



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

CESWG - RDN

18 May 2026

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),<sup>1</sup> SWG-2023-00294, (MFR 1 of 1)<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

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).

Feature Name	Feature Type	Latitude	Longitude	Acres/Linear Feet	Jurisdictional Status
Wetland 1	Palustrine Emergent Wetland (PEM)	30.038158	-95.424856	0.07 acre	Non-Jurisdictional
Wetland 2	PEM	30.039396	-95.42381	0.08 acre	Non-Jurisdictional
Wetland 3	PEM	30.04133	-95.421335	0.03 acre	Non-Jurisdictional
Wetland 4	Palustrine Forested Wetland (PFO)	30.04084	-95.419396	1.61 acres	Non-Jurisdictional
Pond 1	Pond	30.038291	-95.425249	0.35 acre	Non-Jurisdictional
Pond 2	Pond	30.038864	-95.423809	0.06 acre	Non-Jurisdictional
Senger Gully	Stream	30.040222	-95.422707	3986 linear feet (LF)	Jurisdictional
Lemm Gully	Stream	30.038711	-95.417181	269 LF	Jurisdictional
Erosional Rill 1	Stream	30.036519	-95.427053	190 LF	Non-Jurisdictional
Erosional Rill 2	Stream	30.036553	-95.427422	67 LF	Non-Jurisdictional
Erosional Rill 3	Stream	30.036494	-95.427519	40 LF	Non-Jurisdictional

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)

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- 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. The review area is an 112-acre tract located near the intersection of Cypress Creek and Interstate Highway 35 in Houston, Harris County, Texas; 30.039258, -95.422167. Within the review site, a preliminary jurisdictional determination (PJD) was completed on 31 May 2023 for Wetland 1, Wetland 2, Wetland 3, Wetland 4, Senger Gully, and Lemm Gully.
- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cypress Creek, Section 10 Water, TNW<sup>6</sup>
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

RESOURCE NAME	FLOWS INTO	TNW
Wetland 1	Pond 1	N/A
Wetland 2	Feature does not connect to any resource	N/A
Wetland 3		
Wetland 4		
Pond 1		
Pond 2		
Senger Gully	Lemm Gully	Cypress Creek
Lemm Gully	Cypress Creek	Cypress Creek
Erosional Rill 1		
Erosional Rill 2		
Erosional Rill 3		

<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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 resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup> 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):

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<sup>7</sup> 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.

<sup>8</sup> 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.

<p>The tributaries described in the below table are natural, man-altered, or man-made water bodies that flow directly or indirectly into a TNW. See section 5 for flow path information. The features have been determined to meet the relatively permanent standard. The features typically flow year-round or have continuous flow at least seasonally. The Ordinary High Water Mark (OHWM) represents the lateral limits of jurisdiction per 33 CFR 328.4. The OHWM was determined using field indicators in RGL 05-05. The upstream and downstream limits of these features are identified on the attached figure.</p>		
RESOURCE NAME	SIZE	RATIONALE
Senger Gully	3986 LF	<p>The OHWM is present based on office verification of delineation data of:</p> <ul style="list-style-type: none"> <li>• Bed and banks</li> <li>• Clear line impressed on the banks</li> <li>• Presence of litter and debris</li> <li>• Absence of upland vegetation within the thalweg</li> <li>• Presence of wrack line</li> <li>• Sediment sorting</li> <li>• Scour</li> <li>• Sediment deposition</li> </ul> <p>These tributaries have been determined to be relatively permanent waters because the majority of the reach’s length (100%) flows year round or has continuous flow at least seasonally.</p> <p>This feature is relatively permanent based on field documentation of the following along the majority of the reach.</p> <ul style="list-style-type: none"> <li>• Standing water present within channel</li> <li>• Sinuosity</li> <li>• Algae/algal crust</li> <li>• Extensive</li> <li>• Strong OHWM</li> <li>• Extensive scouring</li> <li>• Aquatic Vegetation within channel</li> </ul> <p>40% of this tributary feature’s reach is within the review area. Remote LiDAR and aerial images</p>

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		<p>indicate that off-site portions are similar in geomorphology and likely have similar characteristics.</p> <p>Based on the information above, we have determined that the resource meets the definition of “waters of the United States”.</p>
Lemm Gully	269 LF	<p>The OHWM is present based on office verification of delineation data of:</p> <ul style="list-style-type: none"> <li>• Bed and banks</li> <li>• Clear line impressed on the banks</li> <li>• Presence of litter and debris</li> <li>• Absence of upland vegetation within the thalweg</li> <li>• Presence of wrack line</li> <li>• Sediment sorting</li> <li>• Scour</li> <li>• Sediment deposition</li> </ul> <p>These tributaries have been determined to be relatively permanent waters because the majority of the reach’s length (100%) flows year round or has continuous flow at least seasonally.</p> <p>This feature is relatively permanent based on field documentation of the following along the majority of the reach.</p> <ul style="list-style-type: none"> <li>• Standing water present within channel</li> <li>• Sinuosity</li> <li>• Algae/algal crust</li> <li>• Extensive</li> <li>• Strong OHWM</li> <li>• Extensive scouring</li> <li>• Aquatic Vegetation within channel</li> </ul> <p>&lt;5% of this tributary feature’s reach is within the review area. Remote LiDAR and aerial images indicate that off-site portions are similar in geomorphology and likely have similar characteristics.</p>

		Based on the information above, we have determined that the resource meets the definition of “waters of the United States”.
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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”).<sup>9</sup> 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. N/A
- 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. N/A
- 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

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<sup>9</sup> 51 FR 41217, November 13, 1986.

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resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC.

RESOURCE NAME	SIZE	RATIONALE
Pond 1	0.35 acre	<p>These pond features do not drain directly or indirectly to any waters of the United States and does not support a link to interstate or foreign commerce, because it is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce and is not known to be used for industrial purposes by industries in interstate commerce.</p> <p>Based on the above information, we have determined that the subject pond is considered non-jurisdictional isolated water in accordance with SWANCC under the CWA and does not meet the definition of “waters of the United States”.</p>
Pond 2	0.06 acre	

- 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).

Non-RPW Tributaries:

These features are natural water bodies that flow indirectly via overland sheet flow into an RPW and traditional navigable water (TNW). The tributary has been determined to not meet the relatively permanent standard. The tributaries generally flow only in response to precipitation. The OHWM represents the lateral limits of jurisdiction per 33 CFR 328.4. The OHWM was determined using field indicators in RGL 05-05. The upstream and downstream limits of the tributaries are identified on the attached figure.

<b>RESOURCE NAME</b>	<b>SIZE</b>	<b>RATIONALE</b>
Erosional Rill 1	190 LF	<p>The OHWM is present based on documentation of</p> <ul style="list-style-type: none"> <li>- Bed and Banks</li> </ul> <p>The tributary has been determined to be a non-relatively permanent water because the majority of its length does not flow at least seasonally.</p> <p>This feature is not relatively permanent based on documentation of:</p> <ul style="list-style-type: none"> <li>- Weak bed and bank/OHWM indicators</li> <li>- No evidence of base flow, subsurface flow, groundwater connection</li> <li>- Fibrous roots within channel</li> <li>- Vegetation growing within the channel</li> <li>- Abundant old leaf litter within channel</li> <li>- High elevation gradient</li> </ul> <p>100% of the tributary feature is within the review area. Based on the information above, we have determined that the subject resource does not meet the definition of “waters of the United States.”</p>
Erosional Rill 2	67 LF	<p>The OHWM is present based on documentation of</p> <ul style="list-style-type: none"> <li>- Bed and Banks</li> </ul> <p>The tributary has been determined to be a non-relatively permanent water because the majority of its length does not flow at least seasonally.</p> <p>This feature is not relatively permanent based on documentation of:</p> <ul style="list-style-type: none"> <li>- Weak bed and bank/OHWM indicators</li> <li>- No evidence of base flow, subsurface flow, groundwater connection</li> <li>- Fibrous roots within channel</li> <li>- Vegetation growing within the channel</li> <li>- Abundant old leaf litter within channel</li> </ul>

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		<ul style="list-style-type: none"> <li>- High elevation gradient</li> </ul> <p>100% of the tributary feature is within the review area. Based on the information above, we have determined that the subject resource does not meet the definition of “waters of the United States.”</p>
Erosional Rill 3	40 LF	<p>The OHWM is present based on documentation of</p> <ul style="list-style-type: none"> <li>- Bed and Banks</li> </ul> <p>The tributary has been determined to be a non-relatively permanent water because the majority of its length does not flow at least seasonally.</p> <p>This feature is not relatively permanent based on documentation of:</p> <ul style="list-style-type: none"> <li>- Weak bed and bank/OHWM indicators</li> <li>- No evidence of base flow, subsurface flow, groundwater connection</li> <li>- Fibrous roots within channel</li> <li>- Vegetation growing within the channel</li> <li>- Abundant old leaf litter within channel</li> <li>- High elevation gradient</li> </ul> <p>100% of the tributary feature is within the review area. Based on the information above, we have determined that the subject resource does not meet the definition of “waters of the United States.”</p>

Wetlands

The features listed in the below table meet the definition of “wetlands” per 33 C.F.R. 328.3 and 40 C.F.R. 120.2 and were delineated using the 1987 Corps of Engineers Wetlands Delineation Manual and the appropriate supplement. The features below do not have a continuous surface connection because they do not directly abut a jurisdictional water (they are separated by uplands, a berm, dike or similar feature).

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RESOURCE NAME	SIZE	RATIONALE
Wetland 1	0.07 acre	<p>This determination is supported by an office verification that this wetland does not abut nor have a continuous surface connection to any jurisdictional waters.</p> <p>This wetland abuts Pond 1 which has been determined to be non-jurisdictional in the above section</p>
Wetland 2	0.08 acre	<p>This determination is supported by an office verification that these wetlands are not abutting or have a continuous surface connection to any jurisdictional waters.</p> <p>These wetlands are geographically separated from the nearest jurisdictional water by uplands.</p> <p>Based on the information above we have determined that the subject resource does not meet the definition of “waters of the United States”</p>
Wetland 3	0.03 acre	
Wetland 4	1.61 acres	

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. Consultant reports dated March 2026 and September 2026
  - a. Field photos (consultant field visits conducted on February 24, 2023 and July 17, 2025)
  - b. Wetland Delineation Data Sheets
  - c. Feature Description Narratives
  - d. US Geological Services Topographical Map
  - e. National Wetland Inventory Map
  - f. National Hydrography Dataset Map
  - g. FEMA Floodplain Map
  - h. Elevation Map
- b. National Regulatory Viewer Layers accessed March 12, 2026
  - a. National Wetland Inventory
  - b. National Hydrography Dataset
  - c. USA Soil Map Units

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- d. 3DEP Digital Elevation Model (DEM)
- e. 3DEP Hillshade map
- f. USGS Topography Map

10. OTHER SUPPORTING INFORMATION. N/A


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.

**PREPARED BY:**

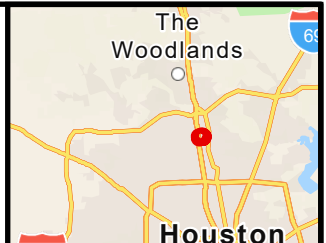
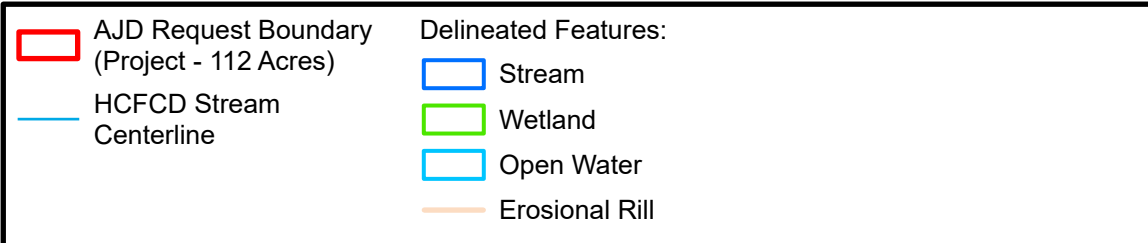
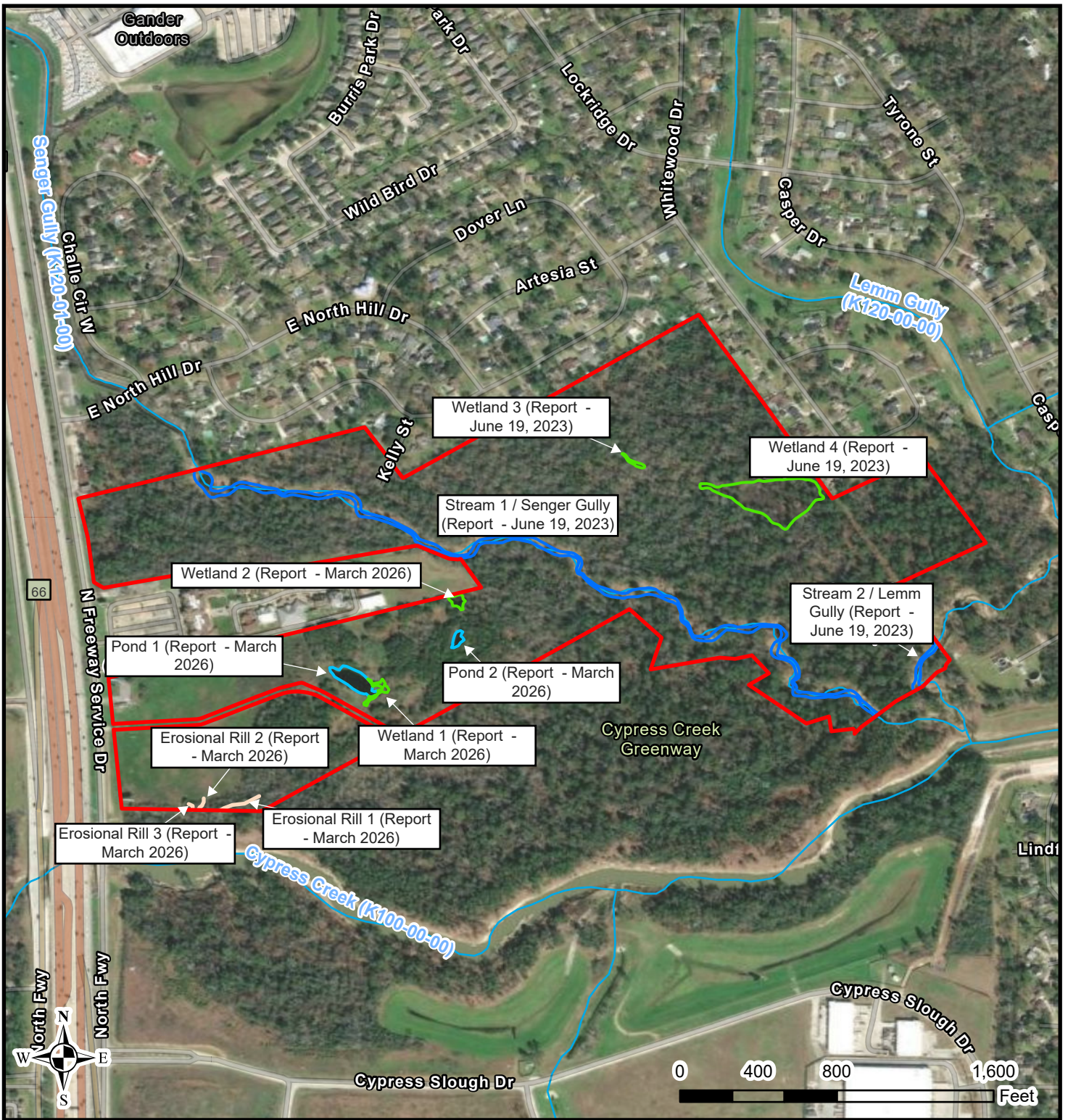
  
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Micah Yone  
Regulatory Specialist

Date: 18 May 2026

**REVIEWED/APPROVED BY:**

  
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Andria Davis  
Acting Leader, North Branch  
Regulatory Division, Galveston District

Date: 18 May 2026



**Figure 2: AJD Request Delineated Features Map**  
 Senger Stormwater Detention Basin  
 Harris County  
 HCFCD Project ID K500-31-00-E002

Sources: HCFCD, Hybrid Reference Layer: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community  
 World Transportation: Esri, HERE  
 World Navigation Map: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community  
 World Imagery: Vantor

