



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

February 3, 2026

North Branch

SUBJECT: SWG-2025-00684: Harris County Flood Control; Approved Jurisdictional Determination; Approximate 24.6-Acre Tract, Southeast of Farm to Market Road 528 in Friendswood, Harris County, Texas

Denise Wade
Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77040
Sent Via Email to: denise.wade@hcfcd.hctx.net

Dear Ms. Wade:

This is in reference to your request, dated December 11, 2025, for an Approved Jurisdictional Determination for an approximate 24.6-acre tract. The review area is located Southeast of Farm to Market Road 528 in Friendswood, Harris County, Texas. Specifically, the project site is located at Latitude: 29.515655°, Longitude: -95.171306°.

The Corps of Engineers has the regulatory responsibility over two primarily federal laws, Section 10 of the Rivers and Harbors Act (Section 10) which regulates work and/or structures in/or affecting navigable waters of the United States (U.S.) and Section 404 of the Clean Water Act (Section 404) which regulates the discharge of dredged and/or fill material into waters of the U.S., including adjacent wetlands. If activities involved trigger either of these aforementioned federal regulations, a Department of the Army (DA) permit is required prior those activities occurring.

Based on our desk review conducted in December 2025 and January 2026, we have determined that the approximate 24.6-acre tract contains 7 palustrine wetlands and 2 stream channels. As described in the enclosed Memorandum for Record, these aquatic resources meet the definition of adjacent wetlands and relatively permanent waters as defined in the pre-2015 regime post Sackett guidance, and as such, are a water of the U.S. subject to Section 404 and subject to Section 10. Therefore, a DA permit is required for the discharge of dredged and/or fill material and/or work and/or structures within these waters of the U.S.

This letter does not obviate the need to obtain Federal, state or local authorization(s) required by law, nor does it grant property rights and/or exclusive privileges, nor authorize any injury to property or rights of others. It is recommended that you visit

<https://www.swg.usace.army.mil/Missions/Operations-Division/Land-Use/> and coordinate with the appropriate offices.

The jurisdictional determination included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This letter contains an AJD for the subject site. For the purposes of this AJD, we have relied on 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 (USACE), 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 to determine jurisdiction. If you object to the AJD portion determination, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. You will find an enclosed Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Southwest Division Office at the following address:

Administrative Appeals Review Officer
Southwestern Division U.S. Army Corps of Engineers (CESWD-PD-O)
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Contact email: swdregulatoryappeals@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.

The AJD is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. If you have questions concerning this matter, please reference file number **SWG-2025-00684** and contact Sean Dillard at the letterhead address, by e-mail at Sean.M.Dillard@USACE.ARMY.MIL or by telephone at 409-766-6315. To assist us in improving our service to you, please complete the survey found at <https://regulatory.ops.usace.army.mil/customer-service-survey/> and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

FOR THE DISTRICT COMMANDER:

Sean Dillard

Sean Dillard
Regulatory Project Manager

cc w/Encl.



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

CESWG - RDN

03 February 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-2025-00684²

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

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.

AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as 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).

- i. Wetland 1, Non-Jurisdictional, 29.5154754, -95.1733410, 0.017-Acre
- ii. Wetland 2, Jurisdictional, Section 404, 29.5146396, -95.1731712, 0.067-Acre
- iii. Wetland 3, Jurisdictional, Section 404, 29.5150819, -95.1687118, 0.162-Acre
- iv. Wetland 4, Jurisdictional, Section 404, 29.5147447, -95.1714302, 0.004-Acre
- v. Wetland 5, Jurisdictional, Section 404, 29.5149731, -95.1712419, 0.007-Acre
- vi. Wetland 6, Jurisdictional, Section 404, 29.5151499, -95.1710281, 0.010-Acre
- vii. Wetland 7, Jurisdictional, Section 404, 29.5153366, -95.1700904, 0.004-Acre
- viii. Wetland 8, Jurisdictional, Section 404, 29.5152526, -95.1700024, 0.012-Acre
- ix. Upland Drainage Feature 1, Non-Jurisdictional, 29.5170423, -95.1731702, 144 Linear Feet
- x. Upland Drainage Feature 2, Non-Jurisdictional, 29.5165092, -95.1732731, 179 Linear Feet
- xi. Water Feature 1, Jurisdictional, Section 404, 29.5148345, -95.1692247, 745 Linear Feet
- xii. Clear Creek, Jurisdictional, Section 10, 29.305208, -95.102417, 3,138 Linear Feet

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)

3. REVIEW AREA. The review area includes a 24.6-Acre tract located Southeast of Farm to Market Road 528 in Friendswood, Harris County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees): Review Area Center, Latitude: 29.515655° North; Longitude: 095.171306° West

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Clear Creek is the nearest traditionally navigable waterway in which the subject aquatic resources flow into. Clear Creek then flows downstream and deposits into Galveston Bay which is directly connected to the Gulf of America.⁶
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Wetlands 2, 4, 5, 6, 7, & 8 directly abut Clear Creek (TNW). Water Feature 1 is classified as a relatively permanent waterway which has direct connection to Clear Creek. Wetland 3 surrounds Water Feature 1, resulting in a continuous surface connection with Clear Creek.
- 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

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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸

Clear Creek: Clear Creek, within the review area, is a 3,138-linear-foot TNW located on the southside of the review area and effectively separates Harris County and Galveston County. This portion of channel flows from west to east through Clear Lake and into Galveston Bay. The Ordinary High-Water Mark of the channel is located at a depth of approximately 6 feet from the moderate to densely vegetated banks of the creek. The channel width from bank to bank is estimated to be 120 linear feet.

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):

Clear Creek: Clear Creek, within the review area, is a 3,138-linear-foot TNW located on the southside of the review area and effectively separates Harris County and Galveston County. This portion of channel flows from west to east through Clear Lake and into the Galveston Bay. The Ordinary High-Water Mark of the channel is located at a depth of approximately 6 feet from the moderate to densely vegetated banks of the creek. The channel width from bank to bank is estimated to be 120 linear feet.

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

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.

d. Impoundments (a)(4): N/A

e. Tributaries (a)(5):

Water Feature 1: Water Feature 1 is a Relatively Permanent Waterway (RPW) measuring 745 liner feet that flows into and directly connects to Clear Creek (TNW). The Ordinary High Water Mark width ranges from 10 to 40 feet along the length of the channel and the channel depth ranges from 2 inches at the northeastern extent to 4-5 feet near the Clear Creek connection point.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

Wetland 2: Wetland 2 is a 0.060-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface connection with a TNW, Wetland 2 is jurisdictional under Section 404 of the Clean Water Act.

Wetland 3: Wetland 3 is a 0.162-Acre Palustrine Emergent and Palustrine Forested wetland complex located adjacent to Water Feature 1 (RPW) which itself directly connects to Clear Creek (TNW). Due to this wetlands direct continuous surface connection with an RPW, Wetland 3 is jurisdictional under Section 404 of the Clean Water Act.

Wetland 4: Wetland 4 is a 0.004-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface connection with a TNW, Wetland 4 is a jurisdictional under Section 404 of the Clean Water Act.

Wetland 5: Wetland 5 is a 0.007-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface connection with a TNW, Wetland 5 is a jurisdictional under Section 404 of the Clean Water Act.

Wetland 6: Wetland 6 is a 0.010-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface connection with a TNW, Wetland 6 is jurisdictional under Section 404 of the Clean Water Act.

Wetland 7: Wetland 7 is a 0.004-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface

connection with a TNW, Wetland 7 is jurisdictional under Section 404 of the Clean Water Act.

Wetland 8: Wetland 8 is a 0.012-Acre Palustrine Emergent wetland located adjacent to Clear Creek (TNW). Due to this wetlands continuous surface connection with a TNW, Wetland 8 is jurisdictional under Section 404 of the Clean Water Act.

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 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.

Upland Drainage Feature 1: Upland Drainage Feature 1 is a Non-Relatively Permanent Waterway measuring 144 linear feet in length. This feature has a connection to Clear Creek (TNW) but does not carry relatively permanent flow to Clear Creek (TNW). Upland Drainage Feature 1 measures approximately 2 feet in width and lacks an apparent Ordinary High-Water Mark and lacks a bed and bank. Inundation and the current presence/flow of water were not observed. Due to these reasons, Upland Drainage Feature 1 is non-jurisdictional.

Upland Drainage Feature 2: Upland Drainage Feature 2 is a Non-Relatively Permanent Waterway measuring 179 linear feet in length. This feature has a connection to Clear Creek (TNW) but does not carry relatively permanent flow to Clear Creek (TNW). Upland Drainage Feature 2 measures approximately 2 feet in width and lacks an apparent Ordinary High-Water Mark and lacks a bed and bank. Inundation and the current presence/flow of water were not observed. Due to these reasons, Upland Drainage Feature 2 is non-jurisdictional.

- 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

⁹ 51 FR 41217, November 13, 1986.

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 1: Wetland 1 is a 0.017-Acre Palustrine Emergent wetland located inland of the nearby but separated by uplands from Clear Creek (TNW). This wetland is not directly connected to a Relatively Permanent Waterway that could constitute a continuous surface connection / hydrologic connection to Clear Creek. As such, the Corps considers Wetland 1 to be non-jurisdictional.

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. Office evaluation was conducted December 2025 and January 2026.
 - b. Wetland Delineation Report: Prepared by ISANI, for the Harris County Flood Control District dated 19 November 2025.
 - c. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata accessed December 2025.
 - d. USACE Texas Southwestern Division Regulatory Viewer. National Wetlands Inventory accessed December 2025.

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00684

- e. USACE Texas Southwestern Division Regulatory Viewer. National Hydrography Dataset accessed December 2025.
- f. USACE Texas Southwestern Division Regulatory Viewer. Soils Map accessed December 2025.
- g. USACE Texas Southwestern Division Regulatory Viewer. Hydric Soils accessed December 2025.
- h. USACE Texas Southwestern Division Regulatory Viewer. Digital Elevation & Hillshade accessed December 2025.

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:

Sean Dillard Date: 3 February 2026
Sean Dillard
Regulatory Project Manager

REVIEWED/APPROVED BY:



Andria Davis
Leader, North Branch
Regulatory Division, Galveston District Date: 3 February 2026

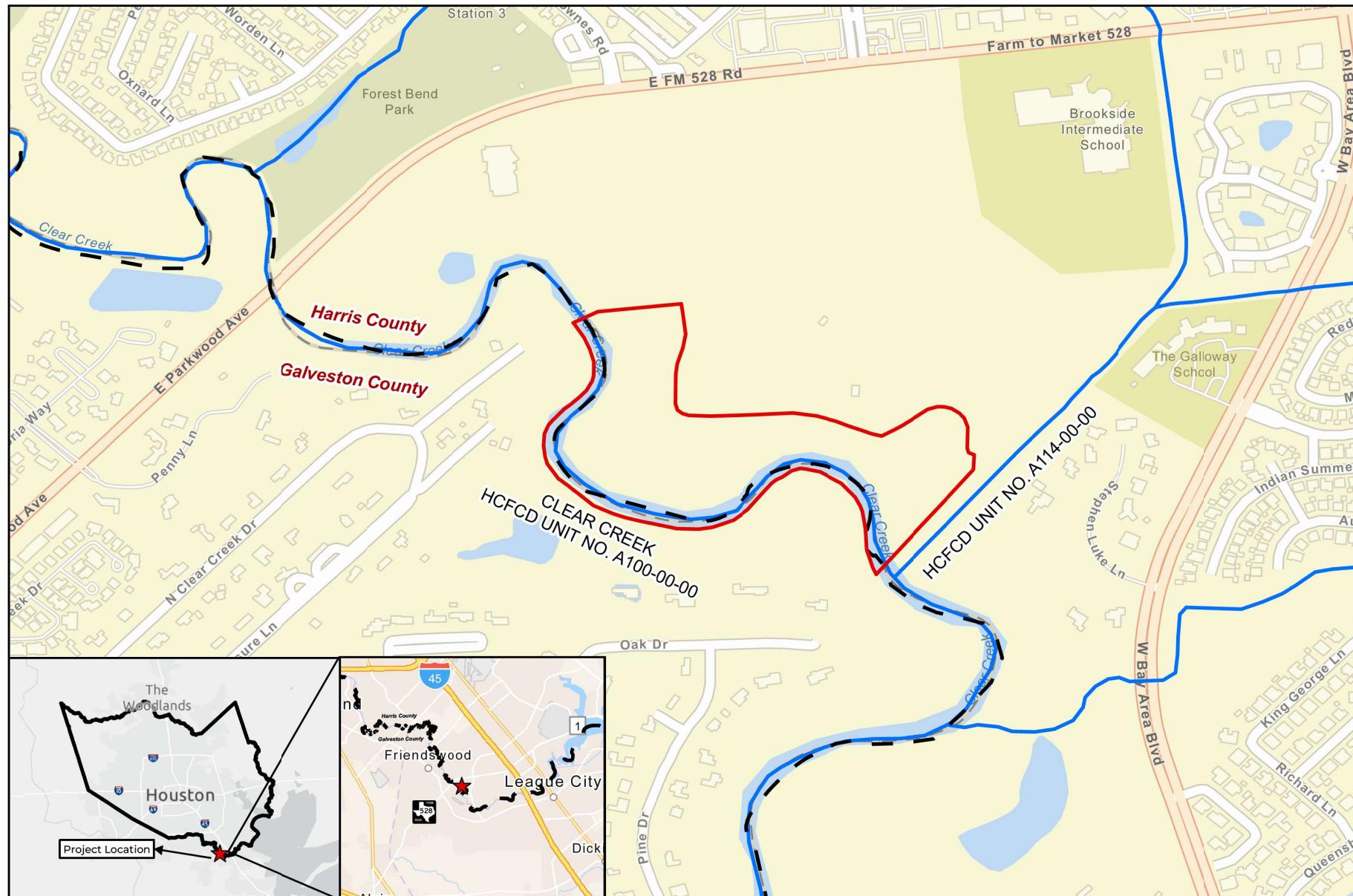


Exhibit 1. Vicinity Map

Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County, TX

Legend

- Project Study Area (Red)
- HCFCD Channels (Blue)
- Harris County Limits (Black Dashed)



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Exhibit 2. Site Location Map

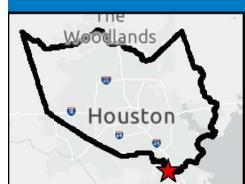
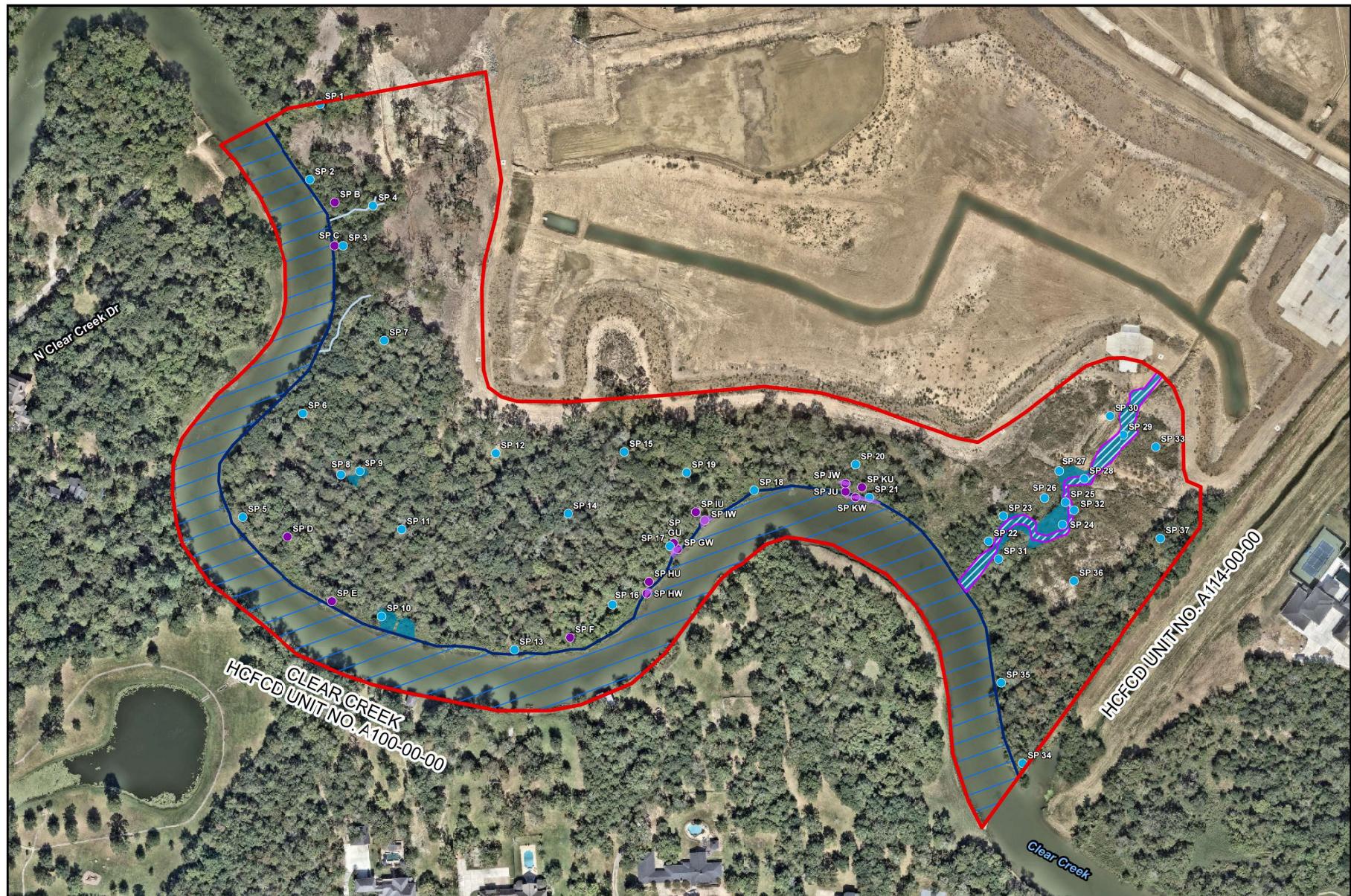
Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County, TX

Legend

- Project Center
- Project Study Area
- HCFCD Channels
- Harris County Limits



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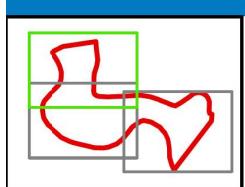
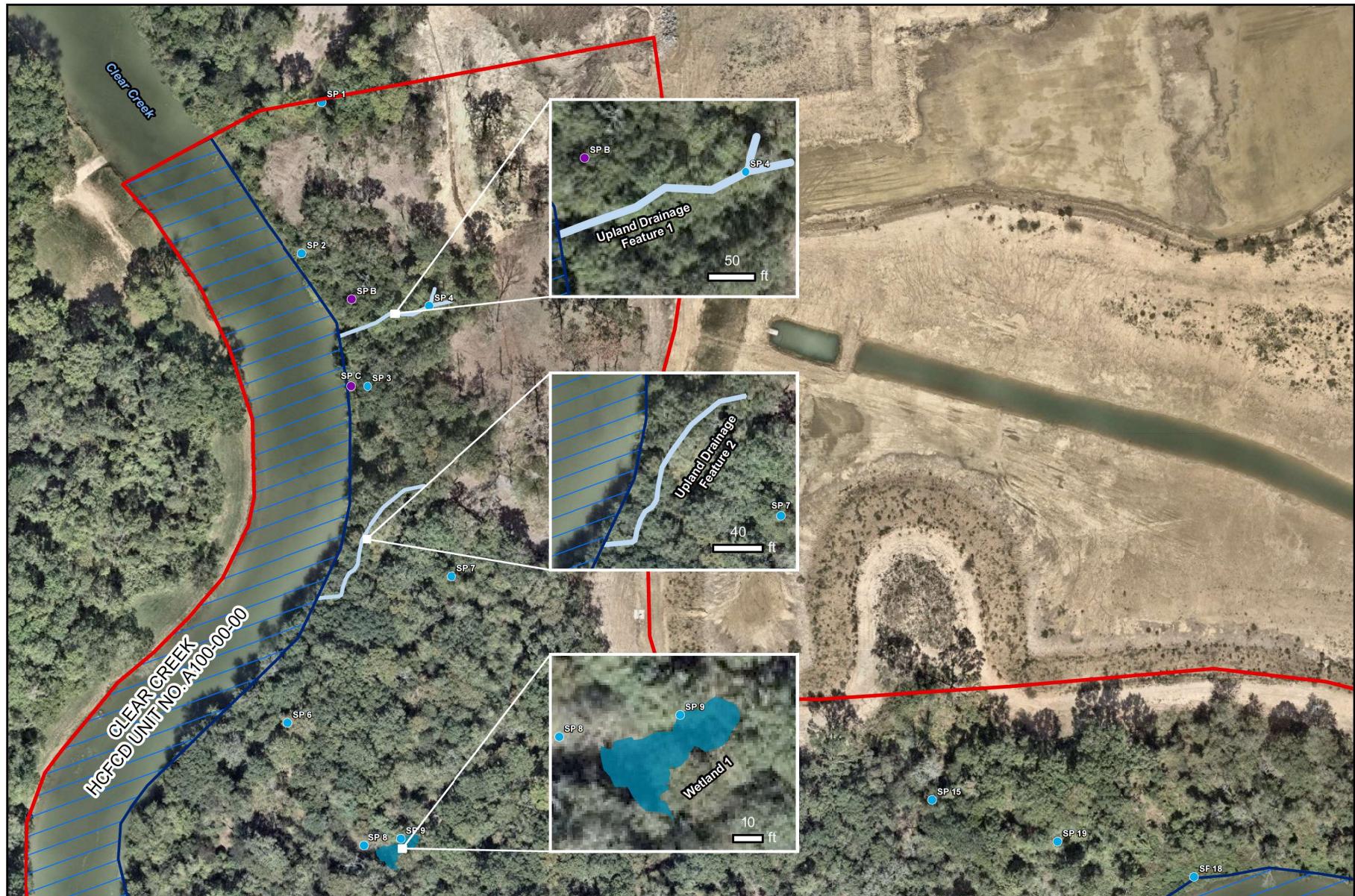
Addendum: Exhibit A. Updated Aquatic Resources Delineation Overview Map
Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County

Legend

- Project Study Area (Red Box)
- Water Feature 1 - Unnamed Tributary to Clear Creek (Hatched Area)
- Delineated Upland Drainage Features from December 2025 (Blue Line)
- Potential Wetland Features Observed in July 2025 (Blue Circle)
- Sample Points from July 2025 (Blue Dot)
- Potential Wetland Features Observed in December 2025 (Purple Circle)
- Sample Points from December 2025 (Purple Dot)



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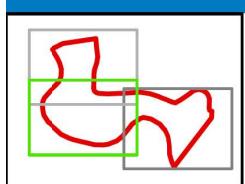
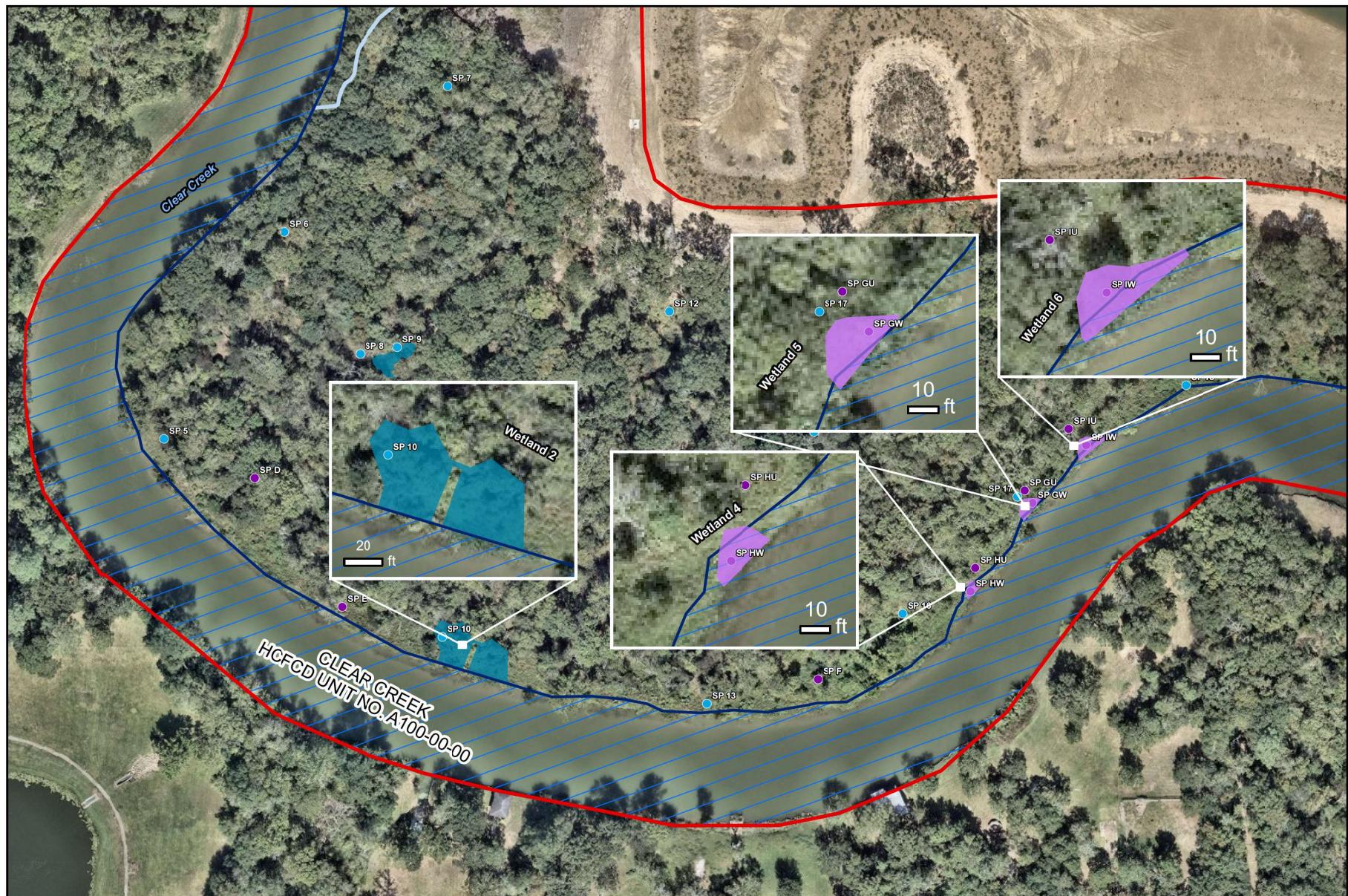
Addendum: Exhibits A1. Updated Aquatic Resources Delineation Map
Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County

Project Study Area
Water Feature 1 - Unnamed Tributary to Clear Creek

Legend

- Delineated Upland Drainage Features from December 2025
- Water Feature 1 - Unnamed Tributary to Clear Creek
- Potential Wetland Features Observed in July 2025
- Potential Wetland Features Observed in December 2025
- Sample Points from July 2025
- Sample Points from December 2025
- Potential Wetland Features Observed in December 2025
- Clear Creek Ordinary High Water Mark

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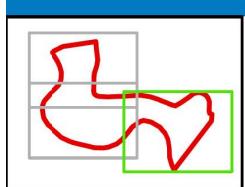
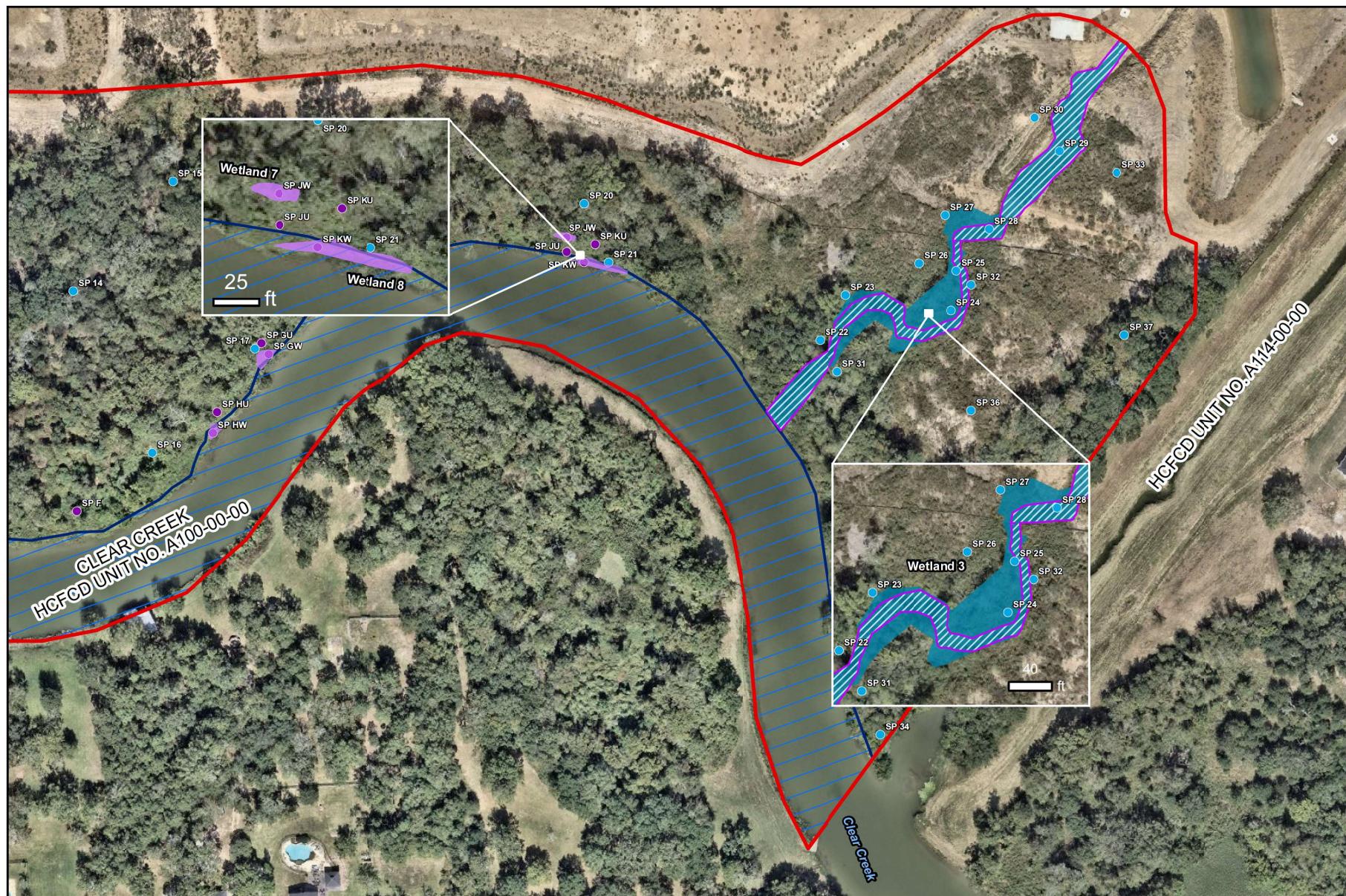
Addendum: Exhibit A2. Updated Aquatic Resources Delineation Map
Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County

Legend

- Project Study Area
- Water Feature 1 - Unnamed Tributary to Clear Creek
- Delineated Upland Drainage Features from December 2025
- Potential Wetland Features Observed in July 2025
- Sample Points from July 2025
- Potential Wetland Features Observed in December 2025
- Sample Points from December 2025
- Potential Wetland Features Observed in December 2025
- Clear Creek Ordinary High Water Mark



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Addendum: Exhibit A3. Updated Aquatic Resources Delineation Map
Whitcomb Terracing and Stormwater Detention Basin
HCFCD Project ID: A500-10-00-E001
Friendswood, Harris County

