



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 30-MAR-2021

ORM Number: SWF-2017-00047

Associated JDs: N/A

Review Area Location¹:

State/Territory: Texas City: Axtell County: Limestone County

Center Coordinates of Review Area: Latitude 31.700832 Longitude -96.922048

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
SWF-2017-00047 ID 19 (T-3)	8400 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	This feature has large intermittently spaced perennial pools observed during site visit and in various aerial photos from multiple years showing both flowing and non-flowing conditions. Appears to have more than seasonal flow; however, does not flow during the driest months.
SWF-2017-00047 ID 20 (T-3)	100 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	This feature is a tributary to ID 19 and also has large intermittently spaced perennial pools observed during site visit and in various aerial photos from multiple years showing both flowing and non-flowing conditions. Appears to have more than seasonal flow; however, does not flow during the driest months.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide and included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
SWF-2017-00047 ID 21 (T-4)	721 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Tributary was dry during site visit. Stream bank development was lacking and/or minimal. No indicators of long term hydrology.
SWF-2017-00047 ID 23 (T-1)	2195 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Tributary was dry during site visit. Leaves lined the stream bottom, indicating lack of regular flow. No indicators of intermittent tributary. No intermittent pools of water. Aerial imagery lacking indicators of intermittent flow.
SWF-2017-00047 ID 24 (T-4)	836 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Tributary is downstream of ID Pond. It was dry during site visit and although it had a well-defined bed and bank had no indicators of intermittent flow.
SWF-2017-00047 ID Pond (I-1)	0.083 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Constructed at top of ephemeral water ID 24 in uplands.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: *Various dates and titles. See e-file.*

This information (*is/is not/is and is not*) sufficient for purposes of this AJD.

Rationale: Additional information was needed. A USACE staff site visit was required to confirm and add to data.

Data sheets prepared by the Corps: *N/A*

Photographs: Aerial and Site Photos: Google Earth Imagery, Numerous Years. Photographs provided by Horizon Environmental, various dates. See e-file and attached.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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- 27, 2020, located within the electronic project file.
- Corps Site visit(s) conducted on *14 Nov 2018*
 - Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*
 - Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
 - USDA NRCS Soil Survey: *Regulatory Viewer, March 30 2021*
 - USFWS NWI maps: *Regulatory Viewer, March 30, 2021*
 - USGS topographic maps: *Regulatory Viewer, March 30, 2021*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	ORM2 30 Mar 2021; Regulatory Viewer
USDA Sources	ORM2 30 Mar 2021; Regulatory Viewer
NOAA Sources	ORM2 30 Mar 2021; Regulatory Viewer
USACE Sources	ORM2 30 Mar 2021; Regulatory Viewer
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): N/A.

C. Additional comments to support AJD: All aquatic features were clearly as indicated above. Ephemeral features had limited hydrology and hydrologic sources over relatively small drainage areas, which had no aquatic life indicators such as fish, tadpoles, hydrophytic vegetation, invertebrates, etc. They were dry with clay bottoms. Intermittent streams demonstrate intermittent pooling obvious on various years of aerial photography, showing flow in the wet season.

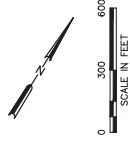
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LEGEND

