



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

October 21, 2022

Corpus Christi Field Office

SUBJECT: SWG-2022-00330; Approved Jurisdictional Determination

Belltown Power Texas, LLC
Attn: Austin Willis
13612 Midway Road, Suite 200
Farmer Branch, Texas 75244

Dear Mr. Willis:

This is in reference to the approved jurisdictional determination (AJD) request received on May 12, 2022, submitted by Stantec to determine if the 10.2-acre subject review area is subject to Corps of Engineers Jurisdiction. The review area is located on South Mile 2 West Road, approximately 0.95-mile south of US Interstate Highway 2 in Mercedes, Hidalgo County, Texas.

Based on our review of the submitted information, resources available/used, and subsequent desk review, the Corps has determined that the 10.2-acre review area, depicted on the attached map in 1 sheet, does not exhibit waters of the United States (US), subject to jurisdiction pursuant to Section 404 of the Clean Water Act (Section 404). Specifically, the Corps determined that the review area is comprised of uplands.

The Corps of Engineers regulates the placement of structures and/or work performed in/or affecting navigable waters of the U.S. (i.e. bulkheads, piers, etc.) under Section 10. The Corps also regulates the discharge of dredged and/or fill material into waters of the US, including navigable waters, under Section 404. Therefore, the placement of structures and/or the discharge of dredged or fill material into this review area does not require a DA permit because it is comprised of wholly of uplands.

The enclosed approved jurisdictional determination (AJD), dated October 21, 2022, is valid for 5 years from the date of this letter unless new information warrants a revision of the determination prior to the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331.5. Also enclosed is a combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA to the Southwestern Division Office at the following address:

Mr. Jamie Hyslop
Administrative Appeals Review Officer
Southwestern Division USACE (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Telephone: 469-216-8324
Email: Jamie.r.hyslop@usace.army.mil

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 NAP, noting the letter date is considered day 1. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

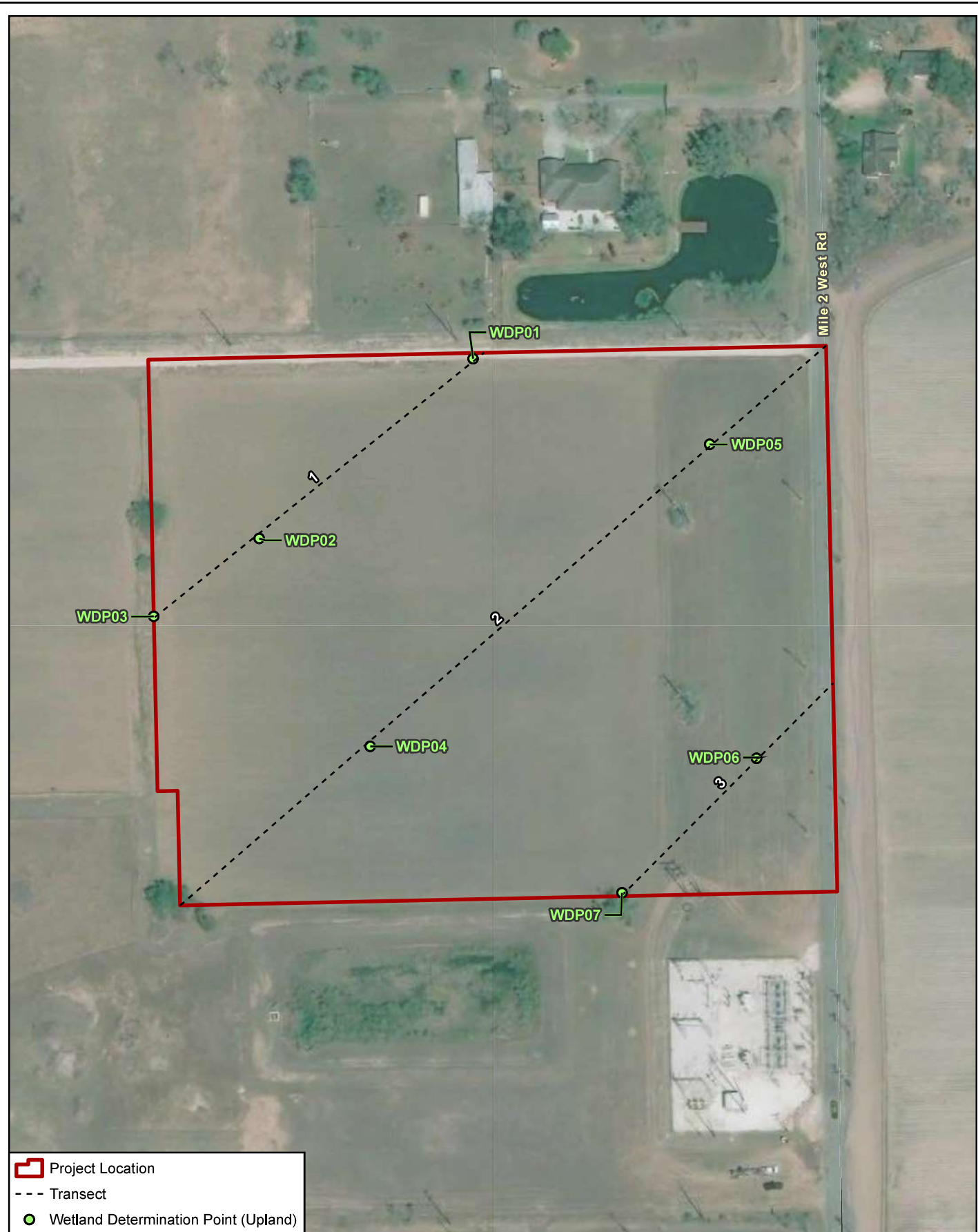
If you have any questions regarding this determination, please contact Wayne Fitzpatrick by telephone at 361-814-5847 ext. 1008 or by e-mail at wayne.c.fitzpatrick@usace.army.mil. To assist us in improving our service to you, please complete the survey found at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.


