



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): December 16, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SAJ-2014-02869-RGH (METRO DEV. GROUP / EPPERSON NORTH, LLC / EPPERSON RANCH NORTH / PASCO)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: FL County/parish/borough: Pasco City:
Center coordinates of site (lat/long in degree decimal format): Lat. 28.299710° N, Long. -82.282966° W.

Universal Transverse Mercator:
Name of nearest waterbody: King Lake and Cypress Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Hillsborough River

Name of watershed or Hydrologic Unit Code (HUC): 03100205 Hillsborough River

[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: December 16, 2019

[X] Field Determination. Date(s): May 2, 2019

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 and are not "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
[] Relatively permanent waters2 (RPWs) that flow directly or indirectly into TNWs
[X] Non-RPWs that flow directly or indirectly into TNWs
[X] 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 0.169 acres.
Wetlands: 164.53 acres.

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

Elevation of established OHWM (if known): 102.5 (King Lake).

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: Wetlands (1C, 8) were determined to be non-jurisdictional. Ditches (100, 101, and 102) were determined to be non-jurisdictional.

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 waterbody⁴ 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: 12.7 square miles

Drainage area: 1000 acres

Average annual rainfall: 55 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 10-15 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1-2 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: RPW is a series of wetlands, sloughs and agricultural ditches flowing to Cypress Creek, a tributary of the Hillsborough River.

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

⁵ 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.

Tributary stream order, if known:

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

Tributary is: Natural
 Artificial (man-made). Explain: Some parts of the RPW connected via ditches.
 Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: **4:1 (or greater)**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: herbaceous/100%
 Other. Explain:

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

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 0.5 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime:

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
 OHWM⁶ (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.⁷ 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: Water is generally clear and slightly tannic.

Identify specific pollutants, if known: Unknown.

⁶A 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.

⁷Ibid.

(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: Foraging habitat for Wood Storks.
 Fish/spawn areas. Explain findings: Foraging, cover, and spawning habitat for mosquitofish, brim, bass, and many others.
 Other environmentally-sensitive species. Explain findings:
 Aquatic/wildlife diversity. Explain findings: Foraging, cover, and spawning habitat for fish and wildlife.

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: 164.53 acres

Wetland type. Explain: Lakes, forested wetlands, and freshwater marsh.

Wetland quality. Explain: Fair, significant invasive species along edges of most wetlands, and all wetlands have been impacted via agricultural modification or processes.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Wetlands overflow due to rain events during rainy season.

Surface flow is: **Discrete and confined**

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: Wetlands 1, 1B, 1G, 30, Ditch 100, 101, 102, 103 all have surface or piped connection to King Lake that flows to RPW.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **50 - 100-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: Water is generally clear and slightly tanic.

Identify specific pollutants, if known: Unknown.

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: Forested wetland and marsh/ 100%.

Habitat for:

Federally Listed species. Explain findings: Wetlands provide potential foraging habitat for wood stork.

Fish/spawn areas. Explain findings: Foraging, cover, and spawning habitat for mosquitofish, brim, bass, and many others.

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Foraging, cover, and spawning habitat for fish and wildlife.

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

All wetland(s) being considered in the cumulative analysis: **30 (or more)**

Approximately (500) 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>
1 Y	163.25	1B Y	0.85
6 Y	0.13	Wetland 30	0.30
Downstream waters Y	335.47		

Summarize overall biological, chemical and physical functions being performed: Storage of flood waters; reduction of downstream peak discharges and volumes; recharge of aquifers; maintenance of seasonal/baseflows; maintenance of groundwater supplies; removal of sediments and nutrients; provision of breeding grounds and wildlife habitat (e.g. feeding/foraging, nesting, spawning, rearing of young); supports diverse community of benthic invertebrates, a major food source for vertebrates.

Physical: The wetlands perform important flow maintenance functions including storage of flood waters and a release of these waters into the tributary in a more even and consistent manner. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water. The wetlands reduce local flooding. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters.

