

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

August 26, 2020

Regulatory Division North Permits Branch Cocoa Section SAJ-2020-01163(NPR-JDP)

Brevard County Public Works C/O Rachel Gerena, Engineering Program Manager 2725 Judge Fran Jamieson Way, Suite A-201 Melbourne, FL 32940

Dear R. Gerena:

Reference is made to the application received on March 16, 2020, for a Department of the Army permit to fill approximately 6.84 acres and dredge approximately 12.76 acres of waters to widen a portion of Ellis Road, located between John Rodes Blvd. and Wickham Road, from the existing two-lanes to the proposed four-lanes, and associated stormwater management system. The proposed project site is located along Ellis Road, between John Rodes Blvd. and Wickham Road, in Sections 25, 26, 35, and 36, Township 27 south, Range 36 east, Brevard County, Florida. Begin Latitude: 28.099013°, Longitude: -80.704087°; End Latitude: 28.099698°, Longitude: -80.672834°. The application has been assigned the file number SAJ-2020-01163.

The project as proposed will not require a Department of the Army permit in accordance with Section 10 of the Rivers and Harbors Act of 1899 as it is not located within the navigable waters of the United States. Furthermore, a permit will not be required in accordance with Section 404 of the Clean Water Act as it will not involve the discharge of dredged or fill material into waters of the United States. Provided the work is done in accordance with the enclosed drawings, Department of the Army authorization will not be required.

This letter contains an approved jurisdictional determination for your subject site. <u>If</u> <u>you object</u> to this determination/decision, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination/decision, you must submit a completed RFA form to the South Atlantic Division Office at the following address:

Mr. Phillip A. Shannin South Atlantic Division U.S. Army Corps of Engineers CESAD-CM-CO-R, Room 9M15 60 Forsyth St., SW. Atlanta, Georgia 30303-8801.

Mr. Shannin can be reached by telephone number at 404-562-5136, 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 October 26, 2020. It is not necessary to submit an RFA form to the Division office, if you do not object to the determination/decision in this letter.

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. Please be advised this determination reflects current policy and regulations and is valid for a period of 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 determination, it will automatically expire. Any reliance upon this determination beyond the expiration date may lead to possible violation of current Federal laws and/or regulation.

Additionally, your project site may contain species protected by the Endangered Species Act (ESA) of 1972, as amended. You should contact your local U.S. Fish and Wildlife Service (FWS) office to determine if federally listed species or their habitat are present on your project site. If it is determined that federally listed species may be affected by the proposed project, authorization for "incidental take" may be required. FWS offices can be contacted by the following telephone numbers: Jacksonville at 904-232-2580, Panama City at 850-769-0552, St. Petersburg at 727-570-5398, or Vero Beach at 772-562-3909.

This letter does not obviate the requirement to obtain any other Federal, State, or local permits that may be necessary for your project. Should you have any questions, please contact Jason D. Perryman at the letterhead address or by telephone at 321-504-3771.

Thank you for your cooperation with our permit program. 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 http://per2.nwp.usace.army.mil/survey.html and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise. Please be aware this web address is case sensitive and should be entered as it appears above.

Sincerely,

John C. Palmer Chief, Cocoa Section

Enclosures

cc w/ enclosures:

Applicant: Rachel Gerena, Brevard County Public Works, rachel.gerena@brevardfl.gov

Agent: Kevin Connor, H.W. Lochner Inc., kconnor@hwlochner.com

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REOUEST FOR APPEAL

Applica	ant: Brevard County Public Works	File Number: SAJ-2020-01163	Date: August 26, 2020
Attache	ed is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or	Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of	В	
	PERMIT DENIAL		С
X	APPROVED JURISDICTIONAL DETERMINATION	N	D
	PRELIMINARY JURISDICTIONAL DETERMINAT	ΓΙΟΝ	Е

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg materials.aspx 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		
record of the appeal conference or meeting, and any supplemental clarify the administrative record. Neither the appellant nor the Coryou may provide additional information to clarify the location of in	rps may add new information or ar	nalyses to the record. However,
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:		
If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regard also contact:	ding the appeal process you may
Project Manager as noted in letter	Phillip A. Shannin 404-562-5136	
RIGHT OF ENTRY: Your signature below grants the right of entropy consultants, to conduct investigations of the project site during the notice of any site investigation, and will have the opportunity to pa	course of the appeal process. You	
5 Sources, same of the opportunity to pe	Date:	Telephone number:
Signature of appellant or agent.		



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): 8/13/2020

ORM Number: SAJ-2020-01163

Associated JDs: N/A

Review Area Location¹: State/Territory: Florida City: Melbourne County/Parish/Borough: Brevard County

Center Coordinates of Review Area: Latitude 28.099076° Longitude -80.689212°

II. FINDINGS

٩.		mmary: Check all that apply. At least one box from the following list MUST be selected. Complete the responding 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).
	\boxtimes	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.	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.	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.	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.	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.	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.



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

D. Excluded Waters or Features

Excluded waters (
Exclusion Name	Exclusion		Exclusion ⁵	Rationale for Exclusion Determination
OSWs 1 through 22	0.11	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).	The subject surface water features are manmade, upland-cut ditches.
SWs 1 through 14; D	1.34	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).	The subject surface water features are manmade, upland-cut ditches.
SWs A, B	5.40	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	The subject surface water features are manmade, upland-cut ponds.
Wetlands 1, 2	12.75	acre(s)	(b)(1) Non- adjacent wetland.	The subject wetlands do not abut, nor are they otherwise directly connected to, an (a)(1) through (a)(4) water. The subject wetland also does not lie within the typical year floodplain of an (a)(1) through (a)(4) water.

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.

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.



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

☑ Information submitted by, or on behalf of, the applicant/consultant: Application submitted March 16, 2020; Additional Information submitted August 04, 2020.

This information is sufficient for purposes of this AJD.

