



**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): 7/16/2021
 ORM Number: SWG 2019-00849
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Texas City: Pasadena County/Parish/Borough: Harris
 Center Coordinates of Review Area: Latitude 29.629701 Longitude -95.042853

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
Wetland 1A	0.16 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1A does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. The nearest water of the U.S. is Taylor Bayou, which is a navigable water on the Galveston District Navigable Waters List. A review of the aerial photos and topos shows that Taylor Bayou is approximately 5,600 feet southeast of the project site and that Wetland 1A does not abut nor is separated from Taylor Bayou by a single natural or artificial barrier. See typical year discussion below.
Wetland 2A	0.84 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 2A does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. The nearest water of the U.S. is Taylor Bayou, which is a navigable water on the Galveston District Navigable Waters List. A review of the aerial photos and topos shows that Taylor Bayou is approximately 5,600 feet southeast of the project site and that Wetland 2A does not abut nor is separated from Taylor Bayou by a single natural or artificial barrier. See typical year discussion below.
Wetland B	0.03 acre(s)	(b)(1) Non-adjacent wetland.	Wetland B that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. The nearest water of the U.S. is Taylor Bayou, which is a navigable water on the Galveston District Navigable Waters List. A review of the aerial photos and topos shows that Taylor Bayou is approximately 5,600 feet southeast of the project site and that Wetland B does not abut nor is separated from Taylor Bayou by a single natural or artificial barrier. Wetland B is located above

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
				the 100-year floodplain of any water of the U.S. and therefore, is not inundated by flooding by an (a)(1)-(a)(3) water in a typical year.
Man-Made Ditch 1	51	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Man-Made Ditch 1 is a constructed or excavated channel used to convey water. The ditch is not present on the 1943 or subsequent aerial photo until 2002. The La Porte, Tex. USGS Quadrangle Maps do not show any tributaries, wetlands, or ditches in the project area. Man-Made Ditch 1 is not a re-routed tributary nor was constructed in a tributary or adjacent wetland.
Man-Made Ditch 2	1618	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Man-Made Ditch 2 is a constructed or excavated channel used to convey water. The ditch is not present on the 1943 or subsequent aerial photo until 2002. The La Porte, Tex. USGS Quadrangle Maps do not show any tributaries, wetlands, or ditches in the project area. Man-Made Ditch 2 is not a re-routed tributary nor was constructed in a tributary or adjacent wetland.
Man-Made Ditch 3	366	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Man-Made Ditch 3 is a constructed or excavated channel used to convey water. The ditch is not present on the 1943 or subsequent aerial photo until 2002. The La Porte, Tex. USGS Quadrangle Maps do not show any tributaries, wetlands, or ditches in the project area. Man-Made Ditch 3 is not a re-routed tributary nor was constructed in a tributary or adjacent wetland.
Man-Made Pond 1	1.25	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	This feature is a constructed, or excavated pond used for firefighting on the property. The man-made pond does not meet the definition of an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. The pond is not an impoundment of a jurisdictional water and therefore (c)(6) is irrelevant.



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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: [Spirit Environmental, 20 November 2019](#)

This information **is** sufficient for purposes of this AJD.

Rationale: [N/A](#)

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

Photographs: [Aerial: Google Earth 1943-2019](#)

Corps site visit(s) conducted on: [N/A](#)

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: [Harris County WebSoil Survey](#)

USFWS NWI maps: [Harris County USFWS NWI Map](#)

USGS topographic maps: [Title\(s\) and/or date\(s\)](#).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	La Porte, Texas Quadrangle Maps 1916, 1955, 1982, 2010, 2019
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	ORM for Historical review
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	Harris County Panels 48201C0945M and 48201C1085M both dated 6 January 2017

B. Typical year assessment(s): [Spirit Environmental](#) conducted a wetland delineation on 2 and 3 October 2019. According to the Antecedent Precipitation Tool (APT), the hydrologic conditions on the days of [Spirit Environmental's](#), site visits were normal (14). In addition, the APT calculated the hydrologic conditions which correlate with the aerials included in the document review. 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 compared to long term precipitation. It provides results for short term precipitation (last 72 hours), the last 3 months (WETS score) and the APT result comparing the last 30 years from numerous nearby gages. It also reports the PDSI (drought index) rainfall & WebWimp water balance/hydrologic seasons information. WETS analysis produces a score between 6 and 18 noting a score of 6-9 is drier than normal, 10-14 is normal & 15-18 is wetter than normal. 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 that the wetlands being inundated by surface water associated with flooding from any (a)(1)- (a)(3) waters; even when conditions were recorded as wetter than normal. Here are the long term and short term response for the APT test for aerials & site visit. The results are listed in Table 1.

Table 1



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Date	WETS	APT	Season	PDSI	Preceding 72 hr Rainfall
31 December 1943	13	Normal	Wet	Mild Wetness	~2"
31 December 1977	9	Below	Wet	Incipient Drought	<1"
14 January 1995	16	Above	Wet	Moderate Wetness	~1"
31 December 2001	17	Above	Wet	Severe Wetness	~1"
8 January 2008	11	Normal	Wet	Normal	0
2 January 2018	13	Above	Wet	Moderate Wetness	<1"
2 October 2019 (Agent Site Visit)	14	Above	Wet	Severe Wetness	<1"
3 October 2019 (Agent Site Visit)	14	Above	Wet	Severe Wetness	<1"
1 December 2019	15	Normal	Wet	Incipient Drought	<1"

In review of the aerials, we did not find any photographs showing any flood waters from the closest (a)(1)-(a)(3) waters inundating the subject site. This included those photos that were taken during Wetter than Normal precipitation events. Also, the FEMA FIRMs show a portion Wetlands 1A and 2A are located in the 100-year floodplain. The flood profiles for transects along A104-00-00 (Taylor Bayou) and A104-07-00 near the project site show that the floodplains are superseded by the 1% annual chance coastal flooding. The coastal flood transects from Galveston Bay in the area show that the 10% chance (10 Year Floodplain) elevation associated with coastal flooding is +8.8 feet NAVD 88. The topos and LiDAR show that the project site is approximately 15 to 20 feet, which is above the 10% annual chance of flooding from Galveston Bay, an (a)(1) water. Therefore, using the APT in conjunction with review of the historic aerials and FEMA flood information, it was determined that the delineated wetlands would not be inundated by flooding from an (a)(1) – (a)(3) water in a typical year.

C. Additional comments to support AJD: N/A.