



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON, TEXAS 77550

CESWG-RD-Central

24 February 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), ¹SWG-2022-00160

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

1. Aquatic Features identified in the submitted delineation

Feature Name	Type of Aquatic Resource	Lat/Long	Length (LF)/Size (acre)	Jurisdiction
Wetland 1	PFO	29.97854018 -95.58683883	0.04 acre	Non-adjacent, non-jurisdictional
Wetland 2	PFO	29.98138570 -95.58606713	0.17 acre	Non-adjacent, non-jurisdictional
Wetland 3	PFO	29.98094055 -95.58537348	1.22 acre	Non-adjacent, non-jurisdictional
Wetland 4	PEM	29.97719093 -95.58843956	0.02 acre	Non-adjacent, non-jurisdictional
Wetland 5	PFO	29.97401452 -95.59403911	0.2 acre	Non-adjacent, non-jurisdictional
Wetland 6	PFO	29.97498217 -95.58885300	0.18 acre	Non-adjacent, non-jurisdictional
Wetland 7	PFO	29.97440661 -95.58915801	0.07 acre	Non-adjacent, non-jurisdictional
Wetland 8	PEM	29.97350833 -95.58976890	0.08 acre	Non-adjacent, non-jurisdictional
Wetland 9	PFO	29.97400787 -95.59002315	0.13 acre	Non-adjacent, non-jurisdictional
Stream 1	Ephemeral Stream	29.97900880 -95.58718309	161 LF/ 0.02 acre	Non-relatively permanent, non-jurisdictional
Stream 2	Ephemeral Stream	29.97243393 -95.59661502	366 LF/ 0.09 acre	Non-relatively permanent, non-jurisdictional
Stream 3	Ephemeral Stream	29.97199174 -95.59530018	653 LF/ 0.1 acre	Non-relatively permanent, non-jurisdictional
Stream 4	Ephemeral Stream	29.97143335 -95.59530050	58 LF/ 0.02 acre	Non-relatively permanent, non-jurisdictional
Stream 5	Ephemeral Stream	29.97145170 -95.59513725	28 LF/ 0.003 acre	Non-relatively permanent, non-jurisdictional

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Stream 6	Ephemeral Stream	29.97063669 -95.59444271	277 LF/ 0.05 acre	Non-relatively permanent, non- jurisdictional
Stream 7	Ephemeral Stream	29.97264314 -95.59086671	490 LF/ 0.08 acre	Non-relatively permanent, non- jurisdictional
Stream 8	Ephemeral Stream	29.97377479 -95.59416223	115 LF/ 0.02 acre	Non-relatively permanent, non- jurisdictional
Basin 1 (HCFCD Basin K500- 05-00)	Stormwater Basin	29.97598802 -95.59149734	8.2 acre	Non-jurisdictional
Pond 1	Open Water	29.97839226 -95.58693941	0.12 acre	Non-jurisdictional
Pond 2	Excavated Detention Pond	29.97190610 -95.59420763	2.26 acre	Non-jurisdictional
Pond 3	Excavated Detention Pond	29.97137051 -95.59351106	2.1 acre	Non-jurisdictional
Ditch 1 (HCFCD #K143-00-00)	Drainage Ditch, Tributary	29.97975847 -95.58626262	64 LF/ 0.02 acre	Relatively permanent, jurisdictional
Total Streams			2,148 LF / 0.38 acre	
Total Stormwater Basins			8.2 acre	
Total Ponds			4.47 acre	
Total Man-Made Drainage Ditches			64 LF / 0.02 acre	
Total Wetlands			2.1 acres	

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
 - e. 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning the Proper Implementation of “Continuous Surface Connection” Under the Definition of “Waters of the United States” Under the Clean Water Act.
3. REVIEW AREA. The tract is approximately 137.6 acres located north and south of Cypresswood Drive, between Jones Road and Grant Road in Houston, Harris County, Texas. Center coordinates for the site are Latitude: 29.975699°, Longitude: -95.589845°.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Cypress Creek flows through the project site. Ditch 1 flows into Cypress Creek. Cypress Creek turns into a Traditional Navigable Water (TNW) approximately 6.9 river miles northeast of the confluence of Ditch 1 and Cypress Creek.
 6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ N/A
 7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

for each aquatic resource, supporting that the aquatic resource meets the relevant category of “waters of the United States” in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): Ditch 1 (HCFCD #K143-00-00) is a man-made ditch that flows into Cypress Creek. According to aerial photos and recent topographic maps, Ditch 1 carries relatively permanent flow. More than 50% of the aerial photos show that there is water present in the majority of the length of the ditch. The most recent topo maps show Ditch 1 as a solid line, meaning that it is relatively permanent. Cypress Creek turns into a Traditional Navigable Water (TNW) approximately 6.9 river miles northeast of the confluence of Ditch 1 and Cypress Creek. Therefore, Ditch 1 is relatively permanent tributary to Cypress Creek and a water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into Ditch 1, totaling 64 linear feet, does require a Department of the Army permit.
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

⁷ 51 FR 41217, November 13, 1986.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. [N/A or enter rationale/discussion here.]

Pond 1 is an intrastate pond that is not a tributary to a water of the United States. It abuts Wetland 1 and appears to be a deeper continuation of the wetland. Ponds 2 and 3 are excavated detention ponds. They are not present in the aerial photographs from 1943 and 1977. They first appear in their current location and sizes in the aerial photo from 1988. Streams 3 and 5 connect Pond 2 to Cypress Creek, however, these streams are not relatively permanent. Stream 6 is connected to Pond 3. Stream 6 is non-relatively permanent and is not connected to a relatively permanent water. Therefore, Ponds 1, 2, and 3 are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into Ponds 1-3, totaling 4.47 acres, does not require a Department of the Army permit.

Basin 1 (HCFCD Basin K500-05-00) is an excavated stormwater basin. LiDAR imagery shows that Basin 1 is a depressional feature surrounded by uplands. There are no hydrologic connections between Basin 1 and Cypress Creek. Therefore, Basin 1 is not a water of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into Basin 1, totaling 8.2 acres, does not require a Department of the Army permit.

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Based on a desk review and a review of the submitted delineation, we have determined that Wetlands 1-9 do not meet the continuous surface connection standard for adjacent wetlands as they do not abut a relatively permanent water, a jurisdictional impoundment, or a traditional navigable water. Therefore, these wetlands are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into these wetlands, totaling 2.1 acres, does not require a Department of the Army permit.

According to the site visit photos submitted in the wetland delineation, Streams 1-8 do not carry relatively permanent flow. None of the streams held permanent water in the site visit photos, even though it rained on October 11, October 14, and December 21, 2021, during the wetland delineation as seen in the submitted APT data. They are also not present on topographic maps. All streams except Stream 6 have a connection to Cypress Creek. These streams (1, 2, 3, 4, 5, 7, 8) are non-relatively permanent tributaries to Cypress Creek. Therefore, Streams 1-8 are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredge and/or fill material into Streams 1-8, totaling 2,148 linear feet, does not require a Department of the Army permit.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Aerial Photographs: *31 December 1943 to 19 October 2025*
 - b. United States Geological Survey (USGS) Topographic Maps: *2022, 2019, 2013, 2010 Satsuma, Texas 1:24,000*
 - c. United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) Map Accessed 29 January 2026
 - d. US Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Soil Map Accessed 29 January 2026
 - e. USGS National Map 3D Elevation Program (3DEP) LiDAR 2 January 2025 Accessed 27 January 2026
 - f. Delineation Report submitted by *Harris County Flood Control District* on 25 February 2022, revised version sent on 24 October 2022

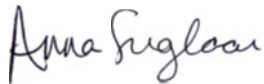
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10. OTHER SUPPORTING INFORMATION.N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

PREPARED BY:



Anna Fuglaar
Regulatory Specialist

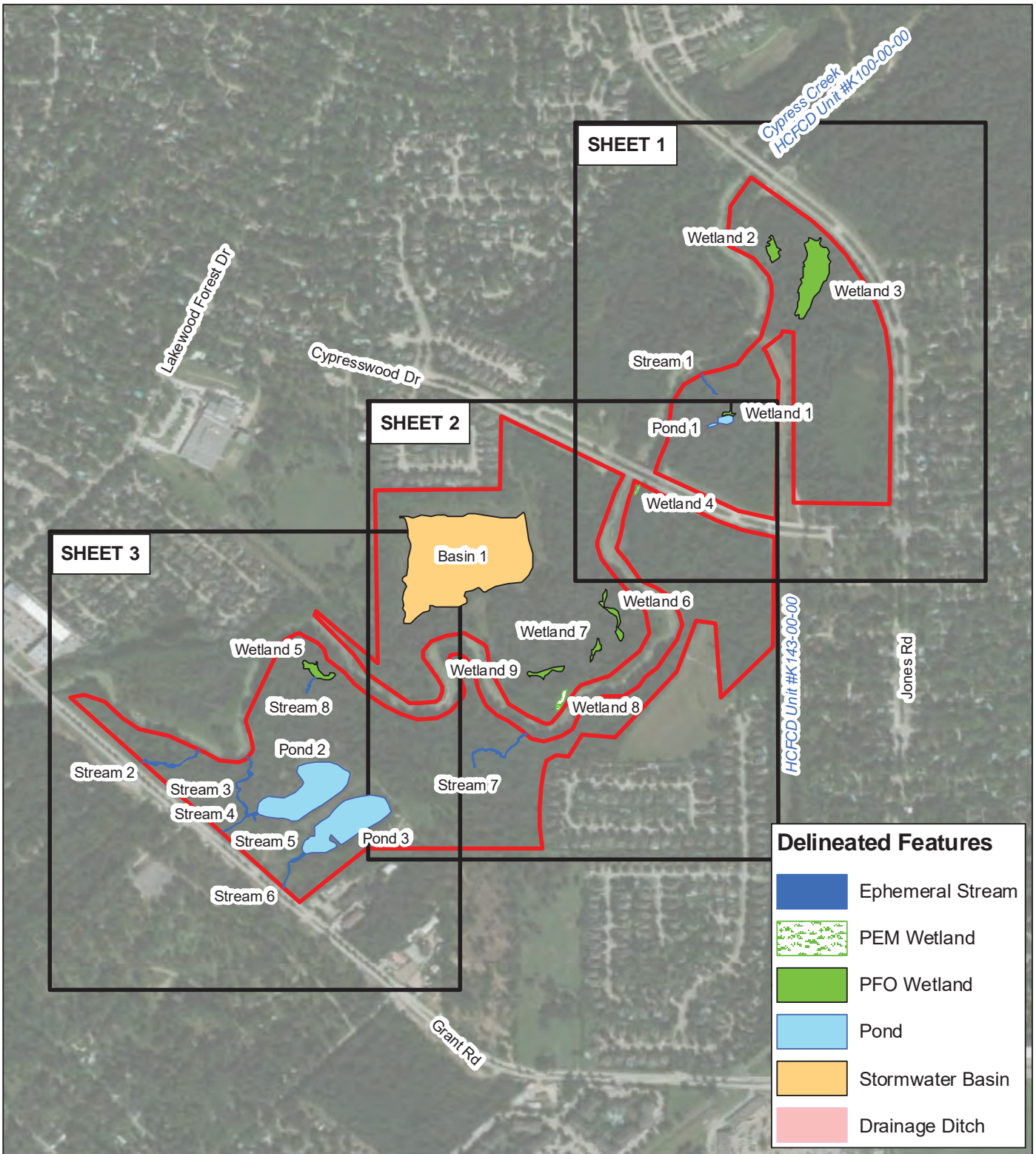
Date: 24 February 2026

REVIEWED/APPROVED BY:










Kara Vick Clark, Team Lead
Regulatory Division, Galveston District

Date: 2/24/2026



Delineated Features

-  Ephemeral Stream
-  PEM Wetland
-  PFO Wetland
-  Pond
-  Stormwater Basin
-  Drainage Ditch

Legend
 Project Area



0 437.5 875 1,750
 Feet

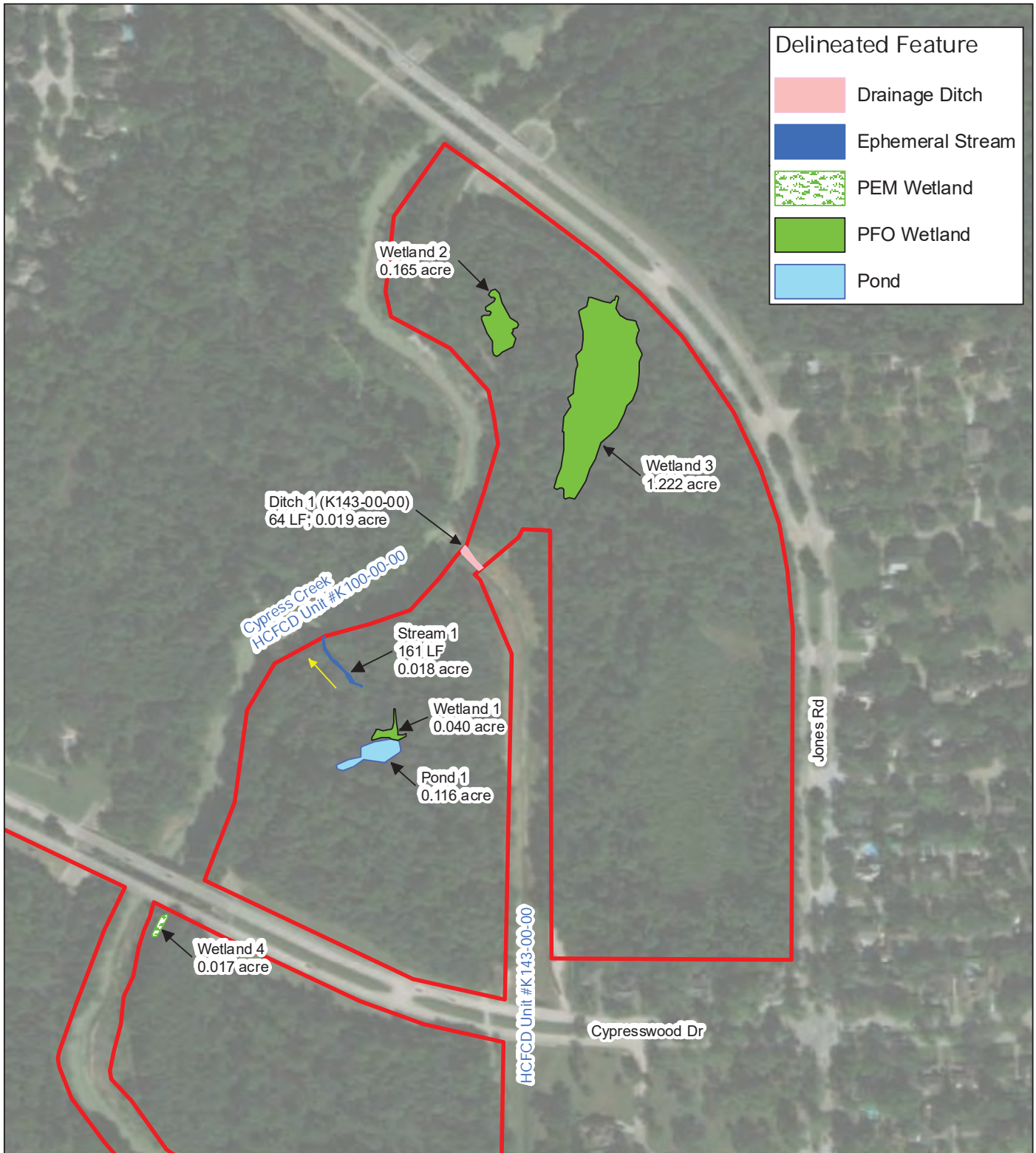
1 inch = 875 feet






FIGURE 9
DELINEATED FEATURE KEY MAP
 ADD 03 - A1, A2, B, & C TRACTS
 K100-00-00-P007/K100-00-00-R005
 HOUSTON, HARRIS COUNTY, TEXAS 77070





Cypress Environmental Consulting LLC
 Date: December 21, 2021
 Project No. 021195

Source: ESRI World Imagery (2020)



Delineated Feature	
	Drainage Ditch
	Ephemeral Stream
	PEM Wetland
	PFO Wetland
	Pond

Legend

-  Project Area
-  Flow Direction



0 175 350 700
 Feet

1 inch = 350 feet

FIGURE 9
DELINEATED FEATURE MAP SHEET 1
 ADD 03 - A1, A2, B, & C TRACTS
 K100-00-00-P007/K100-00-00-R005
 HOUSTON, HARRIS COUNTY, TEXAS 77070



Cypress Environmental Consulting LLC
 Date: December 21, 2021
 Project No. 021195



Legend

Project Area

Flow Direction



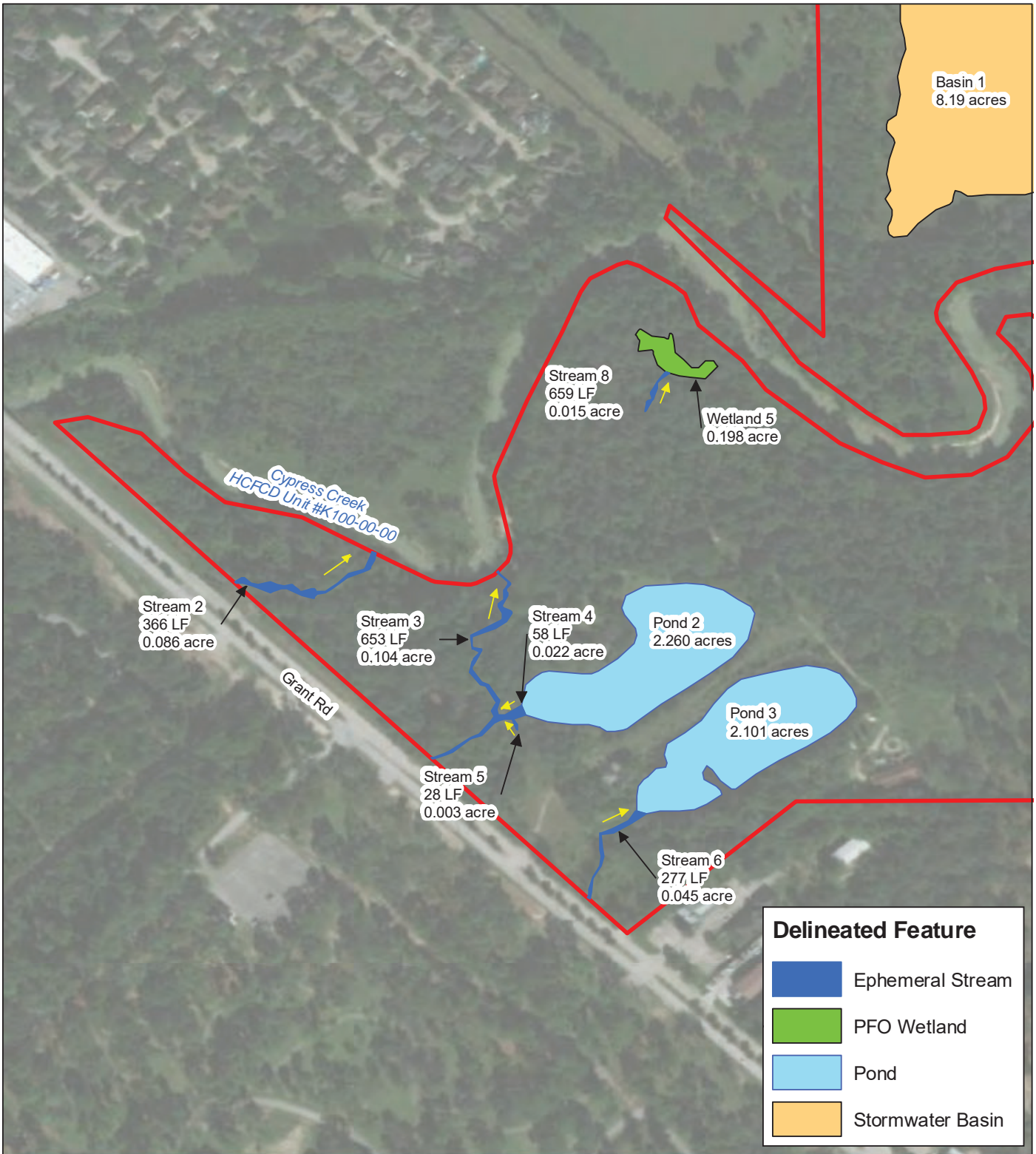
0 175 350 700 Feet





1 inch = 350 feet

FIGURE 9
DELINEATED FEATURE MAP SHEET 2
 ADD 03 - A1, A2, B, & C TRACTS
 K100-00-00-P007/K100-00-00-R005
 HOUSTON, HARRIS COUNTY, TEXAS 77070





Cypress Environmental Consulting LLC
 Date: December 21, 2021
 Project No. 021195



Delineated Feature	
	Ephemeral Stream
	PFO Wetland
	Pond
	Stormwater Basin

Legend

-  Project Area
-  Flow Direction



0 175 350 700
 Feet

1 inch = 350 feet

FIGURE 9
DELINEATED FEATURE MAP SHEET 3
 ADD 03 - A1, A2, B, & C TRACTS
 K100-00-00-P007/K100-00-00-R005
 HOUSTON, HARRIS COUNTY, TEXAS 77070



Cypress Environmental Consulting LLC
 Date: December 21, 2021
 Project No. 021195