



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

CESWG-RD-P

April 23, 2025

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),<sup>1</sup> SWG-2024-00832, MFR 1 of 1.<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

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.

- 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).

Feature Name	Latitude	Longitude	Acres	Linear Feet	Jurisdictional
Taylor Gully - North	30.08432	-95.2023	N/A	1,735.67	No
Taylor Gully - South	30.08346	-95.2007	N/A	110.99	No
D1	30.08818	-95.2016	N/A	322.76	No
D2	30.08765	-95.2016	N/A	265.30	No
D3	30.08917	-95.2016	N/A	266.19	No
D4	30.08628	-95.2003	N/A	965.51	No
DB1	30.08703	-95.2008	3.92	N/A	No
DB2	30.08305	-95.2018	3.95	N/A	No
DB3	30.07943	-95.2059	2.24	N/A	No
DB4	30.08489	-95.2074	3.33	N/A	No
ST1	30.08559	-95.2013	N/A	38.69	No
ST2	30.08561	-95.2014	N/A	35.82	No
SW1	30.08696	-95.2056	N/A	453.66	No
SW2	30.08619	-95.2067	N/A	358.98	No
SW3	30.08522	-95.2037	N/A	468.50	No
SW4	30.08448	-95.2039	N/A	816.16	No
SW5	30.08363	-95.2018	N/A	76.47	No
SW6	30.08313	-95.2028	N/A	439.80	No
SW7	30.08266	-95.2038	N/A	262.27	No
SW8	30.08169	-95.2041	N/A	767.51	No
SW9	30.08888	-95.2046	N/A	507.33	No
WB1	30.08388	-95.2019	0.04	N/A	No
WB2	30.07983	-95.2074	5.76	N/A	No
WB3	30.08068	-95.2087	0.23	N/A	No
WET1	30.08595	-95.2013	0.46	N/A	No
WET2	30.0875	-95.2027	2.86	N/A	No
WET3	30.08674	-95.2077	1.32	N/A	No
WET4	30.08655	-95.206	0.07	N/A	No
WET5	30.08552	-95.2018	0.19	N/A	No

Feature Name	Latitude	Longitude	Acres	Linear Feet	Jurisdictional
WET6	30.07728	-95.209	0.01	N/A	No
WET7	30.08374	-95.2026	0.26	N/A	No
WET8	30.08217	-95.2065	0.06	N/A	No
WET9	30.08068	-95.2078	0.35	N/A	No
WET10	30.08563	-95.2028	0.45	N/A	No
WET11	30.08769	-95.2056	0.79	N/A	No
WET12	30.08543	-95.2054	0.62	N/A	No
WET13	30.08096	-95.2082	0.09	N/A	No
WET14	30.0785	-95.2087	0.08	N/A	No
WET15	30.08139	-95.2051	0.08	N/A	No
WET16	30.08914	-95.2023	0.37	N/A	No
WET17	30.08885	-95.2019	0.03	N/A	No
WET18	30.08851	-95.204	0.11	N/A	No
WET19	30.08868	-95.2069	0.03	N/A	No

## 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 (25 August 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., 143 S. Ct. 1322 (2023)
- e. 2008 Rapanos guidance: "In addition, 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, or they do not have a significant nexus to downstream traditional navigable waters."
- f. 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 review area is approximately 225 acres located 0.6 mile west of West Lake Houston Parkway, Kingwood, Harris and Montgomery Counties, Texas Latitude 30.085721° North, Longitude -95.204293° West.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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.

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<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

- 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): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A
- h.

## 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”).<sup>9</sup> 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.

DB1, DB3, and DB4 were created by excavating uplands for the purposes of floodwater retention during extreme weather events. DB1, DB3, and DB4 are not open water features; therefore, they are not relatively permanent. DB1, DB3, and DB4 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.

- 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.

