



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

South Mississippi Branch

29 September 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-2024-01064-KPJ (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.

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	Location	Water Size	Type of Aquatic Resource	Geographic Authority
W1	30.427651, -89.106879	34.2 acres	A7. AJD WETLAND-WOTUS	Section 404
RPW1	30.427727, -89.105950	970 Linear Feet	A5. Tributary - 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 39.5 acre review area is located northwest of the western terminus of Factory Shop Boulevard; within Sections 17 and 20, Township 7 South, Range 11 West; approximate center coordinates Latitude 30.427900° North and Longitude 89.106784° West; Gulfport, Harrison County, Mississippi. The site is bounded by Interstate 10 at the north, a commercial shopping center to the east, and forested land to the west and south. A relatively permanent tributary, RPW1, enters the site at the northern border, bisects the site, and exits at the corner of the southernmost border of the site. The site contains two utility rights-of-way (ROW) within the site boundary and abuts a third ROW that is adjacent (parallel) to the southernmost border. The first ROW begins near the southeastern border of the site, near the terminus of Factory Shop Boulevard, and extends

southeast to northwest through the subject site. The second ROW extends east to west, bisecting the subject site, and converges with the first ROW offsite, approximately at the southeast boundary of the subject site. The third ROW extends along (parallel) the southernmost boundary of the subject site from northeast to southwest and converges with the first and second ROWs near the southeast site boundary. Approximately 34.2 acres of the parcel is wetland.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Bernard Bayou, which is approximately 2.4 miles to the east. Bernard Bayou 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 W1 is a wetland that extends offsite west and south and is part of a large, contiguous wetland system that measures approximately 1,800 acres and abuts *Turkey Creek*, a tributary of *Bernard Bayou*. *Turkey Creek* flows approximately 2.9 miles until intersecting with *Bernard Bayou*. In addition, RPW1 is a relatively permanent water which enters the site at the northern boundary, flows south approximately 970 linear feet onsite, bisecting the site, and exits the site at the southeast corner of the southernmost border of the site. Water in RPW1 flows offsite from the southeastern most corner of the site parallel to maintenance road for approximately 1,324 feet (0.25 miles) to a crossing of a rail spur where water flows approximately 46-feet underneath the rail spur from north to south, via a set of five side-by-side culverts. Together, the side-by side culverts cover an area approximately 43 feet in width. Upon exiting the south side of the rail spur, RPW1 continues southward parallel to a maintenance road for approximately 2,799.8 ft (0.53 miles) until veering westward from the maintenance road and meandering approximately 3,364.6 feet (0.64 miles) southwest and then south through a forested area to *Turkey Creek*. From this junction with *Turkey Creek*, water flows within the creek east for approximately 2.9 miles to *Bernard Bayou*.
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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.

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 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): A relatively permanent water, RPW1, is an unnamed tributary that bisects and drains W1. RPW1 begins north of Interstate 10 and enters the parcel along the northern site boundary (south of Interstate 10), flows onsite southward approximately 970 linear feet, bisecting the project site and exiting the site at the southeast corner of the southernmost border of the site. Specifically, RPW1 enters the site at the northern boundary and flows for approximately 700 feet through the site before reaching the first utility ROW that extends from east to west. RPW1 flows approximately 100 feet through the first ROW. In this ROW, wooden timbers have been placed across RPW1 to allow vehicles to cross with minimal disturbance to the channel. Upon exiting the east to west ROW, RPW1 continues southward, parallel to the site boundary for approximately 150 feet until intersecting the second ROW that extends northeast to southwest adjacent to the southern site boundary. Water flows offsite through an

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.

approximately 20-foot-long culvert installed approximately at the site boundary perpendicular to the second ROW (northeast to southwest). Offsite, after RPW1 crosses the second ROW measuring approximately 85 feet, it continues to flow south-southeast, parallel to a maintenance road for approximately 1,280 feet (crossing a third ROW) to the northern side of a rail spur. In RPW1, water flows underneath the rail spur from north to south, for approximately 46-feet via a set of five side-by-side culverts. Together, the side-by side culverts cover an area approximately 43 feet in width. Upon exiting the south side of the rail spur, water continues southward parallel to the western side of the same maintenance road for approximately 2,799.8 ft (0.53 mile) until veering westward from the maintenance road and meandering approximately 3,364.6 feet (0.64 mile) southwest and then south through a forested area to *Turkey Creek*. In total, the offsite length of RPW1 to *Turkey Creek* is approximately 7,390 feet (1.40 mi).

