



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/31/2020
 ORM Number: (SAJ-2020-02155-SJR)
 Associated JDs: N/A
 Review Area Location¹: State/Territory: FL City: Labelle County/Parish/Borough: Hendry County
 Center Coordinates of Review Area: Latitude 26.70384 Longitude -81.56189

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Agricultural Ditches	2.47 acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	<p>The Project's ditches are not (a)(1) waters, which are defined as, "territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide," for the following reasons:</p> <p>A. The ditches are not traditionally navigable waters, as they are narrow (i.e., 5 to 10 feet wide), only seasonally inundated, and dead-end on the subject property.</p> <p>B. The ditches are also not subject to the ebb and flow of the tide. The Project's ditches do discharge off-site into the Caloosahatchee River; however, the river is non-tidal at this point upstream from the Gulf of Mexico.</p> <p>The Project's ditches are not (a)(2) waters, which are defined as, "tributaries." Tributaries mean a river, stream, or similar naturally occurring surface water channel that contributes surface flow to water identified in paragraph (a)(1) of this section in a typical year either directly or through one or more waters identified in paragraph (a)(2), (3), or (4) of this section. A tributary must be perennial or intermittent in a typical year. The alteration or relation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions of this definition. A tributary does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature; through a subterranean rive; through a culvert, dam, tunnel, or similar artificial feature; or through a debris pile, boulder field, or similar natural feature. The term tributary includes a ditch that either relocates a tributary, or is constructed in an adjacent wetland as long as</p>

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>the ditch satisfies the flow conditions of this definition. The ditches are not tributaries for the following reasons:</p> <p>A. The on-site ditches are not naturally occurring.</p> <p>B. The on-site ditches did not alter or relocate a tributary, as the site is now surrounded by a cell tower and single-family residence to the northeast, Townsend Canal Road to the east, and the Carlos Flow way to the south and west.</p> <p>C. The on-site ditches originate on the subject property and do not direct surface flow from an upstream tributary to the downstream river.</p> <p>D. The on-site ditches were excavated from primarily uplands, and any potential wetlands that may have occurred on the northern portion of the property have been historically eliminated by agricultural activities and the creation of the Carlos Flow way to the west and south, and the Townsend Canal to the east. The Project's FLUCFCS map (Exhibit 2) reflects the site's current condition as all uplands, which was confirmed by COE staff on July 28, 2020, and eliminates the potential for adjacent wetlands on-site. The northern portion of the on-site ditch is not vegetated, as shown in the photographs taken on July 28, 2020 (Exhibit 3). This ditch contains open water with a sandy bottom. The flow in this ditch appears to be ephemeral in nature, resulting from periodic rain events or pumping from irrigation activities for the citrus farm. The Natural Resources Conservation Service (NRCS) soil survey map, provided as Exhibit 4, demonstrates all of the soils on-site are non-hydric, less a small area located along the southern boundary line. The soils map was acquired from the Florida Geographic Data Library website (https://www.fgdl.org/metadataexplorer/about.html), dated October 2007, and was created by the NRCS in 1990. Further, all of the property is designated as an "Area</p>



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>of Minimal Flood Hazard” (i.e., Zone X), so the ditches are not located within the river’s historic flood zone, according to the Federal Emergency Management Agency’s (FEMA) Flood Map Service Center website (https://msc.fema.gov/portal/search). The FEMA map (No. 12051CO160D) is dated July 6, 2015 and is enclosed as Exhibit 5.</p> <p>The Project’s ditches are not (a)(4) waters, which are lakes, ponds, and impoundments of jurisdictional waters. The term lakes and ponds, and impoundments of jurisdictional waters means standing bodies of open water that contribute surface water flow to a water identified in paragraph (a)(1) of this section in a typical year either directly or through one or more waters identified in paragraph (a)(2), (3), or (4) of this section. A lake, pond, or impoundment of a jurisdictional water does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature; through a culvert, dike, spillway, or similar artificial feature; or through a debris pile, boulder field, or similar natural feature. A lake or pond, or impoundment of a jurisdictional water is also jurisdictional if it is inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) of this section in a typical year.</p> <p>A. The subject property contains no lakes, ponds, or impoundments of jurisdictional waters.</p> <p>Pursuant to a site review conducted with COE staff on July 28, 2020, it was confirmed there are no wetlands on the property to be considered adjacent. Further, the main ditch that discharges off-site at the north end of the property appears to have only ephemeral flow and no hydrophytic vegetation growing in it (Exhibit 3), which suggests it is non-jurisdictional.</p>



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III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Data Sheets 29 May 2020](#)
This information **is** sufficient for purposes of this AJD.
Rationale: [N/A](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial: Aerial FLUCFCS Map \(Hendry County Property Appraiser, Jan-Mar 2017](#)
[Additional on-site photo of agricultural ditch taken 28 July 2020](#)
- Corps site visit(s) conducted on: [28 July 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Florida Geographic Data Library website](#)
 [\(https://www.fgdl.org/metadataexplorer/about.html\)](https://www.fgdl.org/metadataexplorer/about.html), dated October 2007.
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [USGS Topographic Map was received on 2 June 2020](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	FEMA Flood Maps Service Center website (https://msc.fema.gov/portal/search) . The FEMA map (No. 12051CO160D) is dated July 6, 2015 .

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [N/A](#)