

**DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM<sup>1</sup>**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 26, 2019**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2019-00708**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Texas County/parish/borough: Harris City: Tomball  
Center coordinates of site (lat/long in degree decimal format): Lat. 30.067633 °, Long. -95.735167 °  
Universal Transverse Mercator: NAD 83  
Name of nearest waterbody: Unnamed Tributary of Little Cypress Creek  
Name of watershed or Hydrologic Unit Code (HUC): HUC 12040104

- Check if map/diagram of review area is available upon request.  
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: January 27, 2020  
 Field Determination. Date(s): [Click here to enter a date.](#)

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

The nearest relatively permanent water is Willow Creek. The man-made drainage ditches present on the subject property are detailed in the table below, along with their distances to Willow Creek.

Area	A	B
Approximate Size (acre)	~0.04	~0.02
Distance to Willow Creek (miles)	1.46	1.45
Center Coordinate of Site (decimal degrees, NAD 83)	30.06775°N -95.735256°W	30.067535°N -95.735129°W

All of the man-made drainage ditches listed above are located above the base floodplain elevation of 210-feet above mean sea level (AMSL), would not be considered impoundments of jurisdictional waters, are not in the floodplain of the nearest TNW, have no hydrological connection to any jurisdictional waters or wetlands in the area, and have been determined to be “ISOLATED” as defined in federal regulations (33 CFR 330.2(e)).

Based on the topography and aerial imagery, the majority of the site is level. The man-made drainage ditches were identified during the delineation and upon review of historic aerial imagery. Based on a review of this imagery, the two man-made drainage ditches appear to remnants of an old access road that has since been abandoned. The two ditches drain into an existing road-side drainage ditch that runs parallel to Mueschke Road. These man-made drainage ditches do not drain wetlands and do not have a surface hydrologic connection to any Waters of the U.S. (WOTUS) or their tributaries.

The delineation was conducted in accordance with the 1987 Manual Regional Supplement: Atlantic and Gulf Coastal Plain Region, which requires that all three wetland criteria be present under normal circumstances for an area to be determined a wetland. The two man-made drainage ditches were determined to not be wetlands because they did not meet all three wetland criteria. Both man-made drainage ditches are shallow depression areas that carry water immediately after rain events. Therefore, conditions necessary for wetlands have not established.

Impacts to any of the above man-made drainage ditches would not affect interstate or foreign travelers for recreational or other purposes, would not affect fish or shellfish that could be taken and sold in interstate or foreign commerce, and would not affect the current use or potential use for industrial purposes by industries in interstate commerce. Therefore, these areas are not considered WOTUS.

The nearest WOTUS to the man-made drainage ditches listed above is an unnamed tributary of Little Cypress Creek. These man-made drainage ditches are not expected to share surface hydrology with the unnamed tributary of Little Cypress Creek, including during high flow (e.g., the 100-year floodplain), as they are elevated above the base floodplain elevation and separated from the tributary by upland areas. These man-made drainage ditches are separated from other WOTUS by uplands that do not allow the

<sup>1</sup> This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

exchange of waters via a confined surface hydrology connection during normal conditions and these man-made drainage ditches are not inseparably bound with Willow Creek.

According to guidance from the Environmental Protection Agency (EPA) Memo *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (Rapanos), the United States Army Corps of Engineers (USACE) "...will generally not assert jurisdiction over ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water."

"Waters of the U.S." are defined in 33 CFR 328.3 (a) 1 through 7 which is addressed in the following. Due to the fact that these aquatic resources: (1) are not currently used, or were used in the past, nor susceptible to be used for interstate or foreign commerce nor subject to the ebb and flow of the daily tide; (2) do not cross interstate or tribal boundaries; (3) the destruction of these wetlands are not expected to affect (i) interstate or foreign travelers for recreational purposes or other purposes or (ii) fish or shellfish that could be taken and sold in interstate or foreign commerce or (iii) current use or potential use for industrial purposes by industries in interstate commerce; (4) are not impoundments of Waters of the U.S.; (5) are not part of a surface tributary system of (a) (1) through (4); (6) are not part of the territorial seas; and (7) are not adjacent to Waters of the U.S. identified in (a) (1) through (6). Therefore, these aquatic resources are not WOTUS subject to Section 404 of the Clean Water Act.

**SECTION III: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: [Click here to enter text.](#)
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: [Click here to enter text.](#)
- U.S. Geological Survey Hydrologic Atlas: [Click here to enter text.](#)
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:

Historical and Modern USGS Topographic Maps		
Date	Scale	Quadrangle Name
2016	1:24,000	Rose Hill and Hockley, Texas Quadrangles
1980	1:24,000	Rose Hill and Hockley, Texas Quadrangles
1962	1:24,000	Rose Hill and Hockley, Texas Quadrangles
1920	1:24,000	Rose Hill and Hockley, Texas Quadrangles
1916	1:24,000	Rose Hill and Hockley, Texas Quadrangles

- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Harris County, TX (August 1976)
- National wetlands inventory map(s). Cite name: Hockley, TX and Rose Hill, TX Quadrangle
- State/Local wetland inventory map(s): [Click here to enter text.](#)
- FEMA/FIRM maps: 48201C0185L, 48201C0195L, 48201C0205L, 48201C0215L (Revised June 18, 2007)
- 100-year Floodplain Elevation is: 210-feet AMSL (North American Vertical Datum of 1988)
- Photographs:  Aerial (Name & Date):

Historic and Modern Aerial Orthoimagery		
Date	Imagery Type	Source
2016	Color	TNRIS
2006	Color	TNRIS
1995	Black and White	TNRIS
1988	Black and White	TNRIS
1943	Black and White	TNRIS

- or  Other (Name & Date): [Click here to enter text.](#)
- Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- Applicable/supporting case law: [Click here to enter text.](#)
- Applicable/supporting scientific literature: [Click here to enter text.](#)
- Other information (please specify): [Click here to enter text.](#)

**B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND:**

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According to guidance from the Environmental Protection Agency (EPA) Memo *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (Rapanos), the United States Army Corps of Engineers (USACE) "...will generally not assert jurisdiction over ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water."

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