During the Corps' site visit on April 11, 2025, RPW1 was observed in different locations along its path within the review area. The first observation was north of the east to west ROW. The channel of RPW1 north of the east to west ROW is between approximately 4 to 6 feet in width and the channel is approximately three to five feet lower than the surrounding wetland. Clear, flowing water was observed in the channel in addition to an ordinary high water mark (OHWM). Additional hydrologic indicators observed for RPW1 in this general area were lack of vegetation in the channel and evidence of organic drift lines. Moving downstream to the intersection with the east to west ROW, the channel width and depth decreases. At the east to west ROW, the channel is between approximately 2 feet wide and approximately 1 foot in depth. At the north side of this ROW crossing, the water in RPW1 was clear and the channel had some vegetation present. Additionally, there was sediment-stained vegetation and debris in the channel bottom, indicating the transportation of sediment and debris in the channel from water flow. This area is also where D1 intersects RPW1. At the south side of this ROW crossing, RPW1 intersects with D2. This area of intersection is where water from RPW1 and D2 merge into a shallow area which included grass. However, the pathway of RPW1 is still seen by a linear pathway of bent grasses indicating the flow pattern and the presence of shallow water. The channel of RPW1 becomes more defined again upon exiting the confluence with D2 and continues southward. At the southeastern most corner of the site boundary, RPW1 exits the site through a culverted crossing in the ROW and continues southward.

The Antecedent Precipitation Tool (APT) report indicated that no rainfall occurred in the three days (April 8-10) prior to the site visit on April 11, 2025. The most recent rainfall was 0.04 inch on April 7, and 2.25 inches on April 6, 2025. The APT results indicated that normal conditions were present during the date of the

site visit and the drought index indicated mild drought. Given the observations were made during a mild drought, with normal antecedent rainfall conditions, and considering the amount of time elapsed (5 days) since the most recent appreciable rainfall event on April 6, evidence suggests that RPW1 maintains at least consistent seasonal flow and does not flow solely in response to rainfall events.

Based upon historical imagery, RPW1 has appeared on maps dating to at least 1924 and has maintained a connection to *Turkey Creek*. The 1924 Soil Map of Mississippi and the 1975 Harrison County Soil Survey illustrates the location and path of the tributary, RPW1 to *Turkey Creek*, although some alterations to the flow path of RPW1 have occurred dating approximately to the 1980's, the hydrological connection to *Turkey Creek* has been maintained. This indicates that RPW1 is more than an inconsequential, ephemeral surface water feature, but is a mapped stream which has been documented at this location for the last 100 years.

On site alterations to RPW1 extending offsite to the vicinity of the rail spur (approximately 0.10 miles south of subject site) appear to have occurred in the early to mid-1990's approximately preceding land clearing and timber harvesting. Google Earth imagery provides the clearest images of vegetation clearing immediately adjacent to both sides of RPW1 onsite and offsite. It appears that channel maintenance/clearing of RPW1 occurred to allow better water flow through the channel onsite and offsite to the five-culvert crossing of RPW1 at the rail spur and connecting to an existing large ditch or canal on the south side of the rail spur.

Preceding any alterations to the subject site and vicinity north of the rail spur, an alteration to the flow path of RPW1 south of the rail spur appears on early 1980's imagery. After the rail spur installation, the flow path of RPW1 was altered to flow through a large ditch or canal beginning approximately at the five-culvert crossing of the rail spur, extending approximately 2,870 feet southward and parallel to the west side of a maintenance road. This alteration to the RPW1 flow path essentially "straightened" the flow path to follow along the western side of the maintenance road.

The natural flow path of the tributary, RPW1, as seen on historic soil maps, meandered southward through the subject site following the same approximate path as currently observed on site. Offsite, RPW1 flowed southeasterly through the wetland in a topographic drain to an area north of a residential area. At the northern edge of the residential area, RPW1 turned toward the southwest and then south to *Turkey Creek*. The altered RPW1 flow path assists with moving

water quickly through the wetland, to the west of the residential area, potentially decreasing flooding events at the residential neighborhood closest to RPW1 and *Turkey Creek*. In spite of the alterations made to RPW1 in recent history, the tributary has maintained a hydrologic connection to *Turkey Creek* and maintains relatively permanent flow.

Based on the field observations, APT data indicating RPW1 flows more frequently than in direct response to precipitation events, and review of desktop resources, all of which are described above, led to the determination that RPW1 is a relatively permanent tributary to *Turkey Creek* with flow occurring at least seasonally.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wetland (W1) is an approximately 34.2-acre wetland that abuts a tributary, RPW1, which enters the site at the northern border, flows south, and exits the site at the southeast corner of the southernmost site boundary and continues offsite to *Turkey Creek*. There are two utility ROWs within W1 and one adjacent (parallel) to the southern site boundary. The three ROWs converge at a central location offsite, near the southeastern site boundary adjacent to the western terminus of Factory Shop Boulevard. Two of the three ROWs contain drainage ditches on the subject site. The first ROW extends northwest to southeast through W1 on the eastern side of the site. The second ROW passes through W1 from west to east and contains two excavated drainage ditches (D1 and D2). The third ROW is adjacent to the southernmost border of the site, extends southwest to northeast parallel to the border. There are two excavated drainage ditches in this ROW; with one being partially inside the review area (D3) and the second ditch associated with this ROW is outside the review area. The three on site drainage ditches in the ROWs (D1, D2, and D3) were excavated approximately in 1996 during site clearing and were excavated specifically for the purpose of draining water from the ROWs to RPW1. These excavated ditches occur in tandem with the access trails in the utility ROWs. The ditches drain water away from the ROWs to allow maintenance vehicles and equipment access to the power lines located in these ROWs. During the April 11, 2025, site visit, standing water, approximately 1 to 2 feet deep was observed in the three ROW drainage ditches in the review area which indicated they were deep enough to intersect the water table. The three drainage ditches did not exhibit an OHWM and where visible, the bottom of the ditches displayed leaf litter, indicating lack of continued or intermittent flowing water. Thus, these drainage ditches are alterations of W1 and will not be evaluated as potential A5 tributaries. The three drainage ditches intersect and drain to RPW 1 in the review area.

USGS topographic maps (1:24000), Gulfport North, and Gulfport Northwest, Mississippi, from 1954 to present illustrate W1 as part of a large wetland system, as indicated by the wetland mapping symbology extending from north of the review area south to *Turkey Creek*. In general, the wetland system measures approximately 1,800 acres and can be described as being located approximately south of Interstate 10 and extending southward approximately 1.3 to 1.4 miles to *Turkey Creek*. The east to west extent of the wetland system is approximately from Old Highway 49 westward approximately two miles towards Canal Road. W1 continues outside of the review area and is part of this large wetland system.

As shown on topographic maps, a topographic depression or draw begins north of Interstate 10 and drains toward the southern border of the site. This draw corresponds with the location of RPW1 as it enters the site at the north boundary and exits the site at the south boundary. Furthermore, contour lines on the topographic maps illustrate that the topography of the subject site primarily slopes from north to south into the large wetland system. The large wetland system as a whole abuts and drains to *Turkey Creek*. Topographic maps show that W1 and the larger wetland system is an area of very little topographic relief. Based upon contour lines, the general drainage pattern of the site is from north to south and the contour lines indicate that site has a slope or gradient less than 0.25% grade. When including the site as part of the larger wetland system, following the drainage pattern (indicated by contour lines) and the approximate path of RPW1 to *Turkey Creek* over a course of approximately 1.62 miles, the elevation changes approximately 11 feet over the course of this pathway. This results in a slope of approximately 6.79 feet per mile or 0.13% grade, indicating relatively little change in elevation between W1 and the surrounding landscape to the south.

