APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

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): 15 July 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Panama City Permits Section, SAJ-2013-03202, FDOT District 1, FPID 420633-3-52-01, SR 35 from W 9th Street to West 3rd Street

C. PROJECT LOCATION AND BACKGROUND INFORMATION: There are four linear ditch features located within the Area of Review, identified as SW-18, SW-20, SW-21 and SW-22. These features are located adjacent to the railroad bed and roadways. These features were identified as being excavated in uplands for the construction of the railroad track. The features are classified as consisting of ephemeral flow. Therefore, these features meet the definition of preamble waters, and are excluded from the definition of "waters of the United States". The preamble states that the agencies will generally not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only uplands and do not carry a relatively permanent flow. Additionally, there is one wetland feature, identified as Wetland 1, within the Area of Review, and extends beyond the area of Review, which abuts an existing canal feature with relatively permanent flow.

State: Florida County/parish/borough: Hardee City: Zolfo Springs
Center coordinates of site (lat/long in degree decimal format): Lat. 27.485739° **N**, Long. -81.795847° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Alligator Branch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Gasparilla Sound – Charlotte Harbor
Name of watershed or Hydrologic Unit Code (HUC): Troublesome Creek-Peace River (0310010107)
☒ 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):
☒ Office (Desk) Determination. Date: 12 April 2016
☒ Field Determination. Date(s): 18 April 2016

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
      ☐ Relatively permanent waters[2] (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
      ☐ 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 acres.
      Wetlands: 0.03 acre.

[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).

c. **Limits (boundaries) of jurisdiction** based on: The Corps of Engineers 1987 Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers 1987 Wetlands Delineation Manual: Atlantic and Gulf Coastal Plain Region.
Elevation of established OHWM (if known): .

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

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: There are four linear features, identified as SW-18, SW-20, SW-21 and SW-22, located within the Area of Review which are not considered to be jurisdictional waters of the United States. These linear features are located adjacent to an existing railroad bed and roadways and serve the purpose of drainage ditches which carry ephemeral flow. A site visit was performed on 18 April 2016. The site visit resulted in the findings of minimal and sporadic evidence of an existing ordinary high water mark throughout the length of the ditches, and no water was present within these features. Portions of the ditches are maintained by apparent mowing activities. These linear ditches are identified as having been excavated in uplands for the construction of the railroad track. Based on review of USGS maps, NWI maps, FLUCFCS maps, NRCS soil surveys, and historic and current Google Earth Pro aerial photography, it has been determined that these linear ditch features were constructed in uplands to drain uplands when the railroad track was constructed/installed, as these features are located directly adjacent to the railroad bed. These features meet the definition of preamble waters, and are excluded from the definition of "waters of the United States". The preamble includes that the agencies will generally not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only uplands and do not carry a relatively permanent flow.

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[4] 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.

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[3] Supporting documentation is presented in Section III.F.
[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

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

(i) General Area Conditions:
Watershed size: 2,350 square miles (Peace River Watershed)
Drainage area: 128,186 acres (Peace River at Arcadia Basin)
Average annual rainfall: 52 inches (Peace River Watershed)
Average annual snowfall: 0 inches (Peace River Watershed)

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.
Project waters are 1-2 river miles from RPW.
Project waters are 30 (or more) 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: N/A.

Identify flow route to TNW[5]: Unnamed tributary to freshwater marsh to Alligator Branch to Peace River to Gasparilla Sound – Charlotte Harbor.
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☒ Artificial (man-made). Explain: The tributary is a man-made canal/ditch.
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 5-6 feet
Average depth: 5-6 feet
Average side slopes: 2:1.

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: Fairly stable.
Presence of run/riffle/pool complexes. Explain: N/A.
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): 0-1 %

(c) Flow:
Tributary provides for: Seasonal flow
Estimate average number of flow events in review area/year: 20 or greater.
Describe flow regime: Flows during wet season and high rainfall events.
Other information on duration and volume: .

Surface flow is: Discrete and confined**.** Characteristics: Flow is within a man-made canal/ditch and within a culvert pipe beneath the roadway.

Subsurface flow: Unknown. Explain findings: N/A.
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (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

[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.
[6] 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.

☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community

☐ 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:
☐ oil or scum line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):

☒ Mean High Water Mark indicated by:
☐ survey to available datum;
☐ physical markings;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain: Water color was clear. May receive runoff from agricultural field during heavy rain events.

Identify specific pollutants, if known: N/A.

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

☒ Riparian corridor. Characteristics (type, average width): Narrow forested wetland (Wetland 1) within Area of Review, approximately 50 feet wide.

☒ Wetland fringe. Characteristics: Forested strip abutting canal/ditch.

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

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: 0.03 acres within the Area of Review (wetland extends outside of the Area of review)

Wetland type. Explain: Palustrine Forested.

Wetland quality. Explain: The wetland is located near US 17 to the west, a freshwater marsh area is farther to the east, and pasture is to the north and south. Given the surrounding land features, the wetland is subjected to runoff which may contain some pollutants. Vegetation consists of approximately 60% exotic species. The wetland supports minimal to moderate functions and services and is, therefore, considered to be of a low to moderate quality wetland.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: The surface water to which Wetland 1 abuts flows during the wet season and high rainfall events (seasonal flow at least 3 months of the year). The surface water to which the Wetland 1 abuts is within a culvert pipe beneath the existing roadway and extends to outside of the Area of Review.

Surface flow is: Discrete and confined.

Characteristics: Wetland 1 is within and along a defined canal/ditch.

Subsurface flow: Unknown. Explain findings: N/A.

☐ 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: .

(d) Proximity (Relationship) to TNW

Project wetlands are 30 (or more) river miles from TNW.

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

[7] Ibid.

Flow is from: Wetland to navigable waters**.**
Estimate approximate location of wetland as within the 50 to 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: The water color is clear. The wetlands are classified as low to moderate quality.
Identify specific pollutants, if known: No known pollutants. Agricultural runoff may flow into Wetland 1 after heavy rain events.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☒ Riparian buffer. Characteristics (type, average width): Narrow forested wetland strip, approximately 50 feet wide.
☒ Vegetation type/percent cover. Explain: Approximately 60% of vegetative species are comprised of exotics. Species include Sabal palmetto, Quercus laurifolia, Schinus terebinthifolius, Blechnum serrulatum and Panicum repens.
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings.
☐ Aquatic/wildlife diversity. Explain findings:.

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: 1 wetland (Wetland 1)
Approximately 0.03 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Wetland 1	Y	0.03 acre (wetland extends outside the Area of Review—only 0.03 acre of the wetland within Area of Review)		

Summarize overall biological, chemical and physical functions being performed: Wetland 1 may filter pollutants from surrounding development, agricultural field and roadway. The wetland may provide habitat for aquatic species and/or wildlife. Although, species were not identified within the feature. Additionally, due to the size of the wetland, and the surrounding land uses, functions and services of the wetland as suitable habitat would be minimal.

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: The unnamed surface water drainage feature flows to Alligator Branch, to Peace River, and ultimately to Gasparilla Sound – Charlotte Harbor. This feature is identified on USGS and Google Earth Pro maps as a blue-line feature. The feature flows through a culvert pipe within the project limits and flows to a marsh to the east, outside of the Area of Review. The drainage feature is approximately 30 or more river miles from its location where Wetland 1 abuts it to the TNW. During the field surveys performed by the applicant, it was identified that there was greater than six inches of standing water present within the canal/ditch feature, and with some areas within the feature consisting of water depths of greater than one foot. Review of multiple aerial photographs of varied years and times of year identified water within the surface water feature. Given this information, it is determined that the flow within the canal/ditch contains flow typically three months or more per year.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **125** linear feet **5-6 foot** width . **(NOTE: The feature is within a culvert pipe in the project limits and extends outside of the Area of Review. Information is included to identify the connection of Wetland 1 to this RPW and ultimately to a TNW. Wetland 1 is at the base of the culvert opening and is part of the surface water which continues outside of the Area of Review).**
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] 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: Wetland 1 is located at the southern end of the area of review limits on the east side of US 17 and south of 9th Street. This wetland continues beyond the project limits to the east. Wetland data sheets prepared by the applicant include findings of surface water, a water table and saturation being present; the hydric soil indicator of a dark surface; and greater than 50% hydrophytic vegetation, thus meeting the three required parameters of a positive wetland determination. Wetland 1 abuts a canal/ditch feature, which is an unnamed drainage feature which flows to Alligator Branch, to Peace River, and ultimately to Gasparilla Sound – Charlotte Harbor. This feature is identified on USGS and Google Earth Pro maps as a blue-line feature. The feature flows through a culvert pipe beneath the roadway within the

[8]See Footnote # 3.

project limits. The wetland is located at the base of the culvert opening and along the drainage feature bank and continues further east of the culvert pipe along the canal/ditch feature and outside of the Area of Review.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.03** 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 jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: 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.**[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): There are four linear ditch features, identified as SW-18, SW-20, SW-21 and SW-22, located within the Area of Review. These ditch features are located adjacent to an existing railroad bed and roadways. A site visit was performed on 18 April 2016. The site visit resulted in the findings of minimal and sporadic identifying markings of an existing ordinary high water mark along the banks of the ditches, and no water was present. The ditches are classified as drainage features which carry ephemeral flow. Portions of the ditches are maintained by apparent mowing activities. These features are identified as having been excavated in uplands, to drain only uplands, when the railroad track was constructed. These features meet the definition of preamble waters, and are excluded from the definition of "waters of the United States". The preamble includes that the agencies will generally not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only uplands and do not carry a relatively permanent flow. Therefore, SW-18-SW-20, SW-21 and SW-22 are not regulated (0.51 acre).

[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.*

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: 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: Florida Department of Transportation – District 1.
☒ 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: .
  ☐ USGS NHD data.
  ☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Scale. Zolpho Springs Quadrangles, Florida-Hardee County, 1956 and 2015.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey.
☒ National wetlands inventory map(s). Cite name: USFWS NWI map.
☒ State/Local wetland inventory map(s): FLUCFCS Map.
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro.
  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: There are four linear ditches, identified as SW-18, SW-20, SW-21 and SW-22, located within the Area of Review which are not considered to be jurisdictional waters of the United States. These linear ditch features are located adjacent to an existing railroad bed and roadways. The flow within the ditch features is classified as ephemeral. There are minimal identifying markings of an ordinary high water mark along the banks. There are no recognizable hydrologic systems located within the footprints of these linear ditch features according to the USGS maps. Additionally, there are no wetlands identified within these ditch features according to the NWI maps. Given these findings, these features do not drain wetlands, they exhibit ephemeral flow, and have been determined to be constructed in uplands to drain uplands when the railroad track was constructed. Based on the above information, these features meet the definition of preamble waters, and are excluded from the definition of "waters of the United States". The preamble includes that the agencies will generally not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only uplands and do not carry a relatively permanent flow. Therefore, SW-18, SW-20, SW-21 and SW-22 are not jurisdictional. Additionally, Wetland 1 abuts a drainage feature which is considered to contain a relatively permanent flow. Therefore, Wetland 1 is a jurisdictional feature.