- PERMIT BOUNDARY
- LIMITS OF WASTE
- COUNTY LINE
- LIMIT OF DISTURBANCE
- WATER FEATURE
- CENTERLINE OF STREAM

STREAM NO.	DISTURBED JURISDICTIONAL WATER	
	TEMPORARY	PERMANENT
19	129.84	98.00
20	66.15	0
TOTAL	194.99	98.00

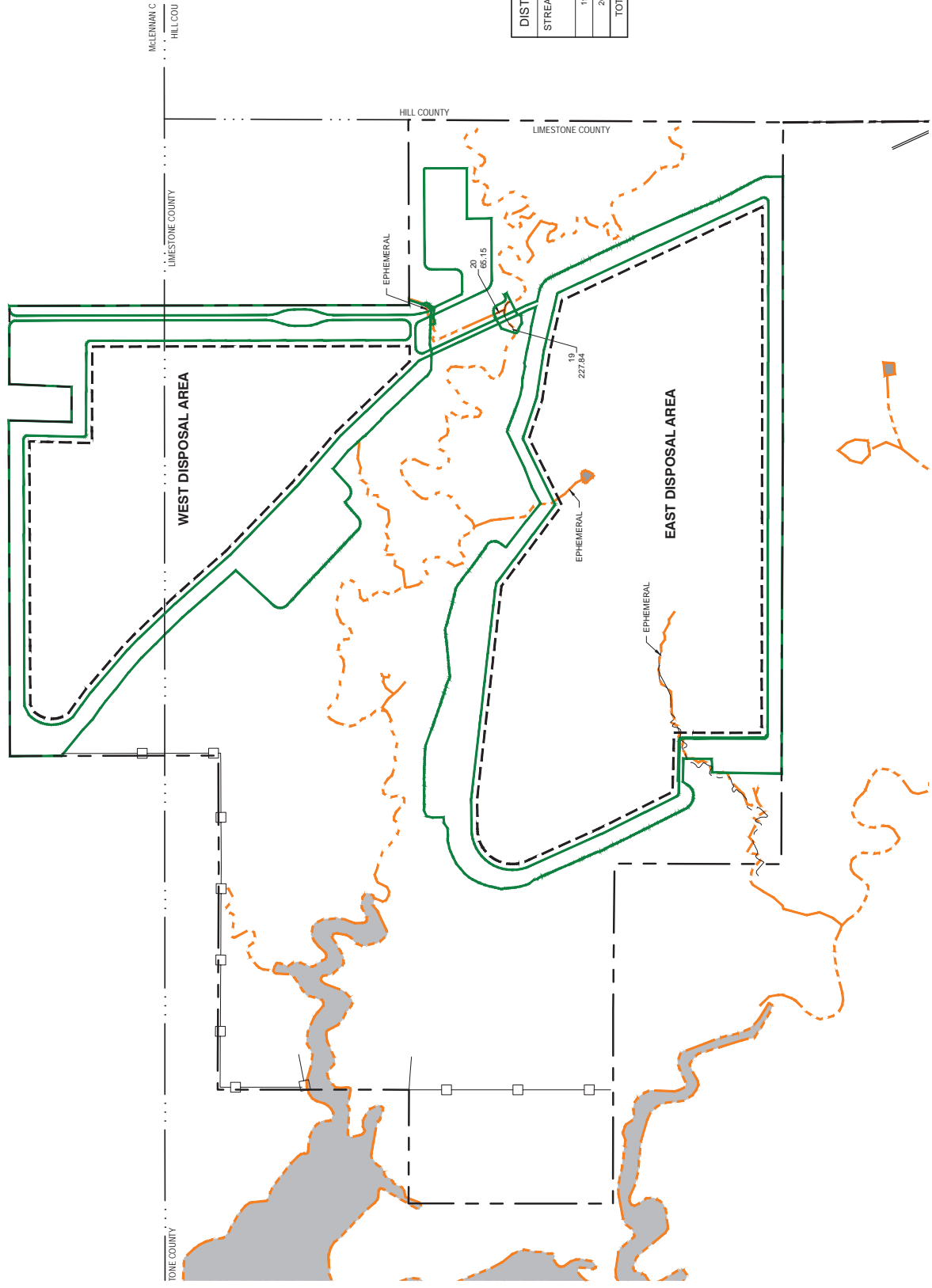
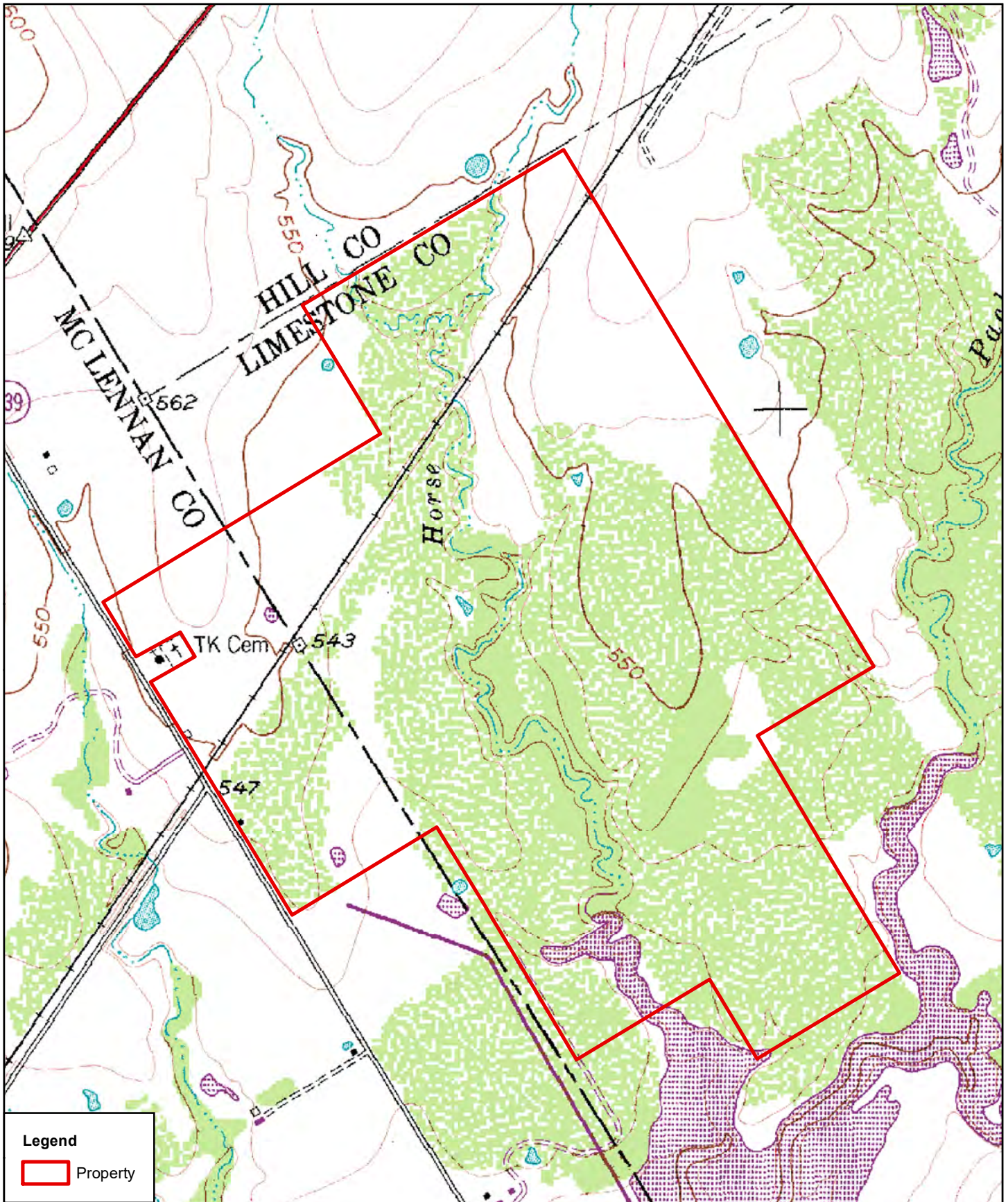


FIGURE 6
JURISDICTIONAL WATER IMPACT ANALYSIS
 FOR DISCUSSION PURPOSES ONLY
SCS ENGINEERS

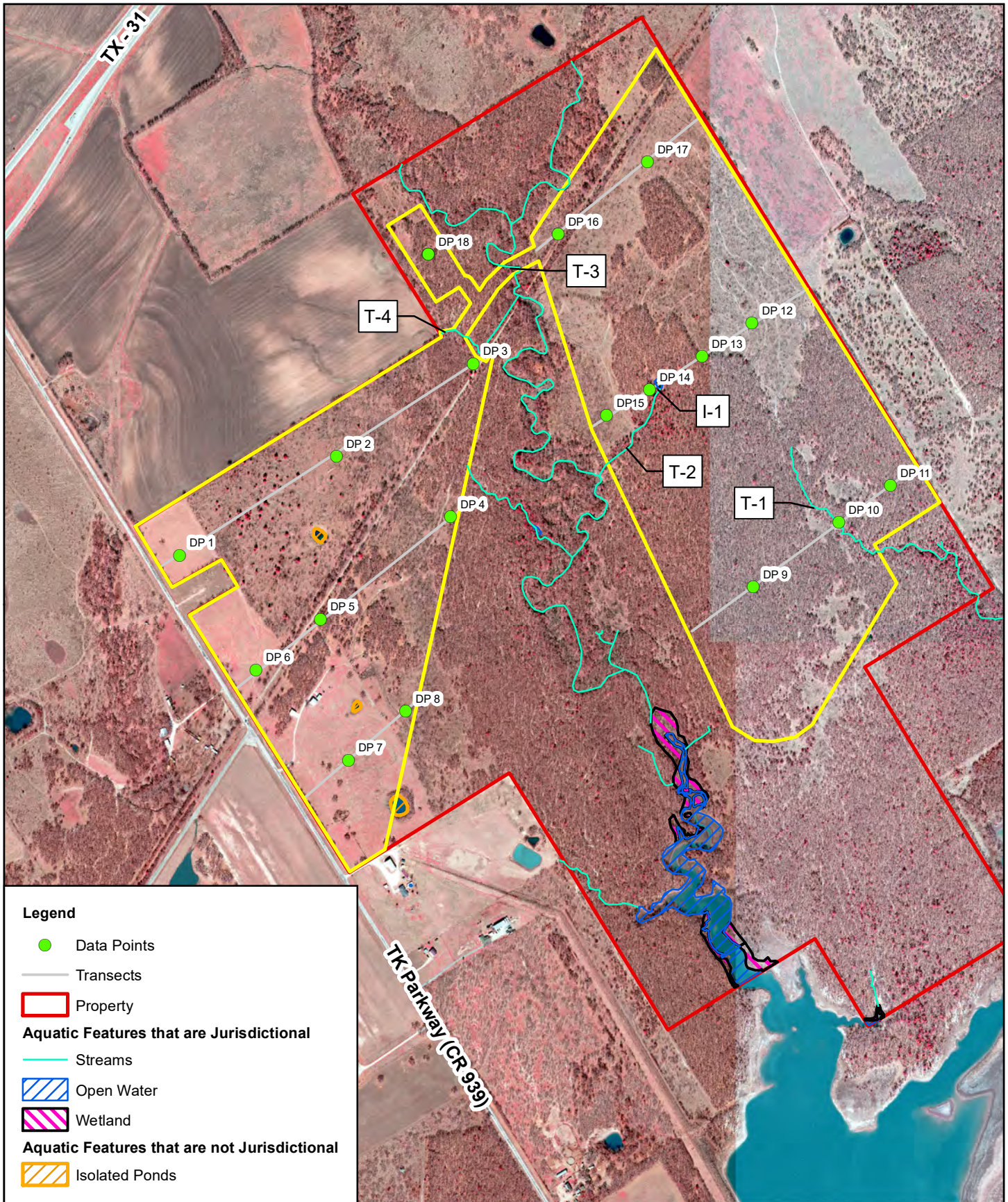


Horizon
Environmental Services, Inc.

Date:	02/15/2019
Drawn:	TED
HJN NO:	150184.003 PA
Source:	USGS, 1978

Figure 2
Topographic Map
Waco Landfill - Site 50
Axtell, McLennan & Limestone Counties, TX

0 500 1,000
Feet



Legend

- Data Points
- Transects
- Property
- Aquatic Features that are Jurisdictional**
- Streams
- Open Water
- Wetland
- Aquatic Features that are not Jurisdictional**
- Isolated Ponds

Horizon
Environmental Services, Inc.

Date:	02/15/2019
Drawn:	TED
HJN NO:	150184.003 PA
Source:	USDA, 2018

Figure 8
Jurisdictional Delineation Map
Waco Landfill - Site 50
Axtell, McLennan & Limestone Counties, TX

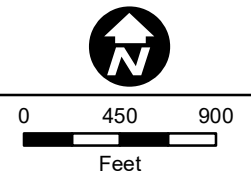




PHOTO 1

General view of upland woodland area within the study area near DP9



PHOTO 2

Ephemeral tributary of Horse Creek located on the southeastern portion of the study area near DP 10



PHOTO 3

Ephemeral tributary of Horse Creek located on the southeastern portion of the study area near DP 10



PHOTO 4

General view of upland woodland area within the study area near DP11



PHOTO 5

General view of upland rangeland area within the study area near DP12



PHOTO 6

General view of upland woodland area within the study area near DP13



PHOTO 7

View of upland woodland area and stock pond near DP14



PHOTO 8

General view of upland rangeland area within the study area near DP15

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Wiley Stem, City of Waco	File Number: SWF-2017-00047	Date: April 13, 2021
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Frederick J. Land
Fred.j.land@usace.army.mil
(817) 886-1729

If you only have questions regarding the appeal process you may also contact:

Mr. Elliott Carman
Administrative Appeals Review Officer (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
469-487-7061

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: