



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

SWG-RD-E

29 October 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),¹ SWG-2025-00260²

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

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.

SWG-RD-E

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00260

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state 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).
 - i. Little Cypress Creek, Jurisdictional, Section 404, 30.079599, -95.568000, 2,208 linear feet
 - ii. S1002, Jurisdictional, Section 404, 30.079700, -95.567802, 70 linear feet
 - iii. S1003, Non-Jurisdictional, 30.080900, -95.566299, 624 linear feet
 - iv. Wetland 1, Non-Jurisdictional, 30.081747, -95.564997, 0.09 Acres
 - v. Wetland 2, Non-Jurisdictional, 30.085356, -95.558679, 0.10 Acres
 - vi. Wetland 3, Non-Jurisdictional, 30.090362, -95.554238, 0.25 Acres
 - vii. Wetland 4, Non-Jurisdictional, 30.090801, -95.553533, 0.05 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. 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."

SWG-RD-E

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00260

3. REVIEW AREA. The review area is a 77-acre tract of land located southwest of the intersection of Bauer Hockley Road and Roberts Road, 1.7 miles Northeast of Hockley, in Harris County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees): Center,
Latitude: 30.033063° North; Longitude: -95.81769° West

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cypress Creek is the nearest traditionally navigable waterway in which the subject water features flow into. Cypress Creek then flows downstream before depositing into Spring Creek which continues its flow path until converging with the San Jacinto River/Lake Houston.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: Little Cypress Creek and S1002 flow directly into Cypress Creek. Cypress Creek then flows downstream before depositing into Spring Creek which continues its flow path until converging with the San Jacinto River/Lake Houston.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ 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.

⁷ 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.

⁸ 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.

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):

Little Cypress Creek: Little Cypress Creek is a 2,208 linear foot relatively permanent waterway which shows consistent water inundation and flow throughout all recent and historical images. This creek has a defined bed and bank and direct connection to Cypress Creek approximately 13 miles downstream, which is considered traditionally navigable a further 9 miles downstream and exhibits an average ordinary high-water mark of 5 to 20 feet wide. Due to this rationale, the Corps considers Little Cypress Creek to be jurisdictional under Section 404 of the Clean Water Act.

S1002: S1002 is a 70 linear foot relatively permanent waterway located directly adjacent and connected to Little Cypress Creek. The direct connection to Little Cypress Creek paired with the location of S1002 leads it to be considered part of the overall Little Cypress Creek stream reach. Due to these reasons, the Corps considers S1002 to be jurisdictional under Section 404 of the Clean Water Act.

- 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”).⁹ 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
- 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.
- 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).

S1003: S1003 is an artificially constructed drainage ditch located in the existing grass/agricultural field that connects directly to Little Cypress Creek. Through review of historical imagery, Lidar/hillshade, topographic maps, National Hydrography Dataset, and on-site photos provided within the submitted wetland

⁹ 51 FR 41217, November 13, 1986.

delineation, the Corps has determined S1003 to not hold standing or continuous flow of water, leading to S1003 being considered a non-relatively permanent waterway. S1003 conveys water solely as a result of precipitation events drained from the surrounding field and is not considered a regulated Water of the US subject to jurisdiction under Section 404 of the Clean Water Act.

Wetland 1: Wetland 1 is a 0.09-acre palustrine emergent wetland located at the end of S1003. S1003 was determined to be non-jurisdictional due to it not having relatively permanent flow. A non-jurisdictional feature such as S1003 cannot be utilized to claim connection or adjacency for wetlands not directly abutting relatively permanent waterways. Due to this reason, the Corps considers Wetland 1 to be non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 2: Wetland 2 is a 0.10-acre palustrine emergent wetland located immediately southwest of Little Cypress Creek. Wetland 2 is surrounded on all sides by upland data points with no further lowland characteristics shown on lidar, hillshade, topographic, or historical imagery. Wetland 2 does not have direct connection or abutment with Little Cypress Creek and is considered non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 3: Wetland 3 is a 0.25-acre palustrine emergent wetland located north of Little Cypress Creek. Wetland 3 is surrounded on all sides by upland data points with no further lowland characteristics shown on lidar, hillshade, topographic, or historical imagery. Wetland 3 does not have direct connection or abutment with Little Cypress Creek and is considered non-jurisdictional under Section 404 of the Clean Water Act.

Wetland 4: Wetland 4 is a 0.05-acre palustrine emergent wetland located immediately north of Little Cypress Creek. Wetland 4 is surrounded on all sides by upland data points with no further lowland characteristics shown on lidar, hillshade, topographic, or historical imagery. Wetland 4 does not have direct connection or abutment with Little Cypress Creek and is considered non-jurisdictional under Section 404 of the Clean Water Act.

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. Office evaluation was conducted 15 October 2025.
 - b. Wetland Delineation Report: Prepared by JMT, for the Harris County Flood Control District dated April 2025.

SWG-RD-E

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00260

- c. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata accessed 15 October 2025.
- d. USACE Texas Southwestern Division Regulatory Viewer. Lidar (3DEP Digital Elevation Model) accessed 15 October 2025.
- e. USACE Texas Southwestern Division Regulatory Viewer. National Wetlands Inventory (NWI) accessed 15 October 2025.
- f. USACE Texas Southwestern Division Regulatory Viewer. National Hydrography Dataset (NHD) accessed 15 October 2025.
- g. U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. RDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

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:

Sean Dillard
Sean Dillard
Regulatory Project Manager

Date: October 29 2025

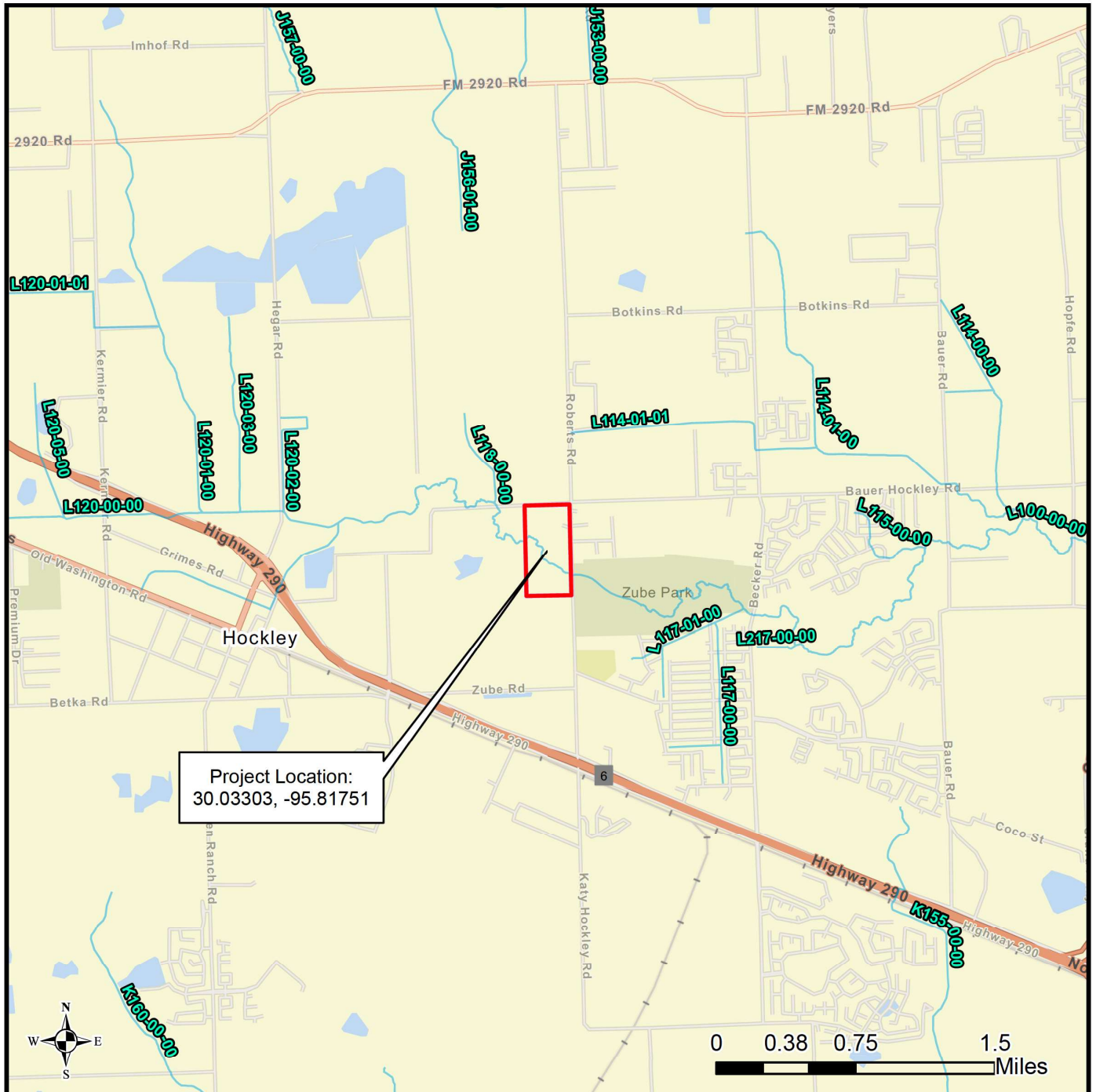
REVIEWED/APPROVED BY:

Andria Davis
Andria Davis
Leader, North Unit
Regulatory Division, Galveston District

Date: October 29 2025

SWG-RD-E

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2025-00260



- ▭ Project Boundary
- HCFCF Centerline

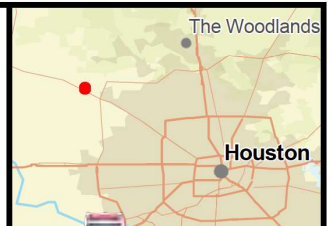


Figure 1A: Vicinity Map

Hegar Stormwater Detention
Basin (Fehlau Tracts)
Harris County, Texas
HCFCF Project ID: L500-11-00-E001

Sources: HCFCF, World Street Map, Baylor University, City of Houston, HPB, Montgomery County, TX GIS
Office, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METINASA,
USGS, EPA, NPS, USDA, USFWS
World Street Map, City of Houston, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, FAO, NOAA, USGS,
EPA, NPS, USFWS





- █ Project Boundary
- HCFCF Centerline

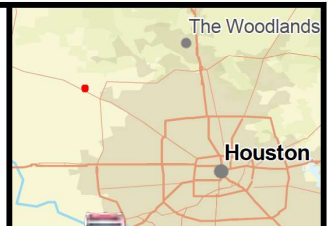
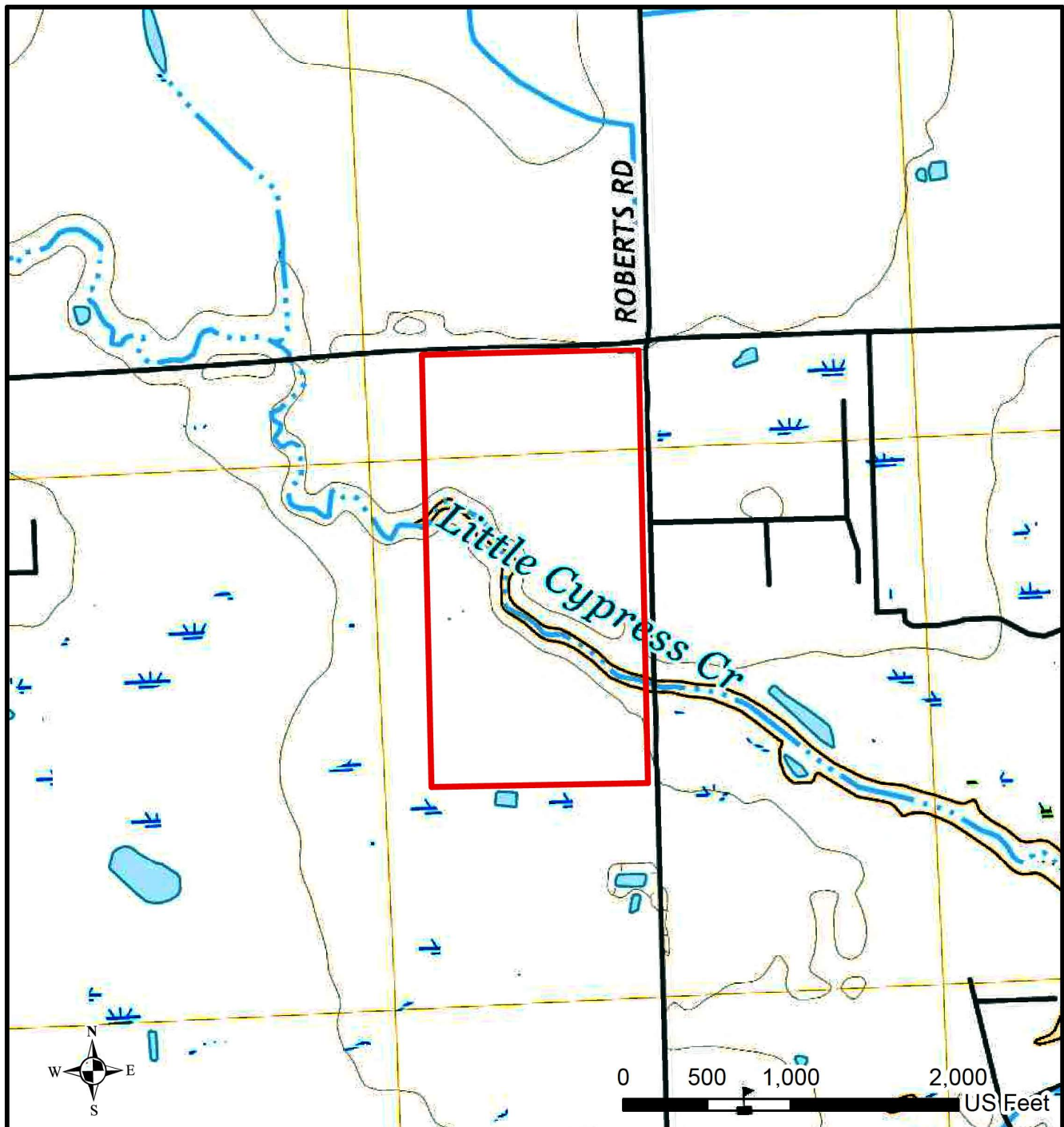


Figure 1B: Aerial Imagery (2023)

Hegar Stormwater Detention
Basin (Fehlau Tracts)
Harris County, Texas
HCFCF Project ID: L500-11-00-E001

Sources: HCFCF, World Imagery, Maxar
World Street Map, City of Houston, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, FAO, NOAA, USGS,
EPA, NPS, USFWS
Hybrid Reference Layer: Esri Community Maps Contributors, Baylor University, City of Houston, HPB,
Montgomery County, TX GIS Office, Texas Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP, Esri,
TomTom, Garmin, SafeGraph, GaoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA,
USFWS





 Project Boundary

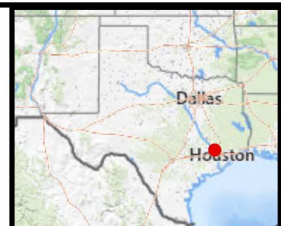


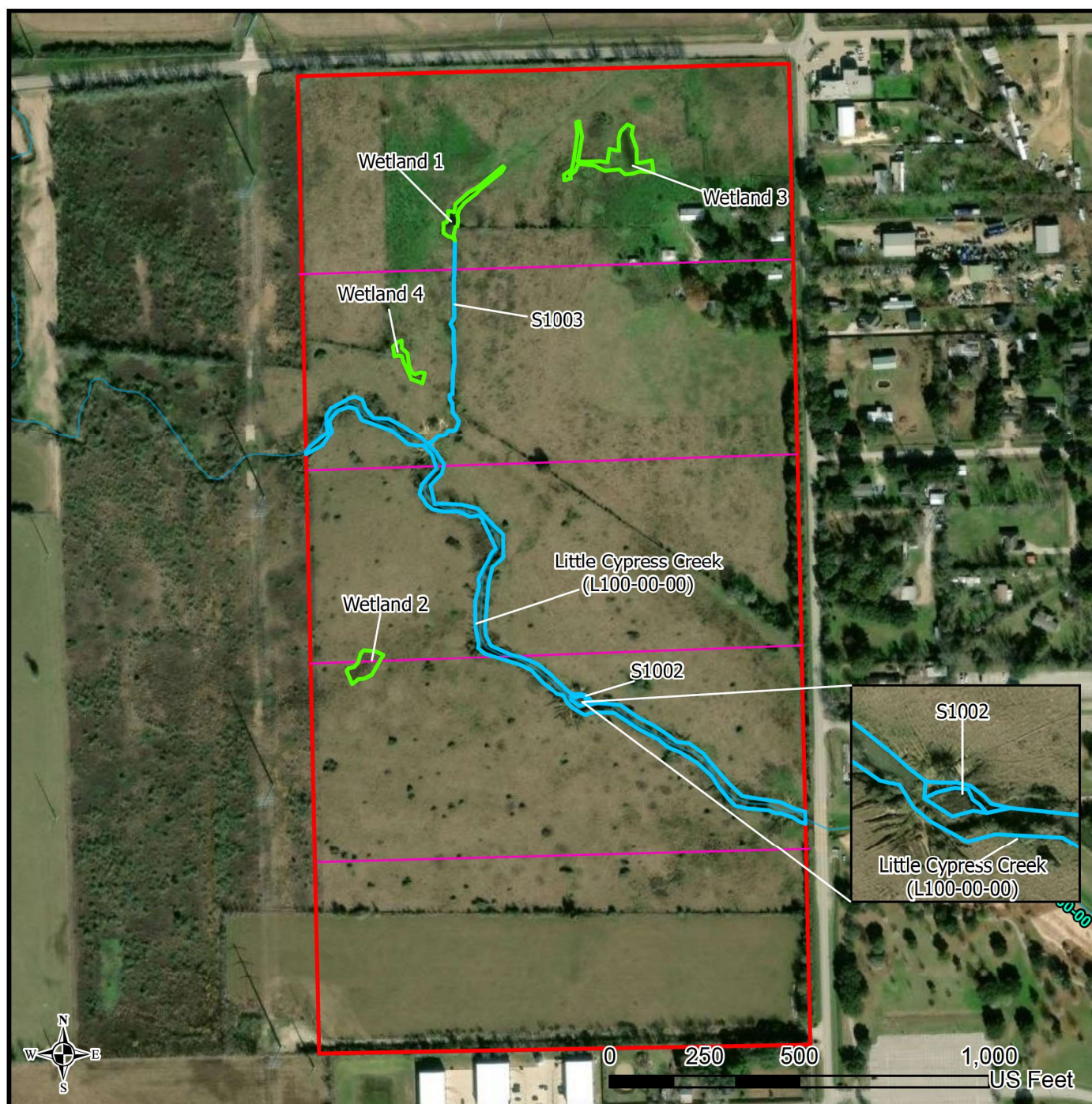
Figure 2F: 2022 Topographic Map

Hegar Stormwater Detention
Basin (Fehlau Tracts)
Harris County, Texas
HCFCF Project ID: L500-11-00-E001

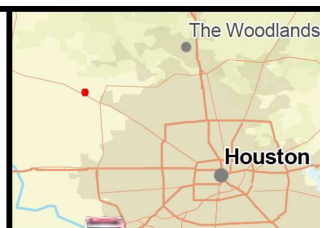
Sources:

Sources: World Transportation: Esri, HERE
USGS Topo: USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names
Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and
National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau 1:500K Line data; USGS Road data;
Natural Earth Data; U.S. Department of State HUI; NOAA National Centers for Environmental Information. Data refreshed
April, 2024.
World Imagery: Maxar
Project Boundary: TxDOT
Topography: USGS 2022
USGS TopoQuad: Hockley, TX





- Project Boundary
- Wetlands
- Streams
- HCFCF Centerline
- Transects



**Figure 7B: Aquatic Features
Delineation Map (No Datapoints)**

Hegar Stormwater Detention
Basin (Fehlau Tracts)
Harris County, Texas
HCFCF Project ID: L500-11-00-F001

Sources: HCFCF, World Topographic Map, Esri Community Maps Contributors, Baylor University, City of Houston, HPR, Montgomery County, TX GIS Office, Texas Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc. METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS, World Imagery, Maxar, Microsoft, World Imagery, Maxar, World Street Map, City of Houston, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, NPS, USFWS, World Hillshade, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatasysteisen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community





Hegar Stormwater Detention Basin (Fehlau Tracts)
Harris County Flood Control District (HCFCD Project ID L500-11-00-E001)

Table 11: Summary of Aquatic Features Delineated within the Project Area

Feature ID	Cowardin Classification	Latitude, Longitude	Size (Acres/LF)	Surface Connectivity	Strahler Stream Order*	Jurisdictional Opinion
Little Cypress Creek (L100-00-00)	Perennial Stream	30.079599, -95.568000	1.13 ac / 2, 208 LF	RPW Jurisdictional Waterbody post Sackett	Third Order	Potentially Jurisdictional
S1002	Intermittent Stream	30.079700, -95.567802	0.01 ac / 70 LF	RPW Jurisdictional Waterbody post Sackett	First Order	Potentially Jurisdictional
S1003	Ephemeral Stream	30.080900, -95.566299	0.01 ac / 624 LF	Non-RPW	First Order	Potentially non-Jurisdictional
Wetland 1	PEM Wetland	30.081747, -95.564997	0.09 ac	Non-adjacent to jurisdictional water based on March 12, 2025 EPA Memo (EPA, 2025)	N/A	Potentially non-Jurisdictional
Wetland 2	PEM Wetland	30.085356, -95.558679	0.10 ac	No Connection to a Downstream TNW or RPW	N/A	Potentially non-Jurisdictional
Wetland 3	PEM Wetland	30.090362, -95.554238	0.25 ac	No Connection to a Downstream TNW or RPW	N/A	Potentially non-Jurisdictional
Wetland 4	PEM Wetland	30.090801, -95.553533	0.05 ac	No Connection to a Downstream TNW or RPW	N/A	Potentially non-Jurisdictional
Total Streams			1.15 ac / 2,902 LF			
Total Wetlands			0.49 ac			
Total Potentially Jurisdictional WOTUS			1.14 ac / 2,278 LF			
Total Potentially Non-Jurisdictional WOTUS			0.50 ac / 624 LF			

*Order was estimated based on DEMs, current USGS topographic maps and field estimates.

The findings reported in this document provide JMT's professional opinion of the presence, extent, and potential jurisdiction of aquatic resources identified on the Project Area. The USACE is the regulatory authority responsible for regulating WOTUS, including wetlands. An official determination of jurisdiction can only be rendered by the USACE. At the discretion of the client, this report should be submitted to the USACE along with a request for a jurisdictional determination. A permit may be required from the USACE to impact these aquatic resources, and compensatory mitigation may also be necessary, dependent upon the extent of impacts to jurisdictional features.