

APPENDIX A

EXECUTIVE ORDER 11988/11990 FLOODPLAIN MANAGEMENT/WETLANDS 8-Step Decision Making (44 CFR Part 9)

Executive Order 11988 (Floodplain Management) requires federal agencies “to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of the floodplain and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” FEMA’s implementing regulations are at 44 CFR Part 9, which includes an eight-step decision-making process for compliance with this part. This eight-step process is applied to the proposed Hardin County Project since a small portion of the project is located within the 100-year floodplain. The steps in the decision-making process are as follows:

Step 1 Determine if the proposed action is located in the Base Floodplain and/or Wetland.

According to the FEMA Flood Insurance Rate Map (FIRM) panel 48199C0530F, dated 10/06/2010, a small portion at southeast corner of the project area is located within Zone A, area of 100-year floodplain associated with the unnamed Boggy Creek tributary.

Step 2 Early public notice (Preliminary Notice).

The initial public notice was posted on FEMA website on 09/26/2017 as a part of a disaster cumulative notice for the Hurricane Harvey disaster (DR-4332-TX). [Initial Public Notice for DR-4332-TX | FEMA.gov](#)

Step 3 Identify and evaluate alternatives to locating in the base floodplain and wetland.

Five project alternatives, including the No Action Alternative, were evaluated during initial project planning. Three alternatives were eliminated from further consideration because of being infeasible to implement, too costly, or exceedingly damaging to the aquatic environment. The alternative selected for detailed evaluation and implementation (the Proposed Action Alternative) would necessarily require construction adjacent to and partially within the floodplain and wetland associated with the unnamed tributary of Boggy Creek. No practicable alternative is available outside of the floodplain and wetland that would adequately and effectively mitigate the floodplain risk in the project area.

Avoiding work in the floodplain (No Action Alternative) would mean that no work would be carried out in floodplain. Avoiding work in the floodplain is not a practicable alternative as it may cause the entire project to fail and would not meet the purpose and need for the mitigation activity.

Step 4 Identify impacts of proposed action associated with occupancy or modification of the floodplain and wetland.

Per 44 CFR 9.10 FEMA must consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard, or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. FEMA should specifically consider and evaluate impacts associated with modification of floodplains; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain values; and these three categories of factors: flood hazard-related factors, natural values-related factors, and factors relevant to a proposed action's effects on the survival and quality of wetlands.

Per 44 CFR, natural values-related factors include, water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archaeological and historic sites, and open space recreation and green belts); and agricultural, aqua cultural and forestry resource values. Factors relevant to a proposed action's effects on the survival and quality of wetlands include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The Hardin County Lumberton Detention Pond Project will not negatively affect the functions and values of the 100-year floodplain. The purpose of the proposed project will be to create additional flood mitigation to minimize flooding in the area neighborhoods. The project will not place structures within 100- or 500-year floodplains which would impede or redirect flood flows. Although the proposed action would reduce the risk to structures in the project areas, the proposed project would not promote development within floodplains and wetlands. In addition, the project will produce minimal impacts to the floodplain because the only work proposed in the floodplain is the installation of 10-foot-wide concrete drain channel. The concrete drain channel is being installed only for maintenance purposes in the existing Detention Pond #1. The proposed channel will be connecting to an existing Outfall pipe and there are no improvements proposed for this structure. The proposed work does not affect existing pond performance. The results of hydraulics model for the project demonstrated improvements within the floodplain downstream of HWY 96 to Hwy 421 resulting in a reduction to the maximum water surface elevation. Therefore, the project will have no adverse impacts to the hydraulics downstream. These detention pond overall will create additional flood mitigation and will not negatively affect the 100-year floodplain.

The addition of detention pond is anticipated to extend the useful life of the surrounding communities' infrastructure and will not encourage future development in the floodplain beyond the current conditions.

Best management practices (BMPs) will be in place during construction to limit sedimentation into water bodies in the area. The project will not facilitate development in the 100-year floodplain and will not facilitate development (including critical facilities such as hospitals, emergency services, fire stations, etc.) in the 500-year floodplain to any greater degree than in non-floodplain areas of the community. Compliance with applicable ordinances and building codes will be required of any new development within floodplains. Completing this project as described will reduce and minimize impacts to the floodplain to the most practicable extent possible.

The function of the floodplain is to provide flood storage and conveyance, filter nutrients and impurities from runoff, reduce flood velocities, reduce flood peaks, moderate temperature of water, reduce sedimentation, promote infiltration and aquifer recharge, and reduce frequency and duration of low surface flows will remain intact after the implementation of the project. The work proposed in floodplain is very minor and will be limited to an existing detention pond. Hence, there will not be significant adverse impacts to these services provided by the floodplain. The proposed project will not impact groundwater recharge. Water quality may be impacted during the construction phase due to sedimentation and run-off. These impacts are considered to be minor and temporary effects to water quality that would be at or below water quality standards or criteria. The proposed action would not cause or contribute to the exceedance of current water quality standards on a short-term or prolonged basis.

The U.S. Fish and Wildlife Services (USFWS) National Wetlands Inventory map available online at the National Wetlands Inventory website mapping indicates that the area is not located within, nor does it affect a designated wetland.

Floodplains also provide services in the form of providing fish and wildlife habitat, breeding, and feeding grounds. These floodplain values will not be adversely impacted, and the overall integrity of the ecosystem will not be impacted. FEMA has determined the project will have no effect on threatened and endangered species and will not adversely modify or otherwise affect critical habitat. The parcel does not offer suitable habitat for any federally listed species. The area is previously impacted multiple times by logging and there are no critical habitats identified within the project area. The proposed action would have negligible impacts to native species and their habitats and population levels of native species would not be affected. Sufficient habitat would remain functional to maintain viability of all species.

Step 5 Design or modify the proposed action to minimize threats to life and property and preserve its natural and beneficial floodplain and wetland values.

Implementation of the Best management practices (BMPs) identified in the EA is a requirement of the EA's Finding of No Significant Impact (FONSI). As explained above, construction of the detention pond is not expected to result in an increased base discharge, nor will it increase flood hazard to other structures or encourage further development in the floodplain. The project is expected to contribute in general to floodplain functions, acting as a stormwater storage facility during heavy rain events and mitigating flooding in the project area.

In order to reduce the impacts identified in Step 4, Hardin County must coordinate with the local floodplain administrator, obtain required permits prior to initiating work, and comply with any conditions of the permit to ensure harm to and from the floodplain is minimized. All coordination pertaining to these activities should be retained as part of the project file in accordance with HMGP instructions.

Step 6 Re-evaluate the proposed action.

The project will not expose any segment of the population to additional flood hazards because it does not include a housing component and will not facilitate development in the floodplains to any greater degree than non-floodplain areas of the community. The project will not disrupt floodplain values because it will not alter water levels in the floodplain and will not reduce habitat in the floodplain. Therefore, it is still practicable to construct the proposed project within the floodplain.

Alternatives consisting of locating additional detention outside the floodplain or taking “no action” are not practicable nor do they address the project need.

Step 7 Final Notification.

