



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON TEXAS 77550

CESWG

10 November 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SWG-2024-00220²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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amended on September 8, 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name	Size (acres)/LF	Location	Jurisdictional Status
W01	0.52-acres	29.919774 -94.962414	No, no continuous surface connection to WOTUS
W02	1.13-acres	29.919041 -94.964028	No, no continuous surface connection to WOTUS
W03	0.078-acres	29.9136 -94.950763	No, no continuous surface connection to WOTUS
W04	2.98-acres	29.907635 -94.955383	No, no continuous surface connection to WOTUS
W05	3.62-acres	29.90066 -94.971403	No, no continuous surface connection to WOTUS
W06	165.66-acres	29.914908 -94.976992	No, no continuous surface connection to WOTUS
W07	51.90-acres	29.9056 -94.967993	No, no continuous surface connection to WOTUS
W08	191.8-acres	29.89254 -94.963859	No, no continuous surface connection to WOTUS
W09	5.74-acres	29.895811 -94.969662	No, no continuous surface connection to WOTUS
S01	8,079-LF	29.906516 -94.962316	No, non-RPW
S02	5,082-LF	29.914875 -94.968505	No, non-RPW
S03	683-LF	29.929562 -94.968178	No, non-RPW
S04	1,436-LF	29.917836 -94.963609	No, non-RPW

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2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
 - b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
 - c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
 - d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
 - e. 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act.
3. REVIEW AREA. An approximately 1069-acre tract is located at 2466 County Road 486, Dayton, Liberty County, Texas. 29.902817 N, -94.970693 W
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cedar Bayou
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Flow is through man-made irrigation ditches that run through and off the tract to Cedar Bayou, TNW.
 6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5) (: N/A)
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁸ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

⁸ 51 FR 41217, November 13, 1986.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.

There are four (4) irrigation ditches located within the review area, totaling approximately 15,280-linear feet (LF). S01 = 8,079 LF, S02 = 5,082 LF, S03 = 683 LF; and S04 = 1,436 LF. The irrigation ditches do not carry a relatively permanent flow, do not have an ordinary high-water mark and/or a bed and bank. Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries. The ditches are a non-relatively permanent water and do not flow into a traditional navigable water; therefore, the ditches do not meet the definition of a tributary as defined in the pre-2015 regime post-*Sackett* guidance and are not a water of the United States.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

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The review area contains nine (9) wetlands totaling 423.43-acres. W01 = 0.52-acres, W02 = 1.13-acres, W03 = 0.078-acres, W04 = 2.98-acres, W05 = 3.62-acres, W06 = 165.66-acres, W07 = 51.90-acres, W08 = 191.80-acres; and W09 = 5.74-acres. Based on data sources listed in #9, our 6 November 2025 desk review, we have determined these wetlands reside in depressional areas within the review area, that collects rainwater, and they are completely enclosed by elevated uplands. Based on our review, the wetlands do not have any known continuous surface connection to any RPW, TNW, or impoundments of either. Therefore, in accordance with the pre-2015 regime post-Sackett and the 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act, Wetlands W01-W09 do not meet the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredged and/or fill material into Wetlands W01-W09 does not require a Department of the Army permit.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Desk Review: 5 November 2025
 - b. Maps, plans, plots, and data submitted by or on behalf of the applicant consultant: Wetland delineation report received 2 April 2024.
 - c. Aerial Photos: Google Earth Aerial Imagery (1978,1989, 2006, 2015; and 2025)
 - d. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); FWS NWI ESRI Layer.
 - e. United State Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Soil Survey Geographic Database (SSURGO) Esri Layer
 - f. United States Geological Survey Topographic Maps: Sheeks, Texas Quadrangle 1961,2010 and 2022
10. OTHER SUPPORTING INFORMATION. N/A

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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

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Approved Jurisdictional Determination
Industrial Sun
2466 County Road 486
Dayton, Liberty County, Texas

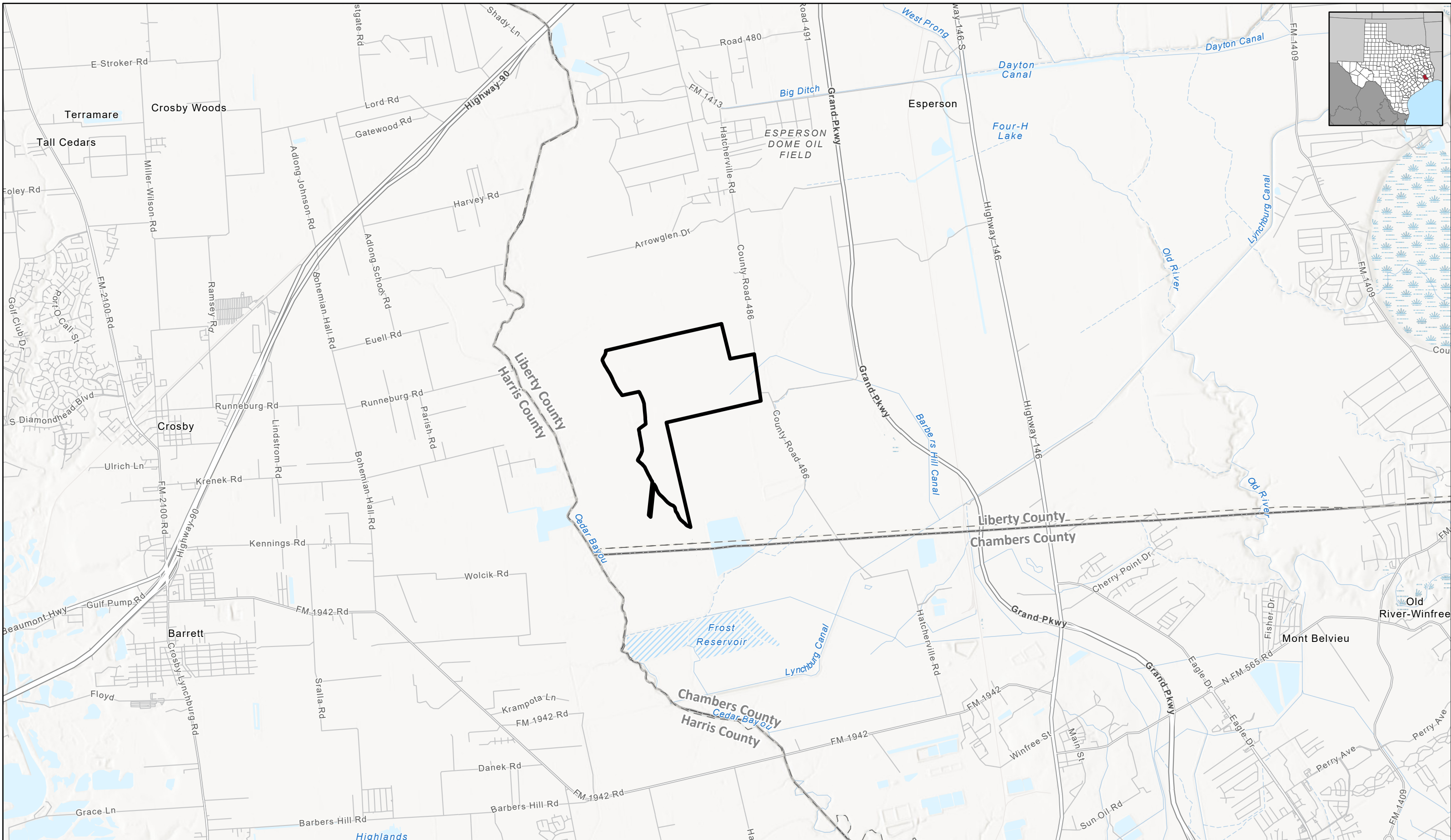
Aquatic Resources Exhibit

Legend



- Review Area = 1069-acres
- S01 = 8,079 LF
- S02 = 5,083 LF
- S03 = 683-LF
- S04 = 1,436 LF
- w01 = 0.52-acres
- w02 = 1.13-acres
- w03 = 0.078-acres
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- w05 = 3.62-acres
- w06 = 165.66-acres
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- w08 = 191.80-acres
- w09 = 5.74-acres

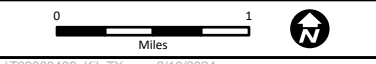
DUSTIN OAKS





Aquatic Resources Report
 Industrial Kilo Project
 22003469
 February 13, 2024

-  Project Area (~1,075 acres)
-  County



Survey Dates: 11/10/2022 - 11/12/2022
 Surveyors: Josh Brown and Kevin Cutrera
 Image Source: Esri World Terrain Base

Figure 1
Project Locator Map
 Liberty County, Texas