The project area has six ditches, Taylor Gully-North, Taylor Gully-South, D1, D2, D3, and D4 which were excavated from uplands. The ditches exhibit low volume, infrequent, and/or short duration flow indicating that the ditches primary source of water is runoff from rainfall. These ditches do not appear on the Moonshine Hill, Texas 1916, 1962, 1980, 1987, and 2000 topographic maps. Taylor Gully-North,

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<sup>9</sup> 51 FR 41217, November 13, 1986.

Taylor Gully-South, D1, D2, D3, and D4 are not relatively permanent waters and do not meet the definition of a tributary as defined in the pre-2015 regime post Sackett guidance and are not waters of the United States.

The project area contains nine drainage swales, SW1-SW9, these features do not have a defined bed and bank and do not appear on the topographic map. The swales exhibit low volume, infrequent, and/or short duration flow indicating that the swales primary source of water is runoff from rainfall. The drainage swales are not relatively permanent waters as defined in the pre-2015 regime post Sackett guidance and are not waters of the United States.

ST1 and ST2 were identified in the project area. These features do not appear on the Moonshine Hill, Texas 1916, 1962, 1980, 1987, and 2000 topographic maps. ST1 and St2 are not relatively permanent waters and do not meet the definition of a tributary as defined in the pre-2015 regime post Sackett guidance and are not waters 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*.

Four open water features were identified, DB2, WB1, WB2, and WB3. DB2 and WB3 were constructed in 2019 according to Google Earth aeriels. WB1 and WB2 were constructed between 2021 and 2022 according to Google Earth aeriels. The use, degradation, or destruction of DB2, WB1, WB2, and WB3 would not affect interstate or foreign commerce. DB2, WB1, WB2, and WB3 are not used for interstate or foreign travelers for recreational or other purposes, fish or shellfish are not taken and sold in interstate or foreign commerce and are not

used for industrial purpose by industries in interstate commerce. DB2, WB1, WB2, and WB3 are not impoundments of a tributary and do not flow to a Traditional Navigable Water, therefore, DB2, WB1, WB2, and WB3 are not waters of the United States.

- 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 our desk review, WET1, WET2, WET3, WET4, WET5, WET6, WET7, WET8, WET9, WET10, WET11, WET12, WET13, WET14, WET15, WET16, WET17, WET18, and WET19 do not directly abut; and therefore, have no continuous surface connection with the nearest TNW, Caney Creek, which is two miles east of the project area. WET1, WET2, WET3, WET4, WET5, WET6, WET7, WET8, WET9, WET10, WET11, WET12, WET13, WET14, WET15, WET16, WET17, WET18, and WET19 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.

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. Google Earth 2019, 2021, and 2022
- b. United States Geological Survey Topographic Quadrangle, Moonshine Hill, Texas 1916, 1962, 1980, 1987, 2000
- c. Waters of the United States Report dated August 2024.

10. OTHER SUPPORTING INFORMATION.

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.





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ENVIRONMENTAL + COMMUNICATIONS

## WOTUS Report

Taylor Gully Channel Conveyance  
Improvements and Woodridge  
Detention Basin

Harris County, Texas

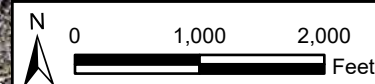
G103-80-03.1-E002

## LEGEND

- HCFCF Drainages
- Project Area (225.7 ac)
- SWG-2022-00179 (38.4 ac)

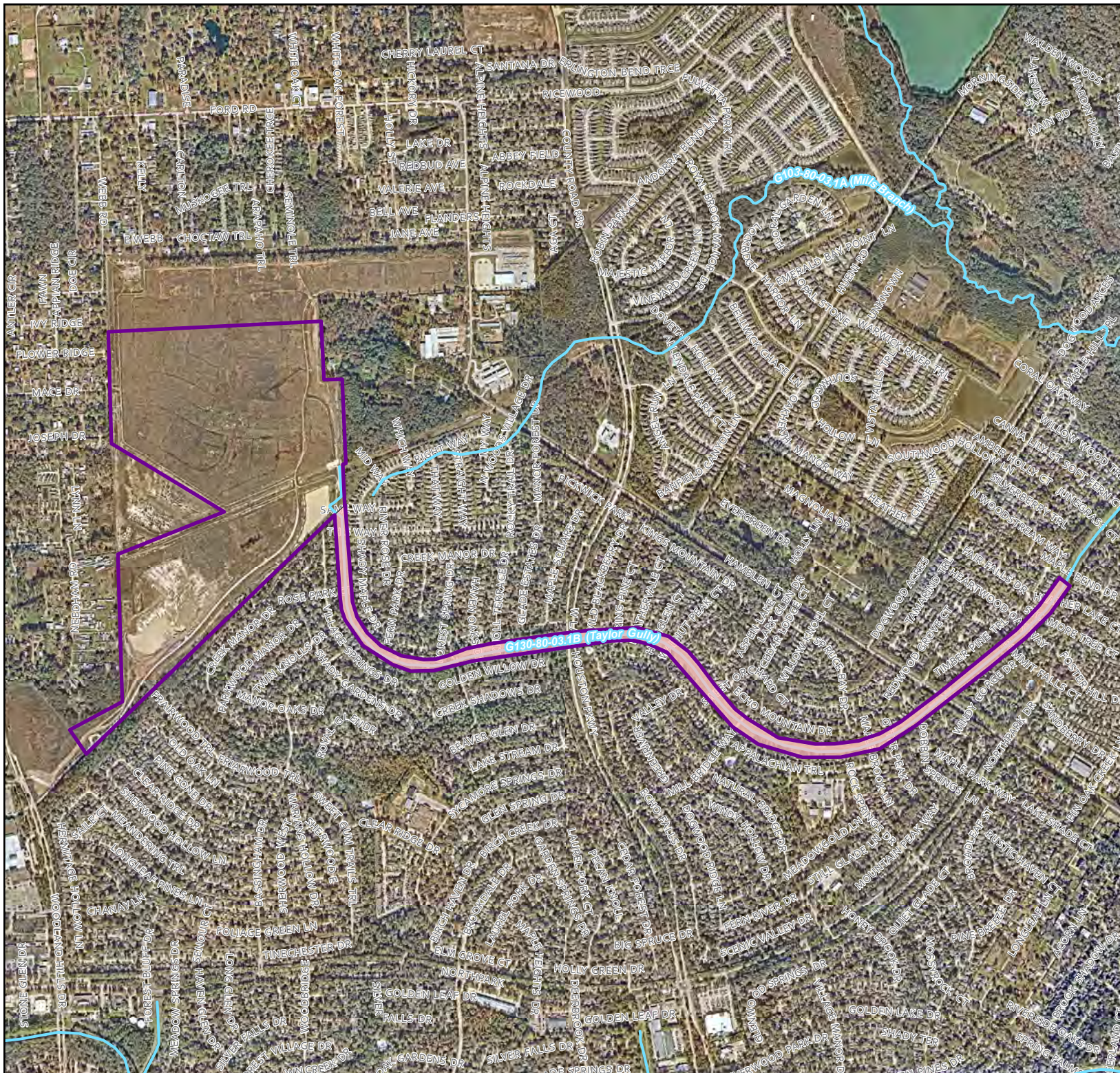
## Exhibit 2

2024 Aerial Map

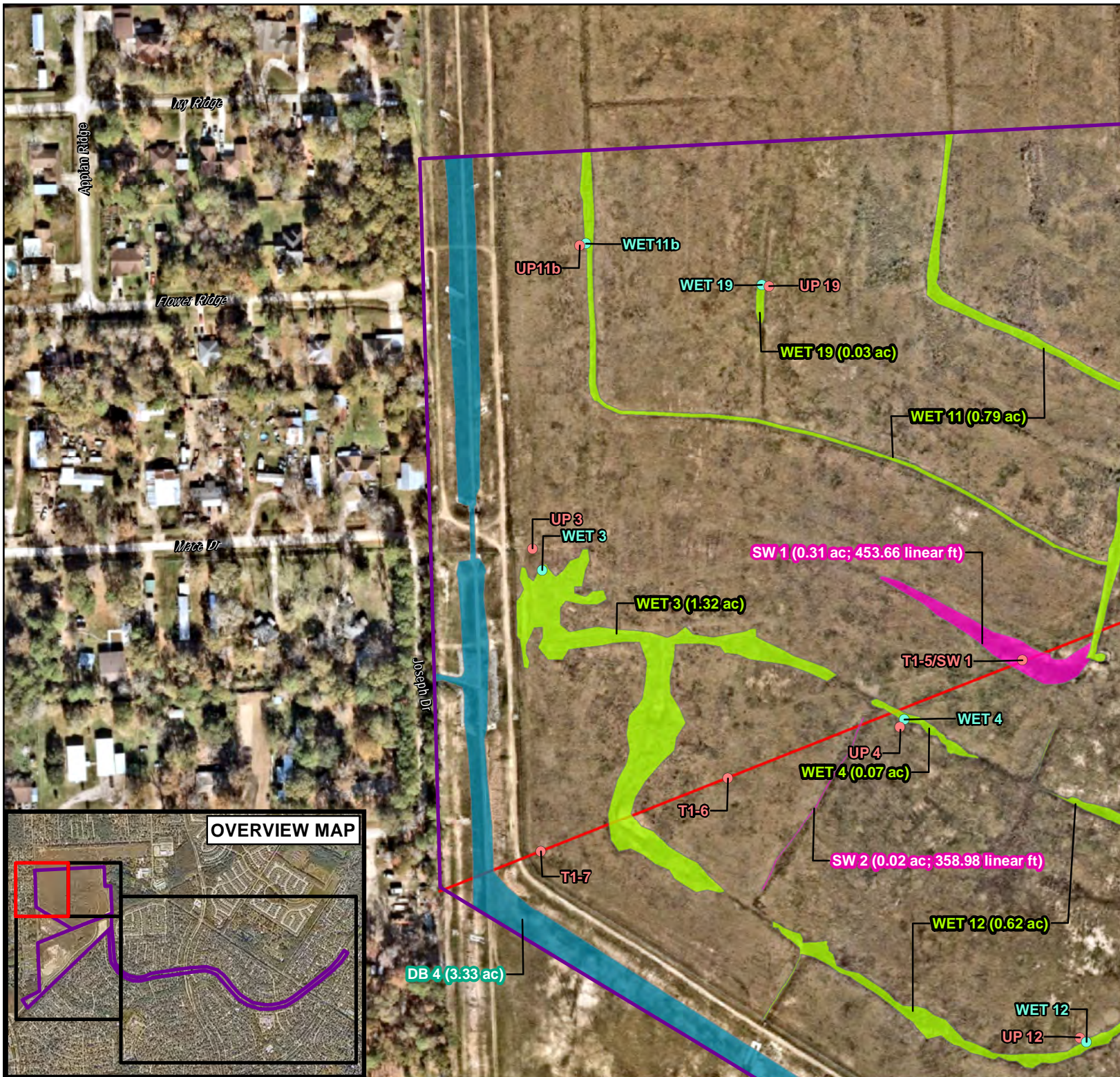


## NOTES

- Centroid Coordinates:  
30.083901, -95.204974
- NearMap Aerial Photograph  
Date: 01/07/2024







**HOLLAWAY**  
ENVIRONMENTAL + COMMUNICATIONS

## WOTUS Report

Taylor Gully Channel Conveyance  
Improvements and Woodridge  
Detention Basin

Harris County, Texas

G103-80-03.1-E002

### LEGEND

- Project Area (225.7 ac)
- Detention Basin (13.44 ac)
- PEM Wetland (8.23 ac)
- Swale (0.673 ac; 4,150.68 linear ft)
- Upland Data Point
- Wetland Data Point
- Transects

### Exhibit 3a

#### Delineation Data Map

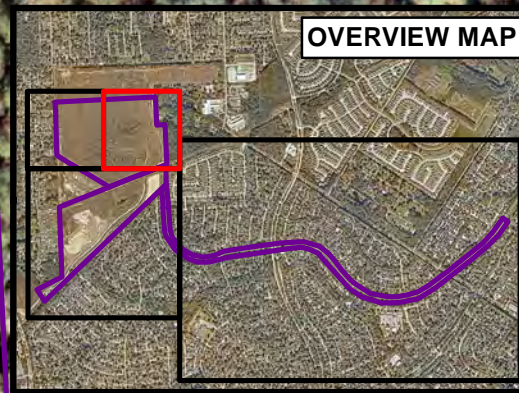
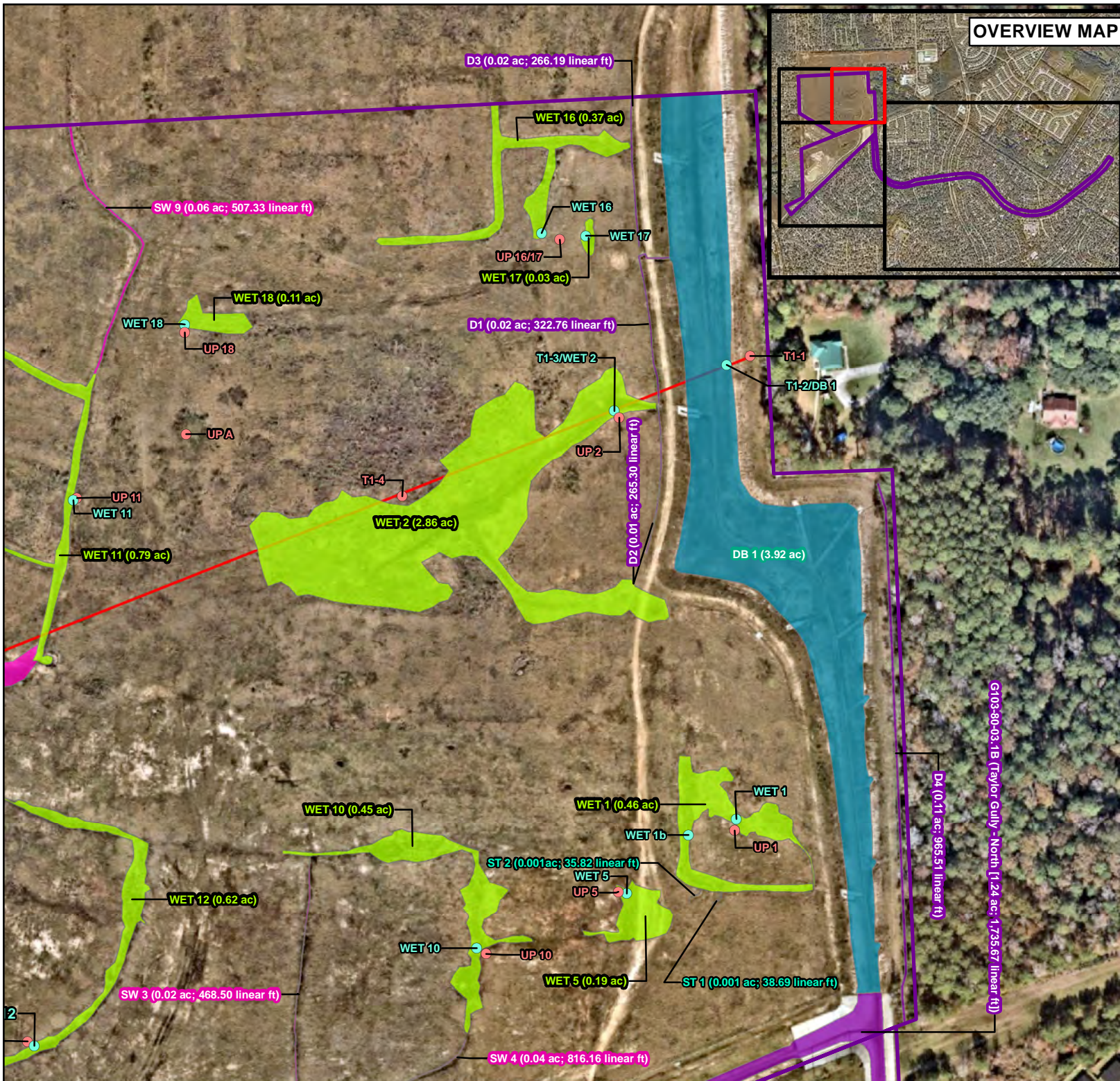


**NOTES**  
- NearMap Aerial Date: 01/09/2024  
- Centroid Coordinates:  
30.083901, -95.204974

### OVERVIEW MAP







**HOLLAWAY**  
ENVIRONMENTAL + COMMUNICATIONS

## WOTUS Report

Taylor Gully Channel Conveyance  
Improvements and Woodridge  
Detention Basin

Harris County, Texas

G103-80-03.1-E002

### LEGEND

- Project Area (225.7 ac)
- Detention Basin (13.44 ac)
- Ditch (1.45 ac; 3,666.42 linear ft)
- Ephemeral Stream (0.002 ac; 74.51 linear ft)
- PEM Wetland (8.23 ac)
- Swale (0.673 ac; 4,150.68 linear ft)
- Upland Data Point
- Wetland Data Point
- Transects

## Exhibit 3b

### Delineation Data Map



**NOTES**  
- NearMap Aerial Date: 01/09/2024  
- Centroid Coordinates:  
30.083901, -95.204974





**HOLLAWAY**  
ENVIRONMENTAL + COMMUNICATIONS

## WOTUS Report

Taylor Gully Channel Conveyance  
Improvements and Woodridge  
Detention Basin

Harris County, Texas

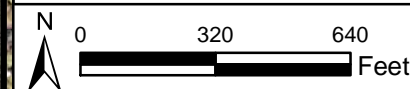
G103-80-03.1-E002

### LEGEND

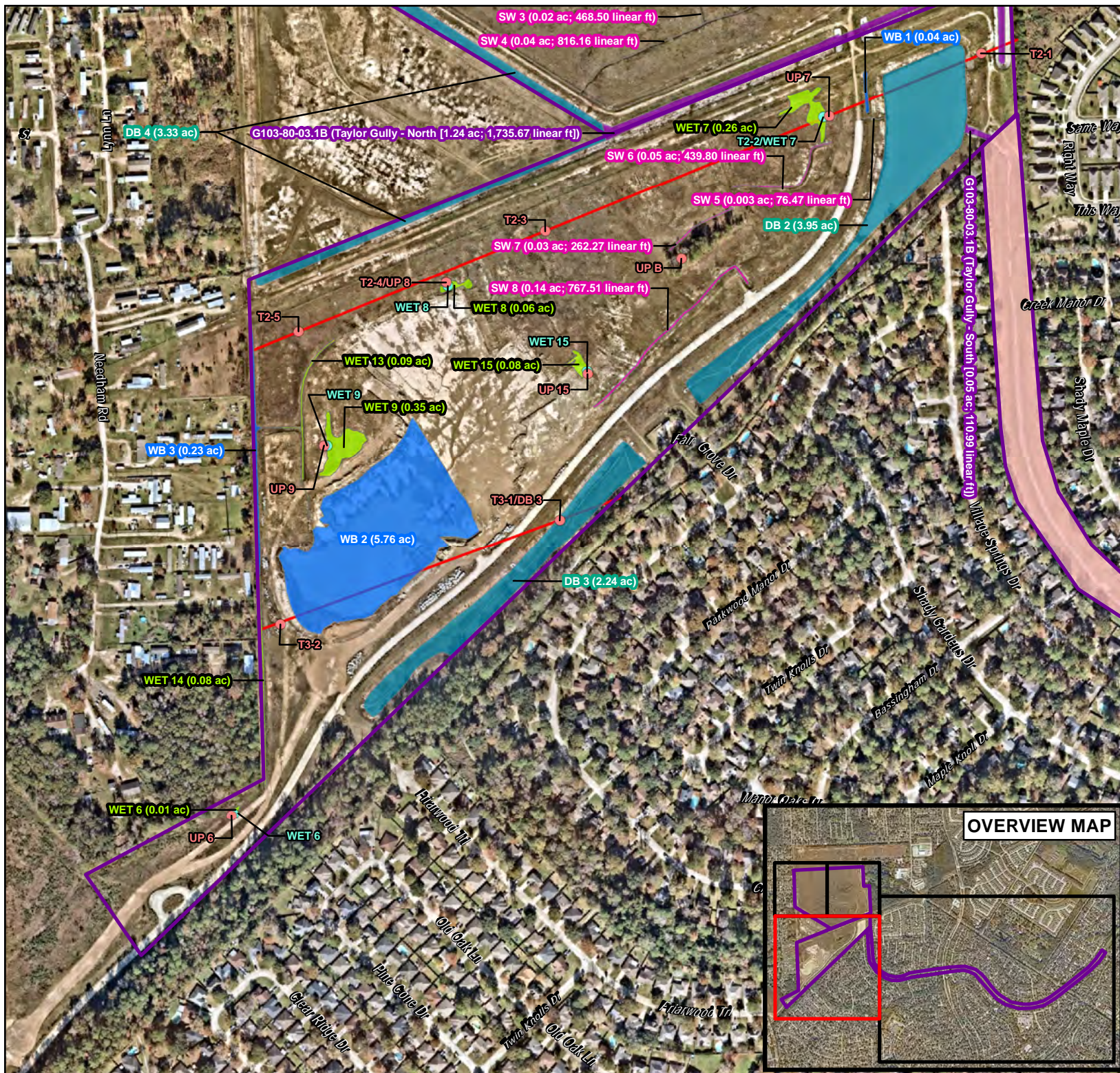
- Project Area (225.7 ac)
- SWG-2022-00179 (38.4 ac)
- Detention Basin (13.44 ac)
- Ditch (1.45 ac; 3,666.42 linear ft)
- PEM Wetland (8.23 ac)
- Swale (0.673 ac; 4,150.68 linear ft)
- Waterbody (6.03 ac)
- Upland Data Point
- Wetland Data Point
- Transects

### Exhibit 3c

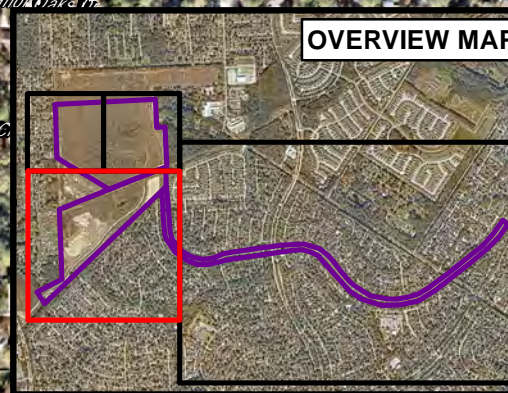
#### Delineation Data Map



**NOTES**  
- NearMap Aerial Date: 01/09/2024  
- Centroid Coordinates:  
30.083901, -95.204974



### OVERVIEW MAP







## WOTUS Report

Taylor Gully Channel Conveyance  
Improvements and Woodridge  
Detention Basin

Harris County, Texas

G103-80-03.1-E002

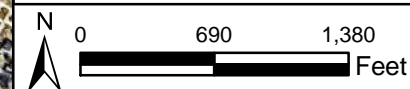
## LEGEND



SWG-2022-00179 (38.4 ac)

## Exhibit 3d

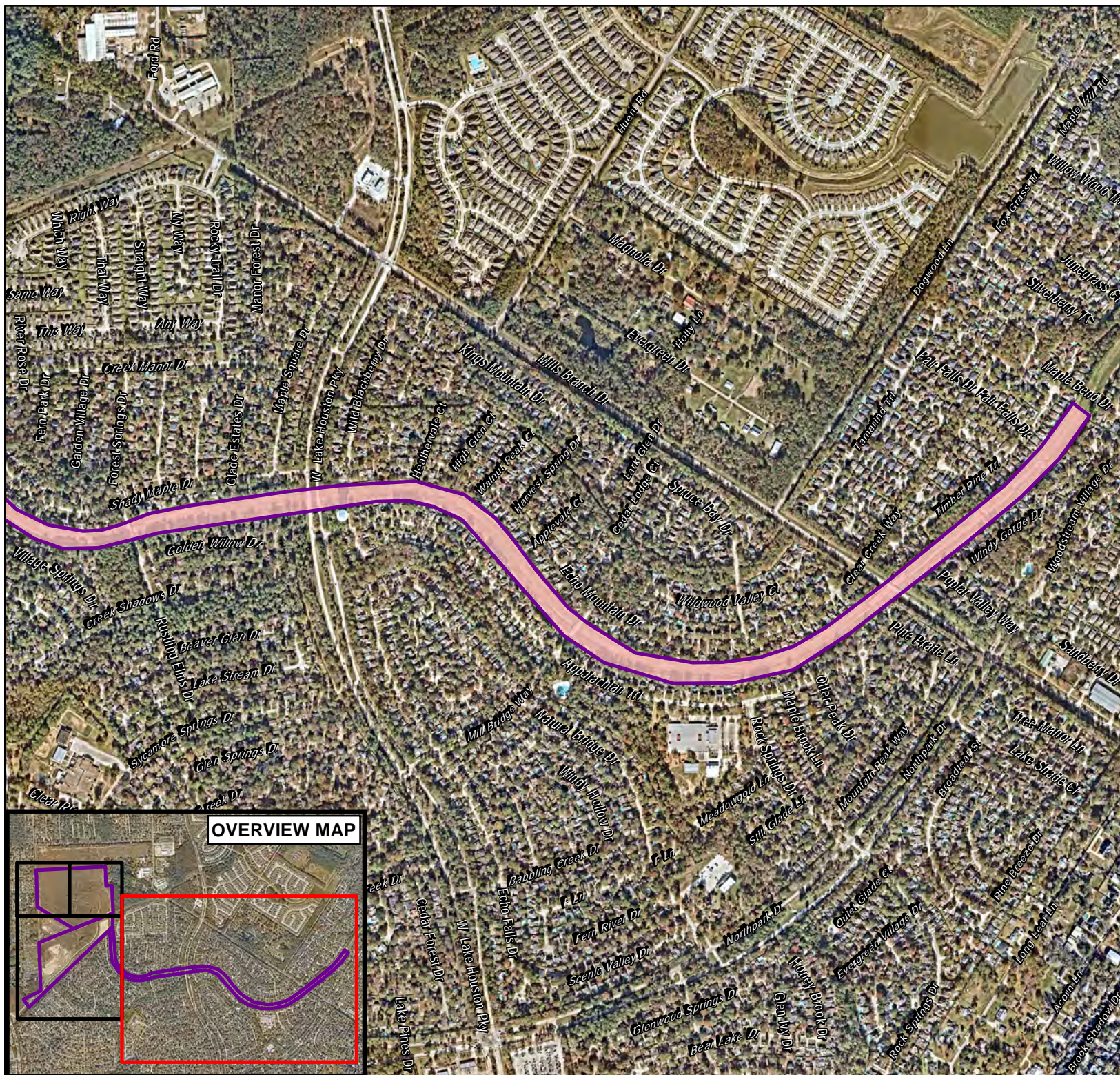
## Delineation Data Map



## NOTES

**NOTES**

- NearMap Aerial Date: 01/09/2024
- Centroid Coordinates:  
30.083901, -95.204974
- A JD for Taylor Gully G103-80-03.1 was issued by the USACE on 02/01/2023 (SWG-2022-00179). As such, this feature is not depicted on these maps.



## OVERVIEW MAP