



**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): 10/7/2020  
 ORM Number: SWG-2020-00338  
 Associated JDs: SWG-2017-00362 RGP 17 Jul 2017, SWG-2005-00232 (PJD)  
 Review Area Location<sup>1</sup>: State/Territory: Texas City: Houston County/Parish/Borough: Harris  
 Center Coordinates of Review Area: Latitude 30.035454 Longitude -95.37922

**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)<sup>2</sup>**

| § 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): <sup>3</sup> |             |                 |                                    |
|---|-------------|-----------------|------------------------------------|
| (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.                               |

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

<sup>2</sup> 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.

<sup>3</sup> 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)): <sup>4</sup> |                |             |  |  |
|--|----------------|-------------|--|--|
| Exclusion Name                                   | Exclusion Size |             | Exclusion <sup>5</sup>   | Rationale for Exclusion Determination  |
| Wet A  | 0.01           | 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. N/A. |
| Wet B  | 0.10           | 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.      |
| Wet C  | 0.04           | 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.      |
| Wet D  | 0.13           | 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.      |
| Ditch 1  | 140.61         | 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). | This man-made ditch exhibits ephemeral surface water flow, neither relocates nor is constructed in a natural tributary, and is not constructed in an adjacent wetland.   |

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup> |                |                |  |  |
|--|----------------|----------------|--|--|
| Exclusion Name                                   | Exclusion Size | Exclusion Size | Exclusion <sup>5</sup>   | Rationale for Exclusion Determination  |
| Ditch 2  | 391.56         | 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). | This man-made ditch exhibits ephemeral surface water flow, neither relocates nor is constructed in a natural tributary, and is not constructed in an adjacent wetland. |
| Ditch 3  | 394.64         | 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). | This man-made ditch exhibits ephemeral surface water flow, neither relocates nor is constructed in a natural tributary, and is not constructed in an adjacent wetland. |
| Ditch 4  | 156.48         | 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). | This man-made ditch exhibits ephemeral surface water flow, neither relocates nor is constructed in a natural tributary, and is not constructed in an adjacent wetland. |

**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: [Mercer Botanical Gardens Drainage and Detention Mitigation Improvements, Holloway Environmental, April 2020.](#)

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: 1938BW, 1944BW, 1957BW, 1979BW, 1983IR, 2004IR, 2009IR, 2012IR, 2016C, 2019C](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [SWG-2005-00232 \(PJD, expired\)](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [NRCS 2020a, Atasco Series \(nh\), Clodine Series \(55% hydric\), Texla Series \(10% hydric\) Tomball Series \(90% hydric\), Wockley Series \(2% hydric\)](#)



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- USFWS NWI maps: [2014 NWI Spring, TX](#)
- USGS topographic maps: [Spring, Texas, 1920, 1961, 1982, 1995](#)

**Other data sources used to aid in this determination:**

| Data Source (select)                       | Name and/or date and other relevant information |
|--|---|
| <a href="#">USGS Sources</a>               | N/A.  |
| <a href="#">USDA Sources</a>               | N/A.  |
| <a href="#">NOAA Sources</a>               | N/A.  |
| <a href="#">USACE Sources</a>              | N/A.  |
| <a href="#">State/Local/Tribal Sources</a> | N/A.  |
| <a href="#">Other Sources</a>              | N/A.  |

**B. Typical year assessment(s):** Water features were analyzed using APT calculating for base delineation map google earth photograph date of 06 Feb 2020. The APT is a tool that affords the user the capability to look at rainfall in the recent past, cumulative for the last 3 months as well and climatological review for the past 30 years. The WETS score (last 3 mths) for that 06 Feb 2020 totaled 9 on a scale of 5-14 with a score of 9-14 being drier than normal precipitation for the previous 3 months, which indicates that the measurements or observations made are reflective of normal climatic conditions. It uses climatic data collected from numerous nearby weather stations and produces the most reliable source with a full 30 years of precipitation data. The site coordinates are located at an appx 79.21 ft elevation. Below is the result of numerous dates run for this site.

| Date                          | Rain prior 72 hours | WETS (3 mth) score: | APT    | Season | PDSI              |
|-------------------------------|---------------------|---------------------|--------|--------|-------------------|
| 06 Feb 2020                   | <.50                | 09 (D)              | Below  | Wet    | Mild drought      |
| 21 Feb 2017<br>(Google Earth) | Less 2"             | 14 (N)              | Normal | Wet    | Incipient wetness |
| 01 Dec 2019<br>(Google Earth) | 0                   | 10 (N)              | Normal | Wet    | Incipient drought |
| 30 Aug 2017<br>(Google Earth) | >15"                | 18 (W)              | Above  | Dry    | Extreme wetness   |
| 22 Apr 2016<br>(Google Earth) | >10"                | 14 (N)              | Normal | Wet    | Moderate wetness  |

The results of the review of the APT analysis aiding in reaching the conclusion needed to determine if the subject feature have more than ephemeral flow and/or are inundated by flooding from a (a)1-(a)3 water in a typical year.

None of the reviewed aerial images depict overbank flooding from the closest (a)1- (a)3 waters within the subject site. Of particular interest are those photos collected during Wetter than Normal precipitation conditions. Additionally, overbank flooding was not observed during the 06 Feb 2020 date which was during a period of dryer than normal precipitation. Therefore, based on the APT tool analysis of historic aerial imagery and site visit dates there is no data to support the conclusion that any of the aquatic features in review are inundated by overbank

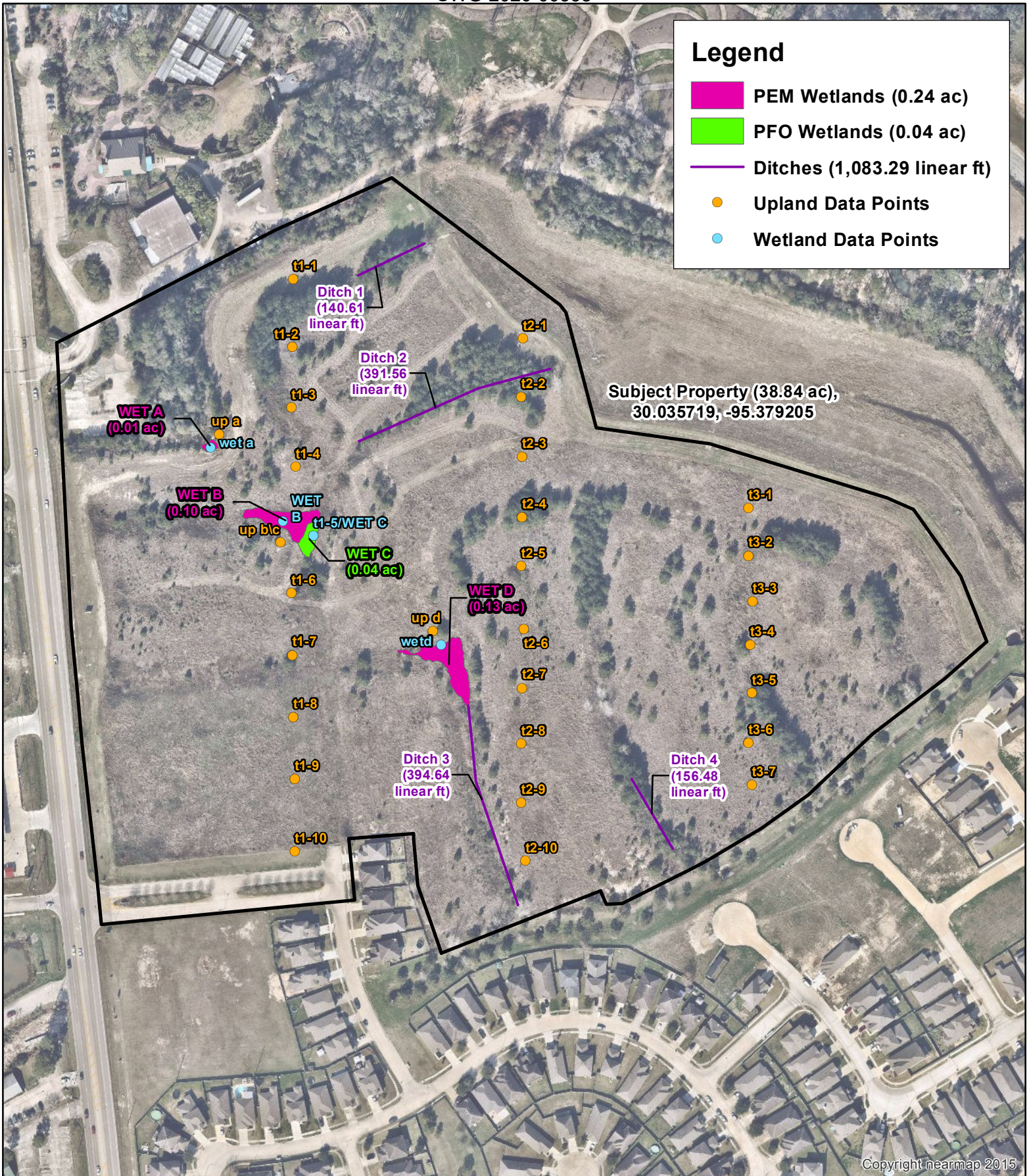


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flooding from an (a)(1) – (a)(3) water in a typical year.

- C. Additional comments to support AJD:** According to the LiDAR data, the Subject Property is relatively flat with elevations ranging from about 74 ft to 82 ft AMSL with the highest elevation existing on the western and northern portions.

The Subject Property exhibits a general downward gradient to the south/southeast towards the man-made drainage ditch. The drainage ditch conveys water to the detention basin east of the Subject Property. The overall downgradient of the area surrounding the Subject Property is to the east towards Cypress Creek.



### Exhibit 3: 2020 Aerial Photograph with Delineated Aquatic Features

Mercer Botanic Gardens Drainage and Detention Mitigation Improvements  
Harris County, Texas

Date of Aerial Photograph: 02/21/2020

Created: 8/11/2020



**HOLLOWAY**  
ENVIRONMENTAL + COMMUNICATIONS

