



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

South Mississippi Branch
Regulatory Division

15 OCTOBER 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-2025-00383-SMP, 5th Street, Gulfport, Harrison County, 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	30.387955° N, 89.029143° W	0.66-acre	A7. NON-WOTUS WETLAND. NEGATIVE-A7.	None
D-1	30.386273°N, 89.028774°W	455 linear feet	NON-JD RAPANOS.GUIDE DITCH.	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)

3. REVIEW AREA.

The approximately 10.7-acre review area is located south of 5th Street and north of the CSX railroad; within Section 31, Township 7 South, Range 10 West; Latitude 30.387131° North and Longitude 89.029029° West; Gulfport, Harrison County, Mississippi. The site is surrounded by a multi-family residential development to the west, commercial developments to the east, undeveloped land to the north, and a CSX railroad to the south. The parcel consists of majority uplands with approximately 0.66 acre of forested wetlands located in a powerline easement in the northern portion of the review area. Approximately 455 linear feet of manmade ditch runs along the southern border of the review area, to the north of the CSX railroad.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Mississippi Sound, which is a TNW approximately 0.38 miles south of the review area. The Mississippi Sound 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 an approximately 0.66-acre forested wetland located along a powerline easement in the northern portion of the review area. This wetland is bordered by uplands to the north, south, and east. W-1 is severed to the west by previous developments. W-1 is an isolated wetland with no apparent flowpath to the TNW.

D-1 is an approximately 455 linear foot manmade ditch running along the southern boundary of the review area. The ditch appears to extend outside the review area to abut a culvert under Cowan Road east of the review area. After flowing through this culvert, the ditch appears to continue flowing on the east side of Cowan Road for approximately 0.18-mile before flowing through a second culvert under the railroad track (30.387492, -89.023878). From here, the ditch flows on the south side of the railroad track for approximately 0.3-mile before traveling south through a series of culverts under Curcor Drive and Anniston Oaks Drive. South of Anniston Oaks Drive, water enters a large wetland drain which flows southwest to the Mississippi Sound, a TNW.

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.

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): 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.

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.

⁹ 51 FR 41217, November 13, 1986.

- 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.

D-1 is an approximately 455 linear foot manmade ditch running along the southern border of the review area, north of the CSX railroad. Access to the feature was limited due to surrounding topography and dense vegetation, however visual observations were conducted from accessible points during a USACE site visit on September 24, 2025. The ditch appeared dry at the time of the site visit, with no flowing or standing water. Minor indicators of soil saturation (seepage, dark, mucky soils) were noted in isolated areas, but no evidence of sustained or continuous flow was observed. The ditch had a defined channel but lacked a discernable OHWM and the bed was characterized by leaf litter and debris. No aquatic organisms or aquatic vegetation were observed within the ditch. Flow, if present, appears to occur only in direct response to precipitation events and does not persist beyond storm runoff. Because D-1 was excavated wholly in uplands, drains only uplands, and exhibits less than a relatively permanent flow regime, it is not jurisdictional.

- 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

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non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

W-1 is an approximately 0.66-acre forested wetland located within a powerline easement. This wetland is bordered by uplands to the north, south, and east, as indicated by plots 2 and 3 on the submitted wetland delineation data sheets. The wetland has been severed to the west by the construction of Westbury Tule Retreat/Westbury Apartments. W-1 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 and is not jurisdictional.

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, September 24, 2025.
 - b. Office evaluation, October 2-3, 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.
 - d. Antecedent Precipitation Tool (APT) outputs from site visit date.
 - e. Wetland delineation report prepared by Ecological Asset Management, LLC dated April 29, 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 subject to future modification or may be rescinded as needed to implement

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

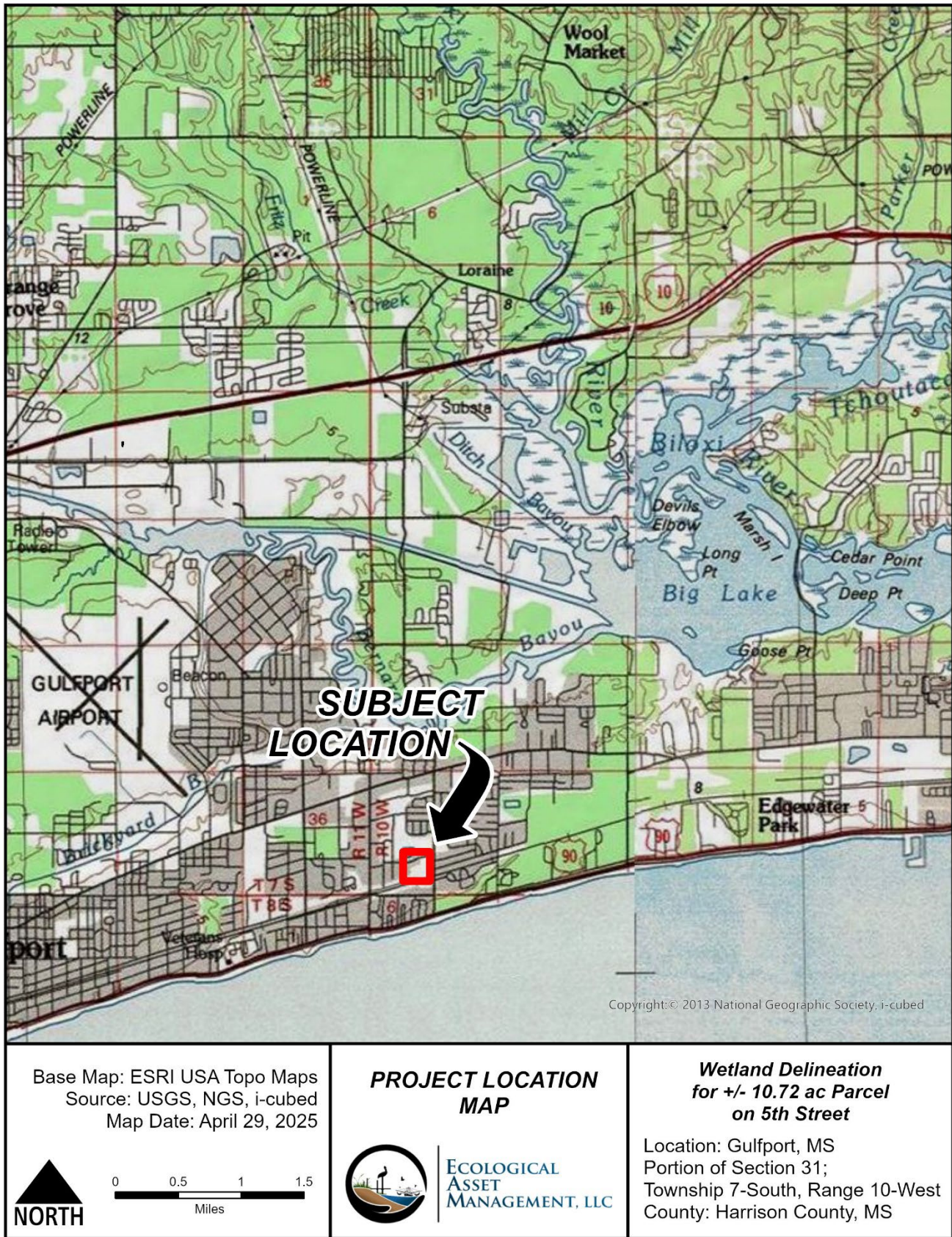


Figure 1: Project Location of the +/- 10.72-acre 5th Street project area; Gulfport, Harrison County, MS.

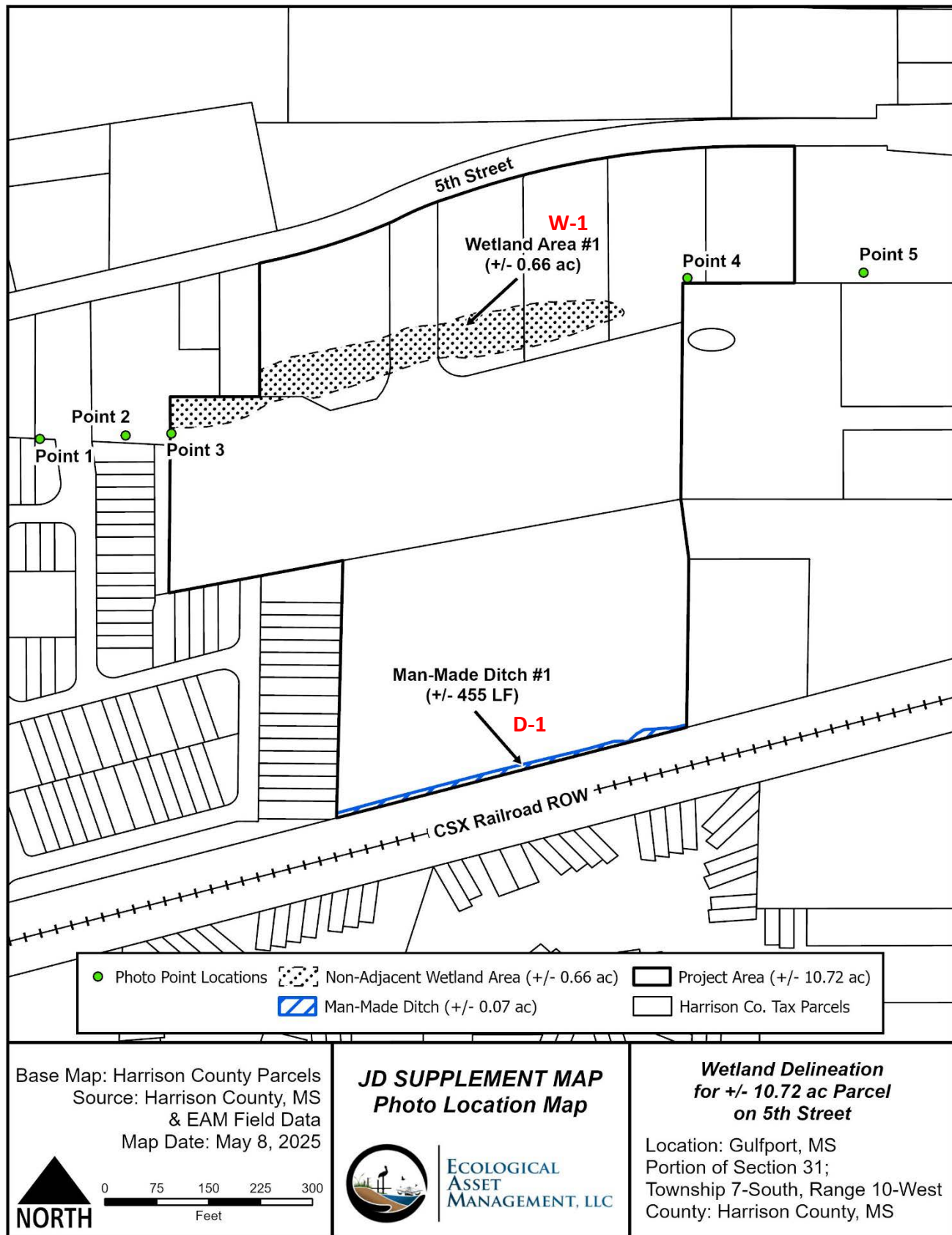


Figure 3: JD Supplement Photo Locations with LiDAR for the +/- 10.72-acre 5th Street project area; Gulfport, Harrison County, MS