



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
ADDRESS
CITY, FLORIDA zipcode

REPLY TO
ATTENTION OF

April 13, 2009

Panama City Permit Section
SAJ-2008-00490 (JD-GAH)
JURISDICTIONAL VERIFICATION
("Triangle Parcel")

Mr. Frank E. Matthews
Hopping Green & Sams
Post Office Box 6526
Tallahassee, Florida 32314

Dear Mr. Matthews:

Reference is made to information submitted to the U.S. Army Corps of Engineers (Corps) regarding the potential extent of Federal jurisdiction on a parcel located at the site of the proposed Levy Nuclear Plant in Section 13, Township 16 South, Range 16 East, Inglis, Levy County, Florida. The parcel is known as the "Triangle Parcel", as shown on the attached aerial photograph. The evaluation of this jurisdictional determination involved many factors and may have included a field visit, review of aerial photographs, geological quad sheets, county soils maps, and site specific information provided by you. A copy of the approved jurisdictional determination form and any information used by our office to support our decision is enclosed. A Department of the Army permit will be required for any areas identified within that information as waters of the United States.

Instructions for Objecting to an Approved Jurisdictional Determination: Enclosed you will find a Notification of Appeal Process fact sheet and Request for Appeal (RFA) form. If you object to this determination, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. If you request to appeal this determination, you must submit a completed RFA form to the South Atlantic Division Office at the following address:

Mr. Michael F. Bell
South Atlantic Division
U.S. Army Corps of Engineers
CESAD-CM-CO-R, Room 9M15
60 Forsyth St., SW.

Atlanta, Georgia 30303-8801.

Mr. Bell can be reached by telephone number at 404-562-5137, or by facsimile at 404-562-5138.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the above address by June 12, 2009.

The determination shown on the enclosed information represents the upland/wetland boundary for purposes of determining the Corps jurisdictional line. As depicted on the enclosed drawing, it has been determined you have waters of the United States onsite (Wetlands LNP 019, LNP 045, and LNP 070), which are subject to regulation by the Corps, and you have wetlands onsite which are considered to be isolated (Wetlands LNP 022, LNP 023, and LNP 062), and thus not subjected to regulation by the Corps. Please be advised that the jurisdictional determination shown is based on the Corps of Engineers Wetlands Delineation Manual (1987) or current regional supplement, and is valid for a period no longer than 5 years from the date of this letter unless new information warrants a revision of the determination before the expiration date. If, after the 5-year period, the Corps has not specifically revalidated this jurisdictional determination, it shall automatically expire. Any reliance upon this jurisdictional determination beyond the expiration date may lead to possible violation of current Federal laws and/or regulations. You may request revalidation of the jurisdictional determination prior to the expiration date. Any revalidation or updating will be considered under the method of jurisdictional determination and other applicable regulations in use at the time of the request. Additionally, this determination has been based on information provided by you or your agent; should we determine that the information was incomplete or erroneous this delineation would be invalid.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate

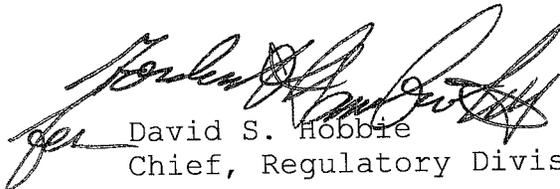
participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

You are cautioned that work performed below the mean high water line or ordinary high water line in waters of the United States, or the discharge of dredged or fill material into adjacent wetlands, without a Department of the Army permit could subject you to enforcement action. Receipt of a permit from the Department of Environmental Protection or the Water Management District does not obviate the requirement for obtaining a Department of the Army permit for the work described above prior to commencing work.

The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey: <http://regulatory.usacesurvey.com/>. Your input is appreciated - favorable or otherwise.

Thank you for your cooperation with our permit program. If you have any questions concerning this matter please contact Mr. Don Hambrick by mail at the letterhead address, by electronic mail at gordon.a.hambrick@usace.army.mil, or by telephone at 850-763-0717 ext. 25.

Sincerely,


David S. Hobbie
Chief, Regulatory Division

Enclosures

Copy Furnished: (w/ encls)
NRC, Doug Bruner (via electronic mail)
Martha Klein, CH2M Hill (via electronic mail)

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Progress Energy Florida		File Number: SAJ-2008-00490 "Triangle Parcel"	Date: April 13, 2009
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/met/functions/cw/ceewo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Project Manager as noted in letter

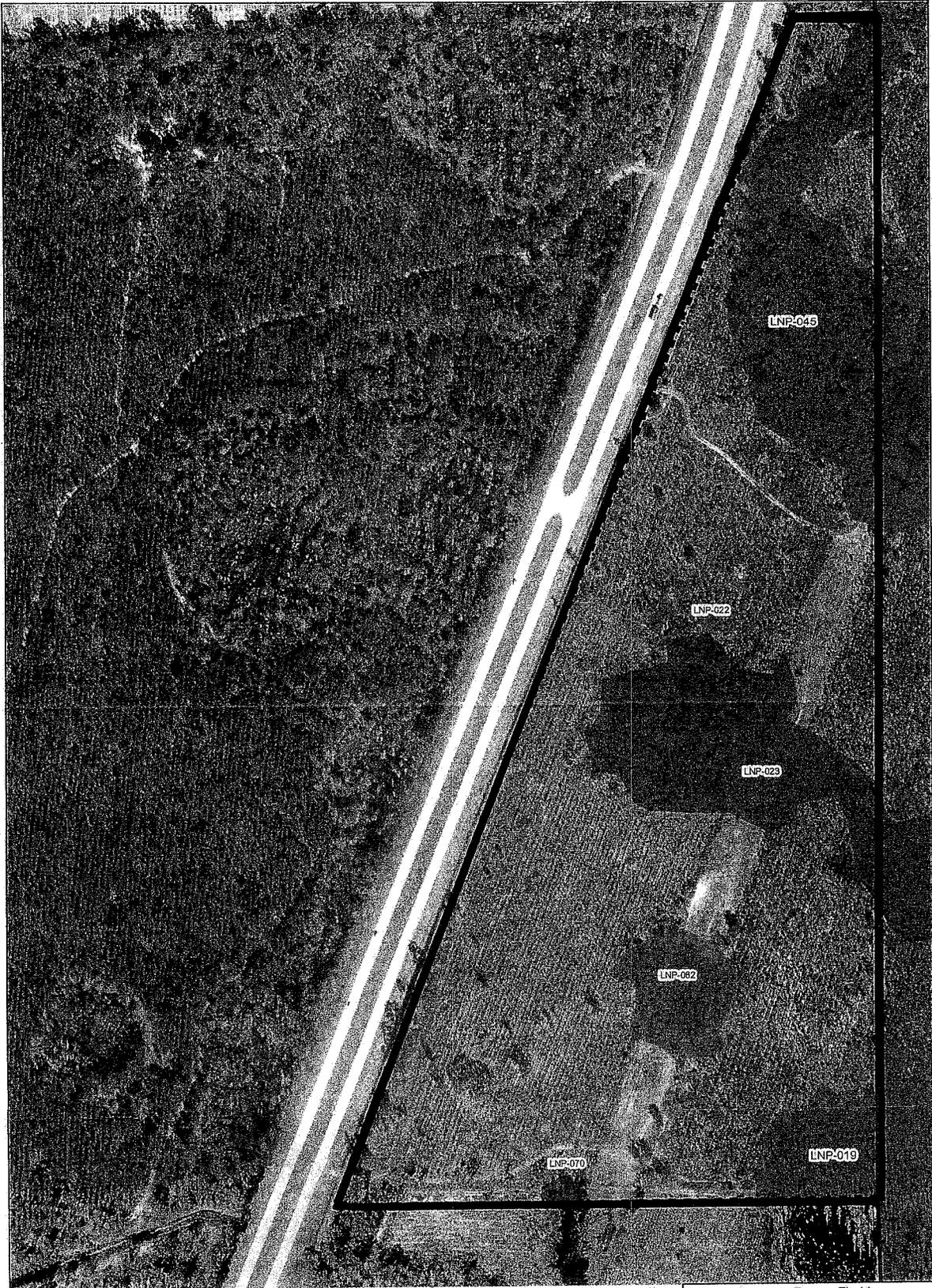
If you only have questions regarding the appeal process you may also contact:
Michael F. Bell
404-562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

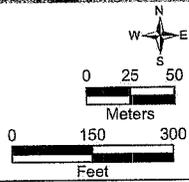
Date:

Telephone number:



"Triangle Parcel"

Note:
For Informational Purposes Only.



