



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

CESWG - RDN

2 March 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),¹ SWG-2025-00624²

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 8 September 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.

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 or Linear Feet (LF)	Jurisdictional Status
Ditch 1	Tributary	30.843217	-93.76153	43.10 LF	Section 404 - Jurisdictional
Wetland A	Forested Wetland	30.842892	-93.763916	39.20 acres	Section 404 - Jurisdictional
Wetland B	Emergent Wetland	30.840771	-93.764423	0.01-acre	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)
- 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 includes a 46.61 acre tract located southeast of the intersection of Highway 190 and Highway 87, and west of Kaufman Street, in Newton, Newton County, Texas.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest traditionally navigable water (TNW) is the Sabine River.

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The Sabine River is located approximately 17 river miles southeast and downstream from the review area.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Wetland A generally flows northeast towards an existing berm along the northeastern boundary of the review area, through a culvert (Culvert 1) installed within a berm, to a tributary (Ditch 1) to outside the review area. Ditch 1, a 43.10 linear foot segment within the review area, begins in the northeast portion of the project site and flows a total of 289 linear feet north through Culvert 1 and two other off-site culverts (Culvert 2 and Culvert 3) into Caney Creek. Caney Creek is the nearest relatively permanent water (RPW) and parallels the northern boundary of the review area. Caney Creek is a stream which carries relatively permanent flow that connects to the Sabine River approximately 17 river miles downstream and southeast of the review.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ 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.

⁷ 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.

⁸ 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.

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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): Ditch 1 is a tributary with relatively permanent flow, measuring 43.10 linear feet within the review area, and directly connects to Caney Creek (RPW) outside the review area. Caney Creek is a stream which carries relatively permanent water flow that connects to the Sabine River (TNW). The entire reach of Ditch 1 holds or contains unobstructed, relatively permanent, flowing water. Continuous surface connection is present within Ditch 1 as flowing unobstructed water through, and primarily under, culvert 1 from Wetland A into Ditch 1. Continuous surface connection is present through Culvert 2 and Culvert 3. Although dug from uplands, Ditch 1 contains a Ordinary High Water Mark (OHWM) and consists of stream bed and bank with relatively permanent flow. The Antecedent Precipitation Tool Reports display normal conditions for Ditch 1. Ditch 1 meets the definition of a tributary as defined in the pre-2015 regime post Sackett guidance and is a Water of the United States.
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): Wetland A is a 39.20 acre palustrine forested wetland located adjacent to Ditch 1 (RPW). Due to the continuous surface connection with a jurisdictional tributary (RPW), Wetland A is jurisdictional under Section 404 of the Clean Water Act. Wetland A meets the definition of an Adjacent Wetland as defined in the pre-2015 regime post Sackett guidance and is a Water of the United States.

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”).⁹ Include size of the aquatic resource or feature within

⁹ 51 FR 41217, November 13, 1986.

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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 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).

Wetland B: Wetland B is a 0.10-acre palustrine emergent wetland located inland and separated by uplands from the nearest RPWs, Caney Creek and Ditch 1. This wetland is not adjacent and does not directly connect to an RPW and/or TNW that could constitute continuous surface connection. Based on our review, the wetland does 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

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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, Wetland B, does not meet the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is not a Water of the United States subject to Section 404 of the Clean Water Act.

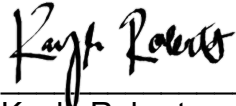
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Request for USACE Jurisdictional Determination (JD) form (ENG 6247), AJD Maps/Figures, Wetland Delineation map, Wetland Determination Data Sheets, Jurisdictional Opinion, and Antecedent Precipitation Tool Results sheet, prepared by Hydrex Environmental, supplied 10 November 2025.
 - e. Site Visit, conducted 29 December 2025.
 - f. Site Visit Memorandum for the Record (MFR), dated 30 December 2025.
 - g. Antecedent Precipitation Tool, reviewed 30 December 2025.
 - b. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata accessed 25 February 2026.
 - c. USACE Texas Southwestern Division Regulatory Viewer. National Wetlands Inventory accessed 25 February 2026.
 - h. USACE Texas Southwestern Division Regulatory Viewer. Soil Map accessed 25 February 2026.
 - i. USACE Texas Southwestern Division Regulatory Viewer. Hydric Soils accessed 25 February 2026.
 - j. USACE Texas Southwestern Division Regulatory Viewer. Digital Elevation Model & Hillshade accessed 25 February 2026.
 - k. Office/ Desktop Evaluation, conducted 2 March 2026.
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

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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:



Kayla Roberts
Regulatory Specialist

Date: 2 March 2026

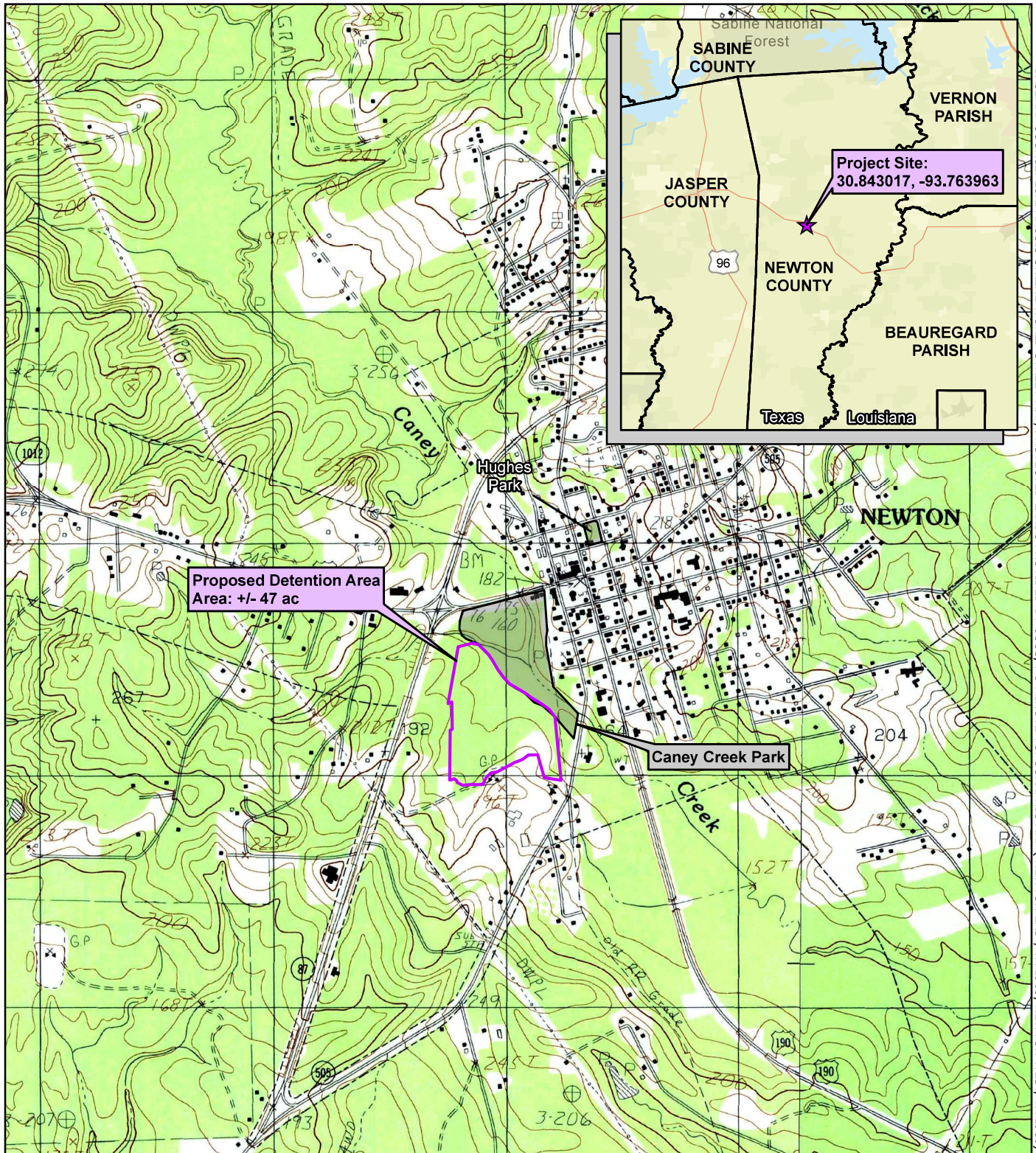
REVIEWED/APPROVED BY:



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

Date: 2 March 2026

BASEMAP SOURCE: ESRI ARCGIS ONLINE WORLD STREET MAP PROTECTED LANDS PROVIDED BY USGS 7.5-MINUTE TOPOGRAPHIC MAP (NEWTON EAST, TX 1985; NEWTON WEST, TX 1985)



- ★ Project Site
- ▭ Local Park
- ▭ Proposed Detention Area

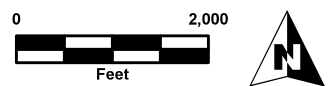


FIGURE 1

← **USGS TOPOGRAPHIC MAP** →

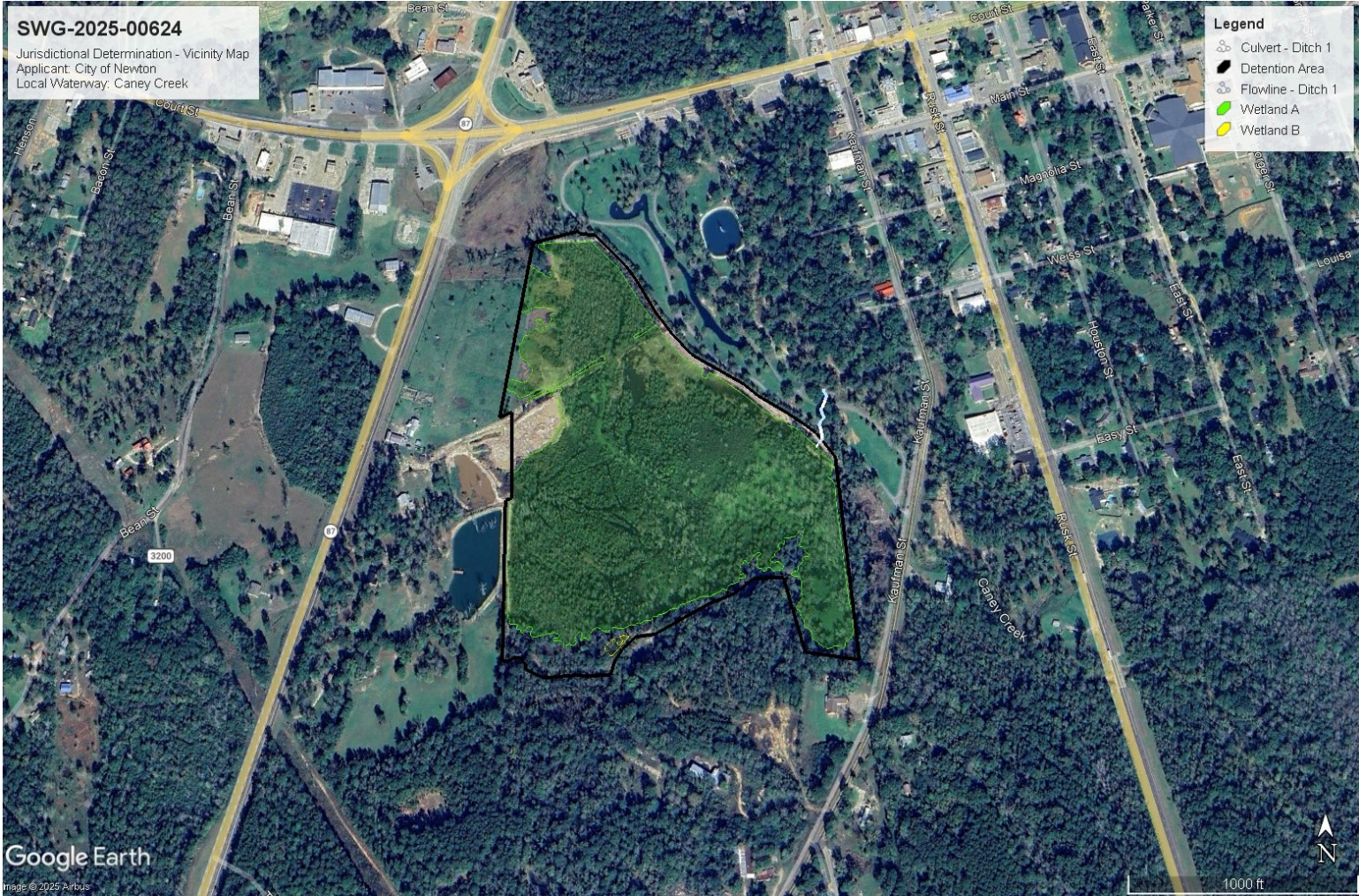
Newton Detention Basin
 +/- 47 Acres
Drainage Infrastructure & Flood Mitigation
 Newton County GLO MIT

Map Revised: 09/25/2025	Project Number: A-12-1843	GIS Analyst: LK
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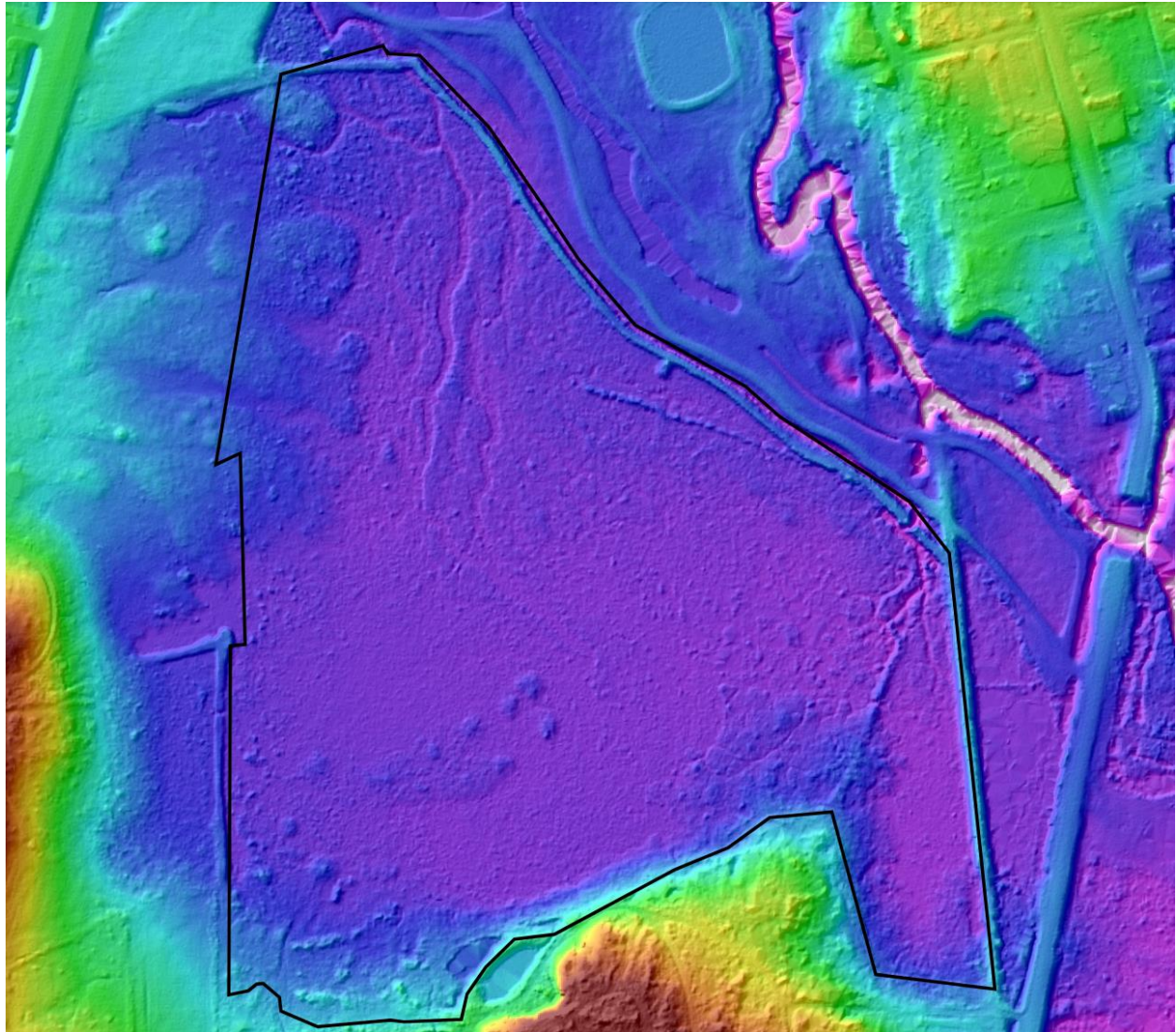
SWG-2025-00624
Jurisdictional Determination - Vicinity Map
Applicant: City of Newton
Local Waterway: Caney Creek

Legend

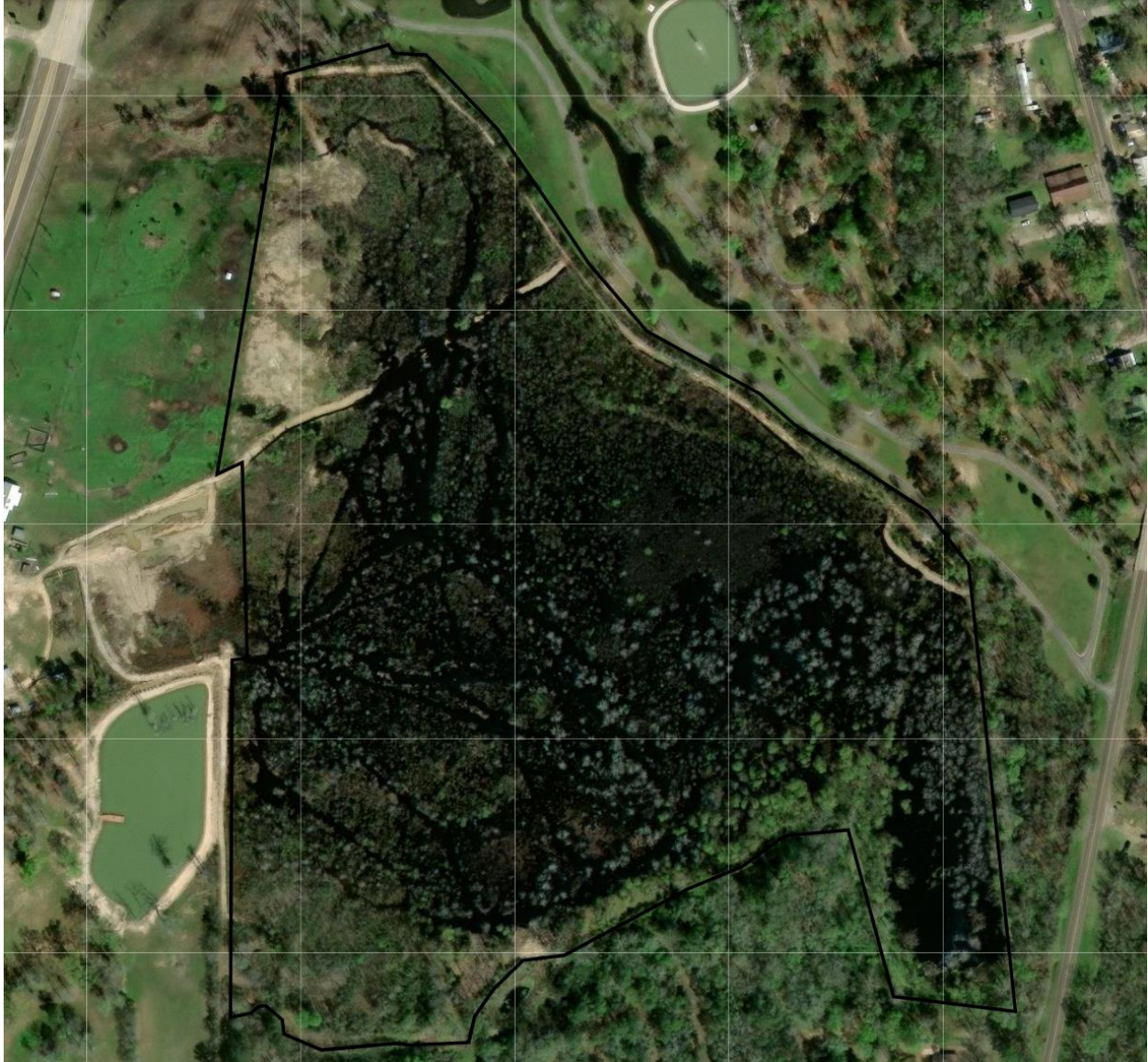
- Culvert - Ditch 1
- Detention Area
- Flowline - Ditch 1
- Wetland A
- Wetland B



USACE Texas Southwestern Division Regulatory Viewer. Digital Elevation Model & Hillshade



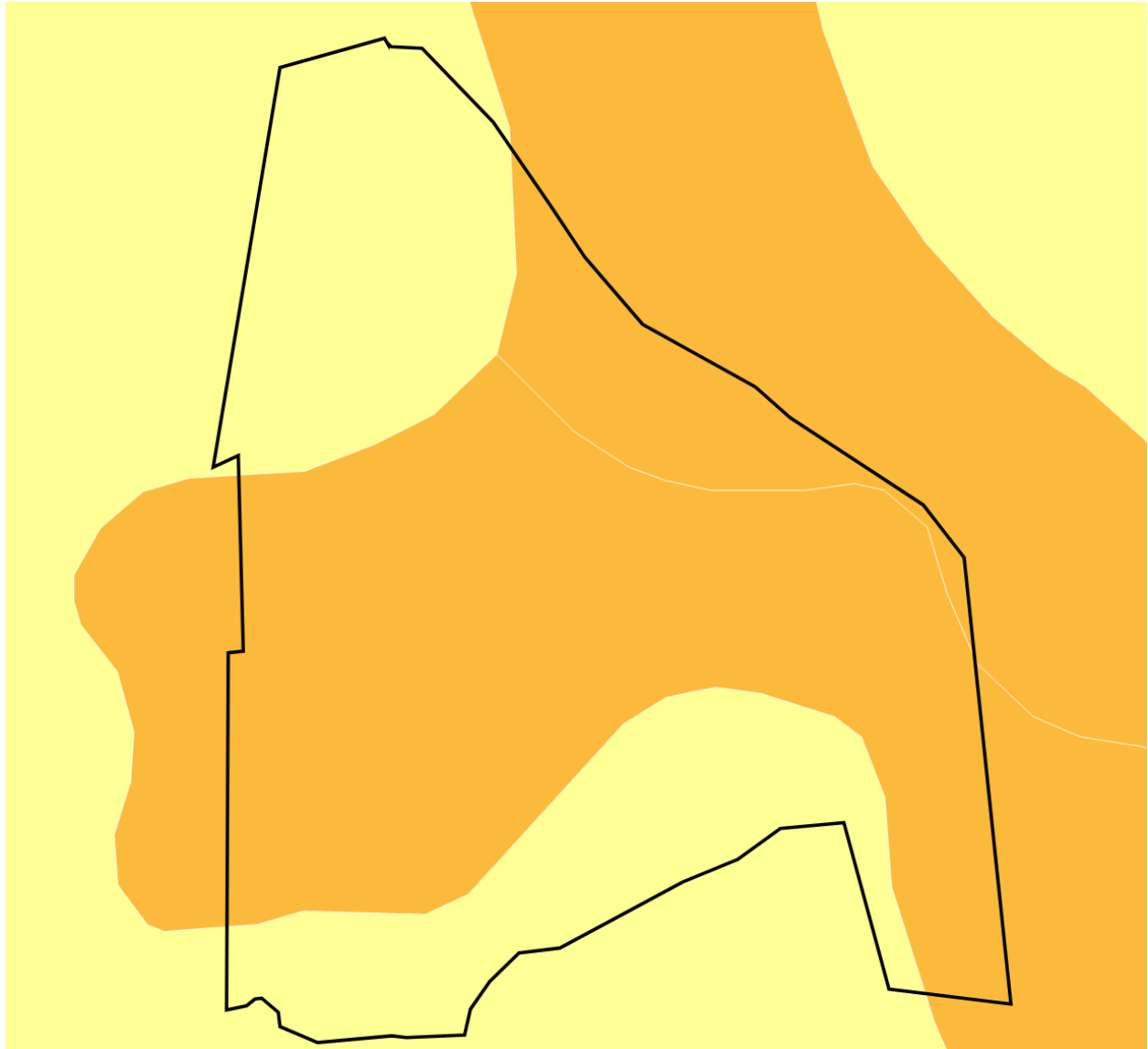
USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata



USACE Texas Southwestern Division Regulatory Viewer. National Wetlands Inventory



USACE Texas Southwestern Division Regulatory Viewer. Soil Map



USACE Texas Southwestern Division Regulatory Viewer. Hydric Soils

