



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 12/8/2020

ORM Number: SWG-2017-00704

Associated JDs: SWG-2017-00704 (Rapanos JD 16 January 2018)

Review Area Location¹: State/Territory: Texas City: Richwood County/Parish/Borough: Brazoria

Center Coordinates of Review Area: Latitude 29.093775 Longitude -95.363750

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
((a)(1) Name	((a)(1) Size	((a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
((a)(2) Name	((a)(2) Size	((a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
((a)(3) Name	((a)(3) Size	((a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
((a)(4) Name	((a)(4) Size	((a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
PEM-1	10.90	acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-2	11.90	acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PFO-1	1.21	acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PFO-2	0.56	acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PFO-3	2.00	acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
				(a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
Borrow Pit-1	1.22	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	This borrow pit was excavated to obtain fill for the operation of the landfill and not from an a)1-a)4 water. This water-filled depression does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
Borrow Pit-2	0.57	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	This borrow pit was excavated to obtain fill for the operation of the landfill and not from an a)1-a)4 water. This water-filled depression does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
Borrow Pit-3	0.57	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	This borrow pit was excavated to obtain fill for the operation of the landfill and not from an a)1-a)4 water. This water-filled depression does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Borrow Pit-5	1.34	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.
Borrow Pit 6	18.00	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: [Wetland Delineation Report submitted by AmaTerra Environmental, Inc. dated 22 June 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

☒ Data sheets prepared by the Corps: [DP01, DP02, and DP03 13 December 2017](#)

☒ Photographs: [Aerial: Google Earth 2010, 2014, 2017, and Digital Globe 2020](#)

☒ Corps site visit(s) conducted on: [13 December 2017](#)

☒ Previous Jurisdictional Determinations (AJDs or PJDs): [SWG-2017-00704 dated 16 January 2018](#)

☒ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☒ USDA NRCS Soil Survey: [Brazoria County Soil survey](#)

☒ USFWS NWI maps: [Oyster Creek NWI Quad map](#)



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☒ USGS topographic maps: Oyster Creek, Texas 1943 and 1963

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Texas Water Development Board 2018 LiDAR FEMA FIRM 48039C0630H5 June 1989 FEMA Flood Insurance Study 48039V002 22 September 1999

B. Typical year assessment(s): Portions of the subject site are located inside in the mapped 100-year flood plain for Bastrop Bayou (located approximately 1 mile north of the site). We verified that the site still contains numerous acres of wetlands and open water features (borrow pits). A review of contemporary LiDAR elevation data & maps reveals that the site is located at an approximate elevation of 5.5' -7' NGVD 88. None of these subject aquatic features (per the FEMA FIS maps) are located in a contiguous landscape position that would be anticipated to be inundated by flooding by the nearest waters of the U.S. (Bastrop Bayou) in a typical year. The determination regarding potential inundation due to flooding by the nearest waterway is based largely upon site specific information and scientific studies regarding flood plain correlation and elevation information for bankfull and floodplains (e.g. study entitled: Hydrogeomorphological differentiation between floodplains and terraces by: Qina Yan, Toshiki Iwasaki, Andrew Stumpf, Patrick Belmont, Gary Parker & Praveen Kuma.). The study referenced shows that the 10-year flood plain elevation is located slightly higher than bankfull elevation in select sites for riverine systems. Noting per NWPR regulation that bank full is anticipated to be located within the area that floods in a typical year and as such any wetlands, lakes, ponds, or impoundments within this area would be jurisdictional. Regulation also states that it does not extend to the boundary of the 100-year flood plain. The aquatic resources on this site are located above the 5' elevation (noting the 10-year flood plain elevation is slightly less than 5') for this area.

In an effort to determine adjacency (as it pertains to hydrologic trends and the subject aquatic resources verified by SWG) an analysis was done using the APT tool, elevation data, aerial imagery & other relevant site-specific information. (The APT is a tool that affords the user the capability to look at rainfall at a specific location in the recent past, cumulative for the last 3 months {WETS analysis product score}, as well as a climatological review for the past 30 years and the PDSI Drought index. This tool also provides WebWimp water balance/hydrologic seasons information. The APT uses climatic data collected from numerous nearby weather stations and produces the most reliable source for a full 30 years of precipitation data.) Historic and recent aerial photographs do not show the wetlands being inundated by surface water associated with flooding from an (a) (2) water, Bastrop Bayou; even when conditions were wetter than normal. Here are the long term and short term response for the APT test for aeriels & site visit on 12/13/17.

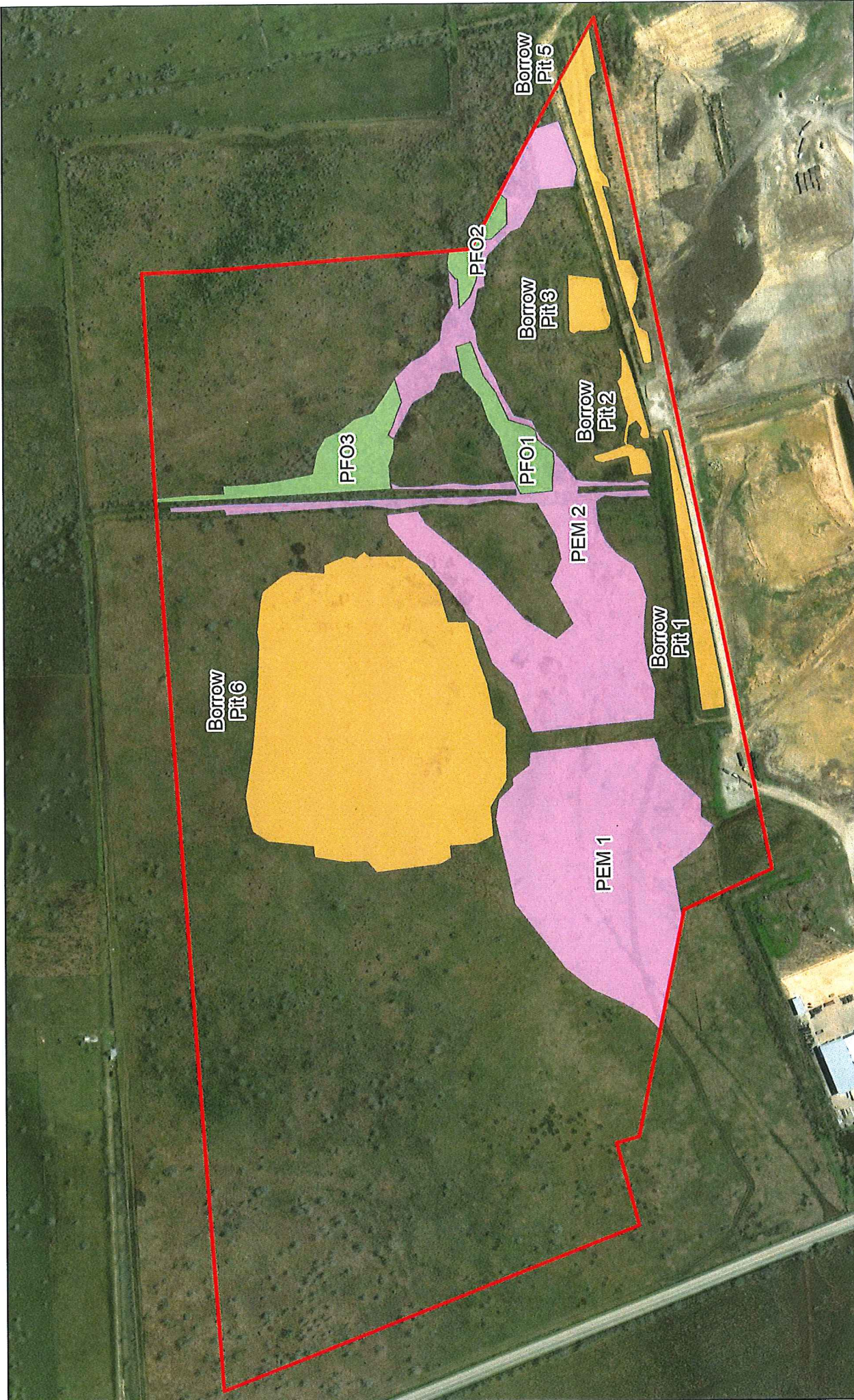
Date	Prior 72 Hour	PDSI	Season	WETS Score	APT (30yr)
1/8/2010	< 1"	Mild wetness	Wet	15	Normal
5/15/2014	~ 2"	Incipient Wetness	Dry	9	Normal
1/22/2017	1-2"	Mild wetness	Wet	11	Normal
12/13/2017	<1"	Severe wetness	Wet	11	Above Normal
6/9/2020	2-3"	Normal	Dry	16	Above Normal



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In conclusion, we have determined that these aquatic features are non-jurisdictional waters (b)(1) waters. This is based on site-specific information, federal regulation, scientific and flood plain studies, and a review of aeriels. These aquatic features do NOT abut an a)1-a)3 water, NOR would they be inundated by flooding of an a)1-a)3 water in a typical year, NOR are they physically separated from an a)1-a)3 water by a single natural barrier, NOR are they physically separated by an artificial barrier that allows direct surface hydrologic connection between the aquatic feature(s) in review and an a)1-a)3 water in a typical year.

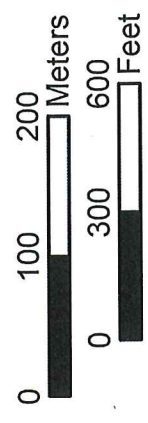
- C. Additional comments to support AJD:** A previous AJD, SWG-2017-00704, was finalized under the Rapanos Guidance on 16 January 2018. This AJD determined that the 70.6-acre tract contained 25.5 acres of adjacent wetlands subject to Section 404 of the Clean Water Act .



- Project Area
- Borrow Pit
- Palustrine Emergent Wetland
- Palustrine Forested Wetland



SW6-2017-00704



Source: 2015 Bing Imagery
Date: 12/9/2020