Sincerely,




Kristie A. Wood
Supervisor
Corpus Christi Regulatory Field Office

cc w/Encls:
Lloyd Pope, Belltown Power Texas



 Project Location

 Transect


 Wetland Determination Point (Upland)





Figure 9.
Potential Waters of the U.S.

Note: The map extent is within an area unmapped by FEMA

Harrison Storage

G:\Projects\Belltown Power\Harrison_Storage\HarrisonStorage_Pro_Working.aprx

Data Source: Stantec (2022)
Aerial Source: Maxar (2021)



0150 Feet

040 Meters

1 in = 150 feet

Scale: 1:1,800

Date: 4/7/2022

DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM¹
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): October 21, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: ;Galveston District; SWG-2022-00330, Site 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/parish/borough: Hidalgo County City: Donna
Center coordinates of site (lat/long in degree decimal format): Lat. 26.138912, Long: -97.943473
Universal Transverse Mercator: 14 R, 605617.82 m E, 2891503.32 m N
Name of nearest waterbody: Arroyo Colorado
Name of watershed or Hydrologic Unit Code (HUC): 12110208 South Laguna Madre Watershed.

- ☒ Check if map/diagram of review area is 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: October 17, 2022
☐ Field Determination. Date(s): *Click here to enter a date.*

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.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are **no** “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

SECTION III: 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: Map provided by Stantec on 12 May 2022.
☐ 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: *Click here to enter text.*
☒ U.S. Geological Survey Hydrologic Atlas: 12110208 South Laguna Madre Watershed.
☐ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: USGS: 1:24K titled: Mercedes, Texas
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: NWI Mapper Map provided by Stantec on 12 May 2022.
☐ State/Local wetland inventory map(s): *Click here to enter text.*
☒ FEMA/FIRM maps: FEMA Panel provided by Stantec on 12 May 2022.
☐ 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth Aerial 2017 and 2022
☐ or ☒ Other (Name & Date): Site photographs provided by Stantec on 12 May 2022.
☐ Previous determination(s). File no. and date of response letter: *Click here to enter text.*
☐ Applicable/supporting case law: *Click here to enter text.*
☐ Applicable/supporting scientific literature: *Click here to enter text.*
☐ Other information (please specify): *Click here to enter text.*

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND: There are no aquatic resources or potential aquatic resources in the review area that would warrant the application of a wetland delineation, significant nexus analysis, navigability determination, and/or delineation of the ebb and flow of

¹ This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

the tides. There are no features that have lateral limits of jurisdiction. (e.g., OHWM) Based on historical aerial imagery from Google Earth and topographic maps the proposed improvement site has been used primarily as an agricultural field.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Belltown Power Texas, LLC		File Number: SWG-2022-00330	Date: Oct 21, 2022
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://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.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 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:
Wayne Fitzpatrick
Project Manager (CESWG-RDR)
U.S. Army Corps of Engineers
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318
361-814-5847 ext. 1008

If you only have questions regarding the appeal process you may also contact:
Mr. Jamie Hyslop
Administrative Appeals Review Officer
Southwestern Division (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Phone: 469-216-8324
Email: Jamie.r.hyslop@usace.army.mil

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: