another manmade ditch (30.475575, -88.951763), running E/W. This ditch is also visible through aerial photography as well as digital elevation models and Hillshade maps. The E/W ditch connects to a N/S ditch which carries flow in a southern direction, along the western boundary of the Eastland Subdivision, for approximately 1,200 feet before it flows into a roadside ditch running E/W, adjacent to Woolmarket Road. Water flows in the roadside ditch for approximately 200 feet before entering a culvert under Woolmarket Road. Water continues to flow slightly SE for approximately 500 feet before entering a forested wetland drain. This drain extends for approximately 3,000 feet (0.6 mile) before meeting Tchoutacabouffa River (TNW). (See Flowpath in AJD Appendix).
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

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.

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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 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): W-1 is an 0.21-acre forested wetland that continues eastward outside the review area and directly abuts an unnamed tributary that exhibits at least seasonal relatively permanent flow. During a site visit conducted by the Corps on April 15, 2025, slow-flowing water was observed in the linear feature east of the subject wetlands, along with bed and bank characteristics, an ordinary high water mark, and aquatic vegetation including algae, common rush, and pennywort. These site observations were made during normal antecedent rainfall conditions, in mild drought conditions, and there were no documented rainfall events within 8 days of the site visit, further supporting the conclusion that the tributary is not solely precipitation-driven and exhibits at least seasonal

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.

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relatively permanent flow. Furthermore, iron-oxidizing bacteria was observed in the tributary, which indicates the stream is partially fed by groundwater rich in iron, leading to the conclusion that the tributary flows more frequently than just in response to precipitation events. Wetland Data Form for SP-1 provided by the agent indicates a water table is present at a depth of 12 inches below surface; the bottom of the tributary channel is at/below this depth, further supporting the conclusion that the tributary is partially fed by groundwater. This unnamed tributary is relatively permanent (RPW) based on the field observations discussed above as well as the classification of this feature as an intermittent stream in the original permit application for the subdivision (SAM-2015-00262-MGS).

Based on a review of USGS Web Soil Survey data and the submitted wetland delineation, Plummer loamy sand exists throughout W-1 and this soil type extends to the east for approximately 450 feet. Vegetation in the review area has been cleared, however wetland data sheets completed in November 2024 indicate that dominant species were *Pinus taeda*, *Magnolia virginiana*, and *Acer rubrum*. Site photos from the Corps April 2025 site visit as well as site photos from a Mississippi Department of Marine Resources site visit in October 2024 support the existence of similar vegetation types extending east outside the review area. A review of Hillshade and Digital Elevation Maps show that the review area slopes slightly towards the RPW then remains relatively constant until reaching the RPW.

Based on elevation, soil, and vegetation types, W-1 was determined to extend outside the review area to the east to abut the unnamed relatively permanent tributary approximately 75 feet to the east. In addition to this, the final plat for Glen Jordan Subdivision indicates that the wetlands continue offsite to abut the relatively permanent tributary (See Glen Jordan Subdivision Final Plan View figure in the AJD Appendix).

Because W-1 abuts an unnamed relatively permanent tributary it is jurisdictional because abutting indicates it has a continuous surface connection to a relatively permanent tributary. (See NHD figure and DEM/Hillshade figure in AJD Appendix). The unnamed tributary flows into a series of ditches and culverts before eventually reaching a forested wetland drain that connects to the Tchoutacabouffa River (TNW), as described in Section 5 of this AJD.

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

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- 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*. 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). N/A
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. Site visit, April 15, 2025.

⁹ 51 FR 41217, November 13, 1986.

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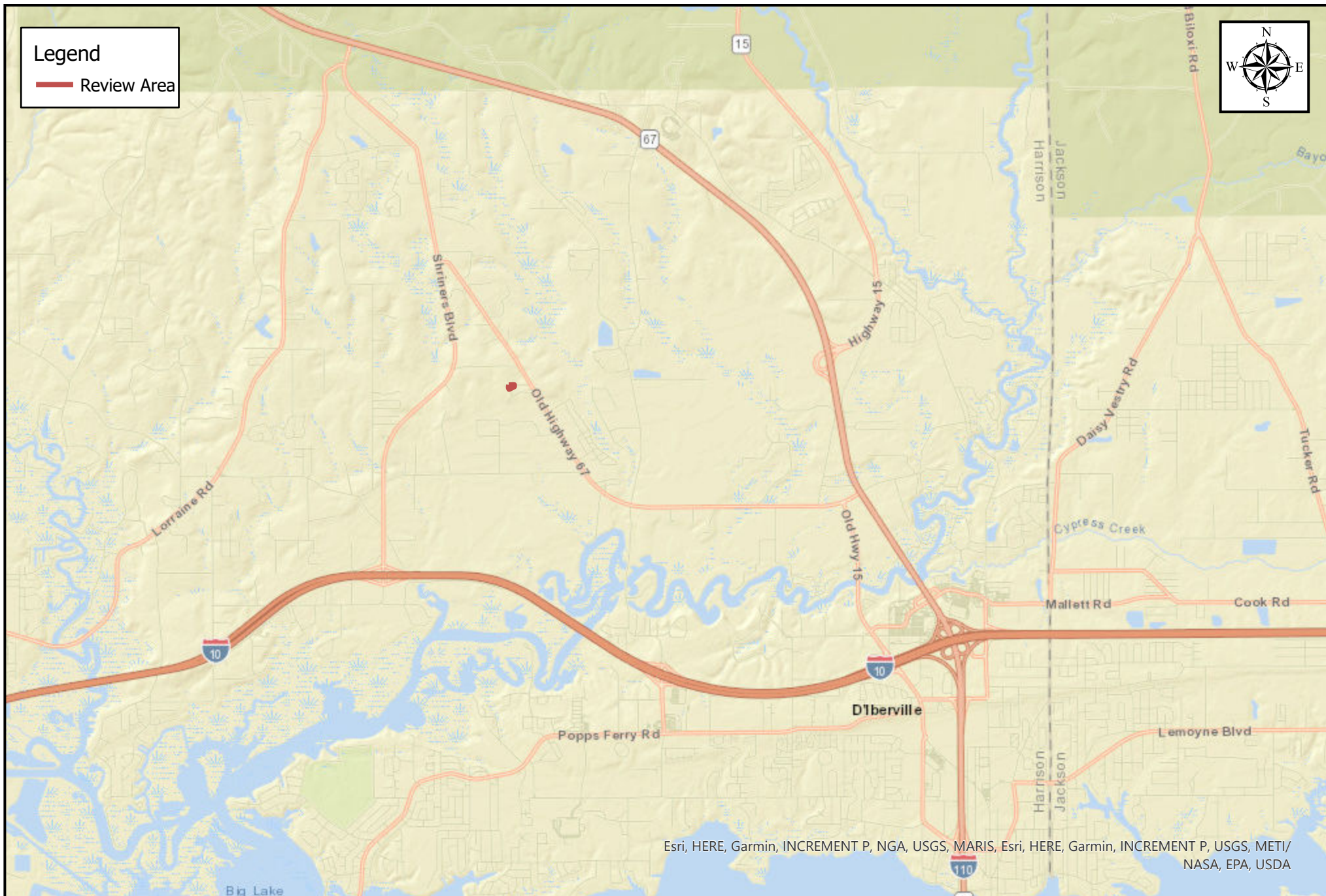
- b. Office evaluation, June 12, 2025.
- c. National Regulatory Viewer Digital Elevation Models (DEM) and Hillshade maps, National Hydrography Dataset (NHD) and National Wetland Inventory (NWI) data, Web Soil Survey Maps, Historic aerial imagery from Google Earth, TopoView topographic maps, and USGS StreamStats.
- d. Antecedent Precipitation Tool (APT) outputs from site visit date and agent's delineation date.
- e. Wetland delineation report prepared by Gulfside Environmental Consulting, LLC, on November 15, 2024.
- f. Permit application, decision document, and issued permit from the original Glen Jordan subdivision (SAM-2015-00262-MGS).

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.

Legend
— Review Area



Esri, HERE, Garmin, INCREMENT P, NGA, USGS, MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, METI/
NASA, EPA, USDA



SAM-2024-00842-SMP Vicinity Map



Map Center: 88.933506°W 30.474399°N

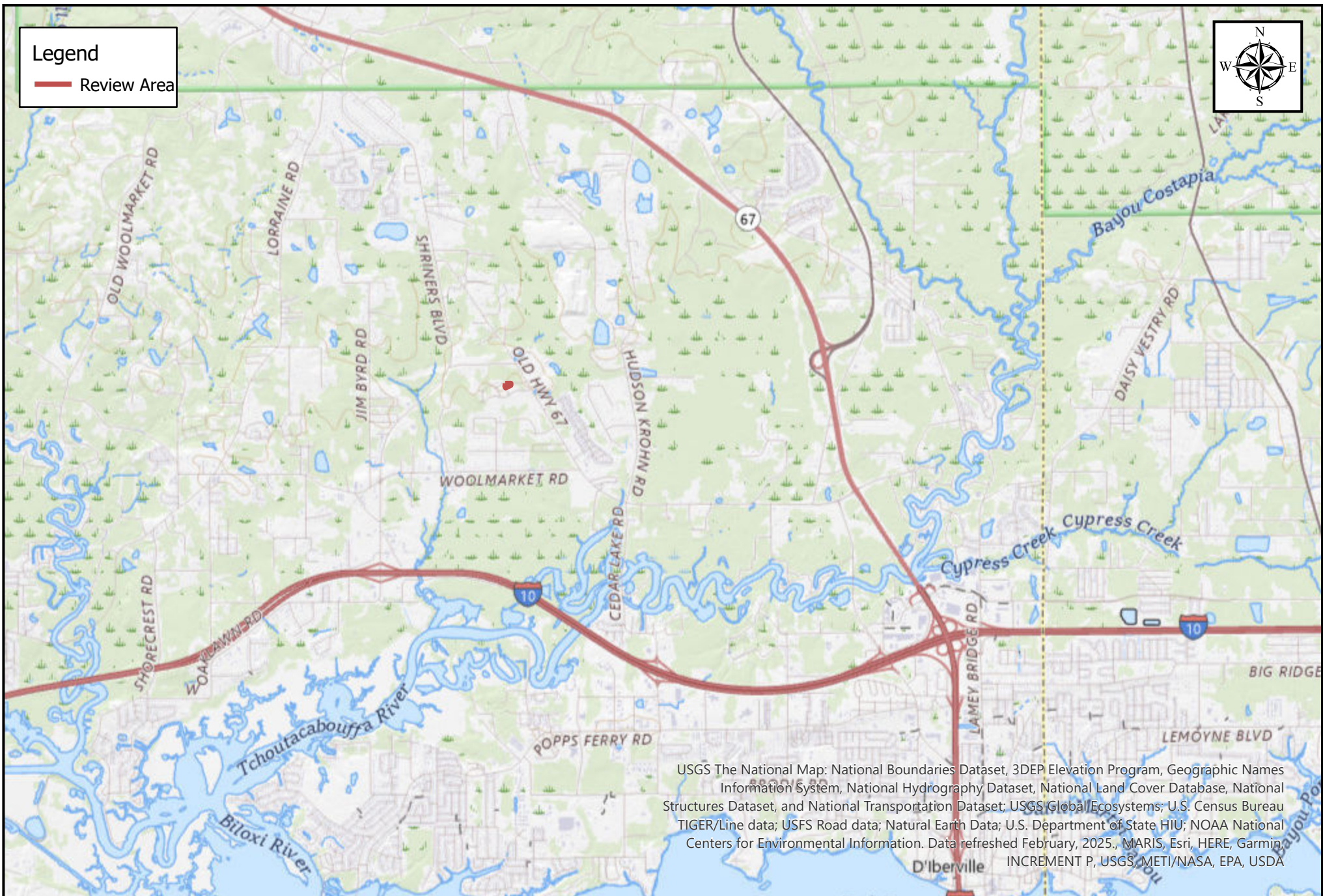
Map Created by: Sarah M. Piesco

Date: 6/25/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

Legend

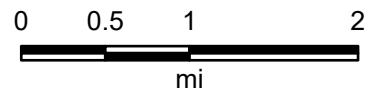
Review Area



USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State, HIU; NOAA National Centers for Environmental Information. Data refreshed February, 2025. MARIS, Esri, HERE, Garmin INCREMENT P, USGS, METI/NASA, EPA, USDA



SAM-2024-00842-SMP Topo Map



Map Center: 88.933506°W 30.474399°N

Map Created by: Sarah M. Piesco

Date: 6/25/2025

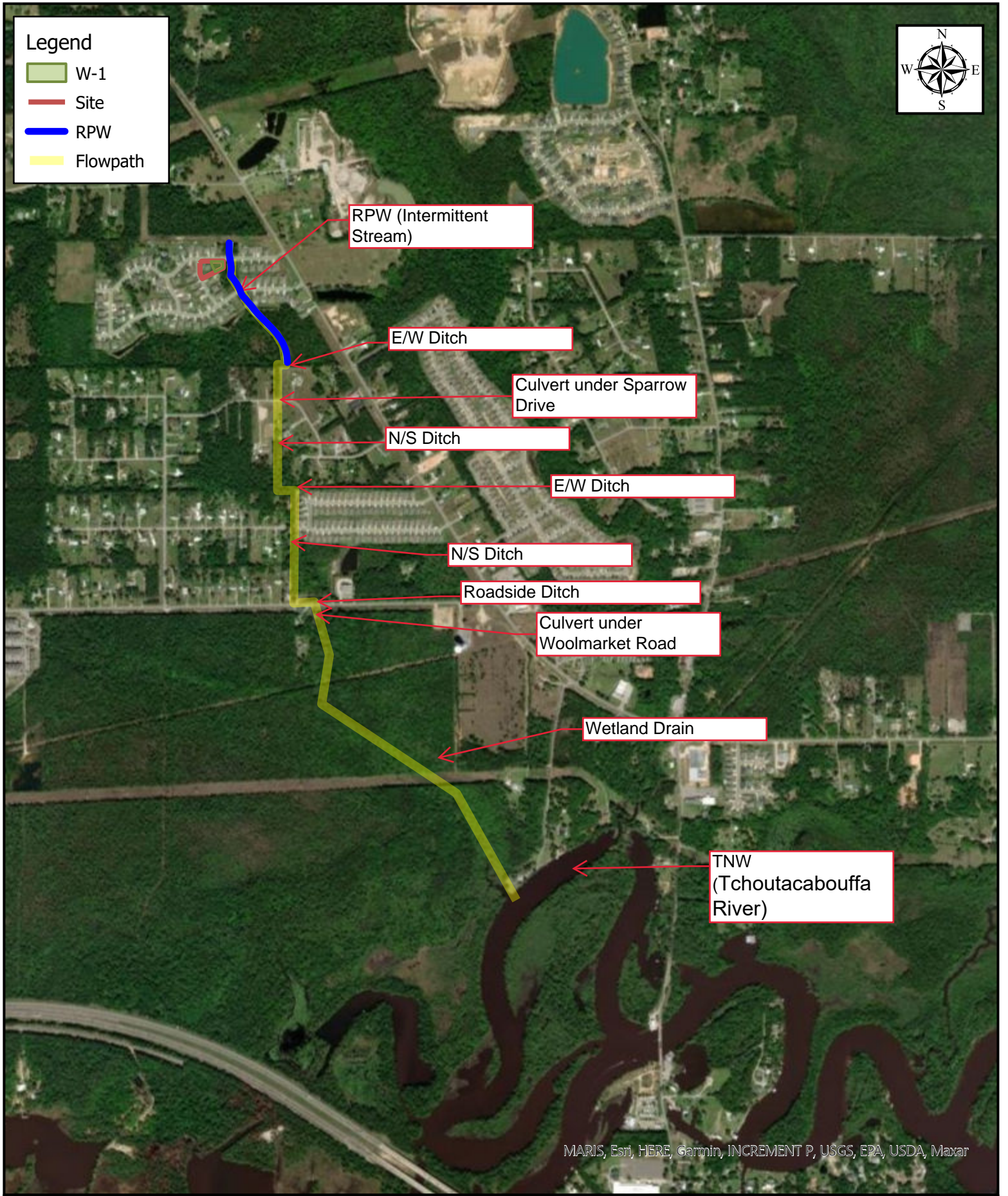
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

SAM-2024-00842-SMP Review Area Map



Legend

- W-1
- Site
- RPW
- Flowpath



RPW (Intermittent Stream)

E/W Ditch

Culvert under Sparrow Drive

N/S Ditch

E/W Ditch

N/S Ditch

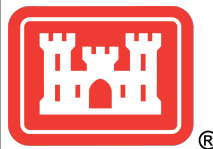
Roadside Ditch

Culvert under Woolmarket Road

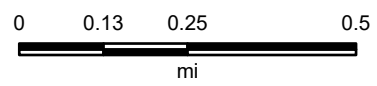
Wetland Drain

TNW (Tchoutacabouffa River)

MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Maxar



SAM-2024-00842
Flowpath



Map Center: 88.94428°W 30.47242°N

Map Created by: Sarah M. Piesco
Date: 6/12/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere