



**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): 12/10/2020

ORM Number: SWG-2019-00775

Associated JDs: SWG-1997-01288 – Unrelated unauthorized activity Investigation on property adjacent to Tract 10.

Review Area Location¹: State/Territory: TX City: Guy County/Parish/Borough: Fort Bend County

Center Coordinates of Review Area: Latitude 29.356166 Longitude -95.741835

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 or describe rationale.
- 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
Tract 01 (~194.9 acres; 29.369394, -95.771633)	~0.3	acre(s)	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on provided information and historic aerial imagery this field contains an unnamed Mound Creek Tributary that was originally an ephemeral feature. This tributary has since been improved and is currently maintain to convey anthropogenic water flow from upstream agricultural irrigation and drainage. But for the artificial hydrology, this feature would convey ephemeral water flow.
Tract 01 (~194.9 acres; 29.369394, -95.771633)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 02 (~ 196.4 acres; 29.379263, -95.753122)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 03 (~ 72.9 acres; 29.375752, -95.750681)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 04 (~ 26.3 acres; 29.373342, -95.747793)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 05 (~58.9 acres; 29.361302, -95.77398)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December

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
				1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 06 (~ 157.3 acres; 29.36564, -95.742902)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 07 (~465.4 acres; 29.360631, -95.724334)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 08 (~76.9 acres; 29.358731, -95.770776)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 09 (~306.4 acres; 29.352105, -95.763028)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 10 (~1,489.1 acres; 29.34712, -95.730107)	~9.0	acre(s)	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on provided information and historic aerial imagery this field contains two unnamed Cow Creek tributaries that were originally ephemeral features. These tributaries have since been improved and currently maintained to convey anthropogenic water flow from upstream agricultural irrigation and drainage. But for the artificial hydrology, these features would convey ephemeral water flow.
Tract 10 (~1,489.1 acres; 29.34712, -95.730107)	N/A.	acre(s)	(b)(6) Prior converted cropland.	Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			contemporary aerial imagery show this field is currently being utilized for grazing.
Tract 11 (~420.6 acres; 29.344118, -95.744499)	N/A.	acre(s)	(b)(6) Prior converted cropland.
Tract 12 (~78.8 acres; 29.349439, -95.714731)	N/A.	acre(s)	(b)(6) Prior converted cropland.
			Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.
			Based on provided information and historic aerial imagery this field has wetlands that were manipulated for agricultural purposes prior to 23 December 1985. Site visit observations and contemporary aerial imagery show this field is currently being utilized for grazing.

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 completed by ESE Partners, LLC, dated 22 August 2019.](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [Submitted wetland delineation was not verified by wetland presence was confirmed.](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

Photographs: [Select. Title\(s\) and/or date\(s\).](#)

Corps site visit(s) conducted on: [23 July 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)

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

USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)

USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)

USGS topographic maps: [7.5-minute, 1953, 2010 - Damon, Texas; Guy, Texas; Needville, Texas; and Smithers Lake, Texas](#)

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	OMBIL Regulatory Module (ORM) for historical site review.
State/Local/Tribal Sources	N/A.
Other Sources	Texas Water Development Board (TWDB), Texas Strategic Mapping Program (StratMap): Texas Upper Coast Light Detection and Ranging (LiDAR), 2018 1.0-Meter Bare Earth Digital Elevation Model (DEM), North American Vertical Datum 1988 (meters).



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B. Typical year assessment(s): *N/A*

C. Additional comments to support AJD: *The twelve (12) subject tracts all have wetlands present. Wetlands within the subject site were identified using the Atlantic and Gulf Coastal Plain Region (Version 2.0) to the 1987 Corps of Engineers Wetland Delineation Manual which requires under normal circumstances, a predominance of hydrophytic vegetation, wetland soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem. All tracts were verified as in agricultural use prior to 23 December 1985, and are currently used for grazing. Therefore the wetlands meet the 33 CFR 328.3(b)(6) exclusion. Tract 01 has an ephemeral unnamed Mound Creek tributary and Tract 10 has two ephemeral unnamed Cow Creek tributaries that have been improved and are currently maintained to convey agricultural irrigation and drainage. Hydrology within the identified tributaries is influenced by anthropogenic sources. Therefore, the ephemeral tributaries meet the 33 CFR 328.3(b)(3) exclusion. No additional work is being done to address geographic jurisdiction of aquatic resources within the subject site since all are subject 33 CFR 328.3(b) exclusions.*