



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
1520 ROYAL PALM SQUARE BOULEVARD, SUITE 310
FORT MYERS, FL 33919

July 15, 2025

Regulatory Division
West Permits Branch
Fort Myers Section
SAJ-2024-04825(NPR-SJR)

Lee County Solid Waste Department
C/o Douglass Whitehead
10500 Buckingham Road
Fort Myers, Florida 33905

Dear Mr. Whitehead:

Reference is made to the application received on October 25, 2024, for a Department of the Army permit to discharge fill into 8.16 acres of freshwater wetlands and surface waters for construction of a recycling facility. The proposed project site is located along State Road (SR)-82 and adjacent to 11990 SR-82, State Tax Parcel ID (36-44-25-L1-U2318.4319), latitude 26.24243°, longitude -81.70972° central coordinates, Fort Myers, Lee County, Florida. The application has been assigned the file number SAJ-2024-04825(NPR-SJR).

Section 10 of the Rivers and Harbors Act of 1899

The project as proposed will not require a Department of the Army permit in accordance with Section 10 of the Rivers and Harbors Act of 1899 as it is not located within a navigable water of the United States.

Section 404 of the Clean Water Act

The U.S. Army Corps of Engineers (Corps) has determined that the proposed project will not require a Department of the Army permit in accordance with Section 404 of the Clean Water Act as the proposed discharge of dredged or fill material would not occur in waters of the United States. Provided the work is done in accordance with the enclosed drawings, Department of the Army authorization will not be required.

This letter also contains an Approved Jurisdictional Determination (AJD). Enclosed you will find the AJD form, accompanying map/figure, and a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you object to this determination, you may request an administrative appeal under the Corps' regulations at 33 C.F.R. Part 331. If you request to

appeal this determination, you must follow the directions provided in Section 1, Part D of the attached RFA form and submit a completed RFA form to the South Atlantic Division Office at the following address:

U.S. Army Corps of Engineers
South Atlantic Division
Attn: Jonathan Swartz
60 Forsyth Street SW
Atlanta, Georgia 30303-8801

Mr. Swartz can be reached by telephone at 912-710-1798 or by email at Jonathan.M.Swartz@usace.army.mil.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. § 331.5, and that it has been received by the Division office within 60 days of the date of the NAP form. Should you decide to submit an RFA form, it must be received at the above address by 15 September 2025.

The determination in the enclosed AJD represents the extent of the Corps' jurisdiction within the specified review area. Please be advised that the jurisdictional determination shown is based on the *Corps of Engineers Wetlands Delineation Manual (1987)* and current regional supplement and is valid for a period no longer than five years from the date of this letter unless new information warrants a revision of the determination before the expiration date. If after the five year period, the Corps has not specifically revalidated this jurisdictional determination, it shall automatically expire. Any reliance upon this jurisdictional determination beyond the expiration date may lead to possible violation of current Federal laws and/or regulations. You may request revalidation of the jurisdictional determination prior to the expiration date. Any revalidation or updating will be considered under the method of jurisdictional determination and other applicable regulations in use at the time of the revalidation/update. Additionally, this determination was based on information provided by you or your agent. Should we determine that the information was incomplete or erroneous, this delineation would be invalid.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the specified review area. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Additionally, your project site may contain species protected by the Endangered Species Act (ESA) of 1972, as amended. You should contact your local U.S. Fish and Wildlife Service (FWS) office to determine if federally listed species or their habitat are present on your project site. If it is determined that federally listed species may be affected by the proposed project, authorization for "incidental take" may be required. FWS can be contacted by emailing FW4FLESRegs@fws.gov.

This letter does not obviate the requirement to obtain any other Federal, State, or local permits that may be necessary for your project. Should you have any questions, please contact Steven Rabney at the letterhead address or by telephone at 239-334-1975 x0009.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit <https://regulatory.ops.usace.army.mil/customer-service-survey/> and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise. Please be aware this web address is case sensitive and should be entered as it appears above.

Sincerely,



Steven Rabney
Project Manager

Enclosure

Jurisdictional Determination

Notice of Administrative Appeal Options and Process and Request for Appeal Form (separate)



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207

CESAJ-RDW-F

9 July 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SAJ-2024-04825

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Florida due to litigation.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

CESAJ-RDW-F

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-04825

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. W-1 & W-3 Florida Land Use Cover and Forms Classification System (FLUCFCS) (630 E4) Wetland Forested Mixed >75% Exotics (20.53 acres), non-jurisdictional
 - ii. W-2 FLUCFCS (211 H) Hydric Pasture (4.81 acres), non-jurisdictional
 - iii. SW-1 FLUCFCS (514) Ditch (0.53 acres), non-jurisdictional
 - iv. SW-2 & SW-3 FLUCFCS (742 H) Borrow Area, Hydric (14.24 acres), non-jurisdictional
 - v. SW-4 FLUCFCS (534) Excavated Reservoir (1.62 acres), non-jurisdictional

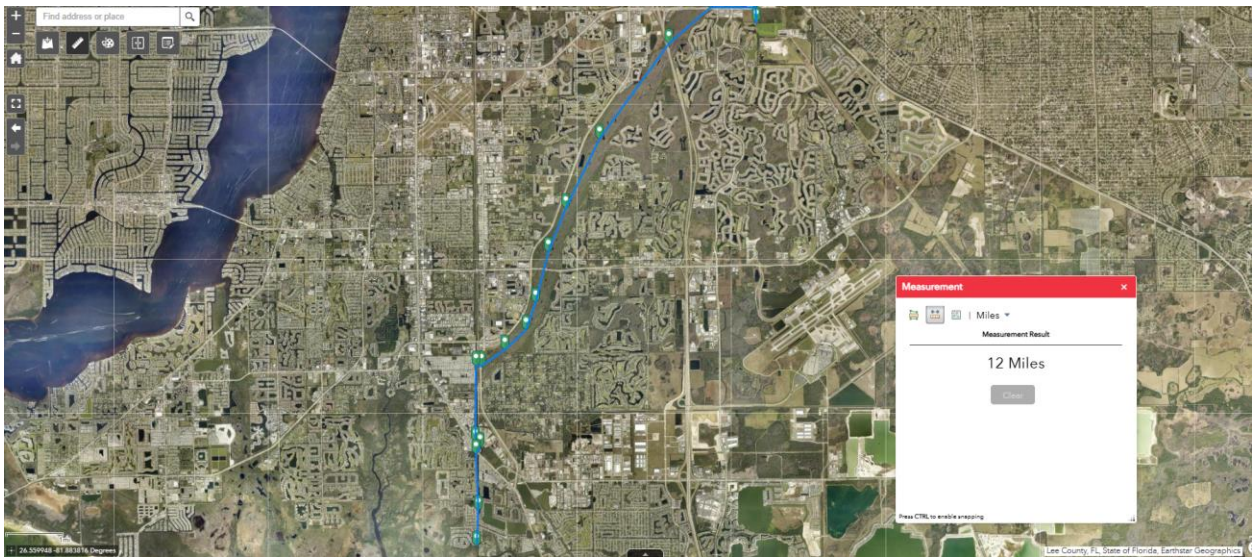
2. REFERENCES.

- 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)
 - e. 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)
3. REVIEW AREA. 50.00-acre parcel located along State Road (SR)-82 and adjacent to 11990 SR-82, State Tax Parcel ID (36-44-25-L1-U2318.4319), latitude 26.24243°, longitude -81.70972° central coordinates, Fort Myers, Lee County, Florida.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. 12.0 miles to the Estero River and 5,628 feet to a relatively permanent water (Six Mile Cypress Slough) via the roadside swale.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.



6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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,

⁵ 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.

⁶ 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.

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”).⁷ 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

⁷ 51 FR 41217, November 13, 1986.

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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).

W-1, W-2, & W-3 and SW-1, SW-2, SW-3, & SW-4 are all non-jurisdictional as there is no continuous surface connection to a relatively permanent water or to a traditional navigable water. The roadside swale does not convey a continuous flow, nor does the storm culvert for drainage into the Six Mile Cypress Slough

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. Soils Map (October 2024)
 - b. U.S. Geological Service (USGS) Quad Map (September 2024)
 - c. National Wetland Inventory (NWI) Map (September 2024)
 - d. Florida Land Use, Cover, and Forms Classification System (FLUCFCS) (June 2025)
 - e. National Regulatory Viewer (NRV) 3D Elevation Program (3DEP) Images (July 9, 2025)

CESAJ-RDW-F

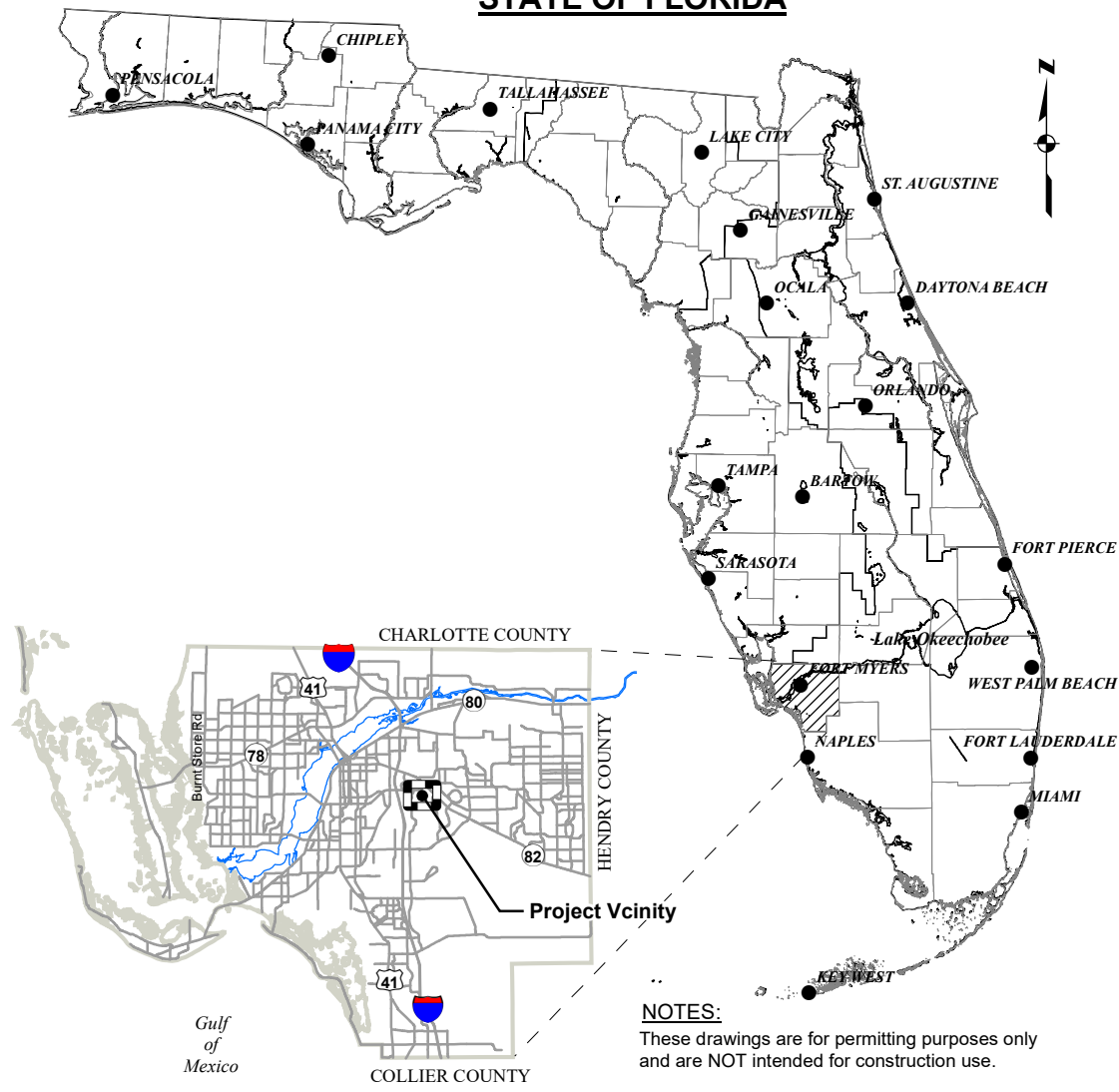
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAJ-2024-04825

10. OTHER SUPPORTING INFORMATION. N/A

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.

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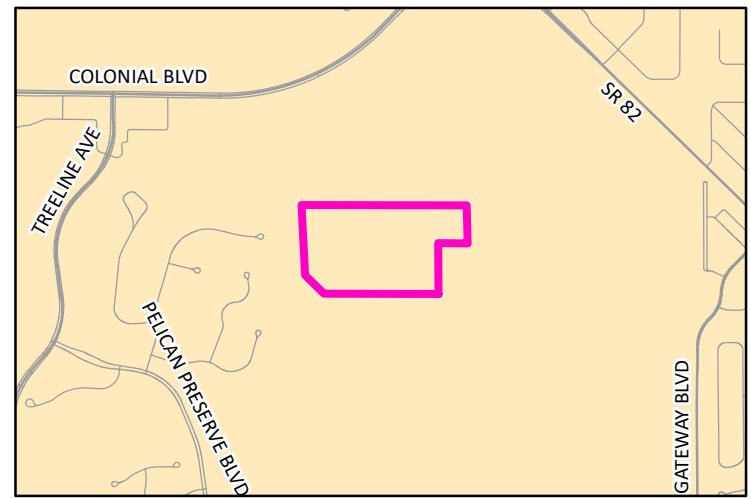
STATE OF FLORIDA



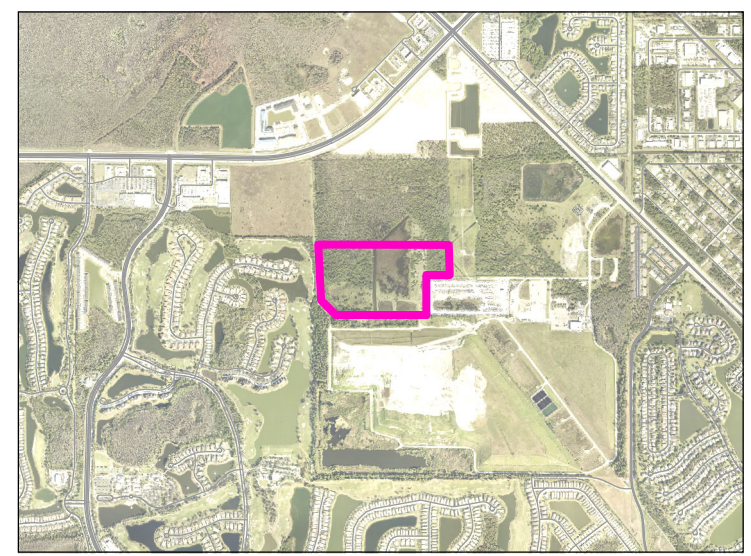
LEE COUNTY
N.T.S.

Section 36, Township 44 South, Range 25 East
Latitude: 26.606842°, Longitude: -81.770170°

NOTES:
These drawings are for permitting purposes only
and are NOT intended for construction use.



STREET MAP
N.T.S.



VICINITY AERIAL
N.T.S.

Notes: Aerial
Photo 2024

SR 82 Recovered Materials
Processing Facility
Lee County, Florida



JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE (239) 334-0046
E.B. #642 & L.B. #642

Location Map

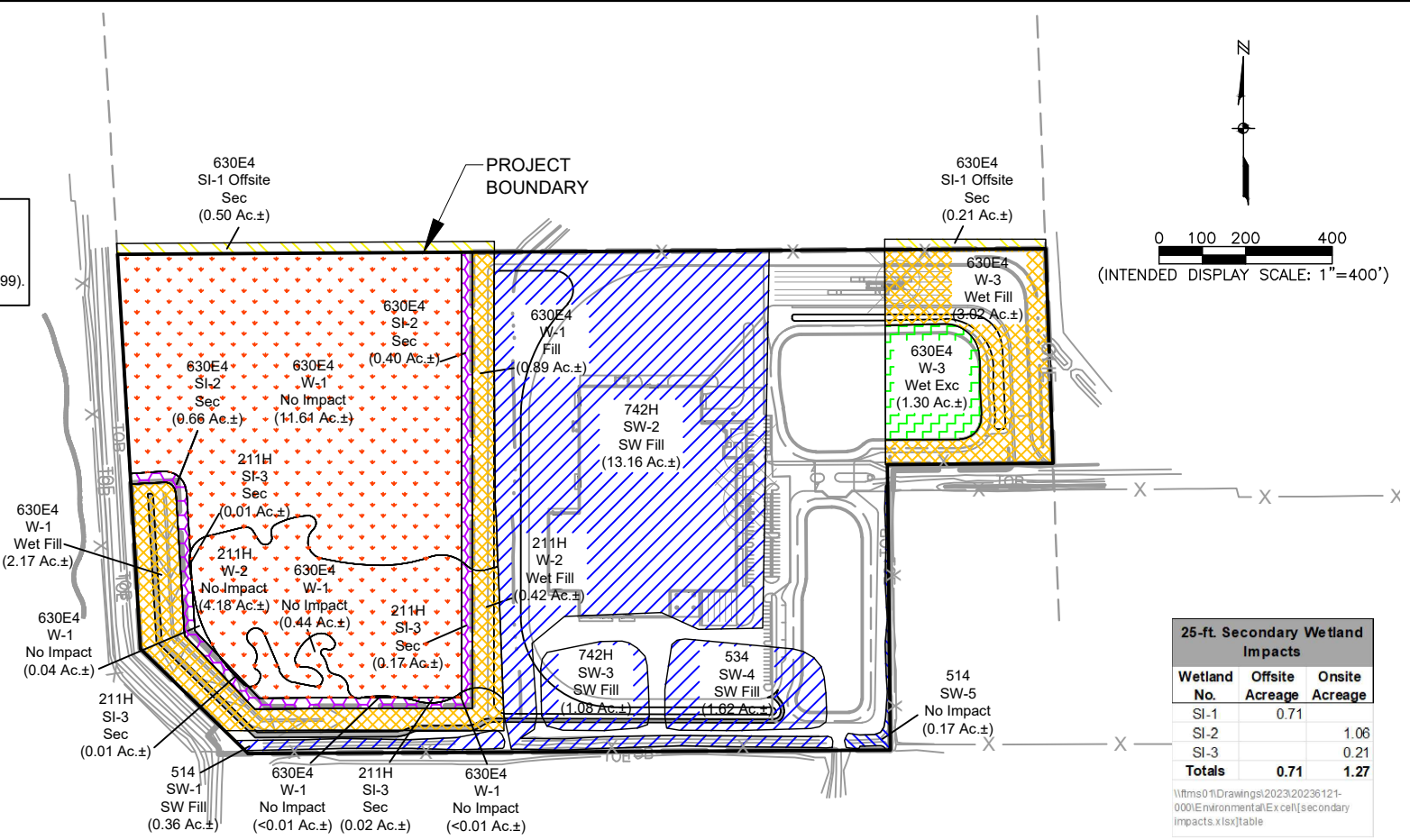
DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
Sept. 2024	20236121-000		Not to Scale	1

\\fms01\drawings\2023\20236121-000\Environmental\Exhibits\ACOE Env Permit.dwg (Impact Map) paul.lbr Jul 03, 2025 - 3:28pm

Notes
 1. Nomenclature and delineations as per the Florida Land Use Cover and Forms Classification System (FLUCFCS) FDOT, 1999.

Legend

- Wetlands Fill
- Wetlands Excavate
- Wetlands No Impact
- Surface Waters Fill
- Surface Waters No Impact
- 25-ft. Secondary Impacts (onsite)
- 25-ft. Secondary Impacts (offsite)



25-ft. Secondary Wetland Impacts

Wetland No.	Offsite Acreage	Onsite Acreage
SI-1	0.71	-
SI-2	-	1.06
SI-3	-	0.21
Totals	0.71	1.27

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Impact Table

FLUCFCS Code	Description	Status	Wetland					SW		Secondary		Total Acres
			Wetland Fill	Excavate	No Impact	SW Fill	No Impact	Impacts	Impacts			
211 H	Hydic Pasture	W	0.42± Ac.	-	4.18± Ac.	-	-	0.21± Ac.	-	-	4.81± Ac.	
514	Ditch	SW	-	-	-	0.36± Ac.	-	0.17± Ac.	-	-	0.53± Ac.	
534	Excavated Reservoir	SW	-	-	-	1.62± Ac.	-	-	-	-	1.62± Ac.	
630 E4	Wetland Forested Mixed (>75% Exotics)	W	6.08± Ac.	1.30± Ac.	12.09± Ac.	-	-	1.06± Ac.	0.71± Ac.	-	20.53± Ac.	
742 H	Borrow Area, Hydic	SW	-	-	-	14.24± Ac.	-	-	-	-	14.24± Ac.	
			6.50± Ac.	1.30± Ac.	16.27± Ac.	16.22± Ac.	0.17± Ac.	1.27± Ac.	0.71± Ac.	0.71± Ac.	41.73± Ac.	

Wetland Direct Impacts

Wetland No.	No Impact (Ac)	Wetland Fill (Ac)	Wetland Excavate (Ac)	Fill Cubic Yards (cy)	Excavated Cubic Yards (cy)
1	12.09	3.06	-	14,810	-
2	4.18	0.42	-	2,033	-
3	-	3.02	1.30	14,617	18,876
Totals	16.27	6.50	1.30	31,460	18,876

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Surface Waters Direct Impacts

Surface Water No.	Surface Water Fill (Ac)	Fill Cubic Yards (cy)
1	0.36	1,742
2	13.16	63,694
3	1.08	5,227
4	1.62	7,841
Totals	16.22	78,504

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SW = Surface Waters (16.39± Ac)
 W = Wetlands (25.34± Ac)
\\fms01\Drawings\2023\20236121-000\Environmental\Excel\COE FLUCFCS and Wetland Impacts 20250627.xlsx\Impact

Recovered Materials Processing
 Facility (RMPF)
 Lee County, Florida



JOHNSON ENGINEERING, LLC
 2122 JOHNSON STREET
 FORT MYERS, FLORIDA 33901
 PHONE: (239) 334-0046
 E.B. #642 & L.B. #642

IMPACT MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
June 2025	20236121-000	36-44-25	As Shown	4