



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

South Mississippi Branch  
Regulatory Division

26 August 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),<sup>1</sup> SAM-2025-00218-SMP, West Railroad Street 7.9-acre Review Area, Long Beach, Mississippi (MFR 1 of 1)<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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).

Aquatic Resource Name	Location	Water Size	Type of Aquatic Resource	Geographic Authority
Wetland Area 1	30.346323°N, 89.183459°W	2.8 acres	A7.NON-WOTUS WETLAND. NEGATIVE-A7.	None
Wetland Area 2	30.343537°N, 89.183170°W	0.93-acre	A7. NON-WOTUS WETLAND. NEGATIVE-A7.	None
Wetland Area 3	30.342321°N, 89.183399°W	0.18-acre	A7. NON-WOTUS WETLAND. NEGATIVE-A7.	None
Stream 1 (Ephemeral)	30.343626°N, 89.183538°W	220 linear feet	A5. NON-WOTUS TRIBUTARY. NEGATIVE-A5	None
Wetland Area 4	30.342089°N, 89.183656°W	0.096-acre	A7. NON-WOTUS WETLAND. 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. \_\_, 143 S. Ct. 1322 (2023)
- e. 2008 Rapanos Guidance

3. REVIEW AREA. The approximately 7.9-acre review area includes three parcels and is located on the north side of West Railroad Street; within Section 15, Township 8 South, Range 12 West; Latitude 30.340595° North and Longitude 89.18351° West; Long Beach, Harrison County, Mississippi. The review area abuts Canal Number One to the north and West Railroad Street to the south. West of the review area is the South Mississippi Regional Center and to the east are residential developments and undeveloped land. The parcel consists of approximately 4.0 acres of forested wetlands located in low elevation areas near the central and northern portions of the property. An approximately 3-foot-wide ephemeral stream is present within Wetland Area 2.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Bayou Portage, which is a traditionally navigable water (TNW) approximately 3.6 miles west of the review area. Bayou Portage is on the Mobile District's Section 10 Waters list and is therefore a TNW.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

Wetland Area 1 is a forested wetland located on the northern portion of the site. This wetland extends outside the review area onto the adjacent parcel to the east/northeast for approximately 200 feet before abutting a culvert, which empties into a ditch then flows directly into Canal Number One, a relatively permanent water

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<sup>6</sup> 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.

(RPW). Canal Number One flows west into Bayou Portage, a TNW (see Flowpath figure in the AJD attachments).

Wetland Area 2 is separated from Wetland Area 1 by approximately 400 feet of higher elevation uplands. Wetland Area 2 is traversed by 220 feet of ephemeral stream (Stream 1). This stream appears to flow to the west before continuing offsite, however, there is no evidence that this stream continues to flow to an RPW or TNW.

Wetland Areas 3 and 4 are isolated from Wetland Area 2 by an upland area of approximately 350 feet. As documented in the submitted Upland Data Sheet (DPU-1), this upland area severs any hydrologic connection between Wetland Areas 3 and 4 and Wetland Area 2. Wetland areas 3 and 4 are surrounded by uplands and have no apparent flowpath to a TNW.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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.

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<sup>7</sup> 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.

<sup>8</sup> 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.

- 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”).<sup>9</sup> 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

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<sup>9</sup> 51 FR 41217, November 13, 1986.

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).

Wetland Area 1 is an approximately 2.8-acre forested wetland located on the northern portions of parcels 0512G-02-017.001 and 0512G-02-015.001 in Long Beach, Mississippi. The wetland is bordered by uplands to the south and an upland transmission line easement to the north. Review of similar elevation, soil, and vegetation types indicate that Wetland Area 1 extends offsite to the east/northeast, abutting a culvert. The culvert flows downhill into a ditch which discharges into Canal Number One, an RPW. However, Wetland Area 1 does not abut the RPW, but rather abuts the culvert which flows into the RPW.

Additionally, there was no observable OHWM extending from the RPW, through the culvert to the wetland. Therefore, because Wetland Area 1 lacks a direct or continuous surface water connection to a TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment it is not considered an adjacent wetland.

Stream 1 exhibits flow only in direct response to precipitation events and lacks at least seasonal flow and an ordinary high water mark. Antecedent precipitation tool (APT) data indicated wetter than normal conditions on the day of the site visit; however, during the site visit the sandy-bottom stream channel lacked both standing or flowing water. Stream 1 bisects Wetland 2 and the topography slopes to the west where Stream 1 leaves the review area via overland flow. Because Stream 1 exhibits a non-relatively permanent flow regime it is not jurisdictional.

Wetland Area 2 is an approximately 0.93-acre forested wetland centrally located on parcels 0512G-02-017.001 and 0512G-02-015.001. This wetland is bordered by uplands to the north, south, and west. Wetland Area 2 abuts Stream 1, a non-RPW, as discussed above. Wetland Area 2 lacks a continuous surface connection to a TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment because it does not abut any of those waters; therefore, it is not an adjacent wetland.

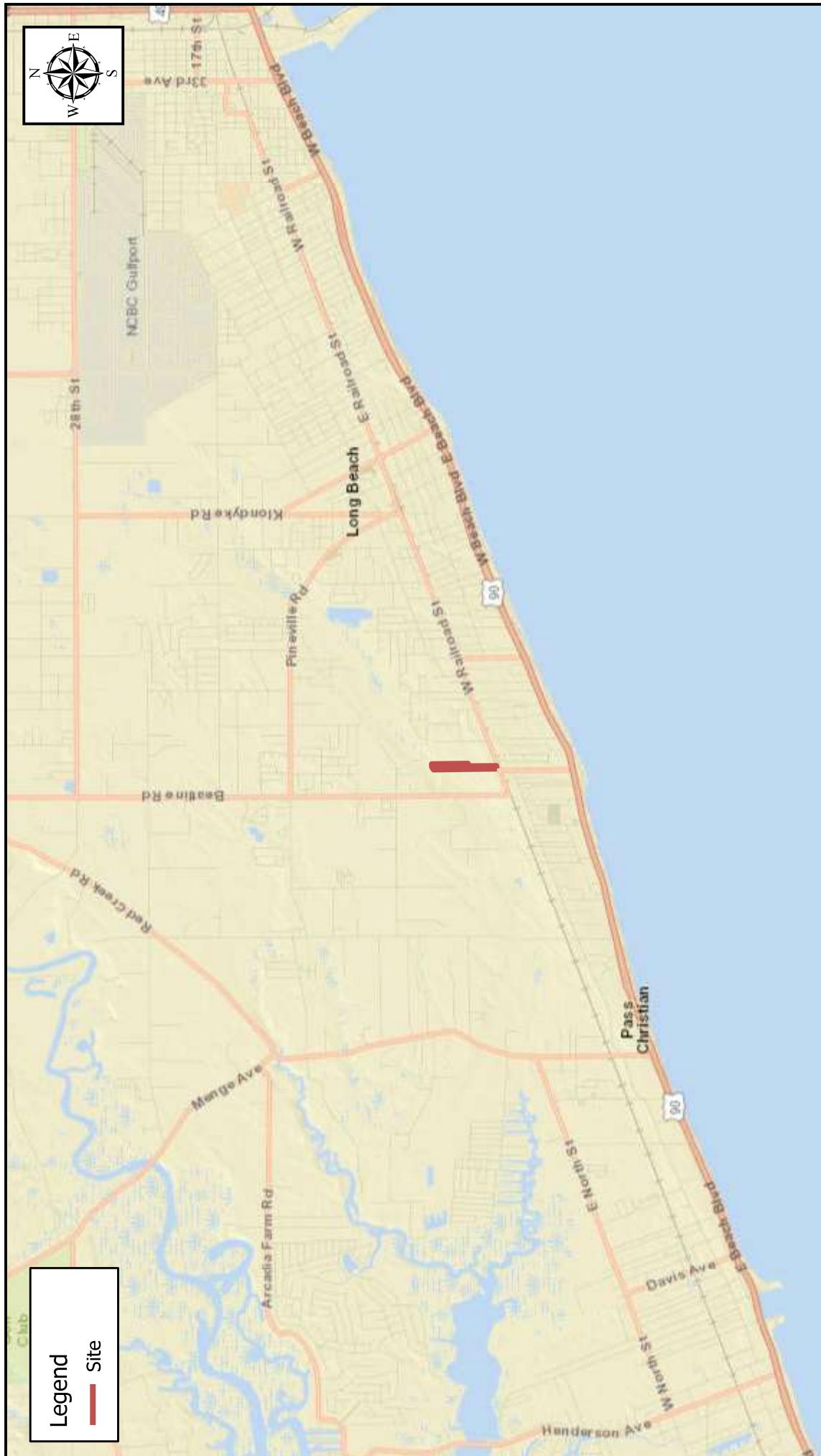
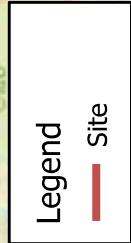
Wetland Areas 3 and 4 are approximately 0.18 acres and 0.096 acres in size, respectively, and are located on the southern portion of parcel 0512G-02-017.001. These wetlands are physically separated from Wetland Area 2 by approximately 250 feet of higher elevation uplands. Similar to Wetland Area 2, Wetland Areas 3 and 4 are bordered by uplands to the north, south, and west. Based on a review of the adjacent elevations, Wetland Areas 3 and 4 are unlikely to extend off-site and connect to any offsite aquatic features. Therefore, Wetland Areas 3 and 4 lack continuous surface connections to a TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment because they do not abut those waters, and therefore, Wetland Areas 3 and 4 are not adjacent wetlands.

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 visits, June 18, 2025, and August 7, 2025.
  - b. Office evaluation, July 8, 2025, and August 12, 2025.
  - c. USACE National Regulatory Viewer (NRV) LiDAR Elevations and Hillshade, NHD Maps and DEM data from the NRV, and Soil Maps from the USDA Web Soil Survey.
  - d. Wetland delineation report and associated data sheets prepared by Jason Saucier on July 12, 2024. This includes the supplemental photos and data from the easement area submitted on July 1, 2025, and supplemental photos from the culvert/ditch submitted on July 18, 2025.
  - e. Antecedent Precipitation Tool (APT) Data from site visits on June 18, 2025 and August 7, 2025.
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

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2025-00218-SMP

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.



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

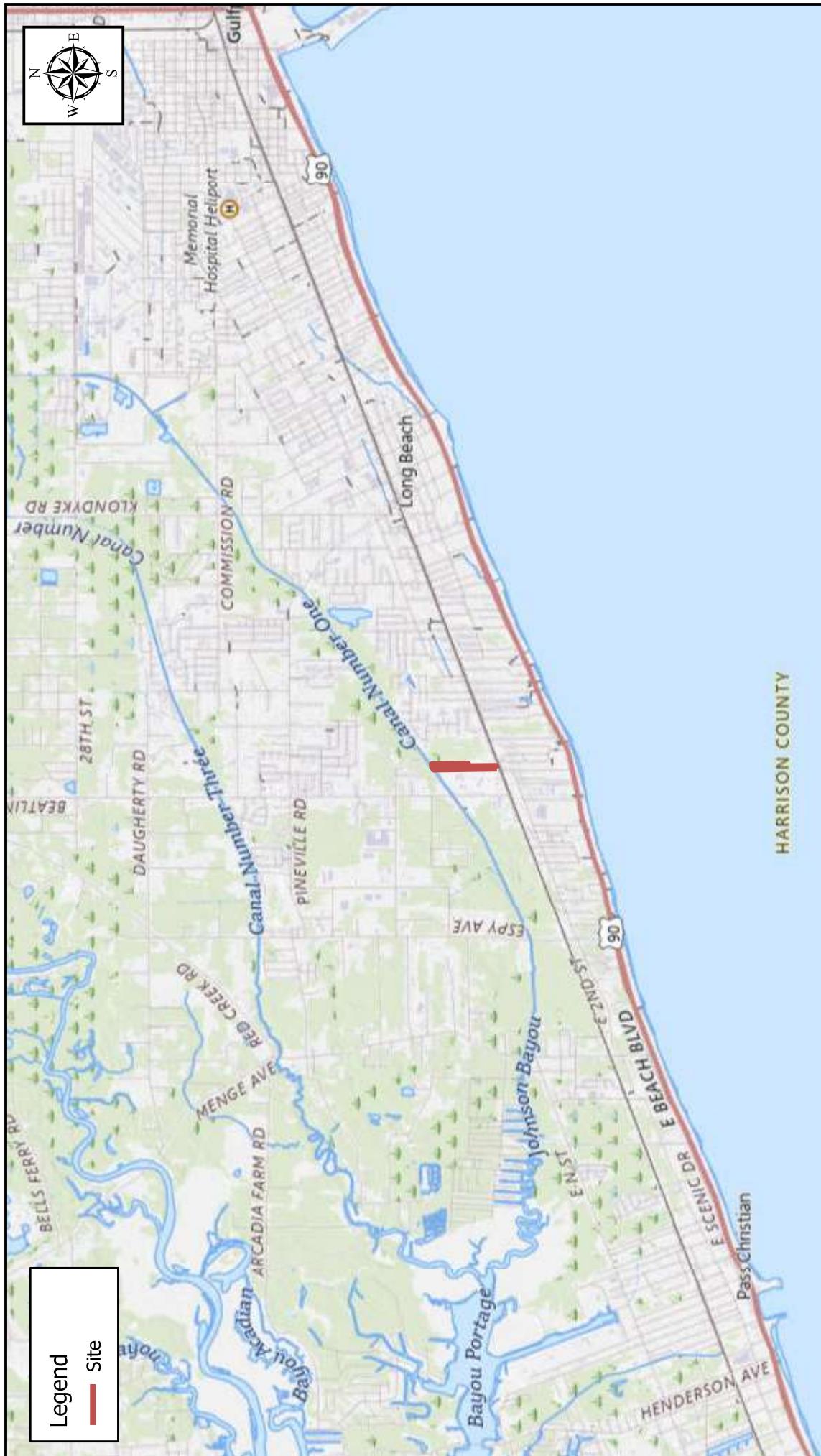
SAM-2025-00218-SMP Vicinity Map



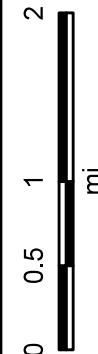
Map Created by: Sarah M. Piesco  
Date: 7/17/2025  
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



Legend  
— Site



### SAM-2025-00218-SMP Topo Map



Map Created by: Sarah M. Piesco

Date: 7/17/2025

Map Center: 89.179263°W 30.340139°N

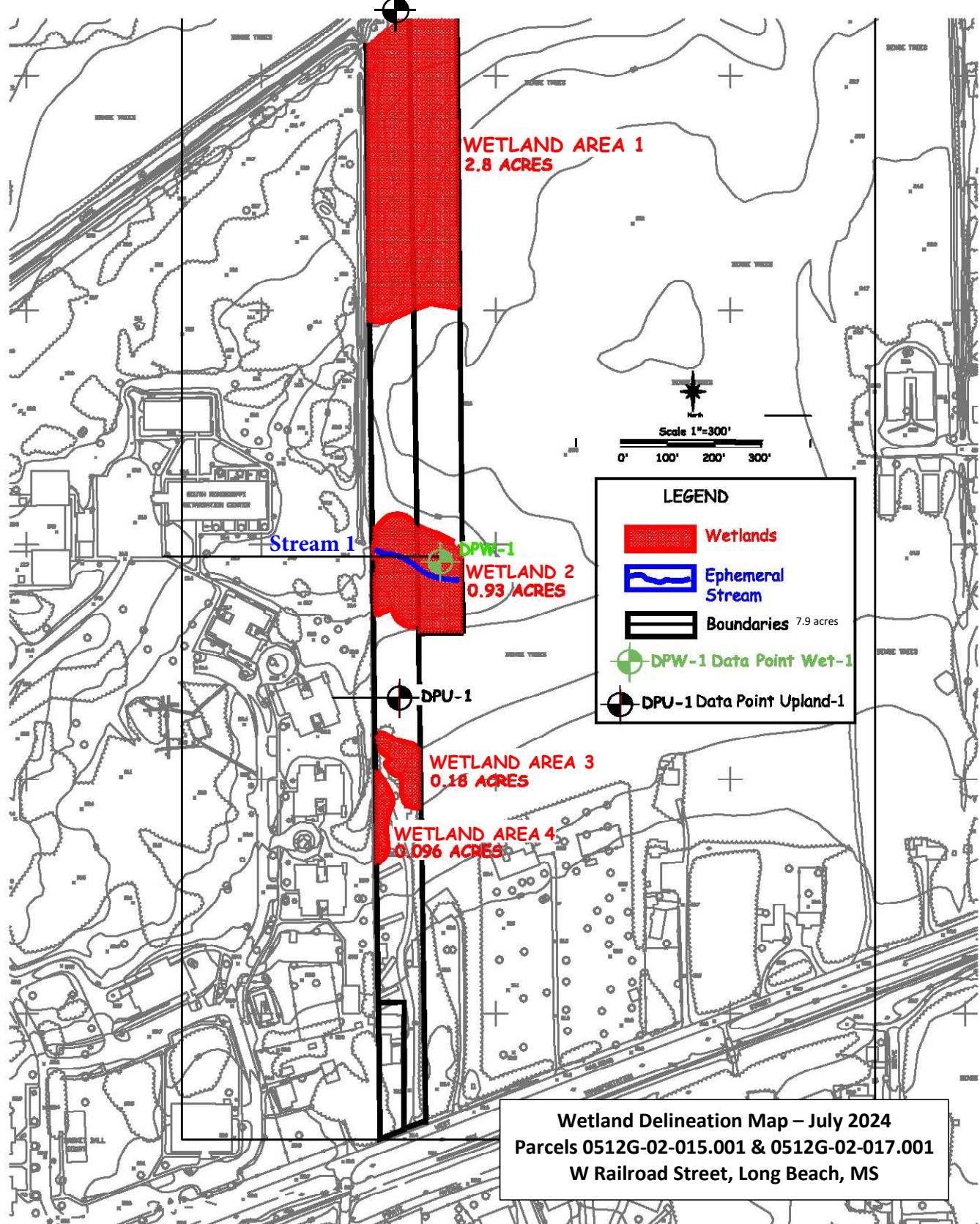
USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HU; NOAA National Centers for Environmental Information. Data refreshed July, 2025.; MARIS, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA, Copyright: © 2013 National Geographic Society, i-cubed

### HARRISON COUNTY

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

SAM-2025-00218-SMP Review Area Map

DPU-2



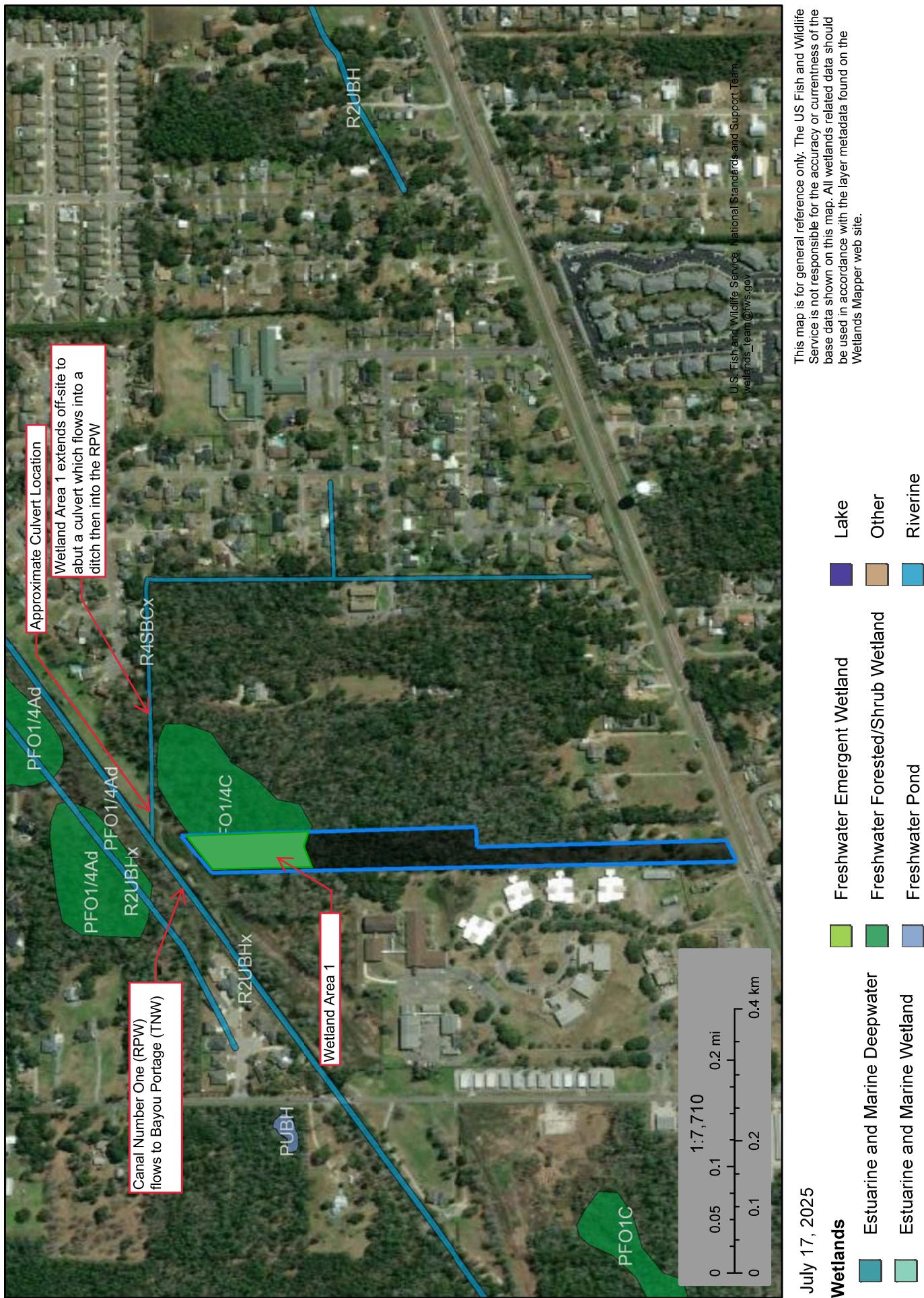
Wetland Delineation Report

Parcels 0512G-02-015.001 & 0512G-02-017.001

Long Beach, MS



# SAM-2025-00218-SMP Flowpath



U.S. Fish and Wildlife Service, National Standards and Support Team  
wetlands\_team@fws.gov

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Other  
Riverine

Freshwater Emergent Wetland  
Freshwater Forested/Shrub Wetland  
Freshwater Pond

Estuarine and Marine Deepwater  
Estuarine and Marine Wetland