



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

SWG- North Branch

2 June 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),¹ SWG-2024-00361²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on September 8, 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.

- 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).

Name	Size (acres)	Location	Jurisdictional Status
Garners Bayou (P138-00-00)	6,029 LF	29.990211 -95.312314	Yes, RPW
Hoods Bayou (P140-00-00)	9,669 LF	29.957407 -95.350121	Yes, RPW
Wetland 1	0.50-acres	29.963086 -95.326022	No, no continuous surface connection to WOTUS
Wetland 2	0.31-acres	29.955989 -95.310083	No, no continuous surface connection to WOTUS
Wetland 3	0.07-acre	29.955359 -95.318879	No, no continuous surface connection to WOTUS
Wetland 4	2.08 acres	29.96212 -95.32408	No, no continuous surface connection to WOTUS
Wetland 5	0.55-acre	29.95253 -95.312318	No, no continuous surface connection to WOTUS
Wetland 6	0.12 acre	29.957638 -95.310772	No, no continuous surface connection to WOTUS
Wetland 7	0.72-acre	29.953583 -95.31116	No, no continuous surface connection to WOTUS
Wetland 8	0.71-acre	29.959978 -95.313033	No, no continuous surface connection to WOTUS
Wetland 9	0.25-acre	29.958425 -95.307114	No, no continuous surface connection to WOTUS
Wetland 10	0.31-acre	29.972919 -95.310985	No, no continuous surface connection to WOTUS
Wetland 11	1.45 acres	29.971658 -95.315038	No, no continuous surface connection to WOTUS

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00361

Name	Size (acres)	Location	Jurisdictional Status
Wetland 12	0.45-acre	29.974221 -95.315307	No, no continuous surface connection to WOTUS
Wetland 13	0.20-acre	29.982115 -95.304957	No, no continuous surface connection to WOTUS
Wetland 14	0.66-acre	29.982315 -95.306071	No, no continuous surface connection to WOTUS
Wetland 15	0.31-acre	29.982068 -95.307802	No, no continuous surface connection to WOTUS
Wetland 16	1.25 acres	29.983517 -95.306551	No, no continuous surface connection to WOTUS
Wetland 17	0.07-acre	29.955359 -95.318879	No, no continuous surface connection to WOTUS
Wetland 18	2.08 acres	29.96212 -95.32408	No, no continuous surface connection to WOTUS
Wetland 19	1.91 acres	29.98256 -95.300252	No, no continuous surface connection to WOTUS
Wetland 20	0.40-acre	29.988744 -95.312932	No, no continuous surface connection to WOTUS
Wetland 21	0.31-acre	29.988005 -95.314214	No, no continuous surface connection to WOTUS
Wetland 22	1.22 acres	29.965292 -95.32798	No, no continuous surface connection to WOTUS
Wetland 23	0.07-acre	29.989062 -95.309681	No, no continuous surface connection to WOTUS
Wetland 24	0.99-acre	29.986332 -95.29633	No, no continuous surface connection to WOTUS
Wetland 25	0.15-acre	29.986658 -95.298055	No, no continuous surface connection to WOTUS
Wetland 26	0.17-acre	29.98729 -95.298146	No, no continuous surface connection to WOTUS
Wetland 27	0.08-acre	29.986384 -95.300419	No, no continuous surface connection to WOTUS
Wetland 28	0.12-acre	29.986313 -95.301008	No, no continuous surface connection to WOTUS
Wetland 29	0.06-acre	29.986412	No, no continuous surface connection to WOTUS

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00361

Name	Size (acres)	Location	Jurisdictional Status
		-95.30159	
Wetland 30	0.22-acre	29.986498 -95.302388	No, no continuous surface connection to WOTUS
Wetland 31	0.40-acre	29.987194 -95.30118	No, no continuous surface connection to WOTUS
Pond 1	0.05-acre	29.952622 -95.311138	No, Waterfilled depression created in dry land and pits excavated in dry land
Pond 2	0.05-acre	29.98885 -95.314899	No, Waterfilled depression created in dry land and pits excavated in dry land
Pond 3	3.02 acres	29.987499 -95.303162	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons
Pond 4	0.07-acre	29.99072 -95.301235	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons
Pond 5	0.08-acre	29.991571 -95.301302	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons
Pond 6	0.15-acre	29.990912 -95.303585	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons
Pond 7	0.41-acre	29.99138, -95.303379	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or

CESWG-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00361

Name	Size (acres)	Location	Jurisdictional Status
			diking dry land to retain water for primarily aesthetic reasons
Pond 8	0.06-acre	29.991286 -95.305954	No, Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons
Ditch 1 (P130-05-00)	4,511 LF / 2.92 acres	29.966335 -95.315057	No, non-RPW
Ditch 2	1,363 LF / 0.44-acre	29.982701 -95.315796	No, non-RPW
Ditch 3 (P130-14-00)	2,997 LF / 1.37 acres	29.985188 -95.31003	No, non-RPW
Ditch 4	446 LF / 0.12-acre	29.988283 -95.311704	No, non-RPW
Ditch 5	1,005 LF / 0.08-acre	29.989975 -95.300738	No, non-RPW
Ditch 6 (P130-13-00)	1,412 LF / 0.07-acre	29.990838 -95.305569	No, non-RPW
Ditch 7	391 LF / 0.03-acre	29.990799 -95.308732	No, non-RPW
Ditch 8	501 LF / 0.12-acre	29.990416 -95.315472	No, non-RPW
Ditch 9	688 LF / 0.25-acre	29.952804 -95.338287	No, non-RPW
			No, non-RPW
Ditch 10	3,427 LF / 0.75-acre	29.953254 -95.339523	
Ditch 11	2,642 LF / 0.80-acre	29.953883 -95.34299	No, non-RPW
Ditch 12	50 LF /	29.951981	No, non-RPW

Name	Size (acres)	Location	Jurisdictional Status
	0.01-acre	-95.342468	
Ditch 13	920 LF / 0.21-acre	29.960959 -95.347555	No, non-RPW
Ditch 14	1,870 LF / 0.25-acre	29.959115 -95.348868	No, non-RPW

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.
- f. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988).

3. REVIEW AREA. Is a group of (5) five tracts that are within the requested project review areas totaling approximately 1,758 acres. The tract is located within the bounds of Houston George Bush Intercontinental Airport (IAH) between runway 33L to the southwest and Garner Bayou to the north side of the airport, 29.970276 N, -95.315356 W, Houston, Harris County, Texas
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Greens Bayou

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Both Garner and Hood Bayou flow into Green's Bayou. Green's Bayou becomes a TNW approximately 8.70-aerial miles from the confluence of Garner and Green's Bayou.
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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 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): Garners and Hoods Bayou both contain water continuously year-round or for periods of at least three out of twelve months out of the year

⁶ 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.

⁷ 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.

and therefore meet the definition of a RPW. 6,029 LF of Garners Bayou (P133-00-00), Garners Bayou is a Relatively Permanent Water (RPW) and tributary to Greens Bayou approximately 3.07 aerial miles downstream from the project site. Approximately 8.70 miles downstream of the confluence of Garner Bayou and Greens Bayou, Greens Bayou becomes a Traditionally Navigable Water (TNW). Greens Bayou flows into Buffalo Bayou and then Galveston Bay.

9,669-LF of Hood Bayou (P140-00-00), Hood Bayou is a RPW & tributary to Greens Bayou approximately 0.82-miles aerial miles downstream from the project site. Approximately 10.35 miles downstream of the confluence of Hood Bayou and Greens Bayou, Greens Bayou becomes a TNW. Greens Bayou flows into Buffalo Bayou and then Galveston Bay.

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”).⁸ 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.

There are (8) eight ponds located within the review area totaling 3.89 acres. Pond 1 = 0.05-acres, Pond 2 = 0.05-acres, Pond 3 = 3.02-acres, Pond 4 = 0.07-acres, Pond 5 = 0.08-acres. Pond 6 = 0.15-acres, Pond 7 = 0.41-acres; and Pond 8 = 0.06-acres. The ponds were identified as generally non jurisdictional because they were excavated for aesthetic reasons for a golf course that once existed within the review area. Therefore, Ponds 1-8 are not waters of the United States.

- 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.

⁸ 51 FR 41217, November 13, 1986.

There are fourteen (14) drainage ditches located within the review area, totaling approximately 22,223-linear feet (LF). Ditch 1 (P130-05-00) = 4,511 LF, Ditch 2 = 1,363 LF, Ditch 3 (P130-14-00) = 2,997 LF, Ditch 4 = 446 LF, Ditch 5 = 1,005 LF, Ditch 6 (P130-13-00) = 1,412 LF, Ditch 7 = 391 LF, Ditch 8 = 501 LF, Ditch 9 = 688 LF, Ditch 10 = 3,427 LF, Ditch 11 = 2,642 LF, Ditch 12 = 50 LF, Ditch 13 = 920 LF, Ditch 14 = 1,870 LF. The ditches do not carry a relatively permanent flow, do not have an ordinary high-water mark and/or a bed and bank. Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries. The ditches are a non-relatively permanent water and do not flow into a traditional navigable water; therefore, the ditches do not meet the definition of a tributary as defined in the pre-2015 regime post-Sackett guidance and are not a water of the United States.

- 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
- 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).

The review area contains thirty-one (31) wetlands totaling 18.19 acres. Wetland 1 = 0.50-acres, Wetland 2 = 0.31-acres, Wetland 3 = 0.07-acres, Wetland 4 = 2.08-acres, Wetland 5 = 0.55-acres, Wetland 6 = 0.12-acres, Wetland 7 = 0.72-acres, Wetland 8 = 0.71-acres, Wetland 9 = 0.25-acres, Wetland 10 = 0.31-acres, Wetland 11 = 1.45-acres, Wetland 12 = 0.45-acres, Wetland 13 = 0.20-acres, Wetland 14 = 0.66-acres, Wetland 15 = 0.31-acres, Wetland 16 = 1.25-acres, Wetland 17 = 0.07-acres, Wetland 18 = 2.08-acres, Wetland 19 = 1.91-acres, Wetland 20 = 0.40-acres, Wetland 21 = 0.31-acres, Wetland 22 = 1.22-acres, Wetland 23 = 0.07-acres, Wetland 24 = 0.99-acres, Wetland 25 = 0.15-acres, Wetland 26 = 0.17-acres, Wetland 27 = 0.08-acres, Wetland 28 = 0.12-acres, Wetland 29 = 0.06-acres, Wetland 30 = 0.22-acres, Wetland 31 = 0.40-acres. Based on data sources listed in #9, our 18 May 2026 desk review, we have determined these wetlands reside in small depressional areas within the review area, that collects rainwater, and they are completely enclosed by elevated uplands. Based on our review, the wetlands do not have any known continuous surface connection to any RPW, TNW, or impoundments of either. Therefore, in accordance with the pre-2015 regime post-Sackett and the 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, Wetlands 1-31 do not meet the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and are not waters of the United States subject to Section 404 of the Clean Water Act. Any discharge of dredged and/or fill material into Wetlands 1-31 do 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. Desk Review: 18 May 2026
 - b. Maps, plans, plots, and data submitted by Freese and Nichols (Consultant) on behalf of Houston Airport System the applicant.: Wetland delineation report received 22 May 2024.
 - c. Aerial Photos: Select Google Earth Aerial Imagery (1944 - 2020)
 - d. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); FWS NWI ESRI Layer.

CESWG-RD-C

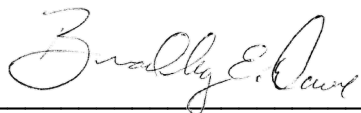
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00361

- e. United State Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Soil Survey Geographic Database (SSURGO) Esri Layer
- f. United States Geological Survey Topographic Maps: Humble, Texas Quadrangle 1916, 1954, 2022; Houston, Texas Quadrangle 1992, Harmaston, Texas Quadrangle 2022; Maedan, Texas Quadrangle 2022

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:



Date: 2 June 2026

Bradley Dawe

Regulatory Project Manager, Central Branch
Regulatory Division, Galveston District

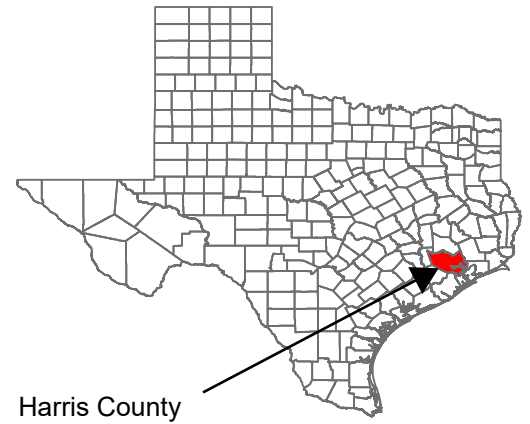
REVIEWED/APPROVED BY:



Date: 2 June 2026

Kara Vick Clark

Team Lead, South Branch
Regulatory Division, Galveston District

PROJECT LOCATION

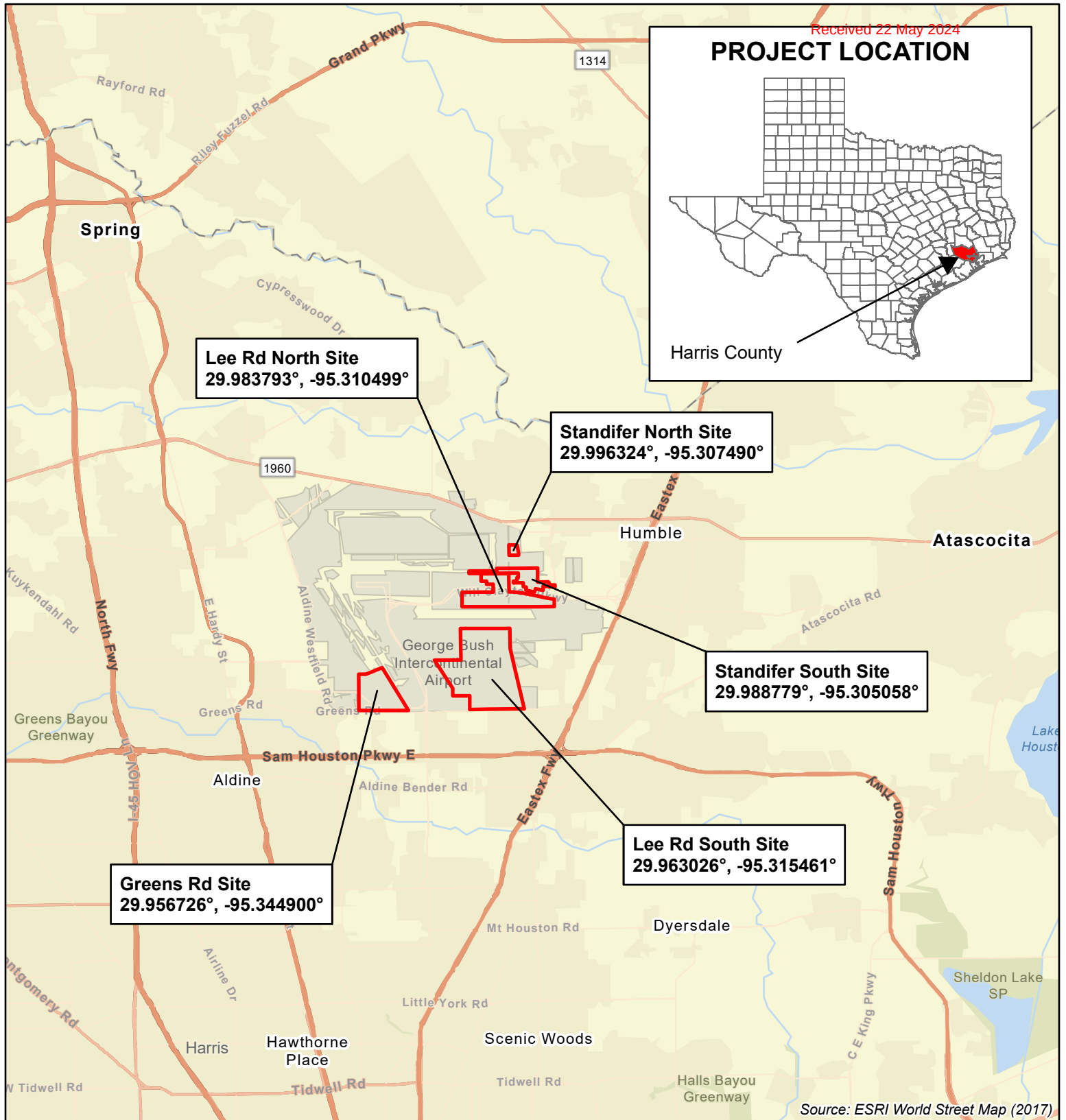
Lee Rd North Site
29.983793°, -95.310499°

Standifer North Site
29.996324°, -95.307490°

Standifer South Site
29.988779°, -95.305058°

Greens Rd Site
29.956726°, -95.344900°

Lee Rd South Site
29.963026°, -95.315461°



Source: ESRI World Street Map (2017)

Legend

Project Area

**FIGURE 1
VICINITY MAP**

**EAST PROPERTIES
GEORGE BUSH
INTERCONTINENTAL AIRPORT
HOUSTON, HARRIS COUNTY, TEXAS 77032**

0 1.5 3 6 Miles

1 inch = 3 mile(s)



Prepared By: Cypress Environmental
Consulting LLC
Project Number: 022427
Date: 12/18/2023