



**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): 7/7/2021

ORM Number: SWG-2021-00105

Associated JDs: N/A

Review Area Location¹: State/Territory: Texas City: League City County/Parish/Borough: Galveston

Center Coordinates of Review Area: Latitude 29.507599 Longitude -95.111675

II. FINDINGS

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

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

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

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

C. Clean Water Act Section 404

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

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

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

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

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

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

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



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.054	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland A does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland A and Clear Creek. See typical year discussion below
Wetland B	0.029	acre(s)	(b)(1) Non-adjacent wetland.	Wetland B neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland B does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland B and Clear Creek. See typical year discussion below
Wetland C	0.044	acre(s)	(b)(1) Non-adjacent wetland.	Wetland C neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland C does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
			barrier that would allow typical year inundation between Wetland C and Clear Creek. See typical year discussion below	
Wetland D	0.015	acre(s)	(b)(1) Non-adjacent wetland.	Wetland D neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland D does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland D and Clear Creek. See typical year discussion below
Wetland E	0.018	acre(s)	(b)(1) Non-adjacent wetland.	Wetland E neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland E does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland E and Clear Creek. See typical year discussion below
Wetland F	0.049	acre(s)	(b)(1) Non-adjacent wetland.	Wetland F neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland F does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland F and Clear Creek. See typical year discussion below



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland G	0.049	acre(s)	(b)(1) Non-adjacent wetland.
			Wetland G neither abuts an (a)(1) – (a)(3) water; nor is inundated by flooding from an (a)(1) – (a)(3) water in a typical year; nor is physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; nor is physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure. The aerial photos and topos show Wetland G does not abut Clear Creek, the nearest waters of the United States. Based on the aerials and topos, there is not a single natural barrier or single artificial barrier that would allow typical year inundation between Wetland G and Clear Creek. See typical year discussion below

III. SUPPORTING INFORMATION

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

☒ Information submitted by, or on behalf of, the applicant/consultant: [Wetland delineation report submitted by Berg-Oliver Associates, Inc. dated December 22, 2020.](#)

This information [Select.](#) sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

☒ Photographs: [Aerial: Google Earth 1977, 1989, 2001, 2006, 2010, 2017, and 2019](#)

☐ Corps site visit(s) conducted on: [Date\(s\).](#)

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)

☒ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☐ USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)

☐ USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)

☒ USGS topographic maps: [7.5-minute topographic map League City, Texas 1995](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	FEMA FIRM panel 48167C038G and Flood Insurance Study 48167CV001A dated August 15, 2019, Texas Water Development Board 2018 .LiDAR

B. Typical year assessment(s): [In an effort to determine adjacency \(as it pertains to hydrologic trends and the subject aquatic resources verified by SWG\) an additional analysis was done using the APT tool, elevation data, aerial imagery & other relevant site specific information. \(The APT is a tool that affords the](#)



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user the capability to look at rainfall at a specific location in the recent past, cumulative for the last 3 months (WETS analysis product score)), as well as a climatological review for the past 30 years and the PDSI Drought index. This tool also provides WebWIMP water balance/hydrologic seasons information. The APT uses climatic data collected from numerous nearby weather stations and produces the most reliable source for a full 30 years of precipitation data. Historic and recent aerial photographs do not show the wetlands being inundated by surface water associated with flooding from an (a)(2) water, Clear Creek; specifically after a catastrophic rain event in 2017. Here are the long term and short term responses for the APT test for aerals and dates of the wetland delineation field work (September 17, 2020 and October 6, 2020).

Date	72 Hours (inches)	PDSI Class	Season	ARC Score	APC
12/31/1977	Not Available	Incipient drought	Wet Season	14	Normal Conditions
12/31/1989	Not Available	Mild drought	Wet Season	9	Drier than Normal
12/31/2001	0.16	Severe wetness	Wet Season	17	Wetter than Normal
1/14/2006	0.01	Severe drought	Wet Season	8	Drier than Normal
1/4/2010	0.00	Mild wetness	Wet Season	16	Wetter than Normal
8/30/2017	26.72	Extreme wetness	Dry Season	13	Normal Conditions
1/25/2019	1.09	Severe wetness	Wet Season	17	Wetter than Normal
9/17/2020	0.01	Normal	Wet Season	12	Normal Conditions
10/6/2020	0.00	Normal	Wet Season	14	Normal Conditions

According to the FEMA Flood Insurance Study (FIS) 48167CV001A dated August 15, 2019, Clear Creek cross-sections AL and AM show that the 10-year flood elevation is 10' NAVD88. The elevation of the wetlands, according to the LiDAR, is 13'-16' NAVD88; therefore, as such the wetlands are not inundated by Clear Creek in a typical year.

Based on submitted information, current federal regulations, and detailed off-site data, we have determined that the subject site wetlands neither abut an (a)(1)-(a)(3) water, NOR would they be inundated by flooding of an (a)(1)-(a)(3) water in a typical year, NOR are they physically separated from an (a)(1)-(a)(3) water by a single natural barrier, NOR are they physically separated by an artificial barrier that allows direct surface hydrologic connection between the aquatic feature(s) in review and an (a)(1)-(a)(3) water in a typical year. Therefore, the subject site wetlands meet the 33 CFR 328.3(b)(1) non-adjacent wetland exclusion.

C. Additional comments to support AJD: N/A