



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

CESWG-RDC

13 April 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-2025-00303

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 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.

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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. Magnolia Bayou, 0.038-acre, Jurisdictional; Section 404 CWA, Latitude 29.4635, Longitude -95.0919
 - ii. SW-1, 0.002-acre, Non-jurisdictional, Latitude 29.4625, Longitude -95.0919
 - iii. SW-2, 0.002-acre, Non-jurisdictional, Latitude 29.4625, Longitude -95.0919
 - iv. FW-1, 20.94 acres, Non-jurisdictional, non-adjacent, Latitude 29.4600, Longitude -95.0877

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: An approximate 21-acre tract located 0.42-mile southeast of the intersection of Farm to Market Road 646 and Interstate Highway 45, in Dickinson, Galveston County, Texas. Latitude: 29.4608, Longitude: -95.0877
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED: Dickinson Bayou

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS: Magnolia Bayou, an RPW, flows continuously 1.91 miles southeast into Dickinson Bayou which is classified as a TNW.
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 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): Magnolia Bayou (0.038-acre, 294 linear feet)

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.

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- 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
- 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.

SWALES: SW-1 and SW-2 (0.004-acre total)

Based on data sources listed in #9 and our 23 June 2025 desk review, we have determined these swales reside within the review area and lack a bed, bank, and/or ordinary high-water mark. Based on definitions found in 33 CFR 328.3(b)(8), the swales are considered non-jurisdictional features by definition. Therefore, under the definition of “Waters of the United States” under the Clean Water Act, SW-1 and SW-2 do not meet the definition of a water of the United States and are not subject to Section 404 of the Clean Water Act.

- 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

⁷ 51 FR 41217, November 13, 1986.

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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).

Forested Wetland 1: FW-1

Based on data sources listed in #9, our 23 June 2025 desk review, and a site visit conducted on 8 September 2025, we have determined this wetland is a depressional area within the review area that collects rainwater. Swales (SW-1 and SW-2) extend from this wetland north to Magnolia Bayou (a relatively permanent water), but the swale features do not exhibit discrete features such as an ordinary high-water mark or bed and bank. Based on our review, there is no surface connection between this wetland and any jurisdictional water. 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, FW-1 fails to meet the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is not a water of the United States subject to 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. Desk Review: 23 June 2025
 - b. Maps, plans, plots, and data submitted by or on behalf of the applicant consultant: Wetland Delineation Report conducted October 2024, received 27 May 2025
 - c. Aerial Photos: Google Earth Aerial Imagery, July 2023

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- d. United States Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI); FWS NWI ESRI Layer.
18 October 2024
- e. United State Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Soil Survey Geographic Database (SSURGO) Esri Layer,
18 October 2024
- f. United States Geological Survey Topographic Maps (Dickinson, Texas Quadrangles)
- g. FEMA Flood Insurance Rate Map (FIRM), 14 August 2019
- h. Strategic Mapping Program (StratMap) 2018 Upper Coast LiDar,
18 October 2024
- i. Site Visit: 8 September 2025

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:

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Zechariah Turk
Regulatory Specialist

Date: 13 April 2026

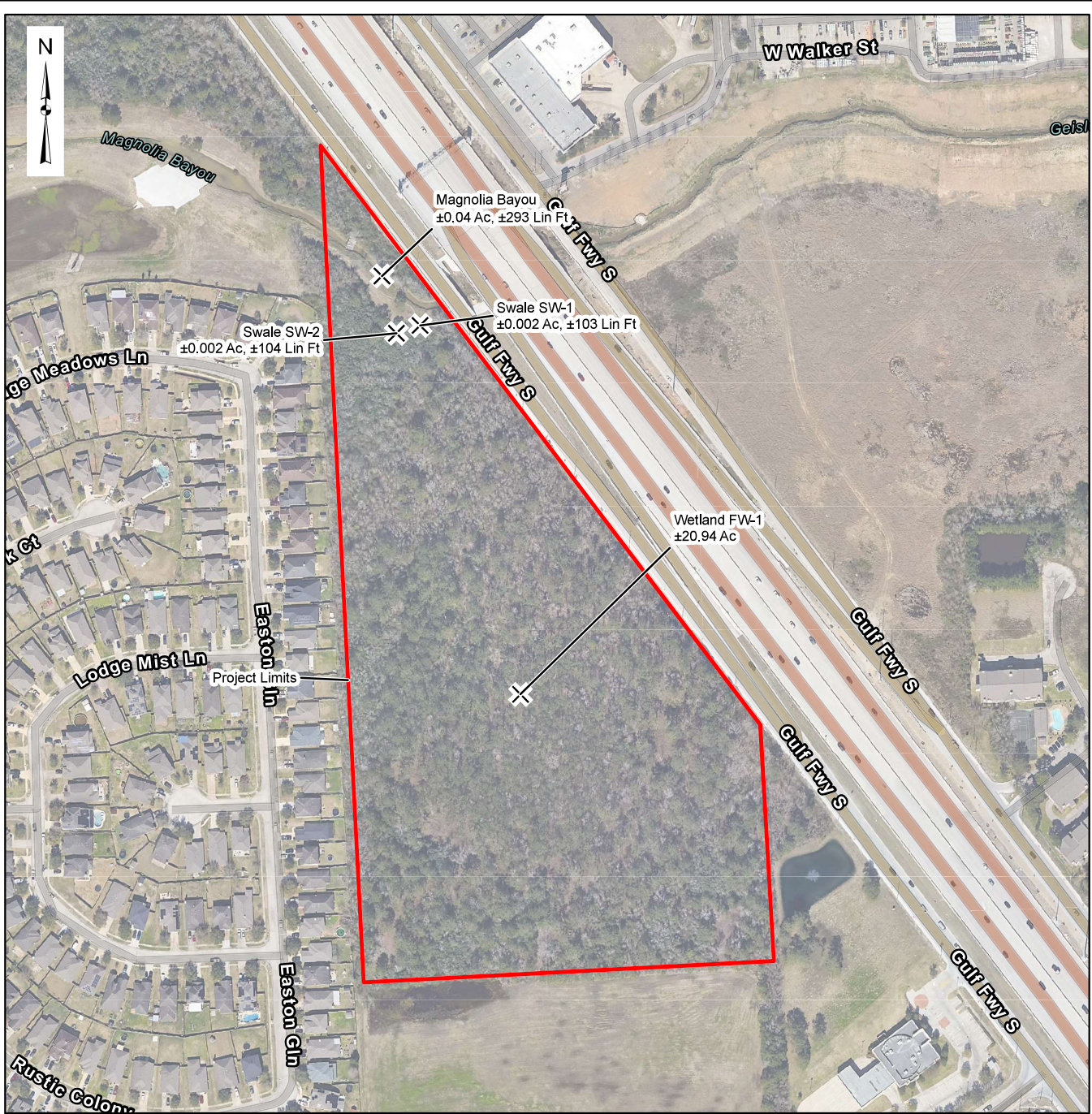
REVIEWED/APPROVED BY:

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NE.MARIE.1385279
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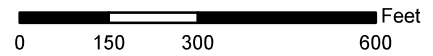
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K. Marie Taylor
Leader, Central Branch
Regulatory Division, Galveston District

Date: 13 April 2026



Project Limits, 21.76 Acres



DATA SOURCES:
 Esri Community Maps Contributors, Texas Parks & Wildlife,
 © OpenStreetMap, Microsoft, CONANP, Esri, TomTom,
 Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA,
 USGS, EPA, NPS, US Census Bureau, USDA, USFWS,
 Google Earth Aerial Photograph 2022-03-26, 2022
 Dickinson, Texas 7.5 Minute USGS Quadrangle Map

Project No.:	92237B59
Date:	05-21-2025
Drawn By:	REW
Reviewed By:	JCL



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Approved Jurisdictional Determination Overview Map

Approved Jurisdictional Determination
 Kelsey Seybold Clinic
 Gulf Freeway
 Dickinson, Galveston County, Texas
 Center: 29.4607867°, -95.087664°

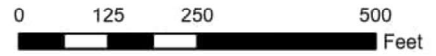
Exhibit

3.2



Legend

- Approximate Project Boundary - 21.47 acres
- Transects
- Sample Point
- Observation Photo Point
- ~ Perennial Tributary
- ~ Swale
- Forested Wetland



DATA SOURCES:
 Maxar, Microsoft, Esri Community Maps Contributors, Texas Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

Project No.:	92237B59
Date:	Apr 2025
Drawn By:	REG/RC
Reviewed By:	JL



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Delineation Map
PRD Land Development Services, LLC Kelsey Seybold Clinic Dickinson, Galveston County, Texas Center: 95°5'16"W 29°27'39"N

Exhibit
8.0

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