Progress Energy Florida
Levy Nuclear Power Plant
Units 1 and 2

Wetlands in Vicinity of Proposed
Training Center Site

FIGURE 1

Rev 0

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): March 12, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SAJ-RD-NP/Panama City Section, Progress Energy Levy Nuclear Plant, SAJ-2008-0490 (JD1-GAH) - Isolated Wetlands LNP 022, 023 & 062 and Sig Nex Wetlands LNP 019, 045 & 062 on "Triangle Parcel".

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Florida County/parish/borough: Levy County City: Inglis - approximately 4 miles to south of site
Center coordinates of site (lat/long in degree decimal format): Lat. 29.085° N, Long. 82.637° W
Universal Transverse Mercator:

Name of nearest waterbody: Withlatchoochee River & Gulf of Mexico

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC):

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: March 12, 2009

Field Determination. Date(s): September 11, 2008 & January 22, 2009

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There ~~Pick List~~ "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 ~~Pick List~~ "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
- 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: 6.80 (LNP-019, 045 & 070) acres.

c. Limits (boundaries) of jurisdiction based on: ~~Pick List~~

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: See Section III F. below and attached MFR. 6.05 acres of isolated wetlands on the project site (LNP 022, 023 & 062).

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: for Withlacoochee River - 2100 ~~square miles~~

Drainage area: 12 ~~square miles~~

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through ~~10 (or more)~~ tributaries before entering TNW.

Project waters are ~~1-2~~ river miles from TNW.

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

Project waters are ~~1-2~~ 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 TNW⁵:

Tributary stream order, if known:

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.

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

Tributary is: Natural
 Artificial (man-made). Explain: ditches and natural tributaries.
 Manipulated (man-altered). Explain:

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

Average width: feet
Average depth: feet
Average side slopes: Pick List

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:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. 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:

Identify specific pollutants, if known:

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:
 - 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: 6.80 (LNP 019, 045 & 070) acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: ~~Pick List~~. Explain:

Surface flow is: ~~Pick List~~

Characteristics:

Subsurface flow: ~~Pick List~~. 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:

(d) Proximity (Relationship) to TNW

Project wetlands are ~~1-2~~ river miles from TNW.

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

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

Estimate approximate location of wetland as within the ~~Pick List~~ 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:

Identify specific pollutants, if known:

(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:

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

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

Approximately (3000) 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>
All wetlands abutt non-RPWs	3000+		

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: The review area encompasses the related LNP site, which is approximately 5000 acres in size, plus some adjacent areas, which are comprised of a complex landscape of uplands and very large areas of interconnected wetlands, totaling more than 3000 acres of wetlands. The landscape is very flat with a gentle tilt to the west and south. Though drainage maps show that there are two main watersheds that meet on the site (Gulf of Mexico and Withlacoochee River), the wetlands are interconnected and contiguous throughout the review area with no breaks in the wetlands. The subject wetlands drain through a multitude of unnamed non-RPW natural tributaries and ditches to offsite non-RPWs and RPWs, which flow either to the Gulf of Mexico to the west or the Withlacoochee River to the south. This huge complex of non-RPW tributaries and their adjacent wetlands directly contribute to the physical, biological, and chemical properties of the TNWs. Almost of the wetlands within the review area are comprised of forested wetlands, which along with the many tributaries, provide functions that benefit the downstream TNWs. These functions include, but are not limited to, carbon cycling, food web support, wildlife habitat, detention and attenuation of stormwater, nutrient cycling, filtration of pollutants, and sediment trapping. Wetlands considered in this review provide for the production (i.e., primary production of plant material), decomposition, storage, and transport of carbon, both through surface flow into the tributaries, which supports the food web of the downstream TNWs. Observation of tannin-stained, non-turbid, waters within portions of the wetlands and tributaries as well as water stains on trees within the wetlands, serve as physical indicators that decomposed organic matter is present within the wetlands. Likewise, the wetlands provide water, nutrients (e.g., nitrogen and phosphorus), and food (e.g., organic matter, microorganisms, and invertebrate prey) which support aquatic life in the downstream TNWs. It is expected that the tributaries and their adjacent wetlands provide habitat for prey items including minnows, frogs, invertebrates, and small reptiles, that are consumed by species, including blue heron and other avian species, that also depend on the downstream TNWs during part of their lifecycle. Additionally, the forested wetlands within this review are expected to provide nesting, resting, and foraging habitat for several species that also utilize the downstream TNWs during part of their lifecycles, such as the Great blue heron, Little blue heron, Tricolored heron, Snowy egret, and Southeastern kestrel. Wetlands within the review will hold water for extended periods. As such, the wetlands provide detention and attenuation of rainfall, as

well as sediment trapping functions, that benefit the downstream TNWs by reducing flash flows within the tributaries and sediment transport associated with such flows.

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:

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-RPW⁸ 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: 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: 6.80 (LNP-019, 045 & 070) 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: 6.05 (LNP 022, 023 & 062) 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:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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 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: Yankeetown and Yankeetown SE, Quad Sheet blowups.
 USDA Natural Resources Conservation Service Soil Survey. Citation: Levy County Soils Survey.
 National wetlands inventory map(s). Cite name: Yankeetown and Yankeetown SE, Quad Sheet blowups.
 State/Local wetland inventory map(s):
 FEMA/FIRM maps:
100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 Photographs: Aerial (Name & Date):
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): See attached MFR.

B. ADDITIONAL COMMENTS TO SUPPORT JD: See attached MFR.

MEMORANDUM FOR RECORD

SUBJECT: Progress Energy Florida (PRF)/Levy Nuclear Plant (LNP)
Jurisdictional Determination Request for "Triangle Parcel" with Isolated
Wetlands # LNP-022, LNP-023 & LNP 062
File # SAJ-2008-490 (JD1-GAH)

1. This MFR serves as background and additional information for the request by PEF for a stand alone jurisdictional determination (JD) on one of the parcels located adjacent to the site of the proposed LNP site in Levy County, Florida (see Enclosures 1 and 2, site location; and Enclosure 3, which is an aerial photograph of the subject parcel).

2. Background information for this request:

a. PEF has submitted a Department of the Army application for the construction of the LNP electrical generation facility, and various associated, integral project components, including electrical transmission lines and substations, access roads, a barge slip at the Cross Florida Barge Canal (CFBC), cooling make-up water pipeline with an intake structure at the CFBC, and water (blowdown) pipelines (approximately 13 miles in length) with discharge at the discharge canal located within the Crystal River Energy Complex. This project is currently going under review through the development of an EIS with the U.S. Nuclear Regulatory Commission acting as the lead agency under NEPA, and the Corps, acting as a cooperating agency. The JD for this project is ongoing.

b. PEF has requested that the Corps make a separate JD on the subject parcel. PEF has stated that the site would be used to construct a training facility.

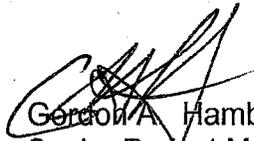
3. There are six (6) wetlands located within the site, identified as wetlands LNP-019 (1.39 acres on the parcel), LNP-022 (0.07 acres), LNP-023 (4.59 acres on the parcel), LNP-045 (5.29 acres on the parcel), LNP-062 (1.39 acres), and LNP-070 (0.12 acres on the parcel), as shown on Enclosure 3.

4. Wetlands LNP-019, NP-045 and LNP-070 extend offsite and are contiguous with other wetlands undergoing separate, ongoing delineation review associated with the overall LNP project, as described in paragraph 2.a. above. These wetlands have a significant nexus to TNWs (Gulf of Mexico and Withlacoochee River).

5. Wetlands LNP-022, LNP-023 and LNP-062 are isolated wetlands surrounded by uplands. They vary in distance of approximately through uplands from 150' to 420' from the nearest conveyance, which is a non-jurisdictional, upland roadside swale at U.S. Highway 19 (US19) (Enclosure 4, photographs). US 19 and its associated swale are

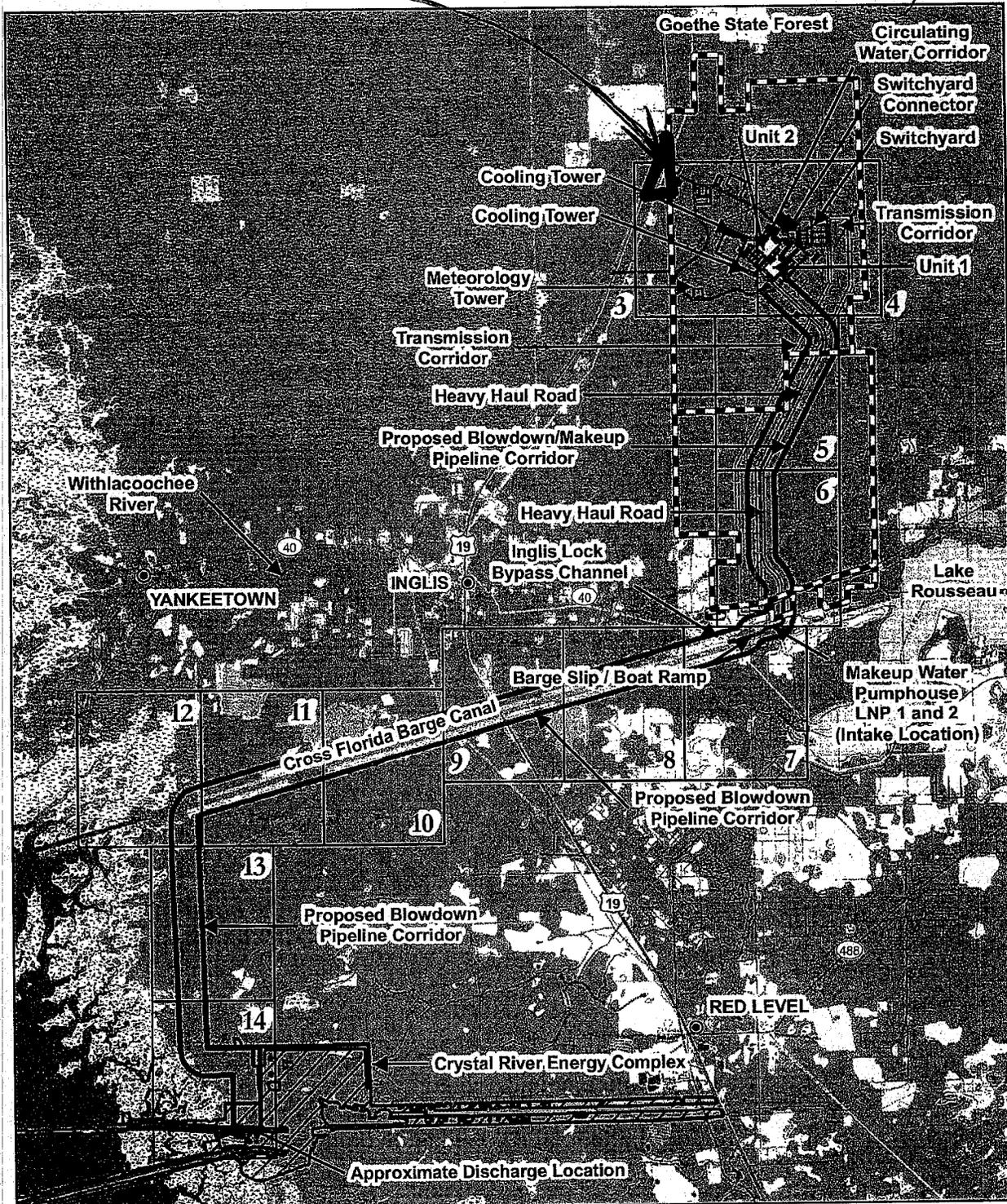
located along the west boundary of the subject parcel. The nearest waterway/tributary is a non-RPW ditch located approximately 1000' to the south of the nearest of the three isolated wetlands (see Enclosure 3). It commences at US 19 and flows to the southwest away from the subject parcel. Wetlands LNP-022 and LNP-062 are located entirely within the subject parcel. Wetland LNP-023 extends eastward off of the subject parcel about 300' with 1.39 acres on the adjacent parcel.

6. The point of contact for the above is the undersigned (tel.# (850) 763-0717 ext. 25).

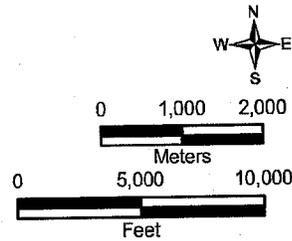


Gordon A. Hambrick, III
Senior Project Manager
Panama City Section

Parcel Subject of this UD Request
 SAJ-2008-490 (JD15AH)



- LEGEND**
- Municipality
 - Site Plan Sheet
 - ▭ Transmission Corridor
 - ▭ Blowdown Pipeline Corridor
 - ▭ Property Boundary
 - ▨ Crystal River Energy Complex



Progress Energy Florida
 Levy Nuclear Plant
 Units 1 and 2

Site Plan Index
 FIGURE 2

Enclosure 1

Parcel Subject of this JD Request
 SAJ-2008-490 (JD I-GAH)



NOTE:
 Jurisdictional Determination only performed within the bounds of current field delineation. Aerial Delineated wetlands subject to change.

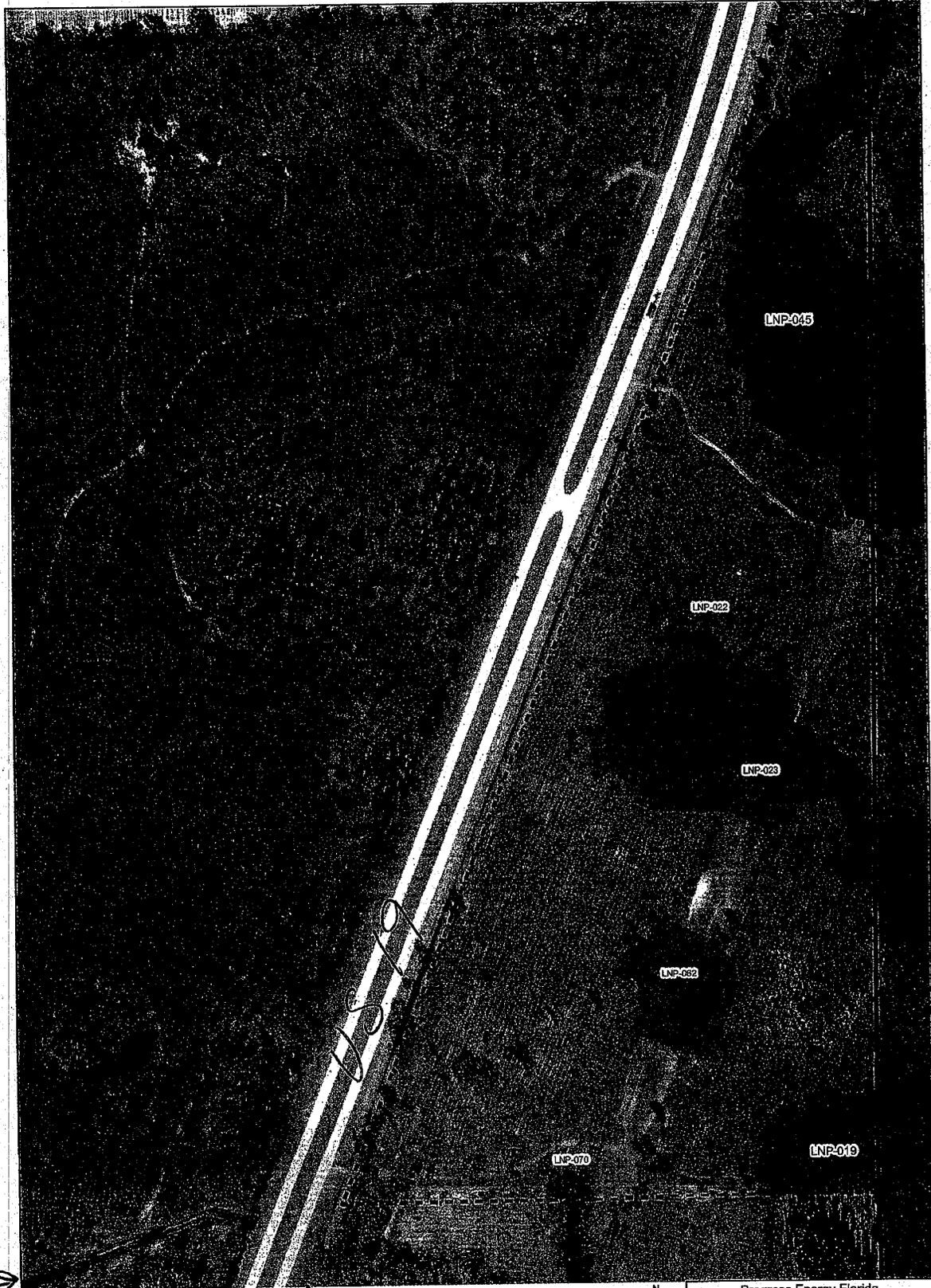
LEGEND	
() Culvert	Isolated Wetland
⊙ GPS Location	SWFWMD FLUCCS
■ Severed Connection	South Property
▭ Aerial Interpreted Wetland	North Property
▭ Field Delineated Wetland	County Boundary

Progress Energy Florida
**Levy Nuclear Plant
 Units 1 and 2**

Preliminary USACE Jurisdictional
 Determination for Field Delineated
 Wetlands
EXHIBIT B1

Enclosure 2

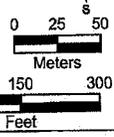
↙ Roadside Swale



Non 2PW →

Enclosure 3

↖ Roadside Swale

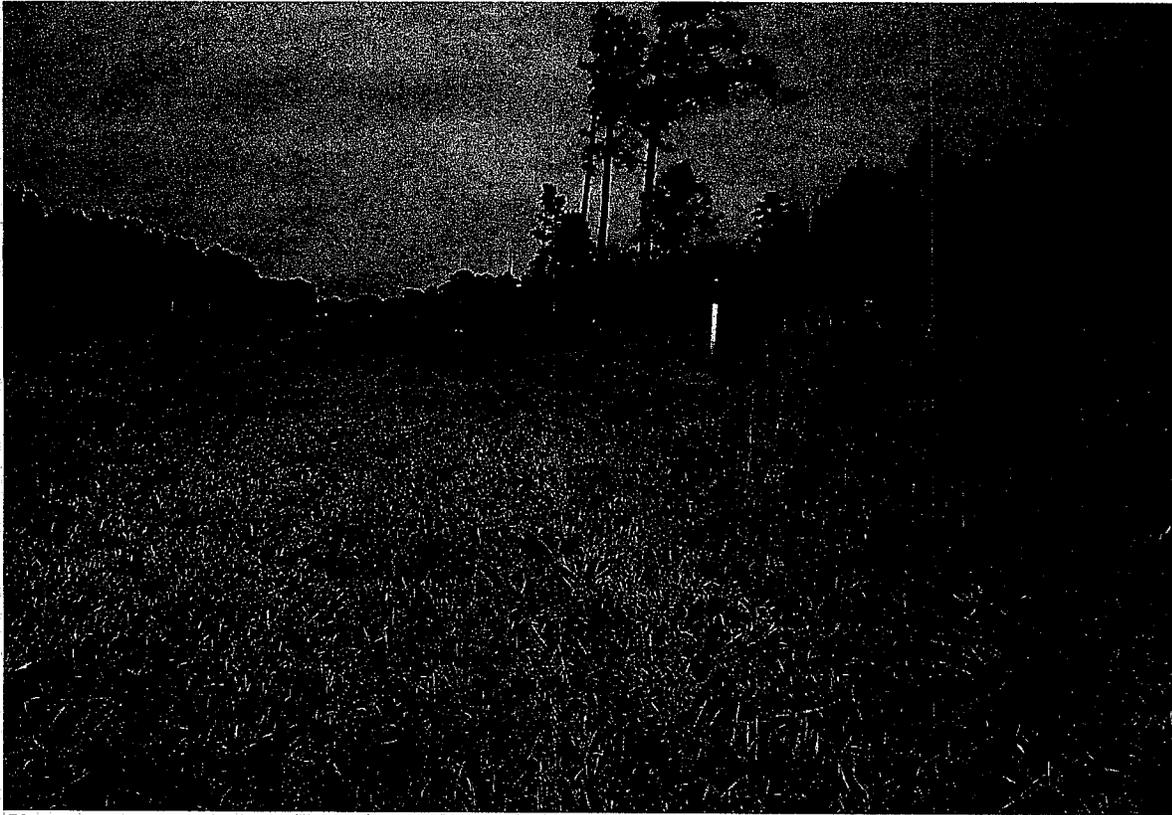


Progress Energy Florida
Levy Nuclear Power Plant
Units 1 and 2

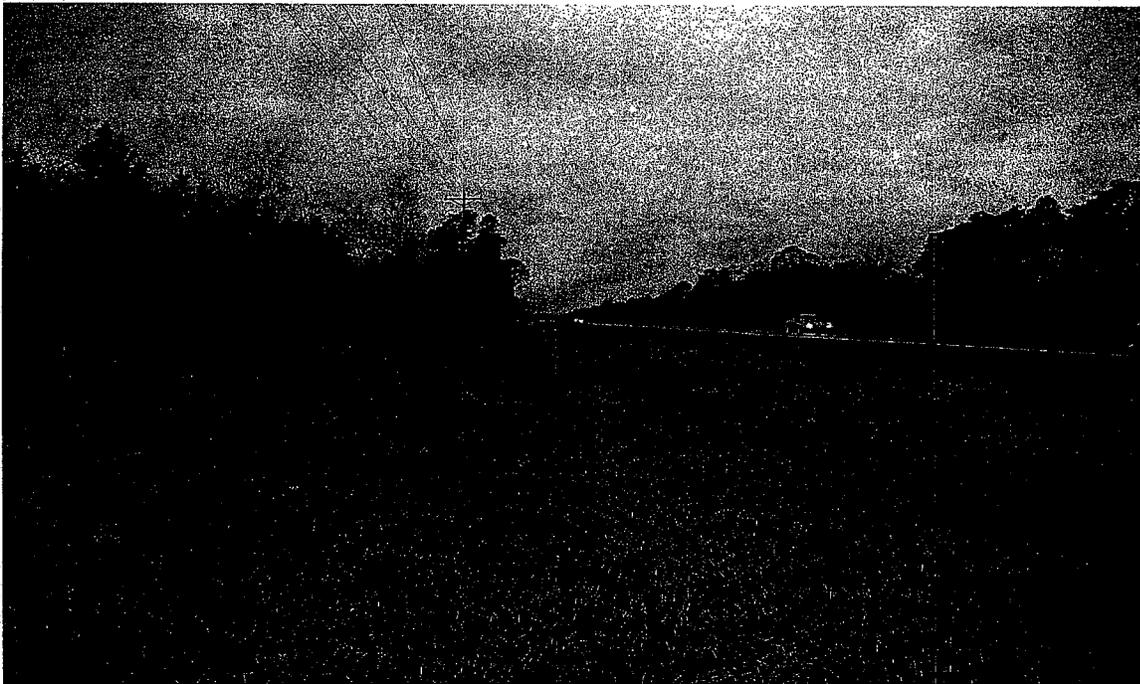
Wetlands in Vicinity of Proposed
Training Center Site

FIGURE X.Y-#

Rev 0



Photograph 3. View north of swale along US-19/98, due west of LNP-023 following morning rainfall (February 12, 2009)



Photograph 4. View south of swale due west of LNP-023 following a rainfall event (February 19, 2009)

Enclosure 4