Chemical: The wetlands improve water quality by removing sediment and nutrients that would otherwise reach downstream waters and have a negative effect on aquatic resources.

Biological: The wetlands are of utmost importance biologically since the majority of other non-wetland areas in the watershed have been altered for agriculture, residential, or other purposes. These wetlands have a high abundance and diversity of species due to their transitional location between terrestrial and aquatic systems. Productivity in downstream waters can depend on the exchange of nutrients within the floodplains. Watersheds dominated by riparian wetlands export a large amount of carbon that is essential to downstream ecosystems. Particulate carbon is important for shredders and filter-feeders while dissolved carbon is important for microorganisms within these systems..

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:

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 Attached Narrative.

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-RPWs⁸ 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: **0.169** acres.
Identify type(s) of waters: **Ditch.**

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: Wetland 1 and 1B overflow to the RPW during normal wet season via an outlet ditch that drains to the west. The outlet ditch from King Lake carries flows to the RPW via a culvert and overtops the road during wet season rainfall events.

Provide acreage estimates for jurisdictional wetlands in the review area: **163.25** 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: **Wetlands 6 and Wetland 30 - 0.43** 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.

⁸See Footnote # 3.

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

7. Impoundments of jurisdictional waters.⁹

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):¹⁰

- 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:

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): .

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: acres. List type of aquatic resource: .
- Wetlands: 1.33 acres.

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: Clearview Land Design.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.

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

¹⁰ 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.

- 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: 031002050401 - Bayou Branch.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:1:24,000; San Antonio, FL.
- USDA Natural Resources Conservation Service Soil Survey. Citation:Florida Soils Map digital data from the Natural Resources Conservation Service. Date (December 16, 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 (December 16, 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):1937-2019.
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: SAJ-2006-07911.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature:"Minimum and Guidance Levels for King Lake (East) in Pasco County, Florida", Southwest Florida Water Management District, March 19, 2008.
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: See Attached Narrative.

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.

1. Wetland 1 (King Lake), 1B, 6, 30: Wetlands either abutting or adjacent to an RPW

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 (King Lake), 1B, 6, 30 exhibits a continuous surface connection to downstream RPWs. 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 (King Lake), 1B, 6, 30 would satisfy the significant nexus standard. Wetland 1 (King Lake), 1B, 6, 30 and could transport nutrients, organic carbon to the downstream TNW via RPW which exhibits consistent seasonal flow based on the gauge data. Aquatic species could easily forage in both Wetland 1 (King Lake), 1B, 6, 30 and due to the direct surface connection between the two waters. Also, Wetland 1 (King Lake), 1B, 6, 30 and could entrain pollutants that would otherwise flow directly to the TNW via downstream RPWs. Thus, Wetland 1 (King Lake), 1B, 6, 30 and has a biological, chemical, and physical effect on the TNW that is not speculative or insubstantial.

B. Ditch 103: Non-RPW that flows indirectly to a TNW

The Corps determined that Ditch 103 is a non-relatively permanent water 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 not relatively permanent. The Corps is required to perform a significant nexus analysis to assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters. Florida is in the Eleventh Circuit and the Eleventh Circuit has concluded that the Kennedy standard is the sole method of determining CWA jurisdiction in that Circuit. Therefore, unless the aquatic resources are traditional navigable waters or wetlands adjacent to traditional navigable waters, the Corps needs to conduct a significant nexus determination on all other waters in order to determine jurisdiction under the CWA. *United States v. McWane, Inc., et al.*, 505 F.3d 1208 (11th Cir. 2007). The Corps has determined that for this review, Ditch 103 has more than an insubstantial or speculative effect on the physical, chemical, and biological integrity of the downstream TNWs, as described in Section III(C) of the Rapanos form. The Corps determined that Ditch 103 satisfy this standard, and are a jurisdictional Non-RPWs.

Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

First, the Corps confirmed via current and historical aerial imagery and by personal observation that Ditch 103 conveys water from Wetland 30 to Wetland 1G to Wetland 1 to the offsite drainage, which flows into RPW.

The Corps examined a series of historic aerial photographs with dates ranging from 1937 to 2019. Ditches were cut through the historical shallow wetland flow paths that connected wetlands and allow drainage to downstream floodways. This analysis revealed that Ditch 103 does exhibit seasonal flow.

Second, Ditch 103 conveys water, sediment, nutrients, pollutants, and carbon, providing a path for excess flood water from wetland systems to downstream RPWs and TNW. Thus, Ditch 103 has more than an insubstantial or speculative effect on the physical, chemical, and biological integrity of the downstream TNWs.

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. Wetlands 1C and 8: SWANCC

The review area contains 2 wetlands that the Corps determined are non-jurisdictional isolated wetlands. The wetlands listed below are non-navigable, 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)).

Wetland	Size (acres)
1C	0.91
8	0.42
Total:	1.33

The Corps determined that none of these waters are navigable-in-fact. Also, none of these waters 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 (33CFR328.3(a)(1)).

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

These wetlands are located entirely within private property and could not be used by foreign or interstate travelers for recreational or other purposes, these wetlands do not support fisheries that could be taken and sold in interstate or foreign commerce, and there is no industrial use for these wetlands in interstate commerce. Thus, no use or

Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

degradation of these waters could directly affect interstate commerce. Therefore, none of these wetlands satisfy the criteria provided in 33 CFR 328.3(a)(3).

The Corps determined that none of these wetlands are impoundments of waters otherwise defined as waters of the U.S. Therefore, none of these wetlands 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 these wetlands satisfy 33 CFR 328.3(a)(5).

The Corps determined that none of these inland wetlands 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.

The Corps determined that none of these wetlands are adjacent to any water of the United States as defined by 33 CFR 328.3(a) (1-6).

None of these wetlands could be categorized as adjacent to the nearest traditional navigable water. The nearest Hillsborough River. The review area is located 10 miles north of this TNW. These wetlands do not possess any of the three criteria provided in the current guidance. First, these wetlands do not possess an unbroken surface or subsurface connection to the TNW. Second, these wetlands are separated from the TNW primarily by uplands that have been subjected to multi-use agricultural development. Thus, the separation exceeds that of a manmade dike or barrier, a natural river berm, beach dune, or similar obstruction. Last, the aerial distance of these wetlands from the nearest TNW is not reasonably close.

The proximity of these wetlands to the nearest TNW would not allow the Corps to support a science-based inference that the wetlands have an ecological interconnection with the nearest TNW.

The wetlands listed above are non-navigable, 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)). Thus, the Corps determined that these wetlands are not waters of the United States, and are not jurisdictional.

B. Ditch 100, 101, and 102: Non-jurisdictional ditch draining uplands

The review area contains 1 non-jurisdictional ditch draining uplands, excavated from uplands.

Generally, the Corps does not consider ditches created in dry land, for agricultural activities draining upland to be jurisdictional.

Exhibit 1: Description of Jurisdictional and Non-Jurisdictional Waters

The Corps examined a series of historic aerial photographs which revealed that this agricultural ditch was excavated from dry land.

This agricultural ditch is not currently used, or was used in the past, or may be susceptible to use in interstate or foreign commerce, and is not subject to the ebb and flow of the tide. This water is surrounded entirely by private property from which the general public is excluded, and does not flow beyond the bounds of the property lines. Thus, there is no potential for this water 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 pits 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, this ditch does not 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 waterbodies. 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, this ditch does not satisfy the criteria provided in 33 CFR 328.3(a)(3).

The Corps determined that none of these waters are impoundments of waters otherwise defined as waters of the U.S. Therefore, this ditch does not 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). This ditch does not convey water outside of the review area. Thus, this ditch does not 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, this ditch does not could be defined as the territorial seas, and thus satisfy 33 CFR 328.3(a)6.

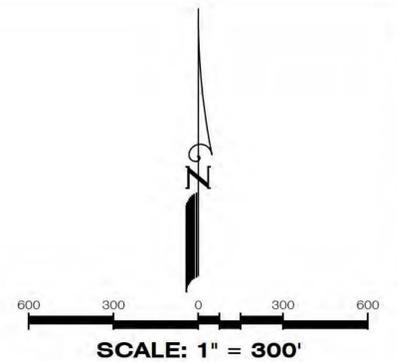
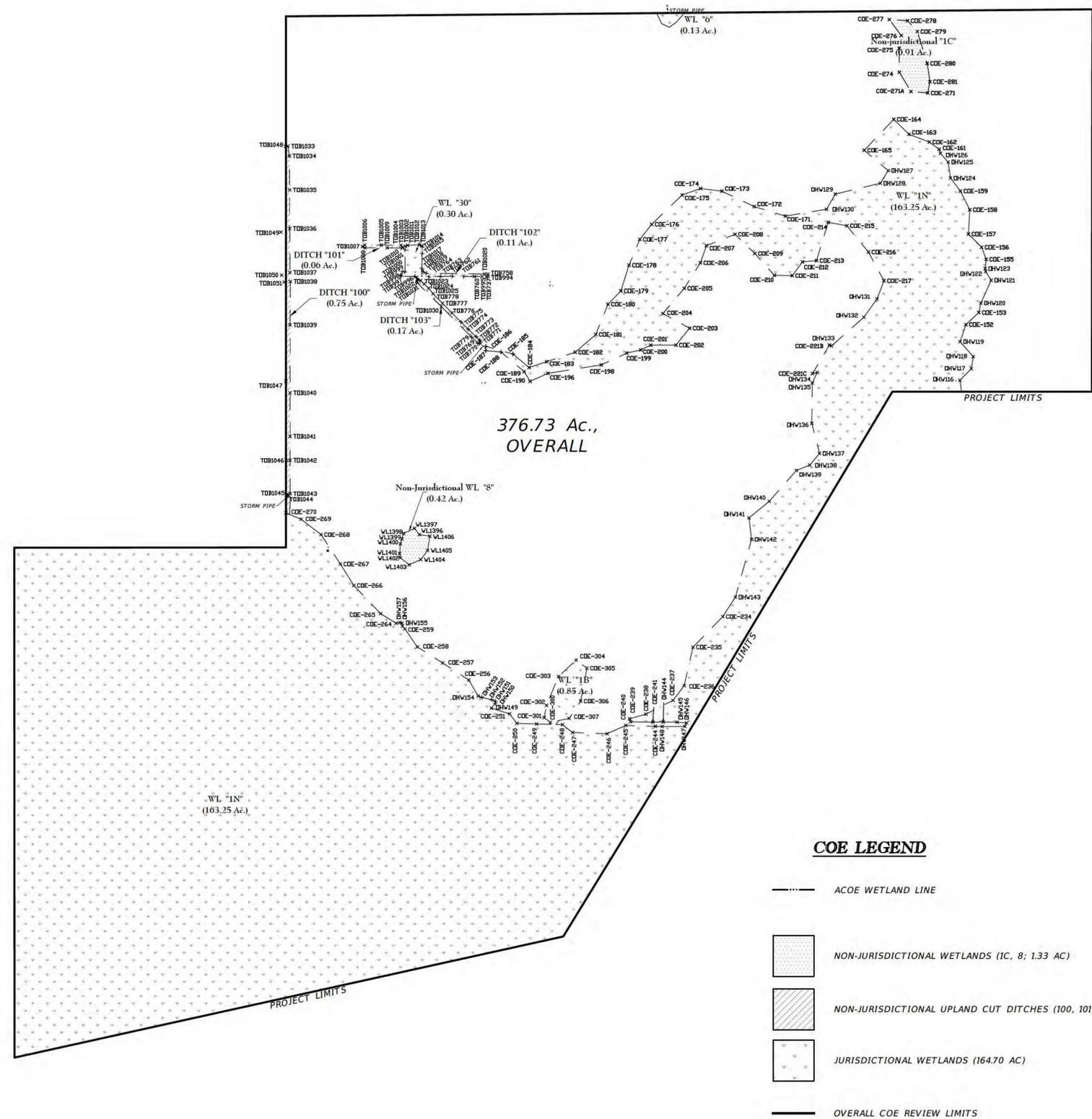
Project Name (SAJ-2014-02869)

WOUS OSW IMPACTS

Impact Activity Area (AA)	Wetland Acres (AC)	Impact Acres (AC)	Watershed
Ditch 100	0.748		03100205 - Hillsborough River
Ditch 101	0.058		03100205 - Hillsborough River
Ditch 102	0.111		03100205 - Hillsborough River
Ditch 103	0.169		03100205 - Hillsborough River
TOTAL		0	
WOTUS	0.169		
Non-WOTUS	0.917		

WOUS WETLAND IMPACTS

Impact Activity Area (AA) #	Wetland Acres (AC)	Impact Acres (AC)	Watershed
Wetland 1	163.25		03100205 - Hillsborough River
Wetland 1B	0.85		03100205 - Hillsborough River
Wetland 1C	0.91		03100205 - Hillsborough River
Wetland 6	0.13		03100205 - Hillsborough River
Wetland 8	0.42		03100205 - Hillsborough River
Wetland 30	0.3		03100205 - Hillsborough River
Total	165.86	0	
WOTUS	164.53		
Non-WOTUS	1.33		



NOTES:
Total Acres: 376.73 AC.

-This exhibit was prepared following an on site meeting with Ryan Hendren (COE, Tampa) on May 2, 2019 with John Goolsby of Clearview Land Design, P.L.

**ACOE WETLAND LINE EXHIBIT
FOR
EPPERSON NORTH
PARCEL A/B
PASCO COUNTY, FL**

PREPARED FOR:
EPPERSON NORTH, LLC

COE LEGEND

- ACOE WETLAND LINE
- NON-JURISDICTIONAL WETLANDS (IC, 8; 1.33 AC)
- NON-JURISDICTIONAL UPLAND CUT DITCHES (100, 101, 102; 0.92 AC)
- JURISDICTIONAL WETLANDS (164.70 AC)
- OVERALL COE REVIEW LIMITS

REVISIONS	
DESCRIPTION	DATE
CDD-EP 029	

**Clearview
LAND DESIGN, P.L.**

Engineering Business C.A. No.: 28858
3010 W Azeele St., Suite 150, Tampa, Florida 33609
Office: 813-223-3919 Fax: 813-223-3975

DRAWN: DROOR	CHECKED: GOOLSBY
JOB NO.: HBW-HD-004	DATE: 12-23-2019
FILE: ACOE.DWG	

SHEET 1 OF 1

P:\EPPERSON_BANCA\MASTER PLAN\ENVIRONMENTAL\NUMBER COE ITEMS\12-23-19 COE MARKUP EXH.DWG-EXI ARCH-D 2019/12/23 10:00 AM TIM WINTER

Legend

- Project Boundary
- Wetland Lines
- Pasco Parcel Boundaries

Vicinity Map



Sections: 22, 23, 26, 27, 28
Township: 25 S Range: 20 E

Notes:

Clearview Land Design, or Pasco County make no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness, or completeness of any of the geodata information provided herein. Aerial: SWFWMD, 2017

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



1 inch = 200 feet

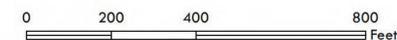


Figure: Wetlands

Project: Epco Ranch

Pasco County

Filename:
Epperson_Wetlands_20191223_24x36_wcs

Map Date:
12/23/2019

Map Prepared By:
Cory Swales



King Lake
WL '1N'
(163.25 Ac.)