Aerial imagery dating to the early 1950s shows the large wetland system, inclusive of the review area, as an undeveloped area abutting the north side of *Turkey Creek*, prior to the installation of the railroad. A color infrared image from 1970 shows that a large area of residential development occurred south of *Turkey Creek*; however, little development occurred north of *Turkey Creek* to Interstate 10 (a residential neighborhood on the west side of Highway 49 and a couple of small residential streets at the east side of Canal and north of *Turkey Creek*). Additionally, a landing strip (currently a drag strip) was constructed approximately 1 mile southwest of the subject site during this approximate time-period. Imagery from the early 1980s shows a rail spur (south of subject site) extending east to west and then turning southwest across the contiguous wetland system and that some tree harvesting occurred at some locations of the larger wetland system (north and south of rail line). Google Earth imagery from

approximately 1996 to 1997 shows that timber harvesting and land clearing occurred on the subject site and immediate vicinity south and west of the subject site. Otherwise, imagery after 1997 to 2023 shows that the subject site and previously harvested timber areas have grown back, and the large wetland system has remained contiguous and largely undeveloped. The review of historical topographic maps and aerial images leads to the conclusion that the large area from north of the review area south to Turkey Creek and extending from Old Highway 49 west to Canal Road was one wetland prior to installation of the rail spur and other structures over the years.

Agent-provided wetland data sheets for this site indicate the presence of wetlands at sampling points 2, 4, 5, and 6. Sampling point 6 is within a utility ROW and has been heavily modified. There are no dominant trees, saplings, or shrub strata recorded for this sampling point. Wetland sampling points 4 and 5 are located in transitional wetland areas between Pine Savannah or wet pine flats and Bayhead Drain; as indicated by the tree stratum. *Magnolia virginiana* (Sweetbay Magnolia) was slightly the more dominant species with 35% cover, followed by *Pinus elliottii* (Slash Pine) at 20 to 25% cover. Sampling site 2 was somewhat different than sampling sites 4 and 5. Sampling point 2 is located in a Bayhead drain wetland as it is dominated by Sweetbay Magnolia (40%), followed by *Acer rubrum* (Red Maple) (25%), *Taxodium distichum* (Bald Cypress) (15%), and *Quercus laurifolia* (Laurel Oak) (10%). Pine Savannah and Bayhead Drain wetlands naturally occur together in large wetland systems along the Mississippi Gulf Coast. The hydrology of bayhead drains is driven by surface runoff from adjacent areas and these drains occur in the lowest topographic positions on the landscape. The change in vegetation characteristics between the sampling points (4 and 5) transitional areas (Pine Savannah and Bayhead drain) to sampling point 2 (Bayhead drain) are due to slight changes in elevation where water drains into the lower topographic depressions of the Bayhead drains. Additionally, the locations of sampling points 4 and 5 are located in areas that where tree harvesting occurred in the mid-1990's. The disturbance that occurred in this area is likely the reason for the nearly equal re-vegetation by Slash Pine and Sweetbay Magnolias.

The soil types associated with the Pine Savannah and Bayhead Drain wetlands consisted of Ponzer and Smithton soils (Ps), Atmore silt loam, 0-2% slopes (At). These soil types transition from one to another on the subject site and continue within the larger wetland system as a response to changes in elevation, further indicating W1 is part of a larger wetland system adjacent to Turkey Creek.

Patterns are observed when looking collectively at the data. Vegetation data collected at wetland sampling points, as documented in the wetland data sheets,

were correlated with observed vegetation appearances on aerial imagery. The Bayhead drain wetland as indicated by sampling point 2 is distinctive in appearance on aerial photos when compared to the surrounding Pine Savannah wetland since it is dominated by trees such as Sweetbay Magnolia, Red Maple, Bald Cypress, and Laurel Oak, rather than Slash Pine or a nearly equal combination of Slash Pine and Sweetbay Magnolia as seen in sampling points 4 and 5. When reviewing aerial photos, based on the appearance of the feature, other areas of Bayhead drains dispersed within the pine savannah wetlands are apparent. Again, both of these types of wetlands are often found together in wetland systems of the Mississippi Gulf Coast. Detailed topographic data derived from 3DEP DEM and Hillshade further aided the vegetation patterns observed in aerial imagery by identifying subtle topographic depressions and drainage patterns indicative of wetland hydrology. This allowed for the extrapolation of wetland boundaries beyond the immediate vicinity of the sampling points, leveraging the characteristic vegetation patterns identifiable in the aerial imagery and the topographic context revealed by the 3DEP DEM and Hillshade. Additionally, the gradual change in elevations as shown on topographic maps, 3DEP DEM, and Hillshade imagery generally coincides with soil type patterns of wetlands (Pine Savannah and Bayhead Drain) on the subject site wetlands and the contiguous, offsite wetland system.

An east to west rail spur is located approximately 0.10 miles south of the project site. The rail spur extends west from a north to south rail line parallel to Old Highway 49 (east of subject site) and travels west through the wetland system for approximately 1 mile before turning southwest, parallel to a nearby utility ROW (the 3rd ROW (southwest to northeast) described above) for approximately 1.5 miles before crossing Canal Road and continuing south-southwest. An environmental assessment (EA) (USACE; CESAM-OP-S (1145b); Bunkley; 7 January 2003) provides historical information about the rail line and approximate timing of appearance. In 1977, acreage was deeded to construct the rail line (spur) to connect a Dupont operating facility to the port in Gulfport, Mississippi. The offsite rail spur appears on the Gulfport North and Gulfport Northwest topographic maps for the first time in 1985. In regard to this offsite rail spur, consideration was given to joint-decision memos NWO-2003-60436 and LRB-2021-01386 in reference to a divided wetland functioning as a single wetland. The following information was reviewed for the consideration of the wetland area north of the rail spur and south of the rail spur having been one contiguous wetland prior to installation of the rail spur and is continuing to function as a single wetland.

Detailed topographic data derived from 3DEP DEM and Hillshade imagery illustrate that the overall elevation of the rail spur is approximately similar in

elevation to the surrounding wetlands. As shown on topographic maps, the general slope of the site and large wetland system is north to south. The crossing of the rail spur in relation to upslope (north of rail spur) and downslope (south of rail spur) wetlands can be shown by utilizing transects. Harrison County (Mississippi) land parcels data shows that the rail spur has a ROW that measures approximately 100 feet in width. The center of the rail spur is approximately 55 feet south of the northern ROW boundary. Additionally, zoomed in Google Earth imagery shows excavated ditches parallel to the rail spur (north and south). The 3DEP DEM imagery in conjunction with a profile tool helps to illustrate the elevations of the wetland, ditches, and rail spur along 300-feet, north to south transects across the rail ROW. Six profiles spaced 0.10 mile apart illustrate the topography of the land north to south across the rail spur. The transects show that a ditch is located on the north side of the rail spur within the rail ROW. This ditch ranges in depth from approximately 1 to 3 feet. Moving southward along the transect to the approximate center of the ROW is the rail spur. South of the rail spur is a second ditch approximately along the southern ROW boundary. This southern ditch is approximately 1 to 3 feet in depth. Following the transects from 1 to 6, the approximate elevation of the rail spur is similar to the upslope wetland with the exception of transects 2, 3, and 5 which are approximately 1 to 2 feet higher in elevation for that specific geographic location.

Surface and subsurface hydrology is maintained between the wetland north of the rail line and south of the rail line. First, the bed of the rail spur is made up of cobbles (medium to large rocks) and when considering the impervious material typically used for the bed of the rail spurs (rail lines), the hydrology is maintained in spite of the rail spur crossing. Next, the excavated ditches on the north and south sides of the rail line act as conveyance channels, capturing and directing surface water flow around the rail spur to RPW1 but are also at a depth which likely intersects the water table. In addition to hydrology maintained at the surface via the permeable characteristics of the rail spur, and subsurface hydrologic connection via excavated ditches north and south of the rail line; Google Earth imagery shows that there are two large north to south culvert crossings underneath the rail spur. The first culvert crossing (5 side-by-side culverts) conveys water in RPW1 and is described in section 7.e. The second culvert crossing made up by 6 side-by-side culverts is located approximately 1.3 miles west-southwest of the RPW1 culverts (30.419844, -89.125219). Water from an un-named tributary flows through this set of culverts from north to south. Additionally, aerial imagery shows that in the early 1980's the flow of this second, un-named tributary south of the rail spur was channelized for approximately 0.65 miles to aid in the movement of water through the wetland system around the

landing strip. This is also indicated by the multiple Google Earth images that shows the presence of water over multiple years and seasons

In conclusion, the rail spur that bisects the large, approximately 1,800-acre wetland system does not sever hydrologic connection between the review area and *Turkey Creek*. Based on elevation data, aerial photos and imagery, soils, vegetation, and consideration of materials used for rail beds; hydrologic connectivity between the wetlands north and south of the rail line is maintained via surface water flow and subsurface water flow. Thus, W1 along with the surrounding offsite wetland system abutting *Turkey Creek* are considered “one wetland” for the purposes of determining adjacency.

After review of all data, USACE has determined that W1 has multiple paths to being a jurisdictional wetland. First, W1 is part of a broader landscape-level wetland complex, estimated to be approximately 1,800 acres, which extends across the review area and westward and southward outside of the review area. Consideration was given to joint-decision memos NWO-2003-60436 and LRB-2021-01386 in reference to a divided wetland functioning as a single wetland to address whether the rail spur separated the large wetland complex. Upon review of the large wetland complex as described above, this wetland complex functions hydrologically as a single, interconnected system that abuts *Turkey Creek*, a tributary of *Bernard Bayou*, a Traditional Navigable Water (TNW). The reach of *Turkey Creek* to which the wetland complex (in which W1 is included) abuts is considered a relatively permanent water because it is higher order stream and is indicated as perennial on USGS and NWI maps; therefore, W1 is jurisdictional because it has a continuous surface connection to *Turkey Creek*, a relatively permanent tributary. Second, W1 abuts RPW1, which is a relatively permanent, un-named tributary of *Turkey Creek*.

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

⁹ 51 FR 41217, November 13, 1986.

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. Field Visit on April 11, 2025.
- b. Office evaluations on April 8, 2025; April 14, 2025; June 4, 9, and 24, 2025; and July 15-17, 2025.
- c. Wetland delineation report prepared by Michael Henry, of Hydrik Wetland Consultants, LLC; dated August 22, 2024.

- d. 3DEP DEM and Hillshade data from NRV.
- e. USDA NRCS accessed at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- f. Aerial imagery downloaded from EarthExplorer at <https://earthexplorer.usgs.gov/> (single frame, NAPP, NAIP, NHAP). Image dates: May 12, 1952, February 17, 1970, January 24, 1982, February 19, 1992, August 25, 2007, July 1, 2023, and August 18, 2023.
- g. United States Geological Survey (USGS) maps downloaded from the USGS topoView at <https://ngmdb.usgs.gov/topoview/>. Map dates: 1954, 1956, 1976, 1977, 1985, 1994, 1997, and 2024. Gulfport North, MS and Gulfport Northwest, MS; 1:24000.
- h. Google Earth for images dated 1992, 1996, 1997, 2003, 2010, 2017, and 2023; and street view of rail crossing at Canal Road.
- i. U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) at <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.
- j. Mississippi Department of Archives and History (MDAH). 1924 Soil Map of Mississippi. Accessed at <https://da.mdah.ms.gov/series/maps/detail/191355>
- k. Internet Archive accessed at <https://archive.org/details/usda-general-soil-map-soil-survey-of-harrison-county-mississippi-1975> for Soil Survey of Harrison County, Mississippi (1975).
- l. Antecedent Precipitation Tool (APT). The APT report indicated that there was no precipitation recorded three days prior to the site visit. The APT report shows normal conditions for April 11, 2024. The Drought Index indicated mild drought for this period.

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.

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2024-01064-KPJ

- b. "Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436", U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, December 19, 2023.
- c. "Memorandum on LRB-2021-01386", U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, February 16, 2024.

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.



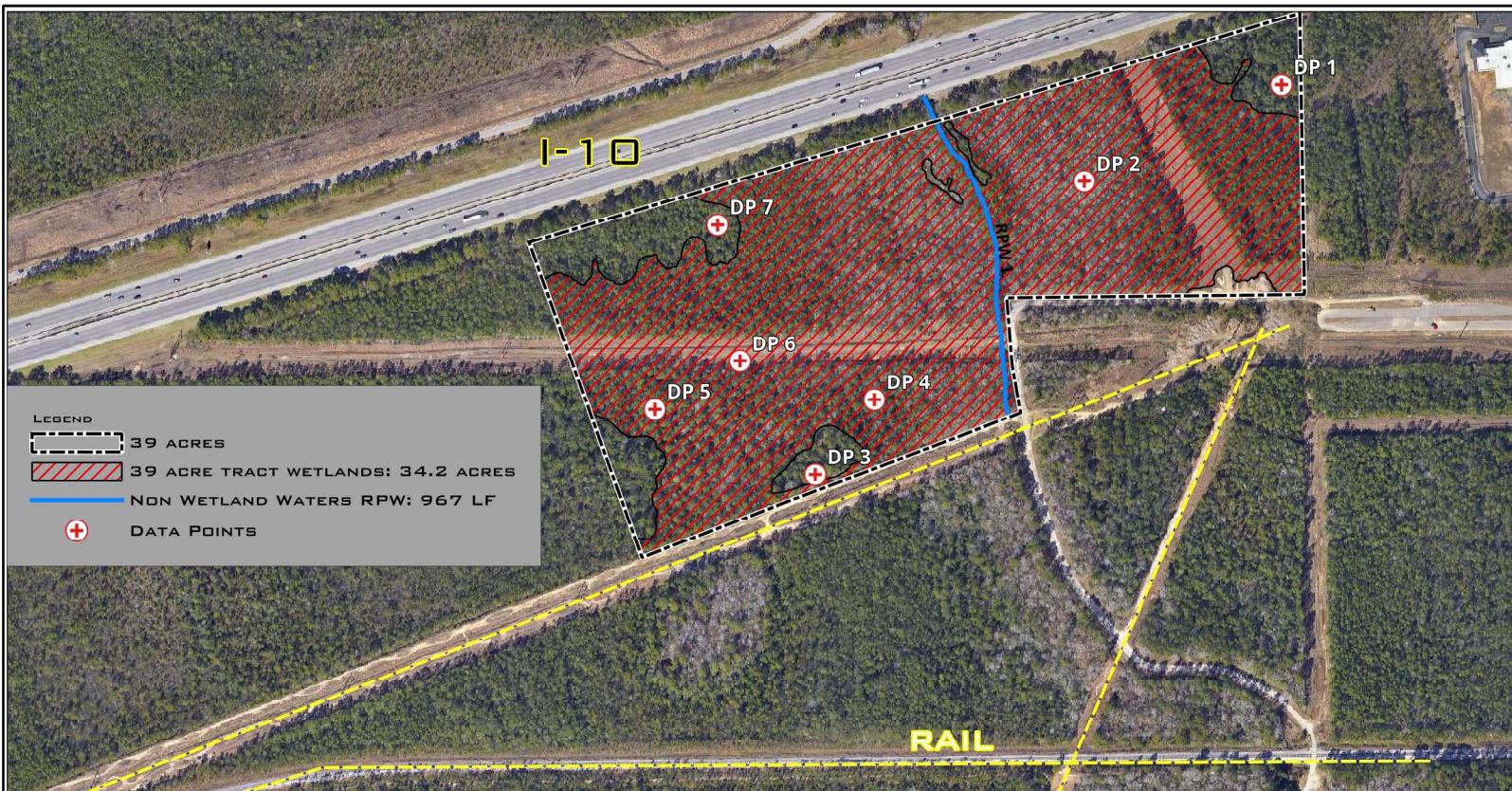
SAM-2024-01064-KPJ

Site Proximity on Aerial

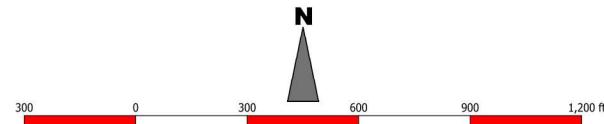
Map Created by: Karen P. Jordan

Date: 9/26/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



~39 ACRES
GULFPORT, MS
HARRISON COUNTY
NAD 83, MS WEST (USFT) EPSG:8754
SITE CENTER: 30.42779, -89.10673



PLEASE NOTE: MAP DATA IS FOR REFERENCE ONLY. THIS IS NOT A LEGAL BOUNDARY SURVEY.

WETLAND DELINEATION RGB

WARD GULFPORT PROPERTIES LP.
AND
T. JERARD GULFPORT, LLC.

FIGURE 14

HF:240488

DATE:R 071525

 HYDRIK