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

Special Projects Branch
Mobile District, Regulatory Division October 29, 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-2025-00749-JEF, Hollinger Island, Mobile, Mobile County, Alabama (MFR #1 of #1)[2]

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[3] AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.[4] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This

[1] While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.
[2] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Alabama 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).

      i. Wetland 1, Non-Jurisdictional (1.0 ac)

      ii. Wetland 2, Non-Jurisdictional (0.9 ac)

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 review area is a 68.2-acre area comprised of portions of Mobile County parcels adjacent to Mobile Bay and Lake Road South. The parcels are Mobile County Parcel Numbers: R023901010014001.005, R023901010011014.002, R023901010013001.000, and R023901010012026.001. The site is in Section 1, Township 6 South, Range 1 West, with center coordinates 30.527984 North and 88.091414 West, in Mobile, Mobile County, Alabama. The site is surrounded by Mobile Bay to the east and is encircled by Lake Road South.

   The uplands found in the review area consist of paved surfaces, industrial infrastructure, and grass fields associated with the review areas industrial facility.

   Two wetlands are found within the review area that are enveloped by uplands and concrete pavement and are generally described here. Wetland 1 is completely encircled by concrete on all sides of the feature. Wetland 2 is bounded by upland

grass field and paved parking lots and roads on the west, south, and eastern boundary.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Mobile Bay which directly abuts the review area. Mobile Bay is subject to the ebb and flow of the tides and is listed on the Mobile District's list of Section 10 waters, which are a subset of TNW's.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The potential flow path from the review area would start at the outfall pipe that discharges stormwater from the site directly into Mobile Bay. This outfall directly discharges into the bay.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7]

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

[6] 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.

[7] 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").[8] 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

[8] 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).

Name	Lat	long	Acres
Wetland 1	30.527508	-88.089114	1.0
Wetland 2	30.529167	-88.090611	0.9

Wetland 1 is a 1.0-acre depressional wetland that has developed in a stormwater detention pond that was created in the interior portion of the industrial facility. The wetland features standing surface water, hydric soils, and only an herb stratum of hydrophytic vegetation consisting of *Phragmites australis* and *Typha domingensis*. The wetland is completely enveloped by concrete pavement associated with Lake Road South and adjacent parking lots and storage areas associated with the use of the industrial facility. The wetland has one outfall pipe that discharges directly into Mobile Bay. This discrete feature extends for approximately 290 feet from the wetland to Mobile Bay. Based on the March 12, 2025 EPA-Army memorandum regarding continuous surface connection, the stormwater outfall pipe cannot serve as a continuous surface connection from Wetland 1 to a requisite water (TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment); therefore, wetland 1 is non-jurisdictional.

Wetland 2 is a 0.9-acre depressional wetland that is located in the central portion of the review area. The wetland is bounded by concrete pavement and surfaces associated with the facility on the eastern, southern, and western boundaries. The northern boundary is a grass field that is upland. The wetland features standing surface water, hydric soils, and only an herb stratum of hydrophytic vegetation consisting of *Phragmites australis* and *Typha domingensis*. Wetland 2 is surrounded by uplands and does not abut a requisite water (TNW, territorial sea, interstate water, relatively permanent tributary, or jurisdictional impoundment); therefore, Wetland 2 is non-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.

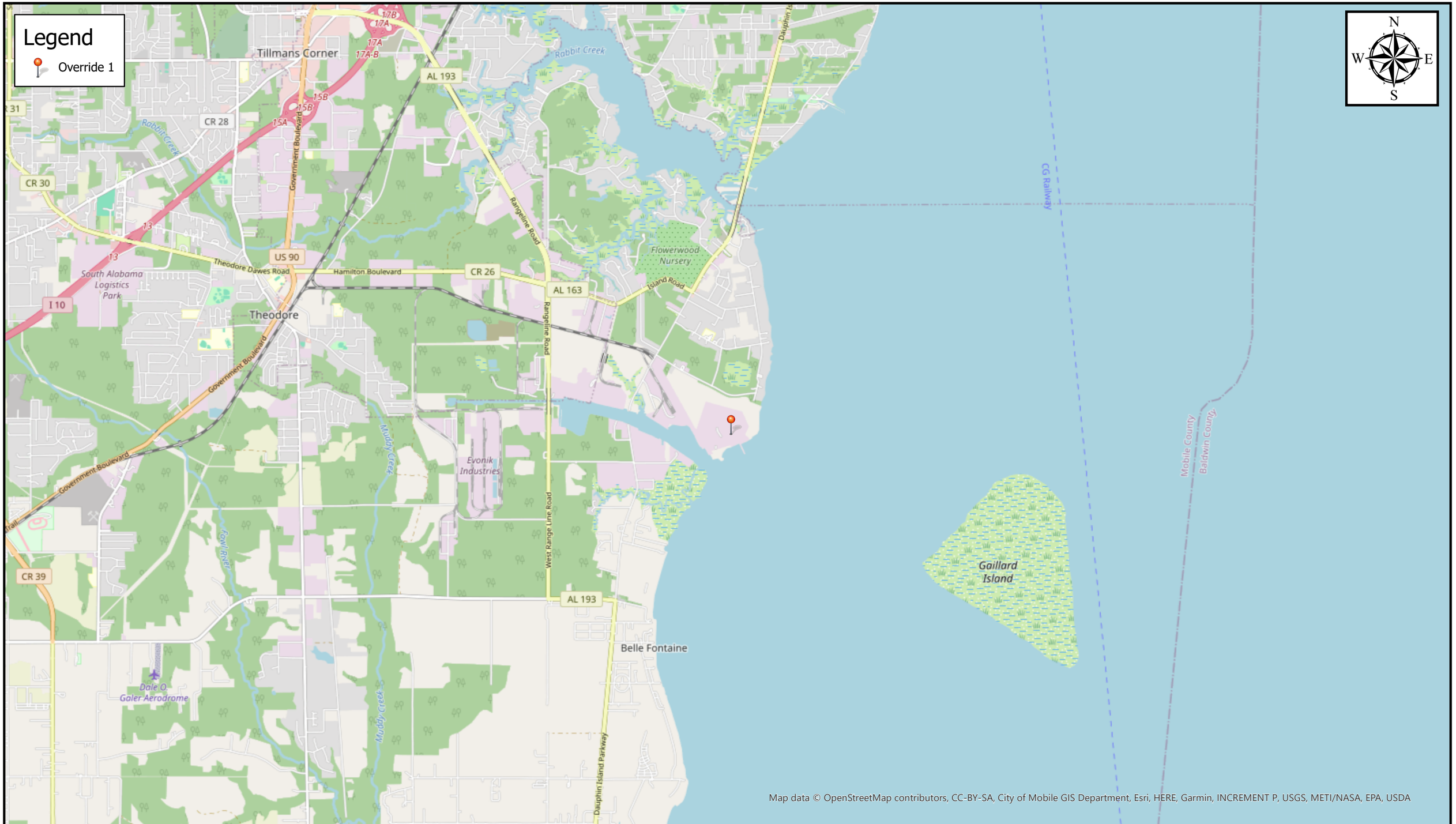
   a. Thompson Engineering AJD request dated September 19, 2025.

   b. Review of LIDAR and DEM imagery from National Regulatory Viewer accessed October 1, 2025.

   c. Review of Google Maps imagery accessed October 1, 2025.

10. OTHER SUPPORTING INFORMATION. “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.



Department of the Army // Vicinity Map // SAM-2025-00749-JEF

0 1 2 4
mi

Map Center: 88.089769°W 30.531251°N

Map Created by: PM NAME

Date: 10/21/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

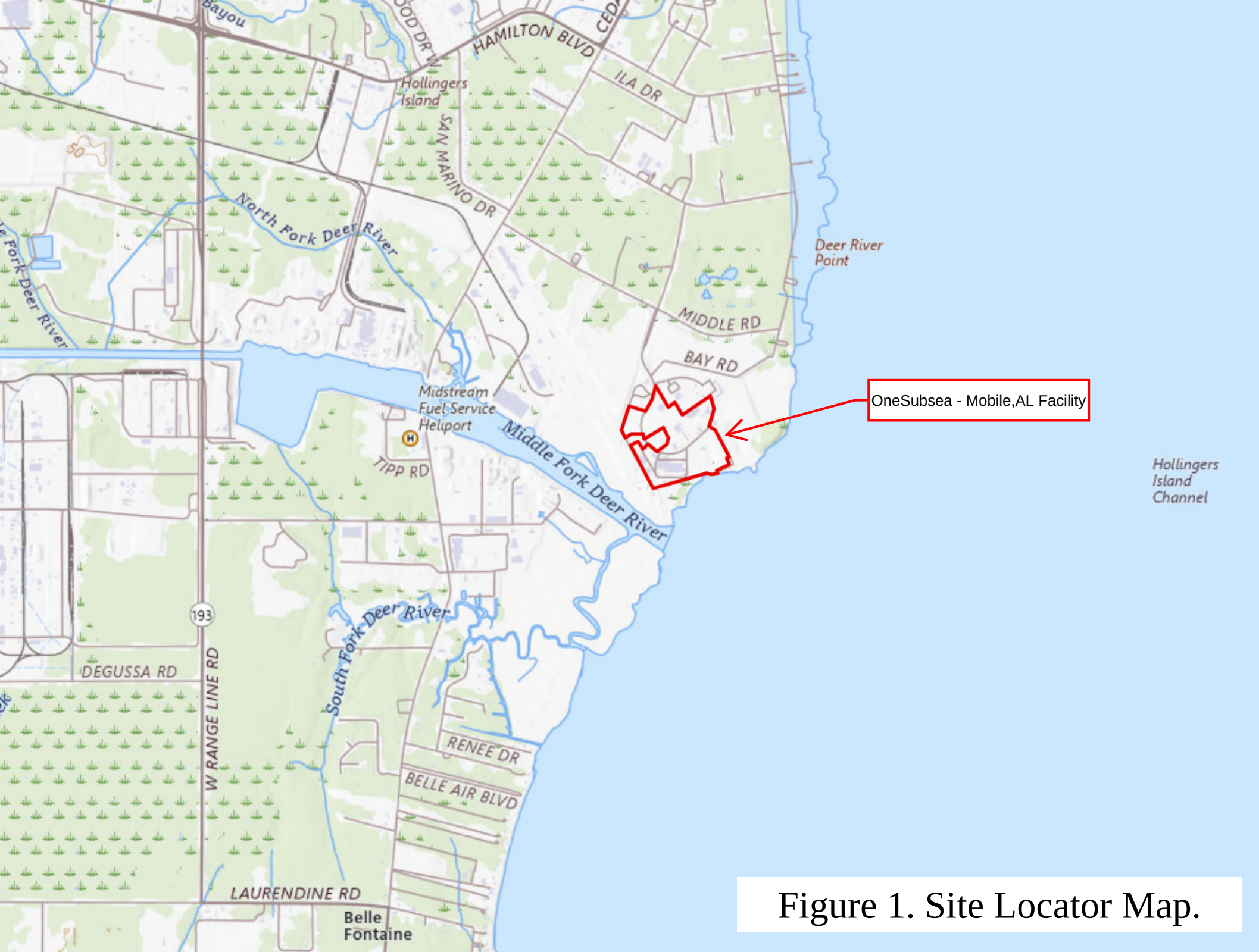
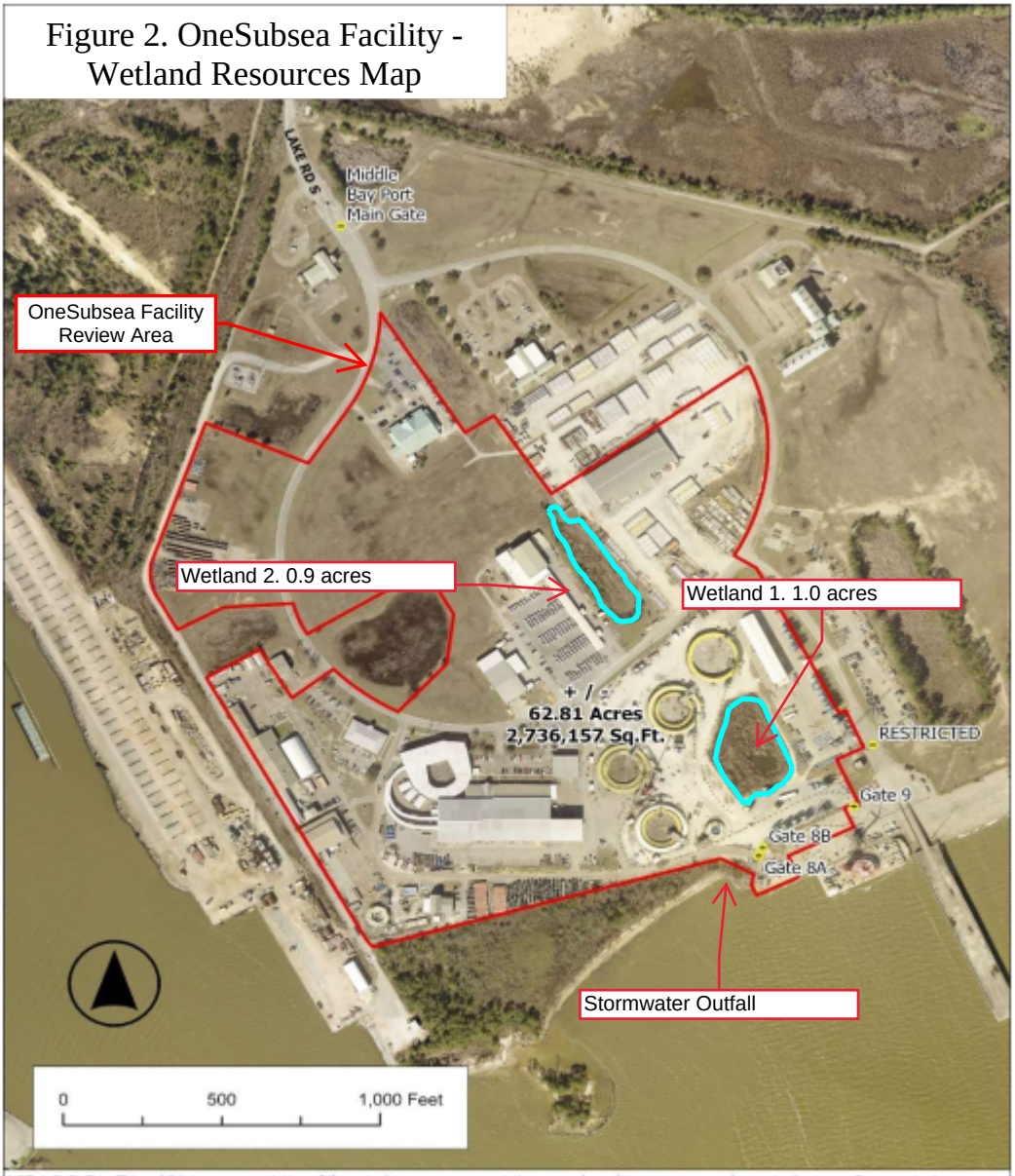


Figure 1. Site Locator Map.

Figure 2. OneSubsea Facility - Wetland Resources Map



NOT A SURVEY - This exhibit is a representation of the actual Lease area per existing ground conditions or as agreed upon in the Lease Document. Area calculations are based on the delineation of the Lease area delineated in this exhibit.

MAP UNITS: US Foot
Mobile County 2023 Imagery - 3" Resolution

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET – Atlantic and Gulf Coastal Plain Region
See ERDC/EL TR-10-20; the proponent agency is CECW-CO-R

OMB Control #: 0710-0024, Exp: 11/30/2024
Requirement Control Symbol EXEMPT:
(Authority: AR 335-15, paragraph 5-2a)

Project/Site: 7611 Lake Rd South, Mobile, AL 36605 City/County: Mobile, AL Sampling Date: 09/16/25

Applicant/Owner: OneSubsea State: AL Sampling Point: WETL DS 1

Investigator(s): David Knowles Section, Township, Range: Section 1 / T6S / R1W Hollingers Island

Landform (hillside, terrace, etc.): Local relief (concave, convex, none): Concave Slope (%): 0-1

Subregion (LRR or MLRA): LRR T, MLRA 152A Lat: 30.527132 Long: -88.089197 Datum:

Soil Map Unit Name: ULI - Urban Land NWI classification:

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No (If no, explain in Remarks.)

Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes No X

Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X	No	**Is the Sampled Area within a Wetland?** **Yes** X **No**
Hydric Soil Present?	Yes X	No	
Wetland Hydrology Present?	Yes X	No	

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- Water Marks (B1)
- Sediment Deposits (B2)
- Drift Deposits (B3)
- Algal Mat or Crust (B4)
- Iron Deposits (B5)
- Inundation Visible on Aerial Imagery (B7)
- Water-Stained Leaves (B9)
- Aquatic Fauna (B13)
- Marl Deposits (B15) **(LRR U)**
- Hydrogen Sulfide Odor (C1)
- Oxidized Rhizospheres on Living Roots (C3)
- Presence of Reduced Iron (C4)
- Recent Iron Reduction in Tilled Soils (C6)
- Thin Muck Surface (C7)
- Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- Surface Soil Cracks (B6)
- Sparsely Vegetated Concave Surface (B8)
- Drainage Patterns (B10)
- Moss Trim Lines (B16)
- Dry-Season Water Table (C2)
- Crayfish Burrows (C8)
- X Saturation Visible on Aerial Imagery (C9)
- X Geomorphic Position (D2)
- Shallow Aquitard (D3)
- X FAC-Neutral Test (D5)
- Sphagnum Moss (D8) **(LRR T, U)**

Field Observations:

Surface Water Present?	Yes X	No	Depth (inches): 4
Water Table Present?	Yes X	No	Depth (inches): 0
Saturation Present? (includes capillary fringe)	Yes X	No	Depth (inches): 10

Wetland Hydrology Present? **Yes** X **No**

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION (Four Strata) – Use scientific names of plants.

Sampling Point: WETL DS 1

Tree Stratum (Plot size: 0.1)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
	=Total Cover		
50% of total cover:	20% of total cover:		
Sapling/Shrub Stratum (Plot size: 0.1)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
	=Total Cover		
50% of total cover:	20% of total cover:		
Herb Stratum (Plot size: 0.1)			
1. *Phragmites australis*	80	Yes	FACW
2. *Typha domingensis*	10	No	OBL
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	90 =Total Cover		
50% of total cover: 45	20% of total cover: 18		
Woody Vine Stratum (Plot size: 0.1)			
1.			
2.			
3.			
4.			
5.			
	=Total Cover		
50% of total cover:	20% of total cover:		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)

Total Number of Dominant Species Across All Strata: 1 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100.0% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	10	x 1 =	10
FACW species	80	x 2 =	160
FAC species	0	x 3 =	0
FACU species	0	x 4 =	0
UPL species	0	x 5 =	0
Column Totals:	90 (A)		170 (B)
Prevalence Index = B/A =			1.89

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

X 2 - Dominance Test is >50%

X 3 - Prevalence Index is ≤3.0[1]

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Four Vegetation Strata:

Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height.

Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall.

Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.

Woody Vine – All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? **Yes** X **No** ___

Remarks: (If observed, list morphological adaptations below.)

SOIL

Sampling Point: WETL DS 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-10	10YR 2/1	90					Mucky Sand	10% unmasked 10yr 8/1

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ Organic Bodies (A6) **(LRR P, T, U)**
- X 5 cm Mucky Mineral (A7) **(LRR P, T, U)**
- ___ Muck Presence (A8) **(LRR U)**
- ___ 1 cm Muck (A9) **(LRR P, T)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Coast Prairie Redox (A16) **(MLRA 150A)**
- ___ Sandy Mucky Mineral (S1) **(LRR O, S)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(LRR S, T, U)**
- ___ Thin Dark Surface (S9) **(LRR S, T, U)**
- ___ Barrier Islands 1 cm Muck (S12) **(MLRA 153B, 153D)**
- ___ Loamy Mucky Mineral (F1) **(LRR O)**
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Marl (F10) **(LRR U)**
- ___ Depleted Ochric (F11) **(MLRA 151)**
- ___ Iron-Manganese Masses (F12) **(LRR O, P, T)**
- ___ Umbric Surface (F13) **(LRR P, T, U)**
- ___ Delta Ochric (F17) **(MLRA 151)**
- ___ Reduced Vertic (F18) **(MLRA 150A, 150B)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 149A)**
- ___ Anomalous Bright Floodplain Soils (F20) **(MLRA 149A, 153C, 153D)**
- ___ Very Shallow Dark Surface (F22) **(MLRA 138, 152A in FL, 154)**

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) **(LRR O)**
- ___ 2 cm Muck (A10) **(LRR S)**
- ___ Coast Prairie Redox (A16) **(MLRA 149A)**
- ___ Reduced Vertic (F18) **(outside MLRA 150A, 150B)**
- ___ Piedmont Floodplain Soils (F19) **(LRR P, T)**
- ___ Anomalous Bright Floodplain Soils (F20) **(MLRA 153B)**
- ___ Red Parent Material (F21)
- ___ Very Shallow Dark Surface (F22) **(outside MLRA 138, 152A in FL, 154)**
- ___ Barrier Islands Low Chroma Matrix (TS7) **(MLRA 153B, 153D)**
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? **Yes** X **No** ____

Remarks: