



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

CESWG - RDC

26 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),<sup>1</sup> SWG-2012-00438

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>2</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>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</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 amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Texas due to litigation.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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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
WET-1	PEM	30.047096, -95.791686	0.23 acres	Non-adjacent, Non-jurisdictional
WET-2	PEM	30.045976, -95.79277	0.13 acres	Non-adjacent, Non-jurisdictional
WET-3	PEM	30.047181, -95.792313	0.22 acres	Non-adjacent, Non-jurisdictional
WET-4	PEM	30.04156, -95.791873	1.90 acres	Non-adjacent, Non-jurisdictional
ST-1 (L114-00-00)	Ditch	30.044137, -95.792074	2,862.01 linear feet	Non-relatively permanent, Non-jurisdictional
ST-2 (L114-01-00)	Ditch	30.040599, -95.793765	406.14 linear feet	Non-relatively permanent, Non-jurisdictional
L-1	Stormwater Basin	30.039134, -95.792113	20.53 acres	Preamble water, Non-jurisdictional
P-1	Stock Pond	30.046972, -95.791604	0.20 acres	Preamble water, 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.

- f. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988).
3. REVIEW AREA. The review area is 102 acres located northeast of the intersection of Becker Road and Bauer Hockley Road in Houston, Harris County, Texas.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS ST-2 flows into Little Cypress Creek. Little Cypress Creek flows into Cypress Creek, a TNW
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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

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<sup>5</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>6</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.

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”).<sup>7</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.

P-1 was excavated between 1988 and 1995 in uplands for use as a livestock pond and is, therefore, a preamble water. P-1 does not abut a TNW, RPW, and/or a jurisdictional impoundment. The 1986 preamble to 33 CFR 320-330 regulations states that for clarification it should be noted that we generally do not consider the following waters to be “waters of the United States...(C) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. Therefore, P-1 is not a water of the United States and is not subject to Section 404 of the Clean Water Act. Any discharge of fill material into P-1, totaling 0.2 acres, does not require a Department of the Army permit.

L-1 is an old borrow pit left from the implementation of Harris County Flood Control District’s Excavation and Removal Program and is, therefore, a preamble water. The 1986 preamble to 33 CFR 320-330 regulations state that “for

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<sup>7</sup> 51 FR 41217, November 13, 1986.

clarification it should be noted that we generally do not consider the following waters to be waters of the United States... (e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction operation is abandoned and the resulting body of water meets the definition of the waters of the United States (33 CFR 328.3 (a))” Therefore, L-1 is not a water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into L-1, totaling 20.53 acres, does not require a Department of the Army permit.

- 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.

ST-1 (L114-00-00) is a drainage ditch. It first appears in aerial photography in January 2021. It was filled in October 2024. It seems to have been created secondary to construction activities. This feature appears on the 1957 and 1982 topo maps, however when compared to the aerial photography and the NWI map, it looks like the feature identified on the topo maps really runs outside of the western property boundary, not through the property. The aerial photography shows that while ST-1 existed, it did not carry relatively permanent flow because it did not have water consistently in the feature. Based on the evidence submitted in the delineation and our desk review, ST-1 (L114-00-00) is not a relatively permanent water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into ST-1 (L114-00-00), totaling 2,862 linear feet, does not require a Department of the Army permit.

ST-2 (L114-01-00) is a drainage ditch. Topo maps show this feature as both a broken and dotted line and a solid line, meaning both relatively and non-relatively permanent. The flow regime is difficult to see along the entire length of the feature due to tree cover. ST-2 flows into stormwater detention basin L-1. There is a culvert on the northeastern edge of L-1. Water will flow out of L-1 and continue along ST-2 if the water level becomes full enough. The topo maps show that ST-2 flows southeast from the project site and joins Little Cypress Creek. After ST-2 flows under Bauer Hockley Road, it is not visible under the tree canopy on aerial photography. The convergence with Little Cypress Creek cannot be seen. Since we cannot prove that ST-2 is relatively permanent along the majority of its length, we will deem it non-relatively permanent. Therefore, ST-2 (L114-01-00) is not a water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into ST-2 (L114-01-

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00), totaling 406.14 linear feet, does not require a Department of the Army permit.

- 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).

Based on a desk review and a review of the submitted delineation, we have determined that Wet 1- Wet 4 do not meet the continuous surface connection standard for adjacent wetlands as they do not abut a relatively permanent water, a jurisdictional impoundment, or a traditional navigable water. Therefore, these wetlands are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into these wetlands, totaling 2.5 acres, 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. Aerial Photographs: 31 December 1943 to 28 July 2025

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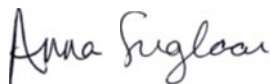
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- b. United States Geological Survey (USGS) Topographic Maps: 1957 *Beaumont, Tx 1:250,000*, 1962 *Hockley, Texas 1:24,000*, 2010 *Hockley, Texas 1:24,000*, 2016 *Hockley, Texas 1:24,000*, 2022 *Hockley, Texas 1:24,000*,
- c. United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) Map Accessed 19 March 2026
- d. US Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Soil Map Accessed 19 March 2026
- e. USGS National Map 3D Elevation Program (3DEP) LiDAR 2 January 2025 Accessed 24 March 2026
- f. Delineation Report submitted by Harris County Flood Control District on 6 September 2024

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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Anna Fuglaar  
Regulatory Specialist

26 March 2026  
Date: \_\_\_\_\_

**REVIEWED/APPROVED BY:**



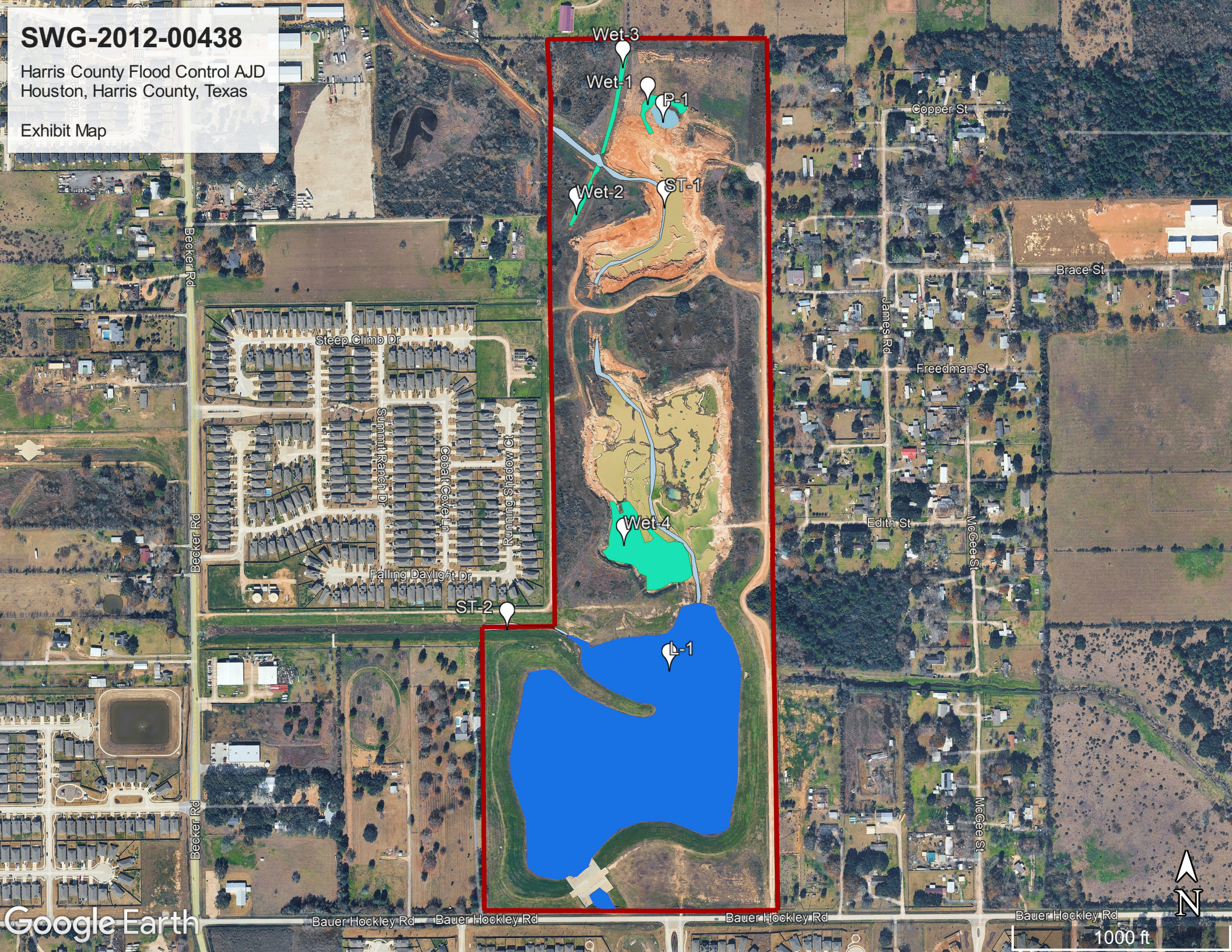
\_\_\_\_\_  
Kara Vick  
Leader, South Branch  
Regulatory Division, Galveston District

26 March 2026  
Date: \_\_\_\_\_

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Harris County Flood Control AJD  
Houston, Harris County, Texas

Exhibit Map



Wet-3

Wet-1

P-1

Wet-2

ST-1

Wet-4

ST-2

L-1

Becker Rd

Becker Rd

Becker Rd

Steep Climb Dr

Summit Raven Dr

Cobalt Cove Ln

Running Shadow Ct

Falling Daylight Dr

Bauer Hockley Rd

Bauer Hockley Rd

Bauer Hockley Rd

Bauer Hockley Rd

Copper St

Brace St

James Rd

Freedman St

Edith St

McGee St

McGee St



1000 ft