



This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): July 26, 2019
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SAJ-2019-01594-RGH (DR HORTON / RYE CROSSING / 1234 N RYE RD / MANATEE)
C. PROJECT LOCATION AND BACKGROUND INFORMATION: State:FL, County/parish/borough: Manatee, City: Parrish, Center coordinates of site (lat/long in degree decimal format): Lat. 27.520008° N, Long. -82.36216° W, Universal Transverse Mercator: Name of nearest waterbody: Rye Creek, Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Manatee River, Name of watershed or Hydrologic Unit Code (HUC): Upper Manatee River - 031002020105, [X] Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. [ ] Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.
D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): [X] Office (Desk) Determination. Date: July 26, 2019 [ ] Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- [ ] Waters subject to the ebb and flow of the tide.
[ ] Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): 1

- [ ] TNWs, including territorial seas
[ ] Wetlands adjacent to TNWs
[X] Relatively permanent waters2 (RPWs) that flow directly or indirectly into TNWs
[ ] Non-RPWs that flow directly or indirectly into TNWs
[ ] Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
[X] Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
[ ] Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
[ ] Impoundments of jurisdictional waters
[ ] Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 0.69 acres.
Wetlands: 0.21 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):3

- [X] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Surface waters SW-1, SW-3, SW-4, SW5 (a total of 1.24 acres), are all man-made agricultural ponds with no connection or ditches that do not drain wetlands.

1 Boxes checked below shall be supported by completing the appropriate sections in Section III below.

2 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": .

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 22763.34 acres

Drainage area: 36.4 acres

Average annual rainfall: 56 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are 20-25 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 5 feet  
Average depth: 4 feet  
Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: Rain and ground water driven.

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank  the presence of litter and debris  
 changes in the character of soil  destruction of terrestrial vegetation  
 shelving  the presence of wrack line  
 vegetation matted down, bent, or absent  sediment sorting  
 leaf litter disturbed or washed away  scour  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by:  Mean High Water Mark indicated by:  
 oil or scum line along shore objects  survey to available datum;  
 fine shell or debris deposits (foreshore)  physical markings;  
 physical markings/characteristics  vegetation lines/changes in vegetation types.  
 tidal gauges  
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Clear and Tanic.

Identify specific pollutants, if known: Possibly impaired for Bacteria and Other Microbes, however significant agricultural fields are adjacent to this waterbody so it is highly likely that, nutrients, herbicides, and pesticides are also within this waterbody..

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: Observed wildlife utilizing waterbodies.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.21 acres

Wetland type. Explain: Forested.

Wetland quality. Explain: Wetland degraded by adjacent ditching, agricultural impacts (cattle in wetlands), and other farm impacts.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Flow events would be limited to rain events.

Surface flow is: **Not present**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain: Wetland was part of a larger wetland slough system that connected with natural streams. Agricultural ditch dug at edge of topo break provided a man-made pathway to drain wetlands. Wetland would drain via sheet flow, to ditch but for the berm created by the side cast spoil.

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

Flow is from: **No Flow**.

Estimate approximate location of wetland as within the **2 - 5-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Clear and Tanic.

Identify specific pollutants, if known: Possibly impaired for Bacteria and Other Microbes, however significant agricultural fields are adjacent to this waterbody so it is highly likely that, nutrients, herbicides, and pesticides are also within this waterbody.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Observed wildlife.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **2**

Approximately ( 25 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
W-1 N	0.21		

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: See Exhibit 1.

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
  - TNWs: linear feet width (ft), Or, acres.
  - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
  - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
  - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: See Exhibit 1.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .  
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: .21 acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain: .  
 Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.  
Identify type(s) of waters: .
- Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): **Upland excavated ponds.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: 1.24acres. List type of aquatic resource: Agricultural Ponds.
- Wetlands: 0.21acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas:031002020105 - Lake Manatee.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:1:24,000; Rye, FL.
- USDA Natural Resources Conservation Service Soil Survey. Citation:Florida Soils Map digital data from the Natural Resources Conservation Service. Date (July 24, 2019). Web Soil Survey website. U.S. Department of Agriculture, Natural Resources Conservation Service, Washington, D.C. .
- National wetlands inventory map(s). Cite name:Wetland digital data from U. S. Fish and Wildlife Service. Date (July 24, 2019). National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C..
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):1940, 1951, 1957, 1970, 2004, 2019.  
or  Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** .

## Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

**1. Jurisdictional Wetlands and Waters:** The Corps utilized the guidance provided in the *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (Guidance) and 33 CFR 328.3(a) to identify which waters in the review area are properly subject to Corps jurisdiction. The Corps found that there are and are not jurisdictional waters within the review area.

### **A. SW-2A, SW-2B, SW-2C: RPW that flows indirectly into a TNW**

The Corps determined that SW-2A, SW-2B, SW-2C are non-relatively permanent waters that flows indirectly to a TNW. The Guidance states that the Corps should exert jurisdiction over non-navigable tributaries of traditional navigable waters that are non-relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally. The Corps determined that SW-2A, SW-2B, SW-2C satisfies the is standard, and is a jurisdictional RPW. First, the Corps confirmed via aerial imagery and NHD flow line data that the ditch (SW-2A, SW-2B, SW-2C) flows directly to Rye Branch that flows into the Manatee River.

### **B. Wetland 1: Wetlands adjacent to an RPW that flows directly or indirectly into a TNW**

According to the Guidance alone, the Corps should exert jurisdiction over wetlands adjacent wetlands that have a continuous surface connection to such tributaries. Wetland 1 is adjacent to ditch (SW-2A, SW-2B, SW-2C) that flows into Rye Branch. In addition, pursuant to specific requirements of case law which apply to the 11th Circuit Court of Appeals jurisdiction, the Corps determined that Wetland 1 would satisfy the significant nexus standard. Wetland 1 could transport nutrients, organic carbon to the downstream TNW via Rye Branch which exhibits consistent seasonal flow based on the observational data. Aquatic species could easily forage in both Wetland 1 and Rye Branch due to the similarly situated waters. Also, Wetland 1 could entrain pollutants that would otherwise flow directly to the TNW via Rye Branch. Thus, Wetland 1 has a biological, chemical, and physical effect on the TNW that is not speculative or insubstantial.

## **2. Non-Jurisdictional Waters and Wetlands**

The Corps determined that there are several waters and wetlands within the review area that are non-jurisdictional for the reasons discussed below.

### **A. Agricultural Ponds SW-1 and SW-3 and Ditch 4 and 5: non-jurisdictional water-filled depressions in dry land**

The review area contains 2 agricultural ponds excavated from uplands to obtain fill material for surrounding roads and development and provide water for livestock:

Agricultural Ponds	Acres
SW-1	0.8
SW-3	0.36

## Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

Total:	1.16
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Agricultural Ditches	Acres
SW-4	0.02
SW-5	0.06
Total:	0.08

Generally, the Corps does not consider water filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purposes of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States provided in 33 CFR 328.3(a). The excavation in these pits, ponds, or ditches has ceased. However, the Corps determined that the pits, ponds, or ditches within this particular review area do not meet the definition of waters of the United States for the reasons provided below.

The Corps examined a series of historic aerial photographs which revealed that these pits, ponds, or ditches were excavated from dry land.

## Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters



This aerial dated circa 1970-1975 reveals that none of the agricultural ponds and ditches are present in the review area. The photo further depicts an upland signature in the eventual location of agricultural ponds SW-1 and SW3 or ditches SW-4 and SW-5.

None of these agricultural ponds or ditches are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, and are not subject to the ebb and flow of the tide. These waters are surrounded entirely by private property from which the general public is excluded, and do not flow beyond the bounds of the property lines. Thus, there is no potential for these waters to transport or bear goods into the stream of interstate commerce, or to provide any opportunity for recreation to an interstate traveler. Therefore, none of these agricultural ponds or ditches satisfy the criteria provided in 33 CFR 328.3(a)(1).

The Corps determined that none of the waters are interstate waters or wetlands. None of these waters straddle an interstate boundary. Therefore, none of these agricultural ponds or ditches satisfy the criteria provided in 33 CFR 328.3(a)(2).

The waters in question are manmade features and would not be accurately described as natural ponds. These waters are located entirely within private property and could not be used by foreign or interstate travelers for recreational or other purposes, these waters do not support fisheries that could be taken and sold in interstate or foreign commerce, and there is no industrial use for these waters in interstate commerce. Thus, no use or degradation of these waters could directly affect interstate commerce. Therefore, none of these agricultural ponds or ditches satisfy the criteria provided in 33 CFR 328.3(a)(3).

## Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

The Corps determined that none of these waters are impoundments of waters otherwise defined as waters of the U.S. Therefore, none of these agricultural ponds or ditches satisfy the criteria provided in 33 CFR 328.3(a)(4).

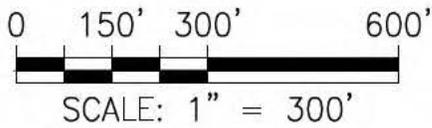
The Corps determined that none of the waters listed above are tributaries of waters defined in 33 CFR 328.3(a)(1-4). No of these waters convey water outside of the review area. Thus, none of the waters satisfy 33 CFR 328.3(a)(5).

The Corps determined that none of these inland waters are subject to the ebb and flow of the tide. Therefore, none of these waters could be defined as the territorial seas, and thus satisfy 33 CFR 328.3(a)6.

Manmade agricultural ponds SW-1 and SW3 do not meet the definition of wetlands provided in 33 CFR 328.3(b). These agricultural ponds or ditches do not support any vegetation typically adapted for life in saturated soil conditions, and the pits exhibit a depth which would not allow such vegetation to recruit in them. Thus, these agricultural ponds or ditches would not constitute wetlands adjacent to any waters identified in 33 CFR 328.3(a)1-6. Thus, none of these agricultural ponds would satisfy the criteria provided in 33 CFR 328.3(a)7.

The agricultural ponds or ditches listed above are intrastate waters for which the only potential basis for the exercise of Corps jurisdiction would be migratory bird use. Migratory bird use by itself is not a sufficient basis for the exercise of CWA regulatory jurisdiction (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)).

In light of these facts, the Corps determined that agricultural ponds SW-1 and SW3 and ditches SW-4 and SW-5 are water filled depressions in dry land that would not otherwise satisfy the definition of waters of the United States provided in 33 CFR 328.3(a).



EXISTING POND SW-3  
(0.36 AC)

EXISTING DITCH SW-5  
(0.06 AC)

**LEGEND**

-  USACE WATERS OF THE U.S.  
(0.90 AC TOTAL)
-  NON-USACE JURISDICTIONAL  
FEATURES  
(1.24 AC TOTAL)

EXISTING  
DITCH SW-2C  
(0.58 AC)

EXISTING W-1  
(0.21 AC)

EXISTING  
DITCH SW-4  
(0.02 AC)

EXISTING POND SW-1  
(0.80 AC)

EXISTING DITCH SW-2B  
(0.09 AC)

EXISTING DITCH SW-2A  
(0.02 AC)

NORTH RYE ROAD

ROSEDOWN  
GLEN

**AQUATIC RESOURCES MAP**

BGE, Inc.  
551 N. CATTLEMEN ROAD SUITE 104  
SARASOTA FL 34232  
TEL: 941-208-2008 www.bgeinc.com  
Certificate of Authorization #32116

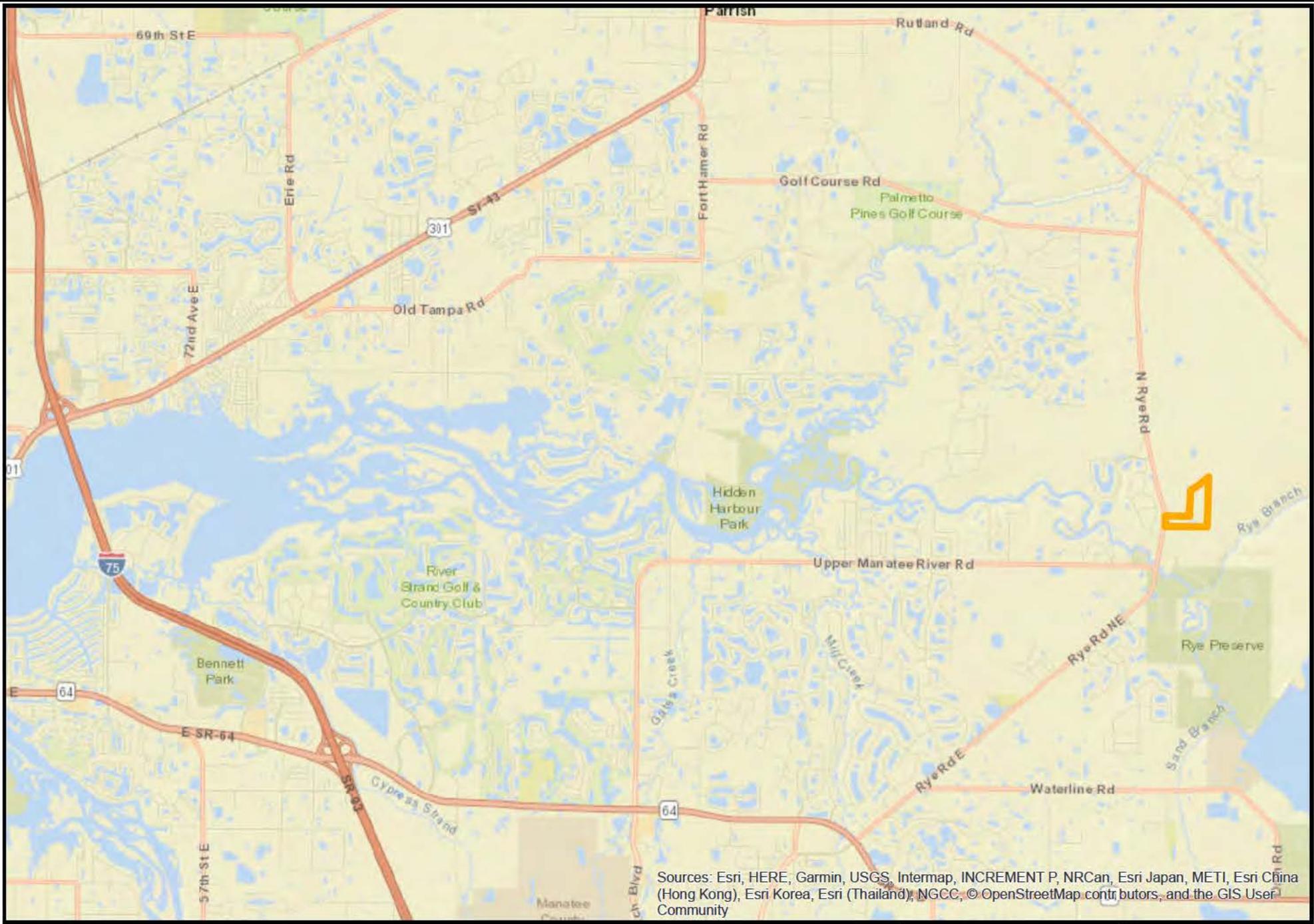


RYE CROSSING  
MANATEE COUNTY, FL

D.R. HORTON, INC.

SEC:	TWP:	RGE:	DATE:
13	34S	19E	03/25/2019

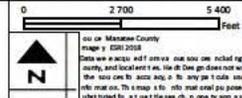
PROJECT NO:	SHEET NO:
6704-00	3 OF 7



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

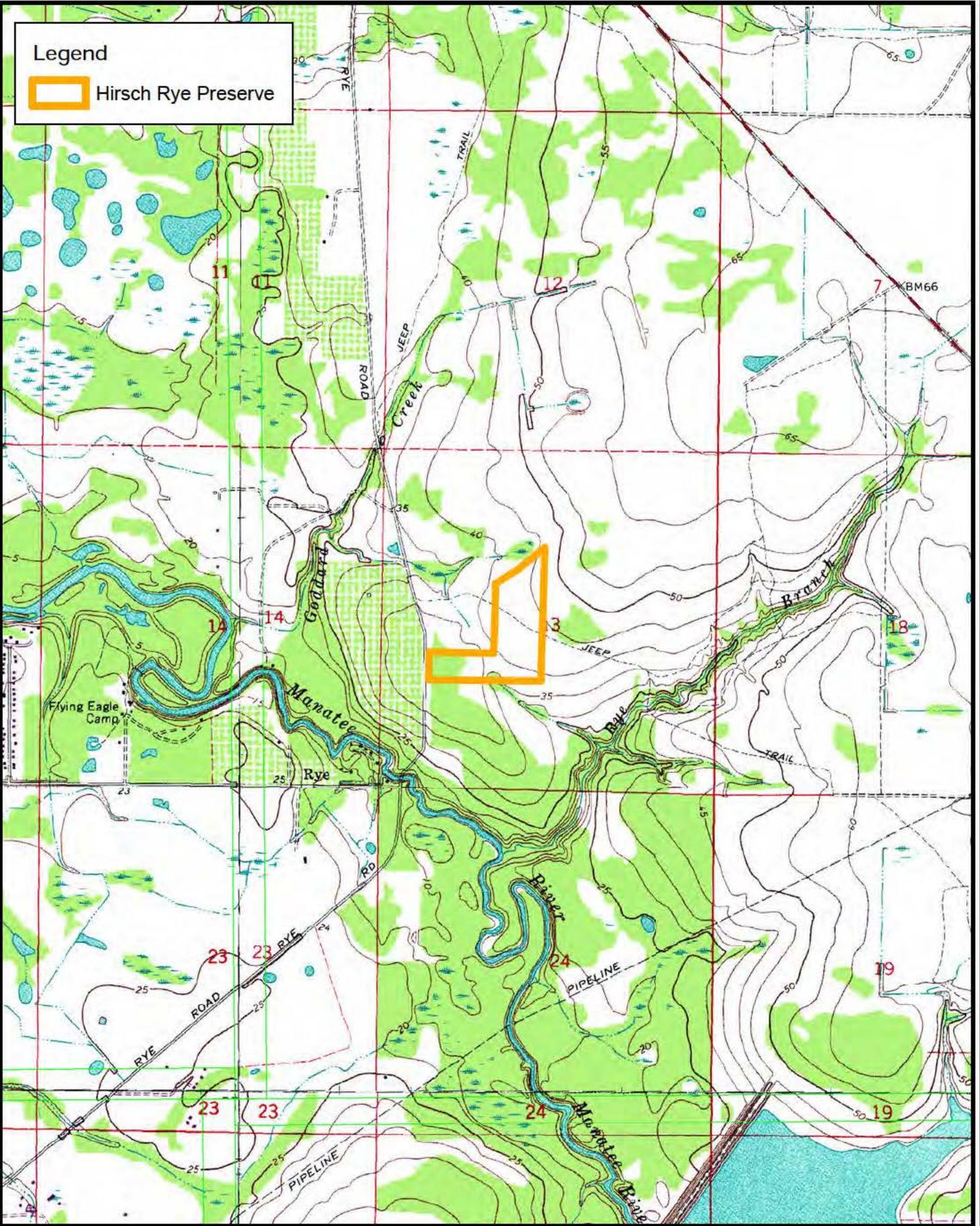
**Hirsch Rye Preserve**  
Location Map

Manatee County



**Legend**

 Hirsch Rye Preserve



# Hirsch Rye Preserve

USGS Quad Map

Manatee County

0 1000 2000  
Feet

 N

Data on file at Design, Manatee County, USGS  
Data was acquired from various sources and is not intended to be used for any purpose other than the original purpose only.  
This map is for informational purposes only and should not be used for any other purpose.  
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**HEIDT**  
DESIGN  
(813) 253-5311

FLUCCS CODE	DESCRIPTION	Acreage (+ acres)
2100	CROPLAND AND PASTURELAND	27.0
4130	SAND PINE	7.3
4340	UPLAND MIXED CONIFEROUS / HARDWOOD	3.7
6160	INLAND PONDS AND SLOUGHS	0.2
6530	INTERMITTENT PONDS	1.2
8140	ROADS AND HIGHWAYS	0.3
	<b>TOTAL PROJECT ACREAGE</b>	<b>39.6</b>
1290	MEDIUM DENSITY UNDER CONSTRUCTION	--
2100	CROPLAND AND PASTURELAND	--
2600	OTHER OPEN LANDS <RURAL>	--
3200	SHRUB AND BRUSHLAND	--
4130	SAND PINE	--
4340	UPLAND MIXED CONIFEROUS / HARDWOOD	--
6150	STREAM AND LAKE SWAMPS (BOTTOMLAND)	--
6160	INLAND PONDS AND SLOUGHS	--
8140	ROADS AND HIGHWAYS	--

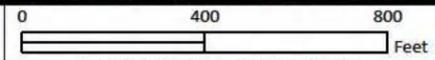


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES

# Rye Crossing

## Estimated FLUCCS

Manatee County



Source: Heidt Design, Manatee County, SWFWMD  
 Imagery: Google Earth 2018  
 Data was acquired from various sources including but not limited to state, county, and local governments. Heidt Design does not warrant data provided by other sources for accuracy, or for any particular use that may require accurate information. This map is for informational purposes only and should not be substituted for a true title search, property appraisal, or survey.



1941



1951



1957



1970