Rationale: N/A

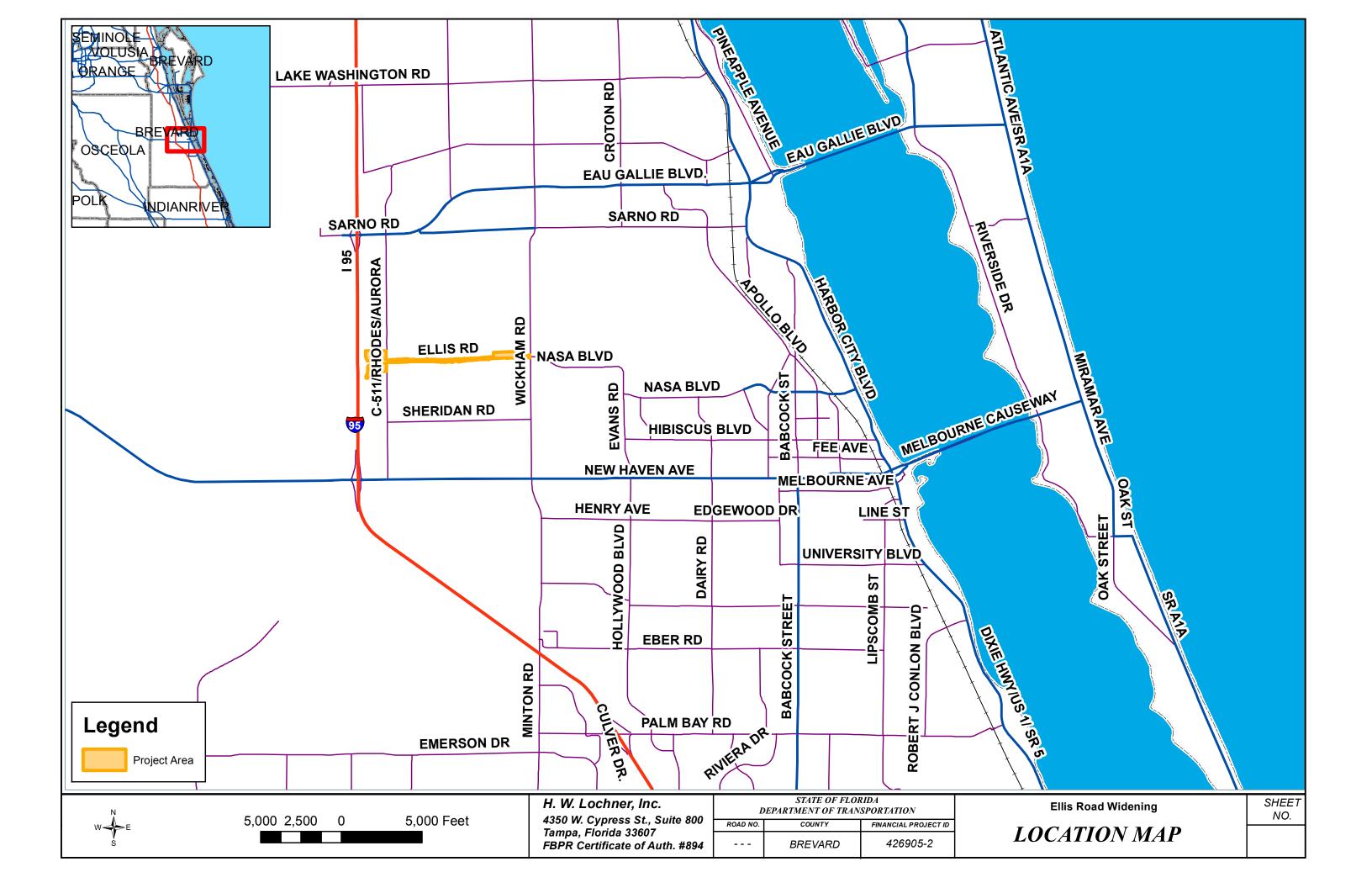
- Data sheets prepared by the Corps: Data Sheets prepared by Applicant; submitted August 04, 2020
- Photographs: Aerial and Other: Aeroal Maps, Wetlands Maps; submitted August 04, 2020
- ☐ Corps site visit(s) conducted on: Date(s).
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).
- Antecedent Precipitation Tool: <u>provide detailed discussion in Section III.B.</u>
- □ USFWS NWI maps: USACE online review of NWI Database; reviewed August 04, 2020
- □ USGS topographic maps: TOPO Map; submitted August 04, 2020

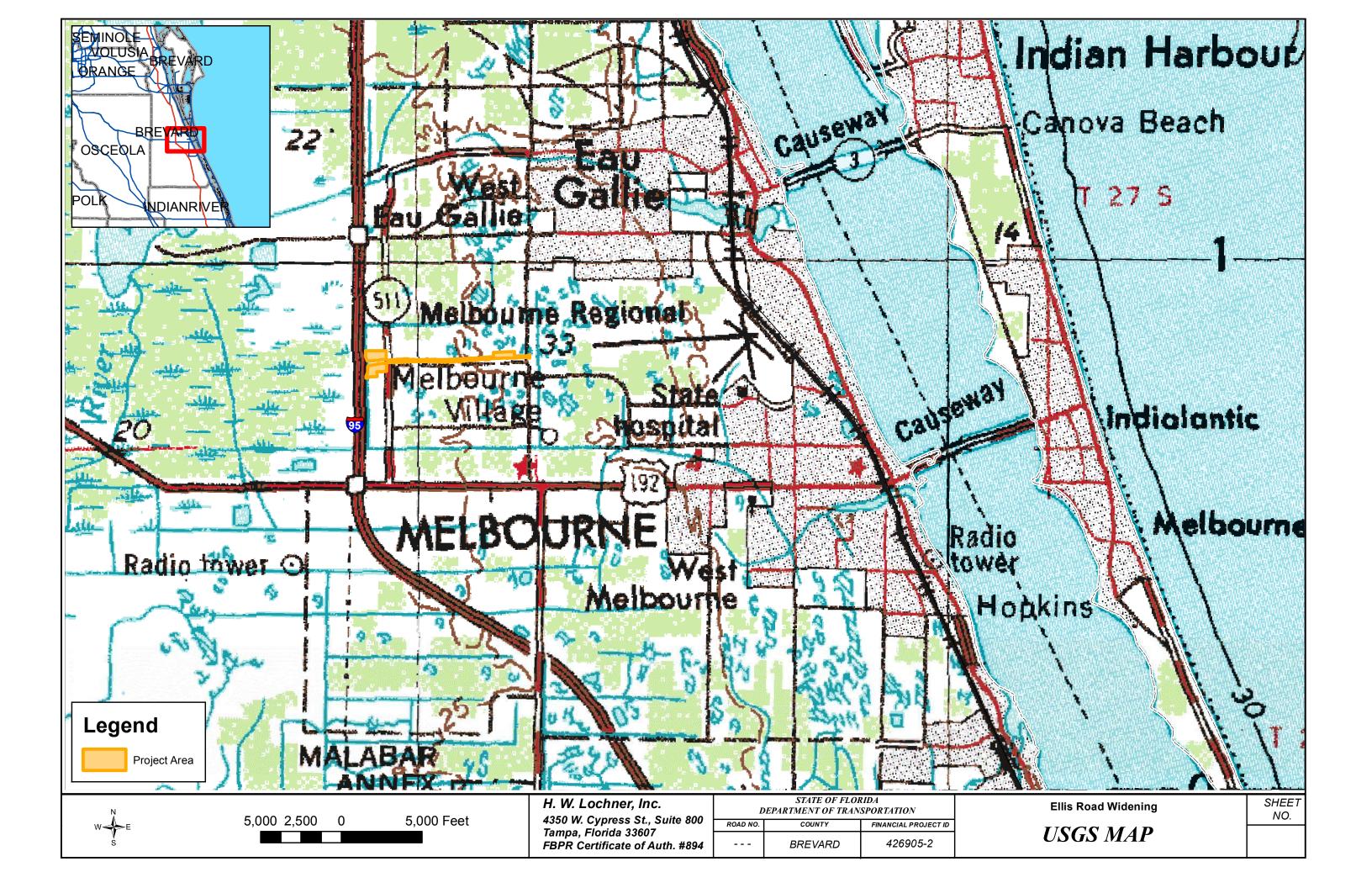
Other data sources used to aid in this determination:

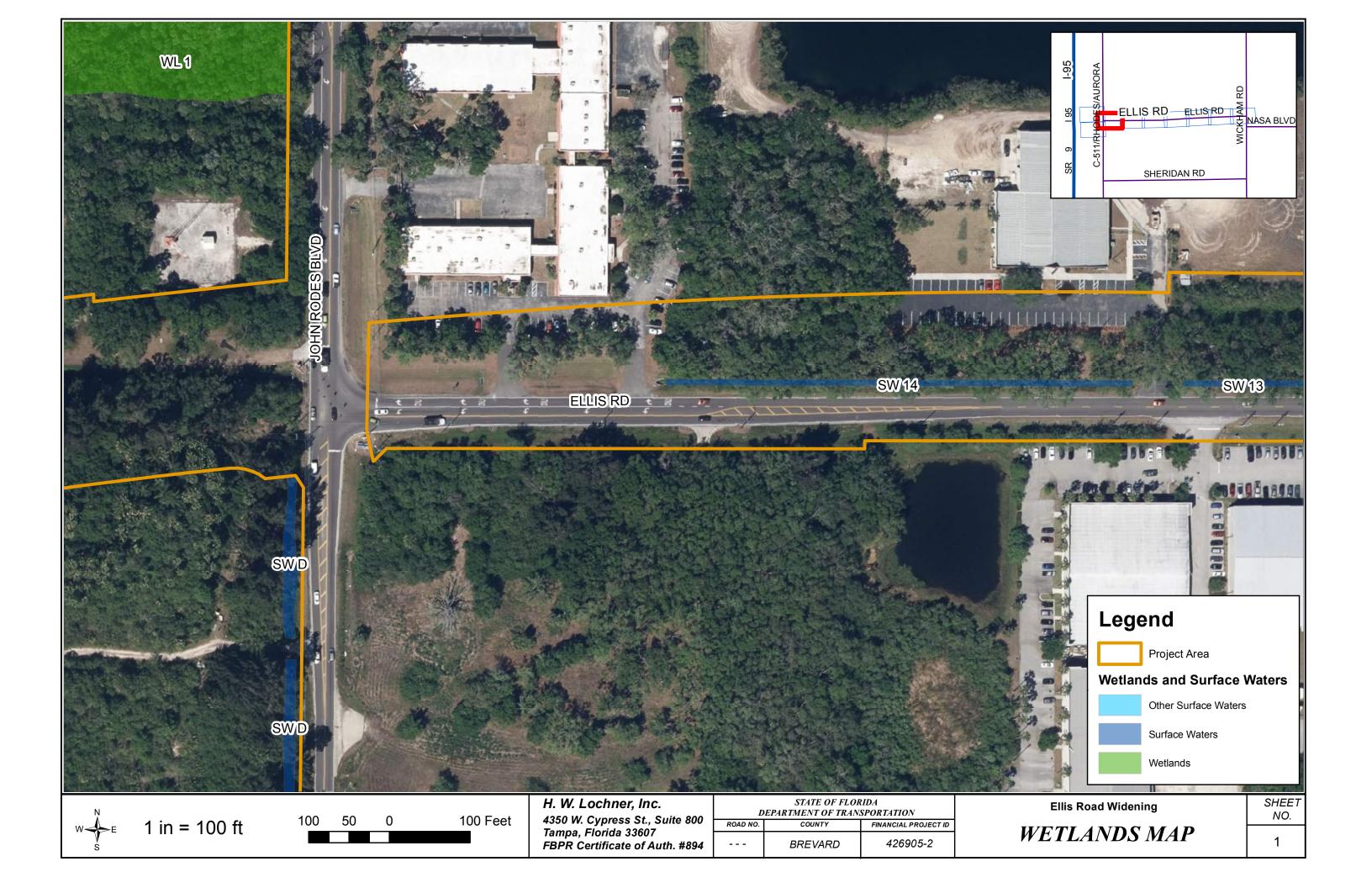
Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	FDEP Maps Direct Database (aerials, elevations, land uses, etc.)
Other Sources	N/A.

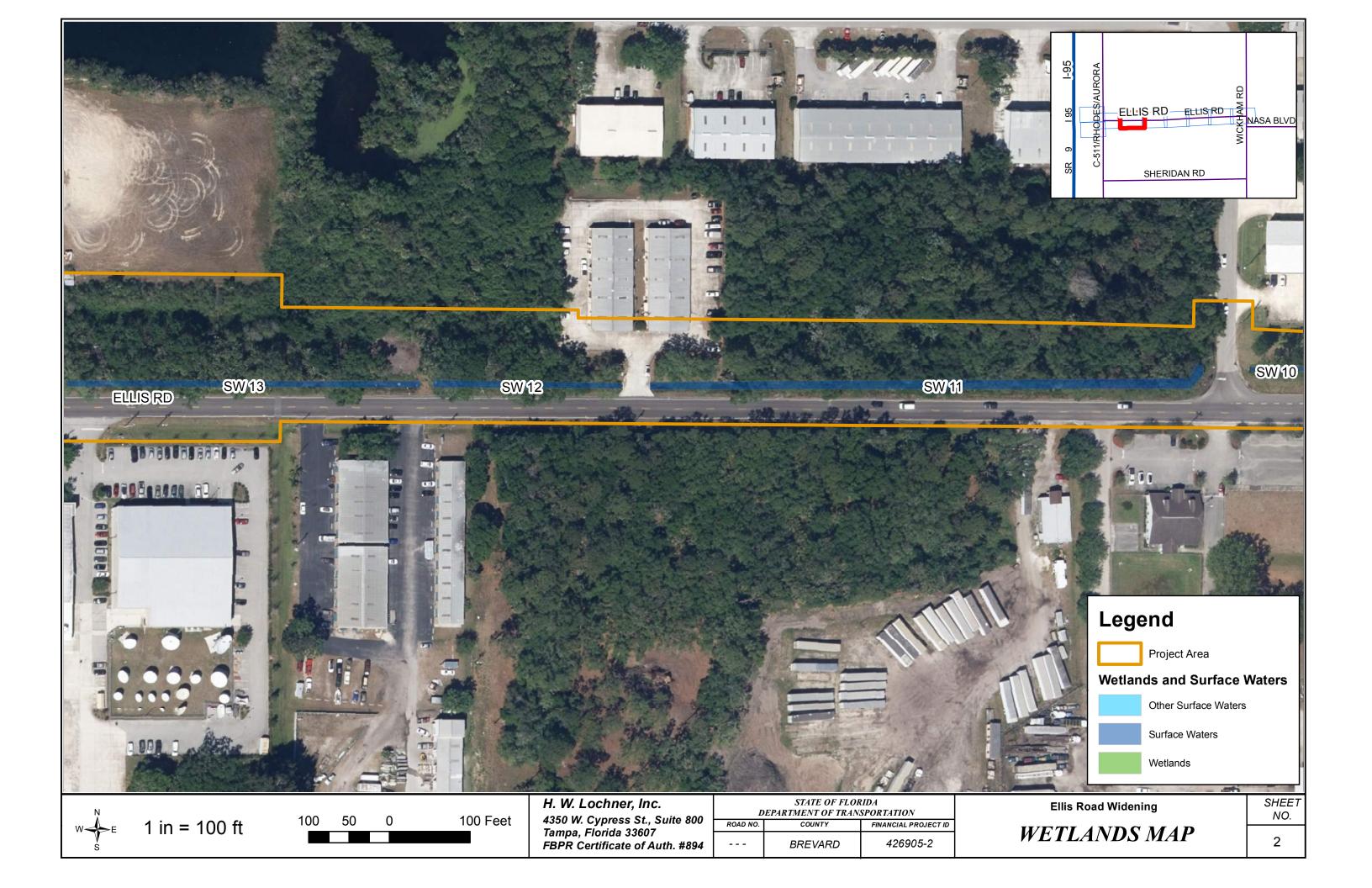
B. Typical year assessment(s): N/A

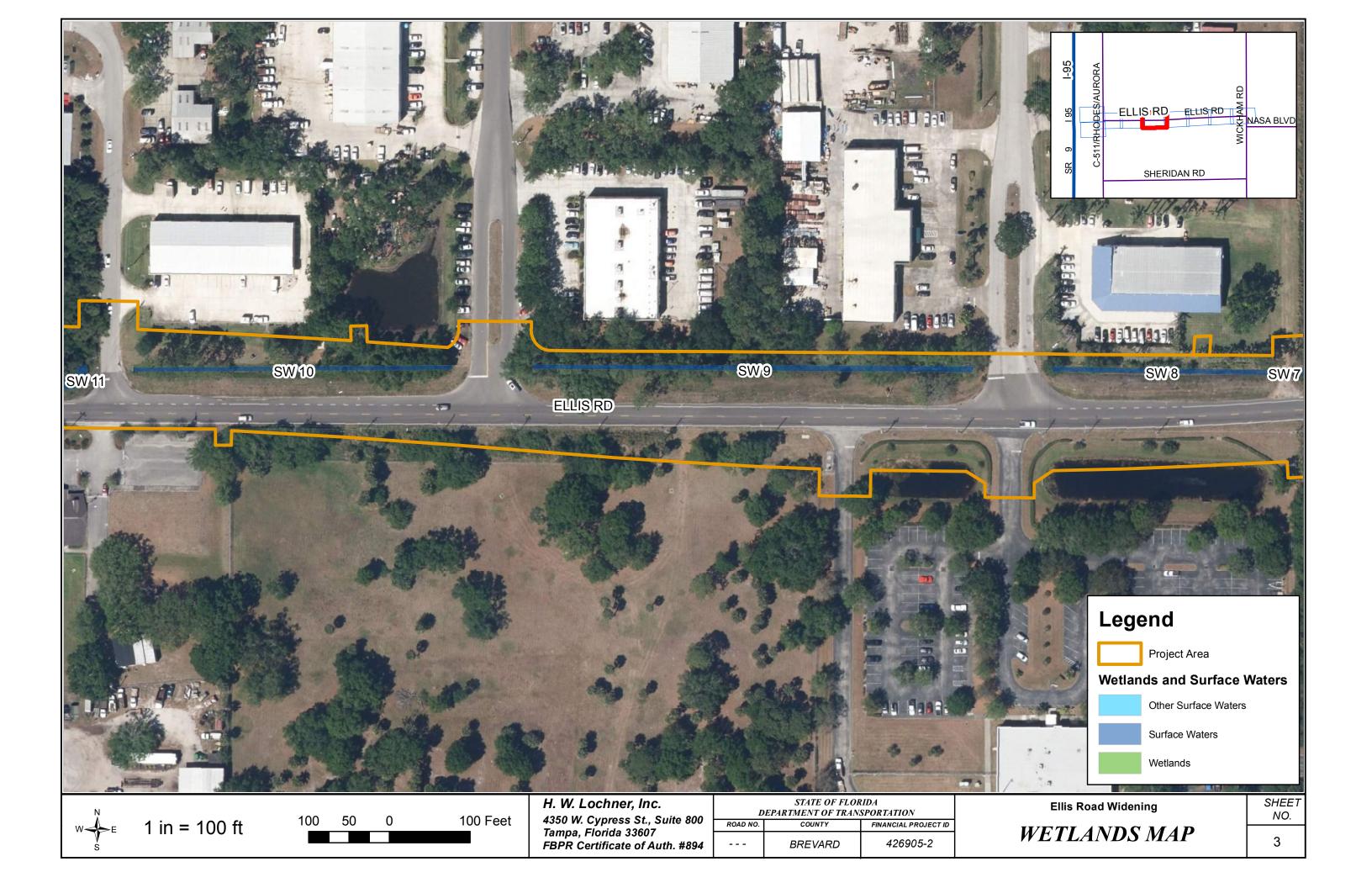
C. Additional comments to support AJD: N/A

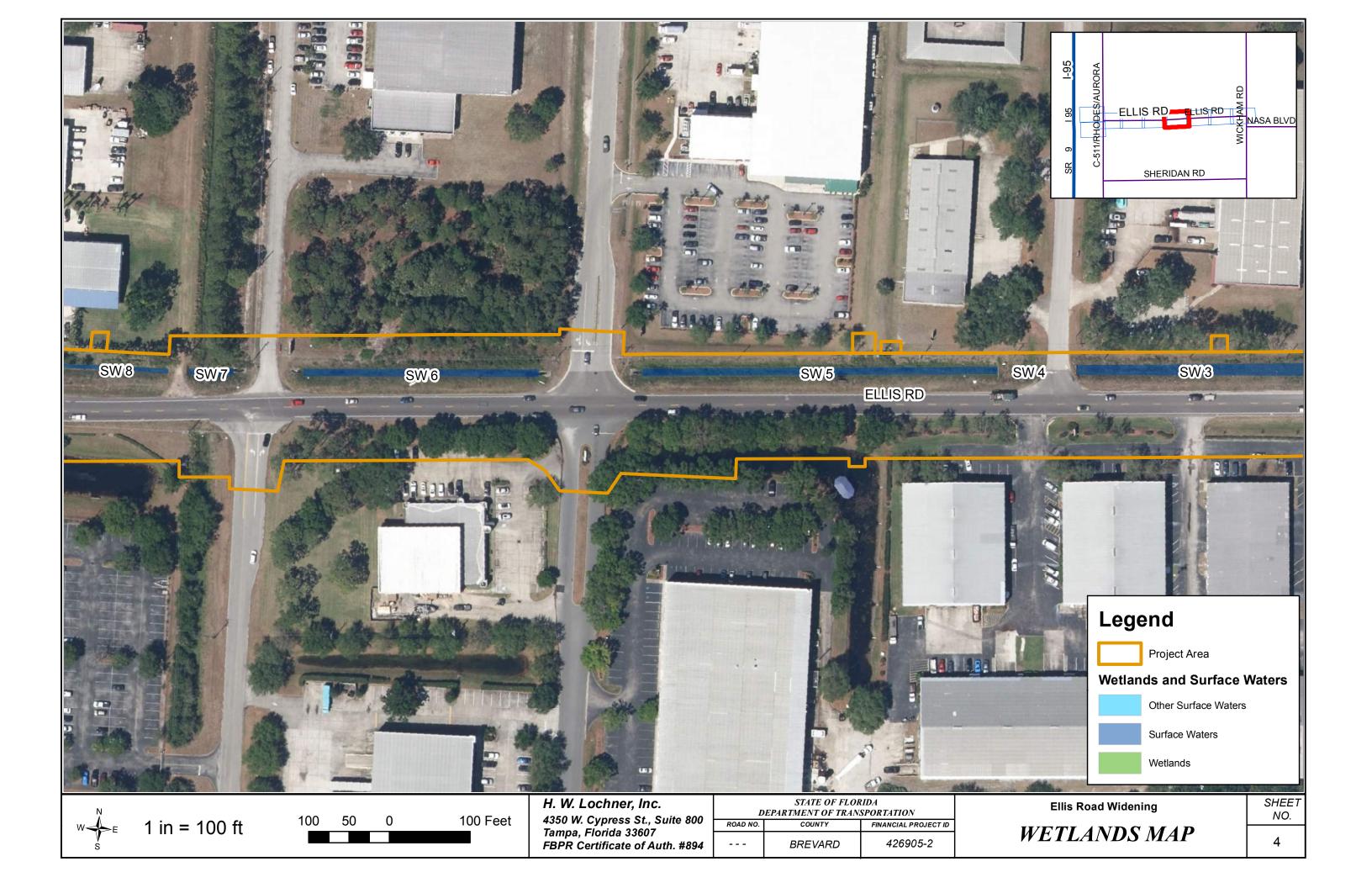


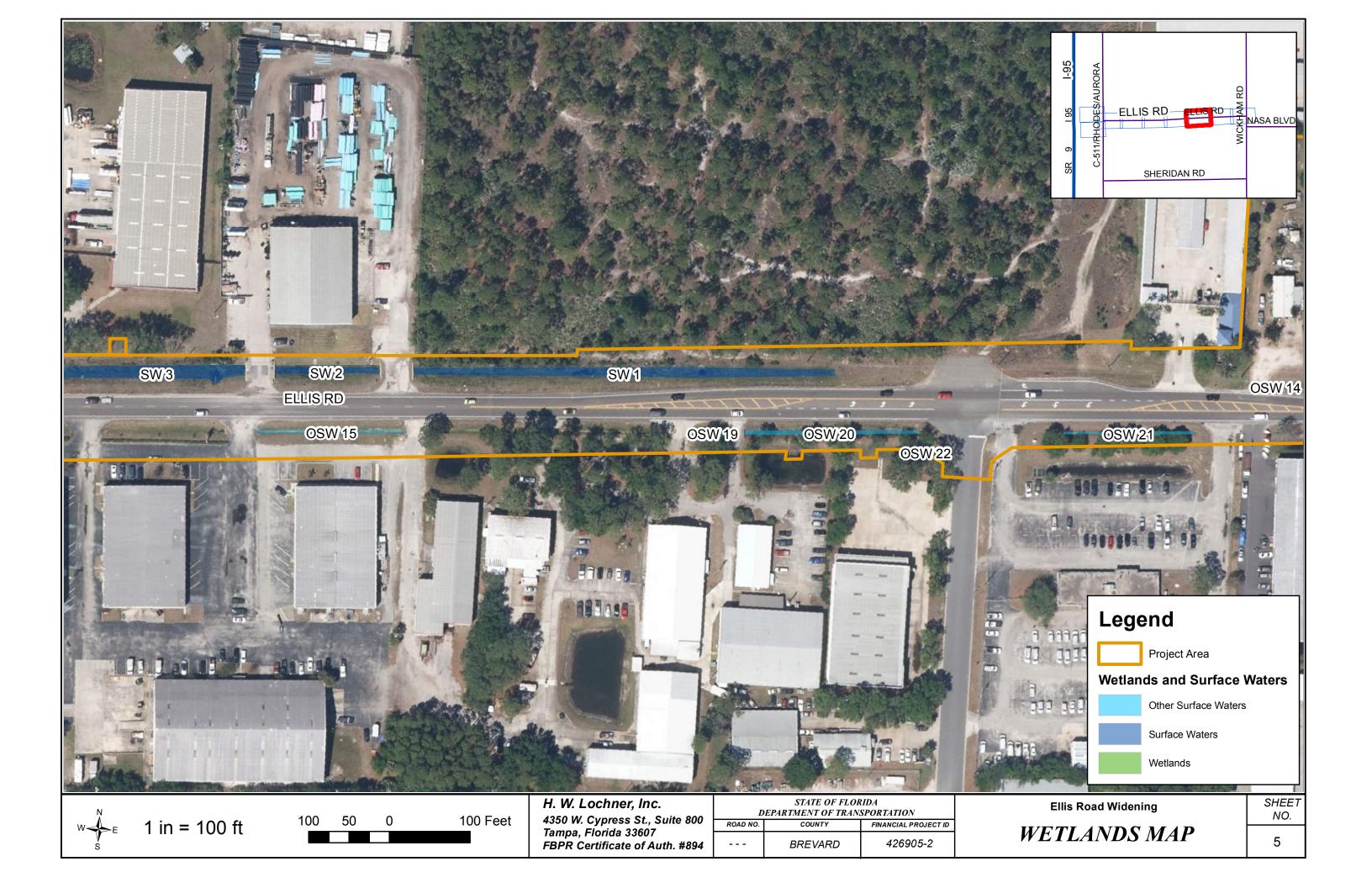


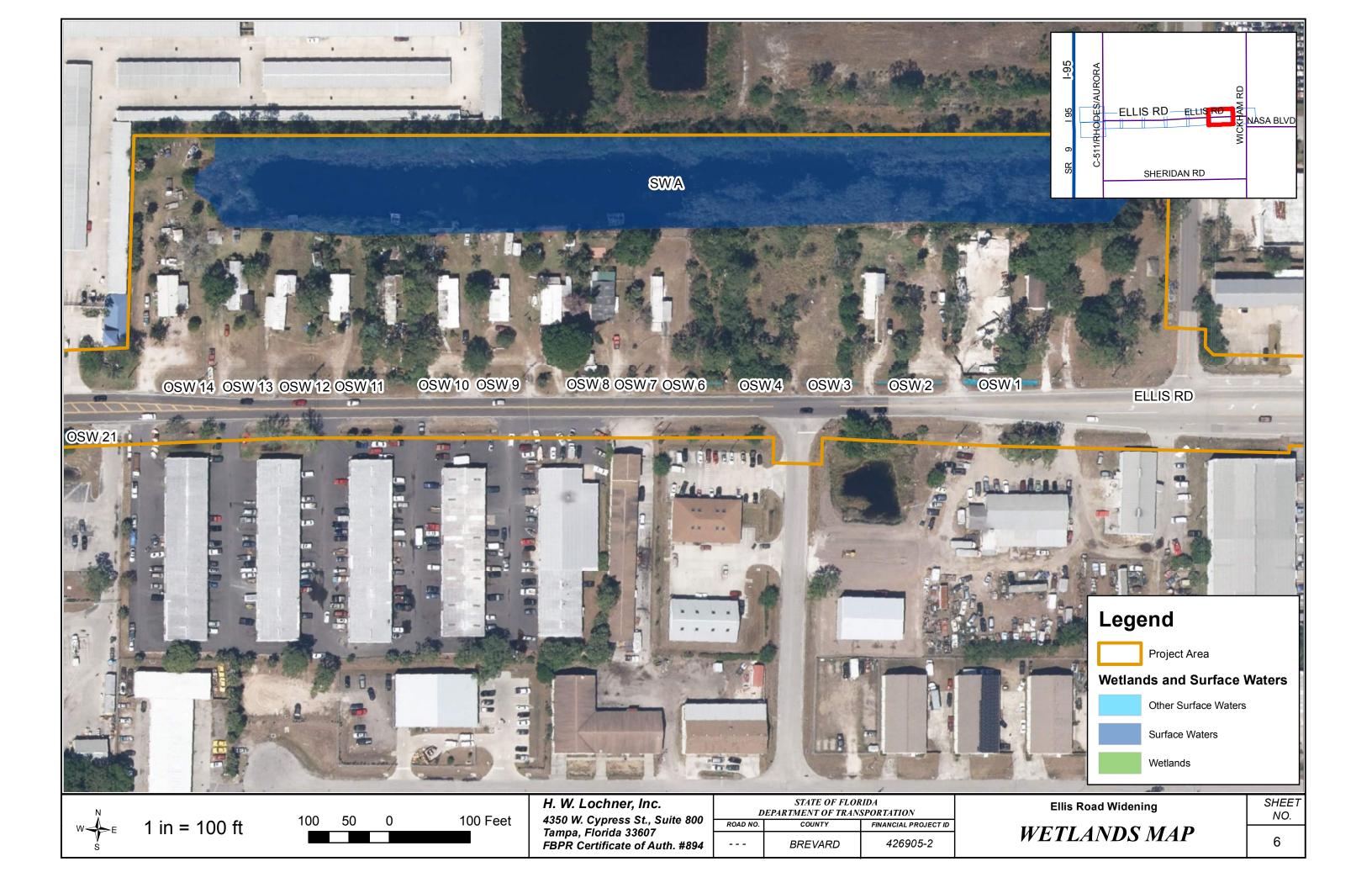


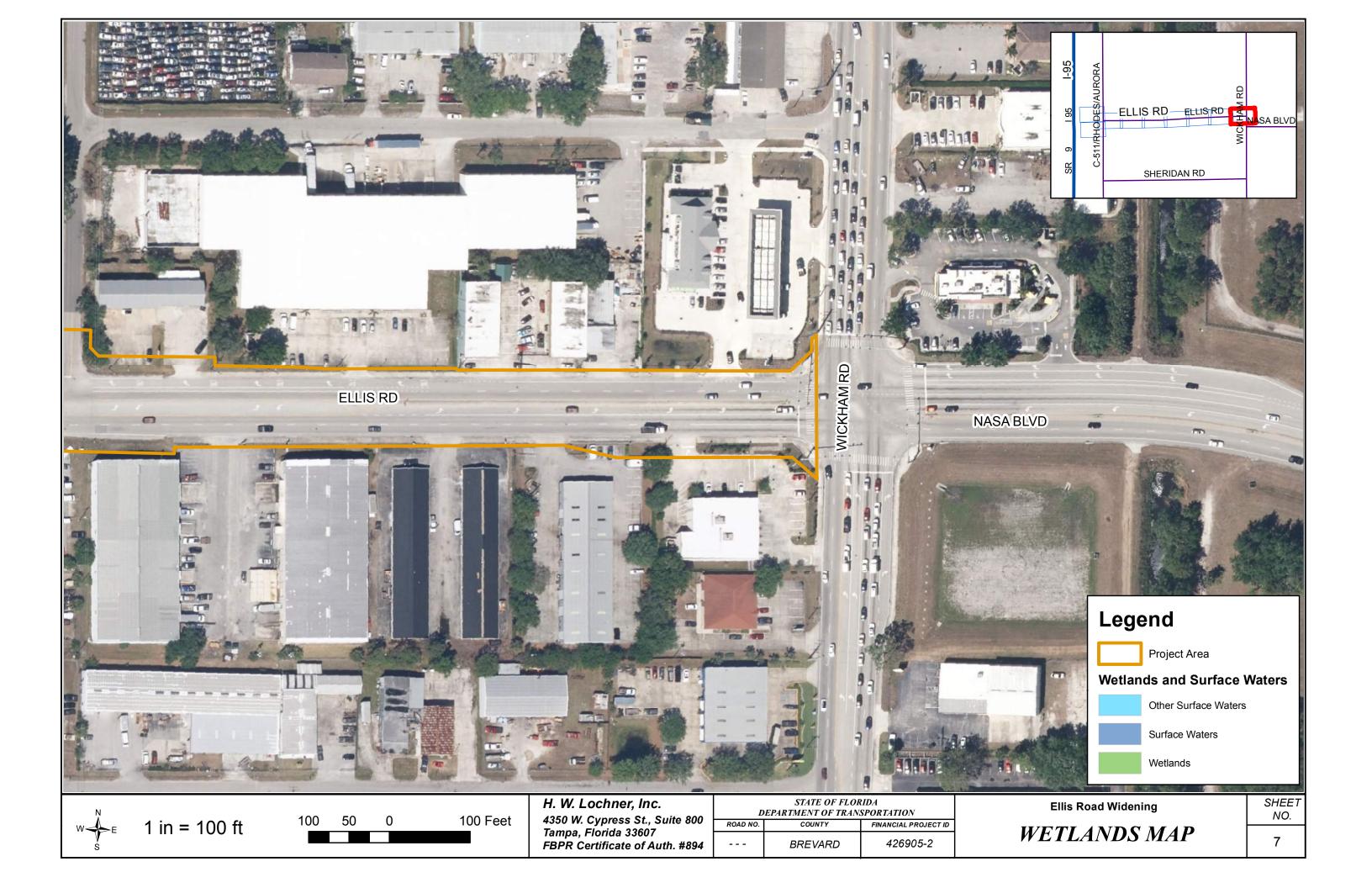


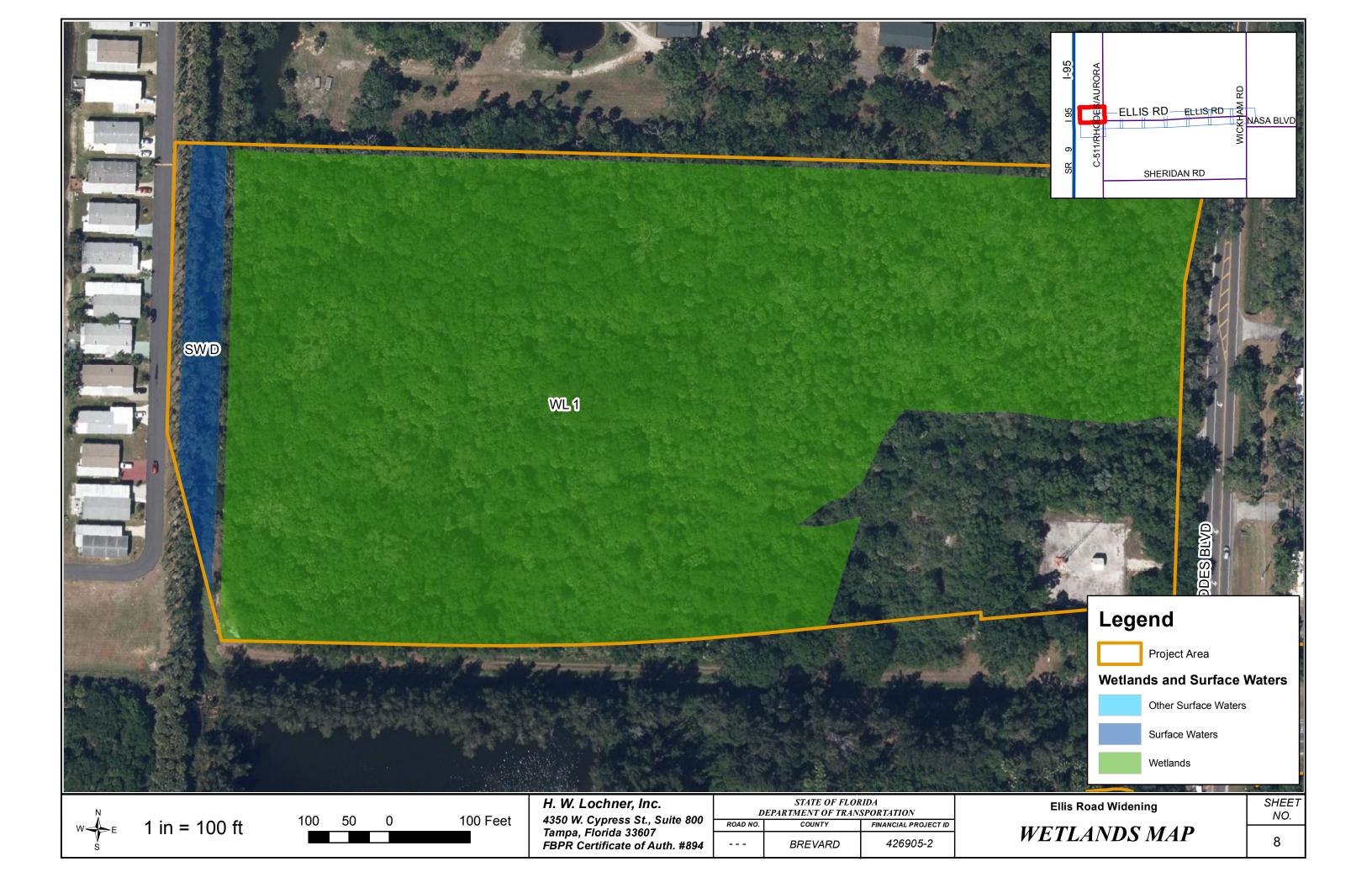


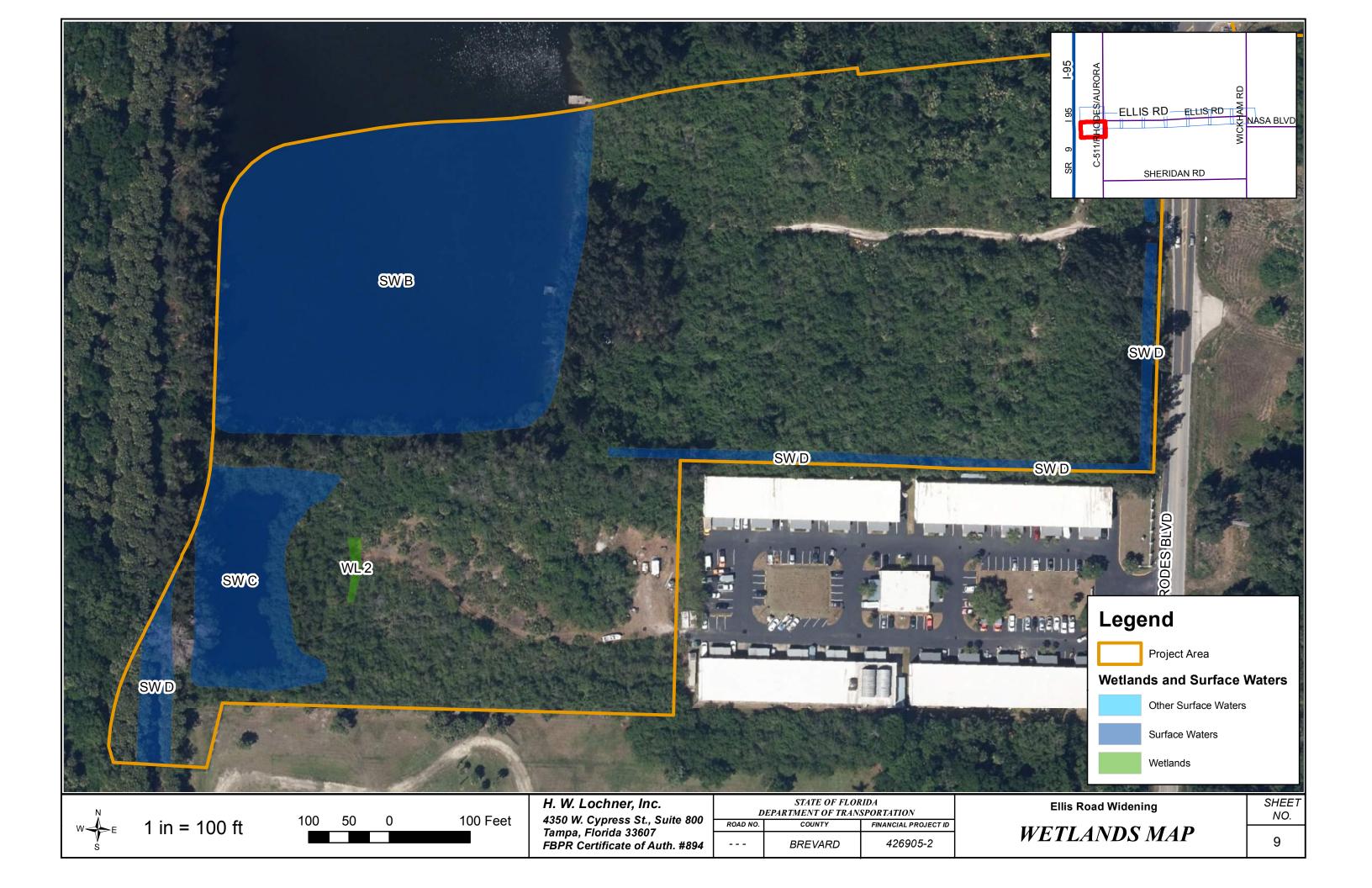












PROJECT IDENTIFICATION

FINANCIAL PROJECT ID <u>426905-2-38-01</u>

COUNTY (SECTION) BREVARD (70220)

PROJECT DESCRIPTION ROADWAY IMPROVEMENTS ALONG ELLIS ROAD

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

DREDGE AND FILL PERMIT SKETCHES