In accordance with 44 CFR Part 9.8(b)(2), a final public notice will be published together with the Notice of Availability of the draft EA for public review. A public notice concerning the proposed project and on the availability of the draft Environmental Assessment will be published in the local paper, and on FEMA’s website (<https://www.fema.gov/emergency-managers/practitioners/environmental-historic/nepa-repository>). Public comment on the proposed project and draft Environmental Assessment will be open for 30 calendar days. The notice will include the name, proposed locations and description of the activities, and an indication that portions of the action are in the floodplain.

Step 8 Implement the action.

The proposed project will be conducted in accordance with applicable floodplain and wetland development requirements and any applicable permit conditions. Hardin County will adhere to the grant conditions outlined in the Finding of No Significant Impact issued for the EA for the proposed action. Failure to comply with conditions enumerated in the Record of Environmental Consideration may jeopardize federal funding.

Project/Site: SWG-2022-00080 City/County: Lumberton / Hardin County Sampling Date: 1/25/2022
 Applicant/Owner: City of Lumberton State: TX Sampling Point: SP1
 Investigator(s): K Mannie Section, Township, Range: N/A
 Landform (hillside, terrace, etc.): Terrace Local relief (concave, convex, none): None Slope (%): <1
 Subregion (LRR or MLRA): LRR T, MLRA 152B Lat: 30.245855 Long: -94.21494 Datum: NAD83
 Soil Map Unit Name: Kirbyville fine sandy loam, 0 to 2% slopes NWI classification: N/A
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes No X (If no, explain in Remarks.)
 Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes X No
 Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes <u>X</u> No <u> </u> Hydric Soil Present? Yes <u>X</u> No <u> </u> Wetland Hydrology Present? Yes <u> </u> No <u>X</u>	Is the Sampled Area within a Wetland? Yes <u> </u> No <u>X</u>
---	--

Remarks:
 SP1 is located in the east-central portion of the subject site. According to the NOAA climatological data the area was visited during a period of normal precipitation conditions. However, during the preceding 72 hours the area received >0.5 inches of rain. Wetland hydrology indicators will be considered in this context.

HYDROLOGY

Wetland Hydrology Indicators: <u>Primary Indicators (minimum of one is required; check all that apply)</u> <input type="checkbox"/> Surface Water (A1) <input type="checkbox"/> Aquatic Fauna (B13) <input type="checkbox"/> High Water Table (A2) <input type="checkbox"/> Marl Deposits (B15) (LRR U) <input type="checkbox"/> Saturation (A3) <input type="checkbox"/> Hydrogen Sulfide Odor (C1) <input type="checkbox"/> Water Marks (B1) <input type="checkbox"/> Oxidized Rhizospheres on Living Roots (C3) <input type="checkbox"/> Sediment Deposits (B2) <input type="checkbox"/> Presence of Reduced Iron (C4) <input type="checkbox"/> Drift Deposits (B3) <input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6) <input type="checkbox"/> Algal Mat or Crust (B4) <input type="checkbox"/> Thin Muck Surface (C7) <input type="checkbox"/> Iron Deposits (B5) <input type="checkbox"/> Other (Explain in Remarks) <input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) <input type="checkbox"/> Water-Stained Leaves (B9)	<u>Secondary Indicators (minimum of two required)</u> <input type="checkbox"/> Surface Soil Cracks (B6) <input type="checkbox"/> Sparsely Vegetated Concave Surface (B8) <input type="checkbox"/> Drainage Patterns (B10) <input type="checkbox"/> Moss Trim Lines (B16) <input type="checkbox"/> Dry-Season Water Table (C2) <input type="checkbox"/> Crayfish Burrows (C8) <input type="checkbox"/> Saturation Visible on Aerial Imagery (C9) <input type="checkbox"/> Geomorphic Position (D2) <input type="checkbox"/> Shallow Aquitard (D3) <input checked="" type="checkbox"/> FAC-Neutral Test (D5) <input type="checkbox"/> Sphagnum Moss (D8) (LRR T, U)
--	---

Field Observations: Surface Water Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> Water Table Present? Yes <u>X</u> No <u> </u> Depth (inches): <u>14</u> Saturation Present? Yes <u>X</u> No <u> </u> Depth (inches): <u>13</u> (includes capillary fringe)	Wetland Hydrology Present? Yes <u> </u> No <u>X</u>
--	---

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:
 SP1 displays no primary and one (1) secondary wetland hydrology indicator; therefore, insufficient wetland hydrology is present at this location.

VEGETATION (Four Strata) – Use scientific names of plants.

Sampling Point: SP1

<u>Tree Stratum</u> (Plot size: <u>30' radius</u>)	Absolute % Cover	Dominant Species?	Indicator Status	
1. <u>None</u>				Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>4</u> (A) Total Number of Dominant Species Across All Strata: <u>4</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100.0%</u> (A/B)
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
_____ = Total Cover				Prevalence Index worksheet: Total % Cover of: _____ Multiply by: _____ OBL species <u>0</u> x 1 = <u>0</u> FACW species <u>45</u> x 2 = <u>90</u> FAC species <u>70</u> x 3 = <u>210</u> FACU species <u>5</u> x 4 = <u>20</u> UPL species <u>0</u> x 5 = <u>0</u> Column Totals: <u>120</u> (A) <u>320</u> (B) Prevalence Index = B/A = <u>2.67</u>
50% of total cover: _____		20% of total cover: _____		
<u>Sapling/Shrub Stratum</u> (Plot size: <u>30' radius</u>)				
1. <u>Ilex glabra</u>	<u>45</u>	<u>Yes</u>	<u>FACW</u>	Hydrophytic Vegetation Indicators: <u>1</u> - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> <u>2</u> - Dominance Test is >50% <u>3</u> - Prevalence Index is ≤3.0 ¹ <u> </u> Problematic Hydrophytic Vegetation ¹ (Explain)
2. <u>Ilex vomitoria</u>	<u>35</u>	<u>Yes</u>	<u>FAC</u>	
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
_____ = Total Cover				
50% of total cover: <u>40</u>		20% of total cover: <u>16</u>		
<u>Herb Stratum</u> (Plot size: <u>30' radius</u>)				
1. <u>Juncus tenuis</u>	<u>20</u>	<u>Yes</u>	<u>FAC</u>	¹ Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height. Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody Vine – All woody vines greater than 3.28 ft in height.
2. <u>Andropogon virginicus</u>	<u>5</u>	<u>No</u>	<u>FAC</u>	
3. <u>Schizachyrium scoparium</u>	<u>5</u>	<u>No</u>	<u>FACU</u>	
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				
10. _____				
11. _____				
12. _____				
_____ = Total Cover				
50% of total cover: <u>15</u>		20% of total cover: <u>6</u>		
<u>Woody Vine Stratum</u> (Plot size: <u>30' radius</u>)				
1. <u>Rubus argutus</u>	<u>10</u>	<u>Yes</u>	<u>FAC</u>	Hydrophytic Vegetation Present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. _____				
3. _____				
4. _____				
5. _____				
_____ = Total Cover				
50% of total cover: <u>5</u>		20% of total cover: <u>2</u>		

Remarks: (If observed, list morphological adaptations below.)
 SP1 exhibits a predominance of hydrophytic vegetation as demonstrated by passing the dominance test and prevalence index.

SOIL

Sampling Point: SP1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-4	10YR 5/2	80	10YR 5/8	20	C	PL	Sandy	Prominent redox concentrations
4-16	10YR 6/2	80	10YR 5/8	20	C	PL/M	Sandy	Prominent redox concentrations

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- Histosol (A1)
- Histic Epipedon (A2)
- Black Histic (A3)
- Hydrogen Sulfide (A4)
- Stratified Layers (A5)
- Organic Bodies (A6) **(LRR P, T, U)**
- 5 cm Mucky Mineral (A7) **(LRR P, T, U)**
- Muck Presence (A8) **(LRR U)**
- 1 cm Muck (A9) **(LRR P, T)**
- Depleted Below Dark Surface (A11)
- Thick Dark Surface (A12)
- Coast Prairie Redox (A16) **(MLRA 150A)**
- Sandy Mucky Mineral (S1) **(LRR O, S)**
- Sandy Gleyed Matrix (S4)
- Sandy Redox (S5)
- Stripped Matrix (S6)
- Dark Surface (S7) **(LRR P, S, T, U)**
- Polyvalue Below Surface (S8) **(LRR S, T, U)**
- Thin Dark Surface (S9) **(LRR S, T, U)**
- Barrier Islands 1 cm Muck (S12) **(MLRA 153B, 153D)**
- Loamy Mucky Mineral (F1) **(LRR O)**
- Loamy Gleyed Matrix (F2)
- Depleted Matrix (F3)
- Redox Dark Surface (F6)
- Depleted Dark Surface (F7)
- Redox Depressions (F8)
- Marl (F10) **(LRR U)**
- Depleted Ochric (F11) **(MLRA 151)**
- Iron-Manganese Masses (F12) **(LRR O, P, T)**
- Umbric Surface (F13) **(LRR P, T, U)**
- Delta Ochric (F17) **(MLRA 151)**
- Reduced Vertic (F18) **(MLRA 150A, 150B)**
- Piedmont Floodplain Soils (F19) **(MLRA 149A)**
- Anomalous Bright Floodplain Soils (F20) **(MLRA 149A, 153C, 153D)**
- Very Shallow Dark Surface (F22) **(MLRA 138, 152A in FL, 154)**

Indicators for Problematic Hydric Soils³:

- 1 cm Muck (A9) **(LRR O)**
- 2 cm Muck (A10) **(LRR S)**
- Coast Prairie Redox (A16) **(outside MLRA 150A)**
- Reduced Vertic (F18) **(outside MLRA 150A, 150B)**
- Piedmont Floodplain Soils (F19) **(LRR P, T)**
- Anomalous Bright Floodplain Soils (F20) **(MLRA 153B)**
- Red Parent Material (F21)
- Very Shallow Dark Surface (F22) **(outside MLRA 138, 152A in FL, 154)**
- Barrier Islands Low Chroma Matrix (TS7) **(MLRA 153B, 153D)**
- Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____
 Depth (inches): _____

Hydric Soil Present? Yes No

Remarks:

SP1 displays the sandy redox and coast prairie redox hydric soil indicators; therefore, the hydric soil criterion is met.

Project/Site: SWG-2022-00080 City/County: Lumberton / Hardin County Sampling Date: 1/25/2022
 Applicant/Owner: City of Lumberton State: TX Sampling Point: SP2
 Investigator(s): K Mannie Section, Township, Range: N/A
 Landform (hillside, terrace, etc.): Terrace Local relief (concave, convex, none): None Slope (%): <1
 Subregion (LRR or MLRA): LRR T, MLRA 152B Lat: 30.248200 Long: -94.214492 Datum: NAD83
 Soil Map Unit Name: Kirbyville fine sandy loam, 0 to 2% slopes NWI classification: N/A
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes No X (If no, explain in Remarks.)
 Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes X No
 Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <u>X</u> No <u> </u>	Is the Sampled Area within a Wetland?	Yes <u> </u> No <u>X</u>
Hydric Soil Present?	Yes <u> </u> No <u>X</u>		
Wetland Hydrology Present?	Yes <u> </u> No <u>X</u>		

Remarks:
 SP2 is located in the northeast corner of the subject site. According to the NOAA climatological data the area was visited during a period of normal precipitation conditions. However, during the preceding 72 hours the area received >0.5 inches of rain. Wetland hydrology indicators will be considered in this context.

HYDROLOGY

Wetland Hydrology Indicators: <u>Primary Indicators (minimum of one is required; check all that apply)</u> <input type="checkbox"/> Surface Water (A1) <input type="checkbox"/> Aquatic Fauna (B13) <input type="checkbox"/> High Water Table (A2) <input type="checkbox"/> Marl Deposits (B15) (LRR U) <input type="checkbox"/> Saturation (A3) <input type="checkbox"/> Hydrogen Sulfide Odor (C1) <input type="checkbox"/> Water Marks (B1) <input type="checkbox"/> Oxidized Rhizospheres on Living Roots (C3) <input type="checkbox"/> Sediment Deposits (B2) <input type="checkbox"/> Presence of Reduced Iron (C4) <input type="checkbox"/> Drift Deposits (B3) <input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6) <input type="checkbox"/> Algal Mat or Crust (B4) <input type="checkbox"/> Thin Muck Surface (C7) <input type="checkbox"/> Iron Deposits (B5) <input type="checkbox"/> Other (Explain in Remarks) <input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) <input type="checkbox"/> Water-Stained Leaves (B9)	<u>Secondary Indicators (minimum of two required)</u> <input type="checkbox"/> Surface Soil Cracks (B6) <input type="checkbox"/> Sparsely Vegetated Concave Surface (B8) <input type="checkbox"/> Drainage Patterns (B10) <input type="checkbox"/> Moss Trim Lines (B16) <input type="checkbox"/> Dry-Season Water Table (C2) <input type="checkbox"/> Crayfish Burrows (C8) <input type="checkbox"/> Saturation Visible on Aerial Imagery (C9) <input type="checkbox"/> Geomorphic Position (D2) <input type="checkbox"/> Shallow Aquitard (D3) <input checked="" type="checkbox"/> FAC-Neutral Test (D5) <input type="checkbox"/> Sphagnum Moss (D8) (LRR T, U)
--	---

Field Observations: Surface Water Present? Yes <u> </u> No <u> </u> Depth (inches): <u> </u> Water Table Present? Yes <u> </u> No <u> </u> Depth (inches): <u> </u> Saturation Present? Yes <u> </u> No <u> </u> Depth (inches): <u> </u> (includes capillary fringe)	Wetland Hydrology Present? Yes <u> </u> No <u>X</u>
---	---

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:
 SP2 displays no primary and one (1) secondary wetland hydrology indicator; therefore, insufficient wetland hydrology is present at this location. During the site visit the soil exhibited episaturated conditions due to recent rainfall. Under normal conditions this soil condition would not be expected.

VEGETATION (Four Strata) – Use scientific names of plants.

Sampling Point: SP2

	Absolute % Cover	Dominant Species?	Indicator Status	
Tree Stratum (Plot size: <u>30' radius</u>)				
1. <u><i>Pinus taeda</i></u>	<u>80</u>	Yes	FAC	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>4</u> (A) Total Number of Dominant Species Across All Strata: <u>4</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100.0%</u> (A/B)
2. <u><i>Quercus nigra</i></u>	<u>30</u>	Yes	FAC	
3. <u><i>Liquidambar styraciflua</i></u>	<u>10</u>	No	FAC	
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
	<u>120</u>	=Total Cover		Prevalence Index worksheet: Total % Cover of: _____ Multiply by: _____ OBL species <u>0</u> x 1 = <u>0</u> FACW species <u>20</u> x 2 = <u>40</u> FAC species <u>160</u> x 3 = <u>480</u> FACU species <u>0</u> x 4 = <u>0</u> UPL species <u>0</u> x 5 = <u>0</u> Column Totals: <u>180</u> (A) <u>520</u> (B) Prevalence Index = B/A = <u>2.89</u>
50% of total cover: <u>60</u>	20% of total cover: <u>24</u>			
Sapling/Shrub Stratum (Plot size: <u>30' radius</u>)				
1. <u><i>Ilex glabra</i></u>	<u>20</u>	Yes	FACW	Hydrophytic Vegetation Indicators: ___ 1 - Rapid Test for Hydrophytic Vegetation <input checked="" type="checkbox"/> 2 - Dominance Test is >50% ___ 3 - Prevalence Index is ≤3.0 ¹ ___ Problematic Hydrophytic Vegetation ¹ (Explain)
2. <u><i>Ilex vomitoria</i></u>	<u>5</u>	No	FAC	
3. <u><i>Quercus nigra</i></u>	<u>5</u>	No	FAC	
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
	<u>30</u>	=Total Cover		
50% of total cover: <u>15</u>	20% of total cover: <u>6</u>			
Herb Stratum (Plot size: <u>30' radius</u>)				
1. <u><i>Chasmanthium sessiliflorum</i></u>	<u>25</u>	Yes	FAC	¹ Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic. Definitions of Four Vegetation Strata: Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height. Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody Vine – All woody vines greater than 3.28 ft in height.
2. <u><i>Dichantherium commutatum</i></u>	<u>5</u>	No	FAC	
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				
10. _____				
11. _____				
12. _____				
	<u>30</u>	=Total Cover		
50% of total cover: <u>15</u>	20% of total cover: <u>6</u>			
Woody Vine Stratum (Plot size: <u>30' radius</u>)				
1. <u>None</u>				Hydrophytic Vegetation Present? Yes <input checked="" type="checkbox"/> No _____
2. _____				
3. _____				
4. _____				
5. _____				
		=Total Cover		
50% of total cover: _____	20% of total cover: _____			

Remarks: (If observed, list morphological adaptations below.)
 SP2 exhibits a predominance of hydrophytic vegetation as demonstrated by passing the dominance test.

SOIL

Sampling Point: SP2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-16	10YR 5/3	80	10YR 4/6	20	C	M	Loamy/Clayey	Distinct redox concentrations

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- Histosol (A1)
- Histic Epipedon (A2)
- Black Histic (A3)
- Hydrogen Sulfide (A4)
- Stratified Layers (A5)
- Organic Bodies (A6) **(LRR P, T, U)**
- 5 cm Mucky Mineral (A7) **(LRR P, T, U)**
- Muck Presence (A8) **(LRR U)**
- 1 cm Muck (A9) **(LRR P, T)**
- Depleted Below Dark Surface (A11)
- Thick Dark Surface (A12)
- Coast Prairie Redox (A16) **(MLRA 150A)**
- Sandy Mucky Mineral (S1) **(LRR O, S)**
- Sandy Gleyed Matrix (S4)
- Sandy Redox (S5)
- Stripped Matrix (S6)
- Dark Surface (S7) **(LRR P, S, T, U)**
- Polyvalue Below Surface (S8) **(LRR S, T, U)**
- Thin Dark Surface (S9) **(LRR S, T, U)**
- Barrier Islands 1 cm Muck (S12) **(MLRA 153B, 153D)**
- Loamy Mucky Mineral (F1) **(LRR O)**
- Loamy Gleyed Matrix (F2)
- Depleted Matrix (F3)
- Redox Dark Surface (F6)
- Depleted Dark Surface (F7)
- Redox Depressions (F8)
- Marl (F10) **(LRR U)**
- Depleted Ochric (F11) **(MLRA 151)**
- Iron-Manganese Masses (F12) **(LRR O, P, T)**
- Umbric Surface (F13) **(LRR P, T, U)**
- Delta Ochric (F17) **(MLRA 151)**
- Reduced Vertic (F18) **(MLRA 150A, 150B)**
- Piedmont Floodplain Soils (F19) **(MLRA 149A)**
- Anomalous Bright Floodplain Soils (F20) **(MLRA 149A, 153C, 153D)**
- Very Shallow Dark Surface (F22) **(MLRA 138, 152A in FL, 154)**

Indicators for Problematic Hydric Soils³:

- 1 cm Muck (A9) **(LRR O)**
- 2 cm Muck (A10) **(LRR S)**
- Coast Prairie Redox (A16) **(outside MLRA 150A)**
- Reduced Vertic (F18) **(outside MLRA 150A, 150B)**
- Piedmont Floodplain Soils (F19) **(LRR P, T)**
- Anomalous Bright Floodplain Soils (F20) **(MLRA 153B)**
- Red Parent Material (F21)
- Very Shallow Dark Surface (F22) **(outside MLRA 138, 152A in FL, 154)**
- Barrier Islands Low Chroma Matrix (TS7) **(MLRA 153B, 153D)**
- Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____
 Depth (inches): _____

Hydric Soil Present? Yes _____ No X

Remarks:

SP2 displayed no hydric soil indicators; therefore, the hydric soil criterion is not met.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2027, view of unnamed tributary UT-1.



Photo IMG-2028, view of unnamed tributary UT-1.



Photo IMG-2029, view of unnamed tributary UT-1.



Photo IMG-2030, view of stormwater detention basin SC1 outfall into the unnamed tributary UT-1.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2031, view of unnamed tributary UT-1.



Photo IMG-2032, view of a shallow swale leading into the unnamed tributary UT-1.



Photo IMG-2034, view of site interior.



Photo IMG-2035, Sample Point (SP) 1 soil profile.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2036, typical interior site vegetation.



Photo IMG-2037, typical interior site vegetation.



Photo IMG-2038, typical interior site vegetation.



Photo IMG-2039, typical interior site vegetation.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2040, view of SC-1.



Photo IMG-2041, view of Ditch 2.



Photo IMG-2042, view of Ditch 2.



Photo IMG-2043, typical conditions within the northeastern portion of the subject site.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2044, typical conditions within the northeastern portion of the subject site.



Photo IMG-2045, view of the end of Ditch 1.



Photo IMG-2046, view of the end of Ditch 1.



Photo IMG-2047, view of stormwater detention basin at the upper reach of Ditch 2.

SWG-2022-00080 Site Visit Photos, 25 January 2022



Photo IMG-2048, view of stormwater detention basin at the upper reach of Ditch 2.



Photo IMG-2049 typical conditions within the northeastern portion of the subject site.



Photo IMG-2050, view of Ditch 2.



Photo IMG-2051, view of Ditch 2 where it receives stormwater flow from the offsite stormwater detention basin.

MEMORANDUM FOR FILE

Subject: SWG-2022-00080 – City of Lumberton, Approximate 111-Acre Site, Approved Jurisdictional Determination (AJD), Proposed Lumberton Detention Pond Project, Lumberton, Hardin County, Texas

1. The Corps received a 21 June 2021 request for a wetland delineation verification and an approved jurisdictional determination (AJD) from Hydrex Environmental, on behalf of City of Lumberton for an approximate 111-acre site of proposed Lumberton detention pond project. The site is located approximately 0.3 mile west of the Farm-to-Market (FM) Road 421 and United States (U.S.) Highway 69 intersection in Lumberton, Hardin County, Texas.
2. The submitted request with site photos was reviewed, including the following detailed off-site information:
 - a. Aerial Photos: 2020 National Agriculture Imagery Program (NAIP), 1.0-meter Near Color (NC) and Color Infrared (CIR); Google Earth Aerial Imagery – 1937 to 2019; National Geospatial-Intelligence Agency (NGA), Global Enhanced Geographic Intelligence (GEOINT) Delivery (G-EGD), Digital Globe High Resolution NC Aerial Imagery – 14 August and 2 October 2020; Texas Resources Natural Information System (TNRIS), Research and Distribution Center (RDC), Jefferson TXDOT Historic Imagery – 2 October 1966, 25 February 1979, and 18 March 1987.
 - b. United States (US) Department of the Army (DA):
 - i. Preliminary Jurisdictional Determination (PJD), SWG-2008-00364, City of Lumberton, Texas, Proposed Drainage Improvements, 25 August 2008.
 - ii. Nationwide Permit (NWP) 7, 13, and 14 Verification, SWG-2009-00056, 14 April 2009.
 - c. Texas Strategic Mapping Program (StratMap). Jefferson, Liberty, & Chambers Counties, 23 March 2017, Light Detection and Ranging (LiDAR), 1.0-meter Bare Earth Digital Elevation Model (DEM), North American Vertical Datum (NAVD) 1988 (meters).
 - d. US Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA): Flood Insurance Rate Map (FIRM), Hardin County, Texas and Unincorporated Areas, Panel Number 48199C0530F (10/6/2010). Flood Zone: A, no base flood elevations (BFEs) determined.
 - e. US Department of Interior (DOI), Fish and Wildlife Service (FWS), National Wetland Inventory (NWI): FWS NWI Online Mapper. (<http://www.fws.gov/wetlands/data/mapper.HTML>), accessed 9 February 2022.
 - f. US Department of Interior (DOI), Geological Survey (USGS) Topographical (Topo) Quadrangle (Quad) Map: 7.5-minute topographic (topo) quadrangle (quad) maps: Silsbee, Texas (1956, 1963, 1993, 2013, 2019); Voth, Texas (1962, 1971, 1984, 2013, 2019).

3. Historic aerial imagery shows the subject site as having been a mix of forested and scrub/shrub vegetation since the late 1980's. The only site improvements visible in early photos were a cleared Southern Pacific (SP) railroad right-of-way (ROW) running northwest to southeast across the northern portion of the subject site, a few home sites southeast of the subject site, and a road and cleared site immediately south of the subject site. In the 2000's multi-family house development is evident immediately north of the subject site, including a drainage ditch and retention basin within the northeastern portion of the subject site. In the 2009 aerial imagery another cleared ROW is present in the east-central portion of the site, extending northwest parallel with the SP ROW. In the early 2010's a stormwater detention basin is present in the southern portion of the subject site, include a cleared area immediately north of the basin. Offsite development is also present immediately southwest of the subject site.

The historic 7.5-minute USGS topo quad maps depict the with two knolls in the west-central and northwest portion of the subject site with gradual slope from the northwest to southeast. In addition, an unnamed Boggy Creek tributary is also identified along the eastern site boundary. In the 1984 Silsbee, Texas topo quad map no longer identifies the SP ROW. This appears to be due to the area being actively used. No other aquatic resources or substantial site characteristics are depicted in the topo quad maps.

The FEMA FIRM depicts the subject site lying within an unshaded Zone X, areas determined to be outside the 0.2% annual chance (500-year) floodplain, except for the far southeast corner of the subject site which lies within a Zone A, 1% chance (100-year) floodplain associated with the unnamed Boggy Creek tributary. However, no base flood elevations have been determined.

The FWS NWI Mapper identifies one (1) aquatic feature within the subject site: the unnamed Boggy Creek tributary, noted as R5UBH (Riverine, Unknown Perennial, Unconsolidated Bottom, Permanently Flooded). The NWI determination is based on historic aerial color infrared imagery collected in 1993.

4. Kevin Mannie, Corps, conducted a site visit 25 January 2022. The site was first accessed on the south side, then accessed from the east side. Delineated aquatic features were observed as well as other areas characteristic of site conditions. The following observations were made:
 - The unnamed Boggy Creek tributary (UT1) was flowing during the site visit. This tributary is identified on the National Hydrography Dataset (NHD) as a perennial tributary. According to the Hardin County Soil Survey the soil series associated with the tributary (Sourlake loam, 0 to 1% slopes, frequently flooded) has a minimum water table depth of 0 cm. Therefore, there is sufficient evidence to determine the unnamed Boggy Creek tributary exhibits seasonal perennial water flow and is a relatively permanent water (RPW). As such, this tributary meets the 33 CFR 328.3(a)(5) tributary definition and is subject to Section 404 of the Clean Water Act (Section 404).

- A substantial portion of the subject site is dominated by inkberry (*Ilex glabra* – FACW), yaupon holly (*Ilex vomitoria* – FAC), poverty rush (*Juncus tenuis* – FAC), and sawtooth blackberry (*Rubus argutus* – FAC). The area exhibits no primary and one (1) secondary (FAC-Neutral Test) wetland hydrology indicators, and the soil displays the sandy redox and coast prairie redox hydric soil indicators (see Sample Point (SP) 1 data sheets). Therefore, this area does not meet the three required wetland criteria.
 - Basin SC1 is an approximate 1.4-acre basin in the northeastern portion of the subject site that was excavated in dry land to capture, retain, and regulate stormwater flow into the unnamed Boggy Creek tributary on the east side of the subject site. This feature only contains water due to episodic rainfall events. Under normal conditions this area remains dry. Therefore, this feature does not meet the 33 CFR 328.3 waters of the US definition.
 - Ditches 1 and 2 are approximate 251-foot-long and 480.7-foot-long excavated drainage features located in the northeast corner of the subject site. Ditches 3 and 4 are approximate 2,066.7-foot-long and 2,198.5-foot-long drainage features running northwest to southeast across the north-central portion of the subject site. These features were excavated wholly within and draining only uplands, and are characterized by low volume, short duration, and infrequent water flow. Therefore, these features do not meet the 33 CFR 328.3(a)(5) tributary definition and are not subject to Section 404 of the Clean Water Act.
 - The northeastern corner, northwestern corner, and west-central site boundary are dominated by loblolly pine (*Pinus taeda* – FAC), water oak (*Quercus nigra* – FAC), inkberry, and longleaf woodoats (*Chasmanthium sessiflorum* – FAC). These areas exhibit no primary and one (1) secondary (FAC-Neutral Test) wetland hydrology indicators, and the soils display no hydric soil indicators (see SP 2 data sheets). Therefore, these areas do not meet the three required wetland criteria.
 - Basin OW1 is an approximate 3.6-acres closed basin filled with water near the west-central site boundary. This feature is a water-filled closed basin created in dry land incidental to construction activity or excavated in dry land to obtain fill, sand or gravel. Therefore, this feature does not meet the 33 CFR 328.3 waters of the US definition.
 - Basin SC2 is an approximate 25.2-acre basin in the south-central portion of the subject site and was excavated within and drains wholly uplands. This feature only contains water due to episodic rainfall events. Under normal conditions this area remains dry. Therefore, this feature does not meet the 33 CFR 328.3 waters of the US definition.
5. Based on our review of the submitted information, additional detailed off-site information, and the 25 January 2022 site visit, we determined the approximate 111-acre subject site contains one (1) approximate 30-foot-long unnamed Boggy Creek tributary, four (4) upland man-made drainage ditches (Ditch 1 – 251 linear feet, Ditch 2 – 476 linear feet, Ditch 3 – 2,076 linear feet, Ditch 4 – 2,208 linear feet), two (2) excavated stormwater detention basins (SC1 - 1.4 acre, SC2 - 25.2 acres), and one (1) 3.6-acre water-filled excavated basin. The site was assessed using the

Atlantic and Gulf Coastal Plain Region (Version 2.0) to the 1987 Corps of Engineers Wetland Delineation Manual which requires under normal circumstances, a predominance of hydrophytic vegetation, wetland soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem. The unnamed Boggy Creek tributary exhibits seasonal perennial water flow; therefore, this feature meets the 33 CFR 328.3 tributary definition and is subject to Section 404 of the Clean Water Act (Section 404). The subject site ditches were created for the purpose of conveying stormwater from the area, were excavated wholly within and drain only uplands, and do not carry relatively permanent water flow; therefore, these features do not meet the 33 CFR 328.3 tributary definition. The stormwater detention basins were excavated within dry land for the purpose of receiving and retaining episodic stormwater runoff; therefore, they do not meet the 33 CFR 328.3 water of the US definition. And the water-filled closed basin was created in dry land incidental to construction activity or excavated in dry land to obtain fill, sand or gravel; therefore, this feature does not meet the 33 CFR 328.3 water of the US definition. All features were assessed per the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States, and Carabell v. United States joint guidance issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers on December 2, 2008. Consequently, the discharge of dredge and/or fill material within the unnamed Boggy Creek requires a Department of the Army (DA) permit. This approved jurisdictional determination will remain valid for five (5) years from the date of this letter unless new information warrants revision or reissuance prior to the expiration date.



Kevin Mannie
Regulatory Project Manager
Evaluation Branch



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

July 18, 2022

Compliance Branch

SUBJECT: SWG-2022-00080 – City of Lumberton, Approximate 111-Acre Site, Approved Jurisdictional Determination (AJD), Proposed Lumberton Detention Pond Project, Lumberton, Hardin County, Texas

Clayton Collier
Hydrex Environmental
1120 Northwest Stallings Drive
Nacogdoches, Texas 75964

Dear Mr. Collier:

This is in response to the June 21, 2021 request for a wetland delineation verification and approved jurisdictional determination (AJD) from Hydrex Environmental, on behalf of City of Lumberton for an approximate 111-acre site of proposed Lumberton detention pond project. The site is located approximately 0.3 mile west of the Farm-to-Market (FM) Road 421 and United States (U.S.) Highway 69 intersection in Lumberton, Hardin County, Texas (map enclosed).

Based on our review of the submitted information, additional detailed off-site information, and the 25 January 2022 site visit, we determined the approximate 111-acre subject site contains one (1) approximate 30-foot-long unnamed Boggy Creek tributary, four (4) upland man-made drainage ditches (Ditch 1 – 251 linear feet, Ditch 2 – 476 linear feet, Ditch 3 – 2,076 linear feet, Ditch 4 – 2,208 linear feet), two (2) excavated stormwater detention basins (SC1 - 1.4 acre, SC2 - 25.2 acres), and one (1) 3.6-acre water-filled excavated basin. The site was assessed using the Atlantic and Gulf Coastal Plain Region (Version 2.0) to the 1987 Corps of Engineers Wetland Delineation Manual which requires under normal circumstances, a predominance of hydrophytic vegetation, wetland soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem. The unnamed Boggy Creek tributary exhibits seasonal perennial water flow; therefore, this feature meets the 33 CFR 328.3 tributary definition and is subject to Section 404 of the Clean Water Act (Section 404). The subject site ditches were created for the purpose of conveying stormwater from the area, were excavated wholly within and drain only uplands, and do not carry relatively permanent water flow; therefore, these features do not meet the 33 CFR 328.3 tributary definition. The stormwater detention basins were excavated within dry land for the purpose of receiving and retaining episodic stormwater runoff; therefore, they do not meet the 33 CFR 328.3 water of the US definition. And the water-filled closed basin was created in dry land incidental to construction activity or

excavated in dry land to obtain fill, sand or gravel; therefore, this feature does not meet the 33 CFR 328.3 water of the US definition. All features were assessed per the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States*, and *Carabell v. United States* joint guidance issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers on December 2, 2008. Consequently, the discharge of dredge and/or fill material within the unnamed Boggy Creek requires a Department of the Army (DA) permit. This approved jurisdictional determination will remain valid for five (5) years from the date of this letter unless new information warrants revision or reissuance prior to the expiration date.

Areas of Federal Interests (federal projects, and/or work areas) may be located within the proposed project area. Any activities in these federal interest areas would also be subject to federal regulations under the authority of Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408 - Section 408). Section 408 makes it unlawful for anyone to alter in any manner, in whole or in part, any work (ship channel, flood control channels, seawalls, bulkhead, jetty, piers, etc.) built by the United States unless it is authorized by the Corps (i.e., Navigation and Operations Division).

Corps determinations are conducted to identify the limits of the Corps Clean Water Act jurisdiction for particular sites. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331.5. Also enclosed are a combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA to the Southwestern Division Office at the following address:

Mr. Jamie Hyslop
Administrative Appeals Officer
Southwestern Division, USACE (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Telephone: 469-487-7061; FAX: 469-487-7199

For an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If you have questions concerning this matter, please reference file number **SWG-2022-00080** and contact me at the letterhead address, by e-mail at kevin.s.mannie@usace.army.mil, or by telephone at 409-766-3016. To assist us in improving our service to you, please complete the survey found at <https://regulatory.ops.usace.army.mil/customer-service-survey/> and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

Sincerely,



Kevin Mannie
Project Manager, Evaluation Branch

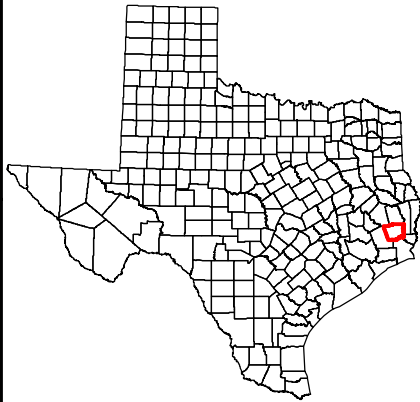
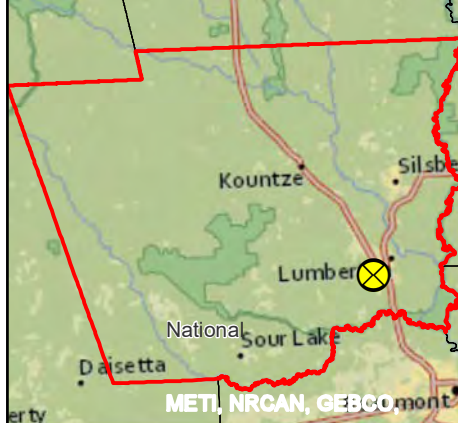
Enclosures



SWG-2022-00080
City of Lumberton
Approximate 110.4-Acre Site
Approved Jurisdictional Determination
Lumberton, Hardin County, Texas

- Review_Area ~ 110.4 ac
- Basins
- Unnamed Trib
- Ditches

Imagery: 2020 National Agriculture Imagery Program (NAIP), 1.0-meter Near Color.
 Note: Review area reflects neither property boundaries nor ownership.



APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 7/18/2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2022-00080

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Texas** County/parish/borough: **Hardin** City: **Lumberton**
Center coordinates of site (lat/long in degree decimal format): Lat. **30.244624° N**, Long. **-94.216574° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Sabine River**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Sabine River**

Name of watershed or Hydrologic Unit Code (HUC): **Lower Sabine - 12010005**

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: **7/18/2022**.

Field Determination. Date(s): **1/25/2022**.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 14.91 acres.

Wetlands: 1,348.61 acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **Basins SC1 and SC2 are excavated in dry land to capture, retain, and regulate stormwater flow into the unnamed Boggy Creek tributary on the east side of the subject site. This feature only contains water due to episodic rainfall events. Under normal conditions this area remains dry. Therefore, this feature does not meet the 33 CFR 328.3 waters of the US definition.**

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

Ditches 1-4 are excavated wholly within and drain only uplands, and are characterized by low volume, short duration, and infrequent water flow. Therefore, these features do not meet the 33 CFR 328.3(a)(5) tributary definition.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain: .
 - Ecological connection. Explain: .
 - Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: linear feet width (ft), Or, acres.
 - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **This tributary is identified on the National Hydrography Dataset (NHD) as a perennial tributary. According to the Hardin County Soil Survey the soil series associated with the tributary (Sourlake loam, 0 to 1% slopes, frequently flooded) has a minimum water table depth of 0 cm. Therefore, there is sufficient evidence to determine the unnamed Boggy Creek tributary exhibits perennial water flow and is a relatively permanent water (RPW).**
 - Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Wetland delineation report completed by Hydrex Environmental.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: **1/25/2022 site visit.**
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: **Lower Sabine - 12010005.**
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **7.5-minute topographic quadrangle maps - Silsbee, Texas, and Voth, Texas.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **National Cooperative Soil Survey Google Earth Layer (http://casoilresource.lawr.ucdavis.edu/soil_web/kml/mapunits.kml), .**
- National wetlands inventory map(s). Cite name: **N/A.**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: **Hardin County, Texas and Unincorporated Areas, Panel Number 48199C0530F (10/6/2010). Flood Zone: Unshaded X, areas determined to be outside the 0.2% annual chance (500-year) floodplain; and A, no base flood elevations (BFEs) determined.**
- 100-year Floodplain Elevation is: **N/A.** (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **2020 National Agriculture Imagery Program (NAIP), 1.0-meter Near Color (NC) and Color Infrared (CIR); Google Earth Aerial Imagery – 1937 to 2019; National Geospatial-Intelligence Agency (NGA), Global Enhanced Geographic Intelligence (GEOINT) Delivery (G-EGD), Digital Globe High Resolution NC Aerial Imagery – 14 August and 2 October 2020; Texas Resources Natural Information System (TNRIS), Research and Distribution Center (RDC), Jefferson TXDOT Historic Imagery – 2 October 1966, 25 February 1979, and 18 March 1987.**
 - or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: We determined the approximate 111-acre subject site contains one (1) approximate 30-foot-long unnamed Boggy Creek tributary, four (4) upland man-made drainage ditches (Ditch 1 – 251 linear feet, Ditch 2 – 476 linear feet, Ditch 3 – 2,076 linear feet, Ditch 4 – 2,208 linear feet), two (2) excavated stormwater detention basins (SC1 - 1.4 acre, SC2 - 25.2 acres), and one (1) 3.6-acre water-filled excavated basin. The site was assessed using the Atlantic and Gulf Coastal Plain Region (Version 2.0) to the 1987 Corps of Engineers Wetland Delineation Manual which requires under normal circumstances, a predominance of hydrophytic vegetation, wetland soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem. The unnamed Boggy Creek tributary exhibits seasonal perennial water flow; therefore, this feature meets the 33 CFR 328.3 tributary definition and is subject to Section 404 of the Clean Water Act (Section 404). The subject site ditches were created for the purpose of conveying stormwater from the area, were excavated wholly within and drain only uplands, and do not carry relatively permanent water flow; therefore, these features do not meet the 33 CFR 328.3 tributary definition. The stormwater detention basins were excavated within dry land for the purpose of receiving and retaining episodic stormwater runoff; therefore, they do not meet the 33 CFR 328.3 water of the US definition. And the water-filled closed basin was created in dry land incidental to construction activity or excavated in dry land to obtain fill, sand or gravel; therefore, this feature does not meet the 33 CFR 328.3 water of the US definition. All features were assessed per the Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States*, and *Carabell v. United States* joint guidance issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers on December 2, 2008. Consequently, the discharge of dredge and/or fill material within the unnamed Boggy Creek requires a Department of the Army (DA) permit. This approved jurisdictional determination will remain valid for five (5) years from the date of this letter unless new information warrants revision or reissuance prior to the expiration date..

Site	Size (Linear Feet/Acres)	Latitude	Longitude	Feature Class	Regulatory Authority
Unnamed Boggy Creek Trib UT1	250.9 lf	30.248563	-94.214614	Perennial trib	404
Ditch 01	480.3 lf	30.248338	-94.214209	Upland man-made drainage ditch	None
Ditch 02	2076.7 lf	30.246695	-94.216339	Upland man-made drainage ditch	None
Ditch 03	2208.2 lf	30.246570	-94.216375	Upland man-made drainage ditch	None
Ditch 04	30.1 lf	30.239510	-94.215042	Upland man-made drainage ditch	None
Stormwater Basin SW1	1.3 ac	30.247085	-94.213997	Excavated Basin	None
Stormwater Basin SW2	25.1 ac	30.241262	-94.216711	Excavated Basin	None
Excavated Basin OW1	3.6 ac	30.243658	-94.218382	Water-filled Excavated Basin	None

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: CITY OF LUMBERTON		File Number: SWG-2022-00080	Date: 7/18/22
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:

Kevin S. Mannie, Project Manager
Regulatory Division, Evaluation Branch (CESWG-RD-E)
U.S. Army Corps of Engineers, Galveston District
2000 Fort Point Road
Galveston, Texas 77550
Telephone: 409-766-3016; Fax: 409-766-3931

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

Mr. Jamie Hyslop
Administrative Appeals Review Officer (CESWD-PD-O)
U.S. Army Corps of Engineers, Southwest Division
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Telephone: 469-487-7061; Fax: 469-487-7199

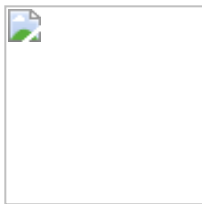
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity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

Signature of appellant or agent.

Date:

Telephone number:

This Correspondence sent to admin2@mptx-inc.com on 01-13-2022



Re: Project Review under Section 106 of the National Historic Preservation Act and/or the Antiquities Code of Texas

THC Tracking #202204638

Date: 01/13/2022

Lumberton Detention Pond Expansion

610 FM 421

Lumberton, TX 77657

Description: Public Facility: Expands existing Flood Detention Complex with 2 add'l triangular shaped ponds (approx. 42.9 ac. total). Location: West side of Lumberton, TX. Coordinates: 30.2445 N // -94.2165 W

Dear admin2@mptx-inc.com:

Thank you for your submittal regarding the above-referenced project. This response represents the comments of the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission (THC), pursuant to review under Section 106 of the National Historic Preservation Act and the Antiquities Code of Texas.

The review staff, led by Justin Kockritz and Emily McCuiston, has completed its review and has made the following determinations based on the information submitted for review:

Above-Ground Resources

- No historic properties are present or affected by the project as proposed. However, if historic properties are discovered or unanticipated effects on historic properties are found, work should cease in the immediate area; work can continue where no historic properties are present. Please contact the THC's History Programs Division at 512-463-5853 to consult on further actions that may be necessary to protect historic properties.

Archeology Comments

- No historic properties affected. However, if cultural materials are encountered during construction or disturbance activities, work should cease in the immediate area; work can continue where no cultural materials are present. Please contact the THC's Archeology Division at 512-463-6096 to consult on further actions that may be necessary to protect the cultural remains.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this review process, and for your efforts to preserve the irreplaceable heritage of Texas. If the project changes, or if new historic properties are found, please contact the review staff. If you have any questions concerning our review or if we can be of further assistance, please email the following reviewers: justin.kockritz@thc.texas.gov, Emily.McCuiston@thc.texas.gov.

This response has been sent through the electronic THC review and compliance system (eTRAC). Submitting your project via eTRAC eliminates mailing delays and allows you to check the status of the review, receive an

electronic response, and generate reports on your submissions. For more information, visit <http://thc.texas.gov/etrac-system>.

Sincerely,



for Mark Wolfe, State Historic Preservation Officer
Executive Director, Texas Historical Commission

Please do not respond to this email.

TEXAS HISTORICAL COMMISSION

REQUEST FOR SHPO CONSULTATION:

Section 106 of the National Historic Preservation Act and/or the Antiquities Code of Texas

Please see instructions for completing this form and additional information on Section 106 and Antiquities Code consultation on the Texas Historical Commission website at <http://www.thc.state.tx.us/crm/crmsend.shtml>.

- This is a new submission.
- This is additional information relating to THC tracking number(s): _____

<i>Project Information</i>		
PROJECT NAME Lumberton Detention Pond Expansion		
PROJECT ADDRESS 610 FM 421	PROJECT CITY Lumberton	PROJECT ZIP CODE(S) 77657
PROJECT COUNTY OR COUNTIES Hardin County		
PROJECT TYPE (Check all that apply)		
<input type="checkbox"/> Road/Highway Construction or Improvement	<input type="checkbox"/> Repair, Rehabilitation, or Renovation of Structure(s)	
<input checked="" type="checkbox"/> Site Excavation	<input checked="" type="checkbox"/> Addition to Existing Structure(s)	
<input checked="" type="checkbox"/> Utilities and Infrastructure	<input type="checkbox"/> Demolition or Relocation of Existing Structure(s)	
<input type="checkbox"/> New Construction	<input type="checkbox"/> None of these	
BRIEF PROJECT DESCRIPTION: Please explain the project in one or two sentences. More details should be included as an attachment to this form. Public Facility: Expands existing Flood Detention Complex with 2 additional triangular shaped ponds (approx. 42.9 ac. total). Location: West side of Lumberton, TX. Coordinates: 30.2445 N // -94.2165 W. Project Purpose: Flood control, mitigation. Additional Details: See attached Site Map/area of ground disturbance.		

<i>Project Contact Information</i>			
PROJECT CONTACT NAME Greg J. Wobbe, CFM		TITLE Project Manager	ORGANIZATION MPTX Associates
ADDRESS 7702 FM 1960 E, #370C	CITY Humble	STATE TX	ZIP CODE 77346
PHONE 512-820-8134	EMAIL greg@mptx-inc.com		

<i>Federal Involvement (Section 106 of the National Historic Preservation Act)</i>	
Does this project involve approval, funding, permit, or license from a federal agency?	
<input checked="" type="checkbox"/> Yes (Please complete this section)	<input type="checkbox"/> No (Skip to next section)
FEDERAL AGENCY FEMA	FEDERAL PROGRAM, FUNDING, OR PERMIT TYPE Hazard Mitigation Grant Program
CONTACT PERSON Dorothy Cook	PHONE
ADDRESS 800 N Loop 288 Denton, TX 76209	EMAIL dorothy.cook@fema.dhs.gov

<i>State Involvement (Antiquities Code of Texas)</i>	
Does this project occur on land or property owned by the State of Texas or a political subdivision of the state?	
<input checked="" type="checkbox"/> Yes (Please complete this section)	<input type="checkbox"/> No (Skip to next section)
CURRENT OR FUTURE OWNER OF THE PUBLIC LAND City of Lumberton	
CONTACT PERSON Steve Clark	PHONE (409) 755-3700
ADDRESS 836 N Main St. Lumberton, TX 77657	EMAIL sclark@gtbizclass.com

Identification of Historic Properties: Archeology		
Does this project involve ground-disturbing activity? <input checked="" type="checkbox"/> Yes (Please complete this section) <input type="checkbox"/> No (Skip to next section)		
Describe the nature of the ground-disturbing activity, including but not limited to depth, width, and length. Proposed construction of two additional flood control / detention ponds, expanding on existing 30 acre pond (Pond #1). Pond #2 is triangular (1,275' x 2,010' x 2,385' = 29.2 acres. Excavation depth range -11' to -19.5'). Pond #3 is triangular (974' x 1,210' x 1,492 = 13.5 acres. Excavation depth range -7' to -11'). Ground disturbance is primarily excavation of soil to create flood control basins.		
Describe the previous and current land use, conditions, and disturbances. Project site is situated on along perimeter of sewer line corridor (see attached site plan). Ground in vicinity was previously disturbed during construction of the diagonally oriented sewer line, and also during construction of south adjacent Pond #1. City of Lumberton is current land owner of the site and is sponsoring the project in coordination with Hardin County.		

Identification of Historic Properties: Structures		
Does the project area or area of potential effects include buildings, structures, or designed landscape features (such as parks or cemeteries) that are 45 years of age or older? <input type="checkbox"/> Yes (Please complete this section) <input checked="" type="checkbox"/> No (Skip to next section)		
Is the project area or area of potential effects within or adjacent to a property or district that is listed in or eligible for listing in the National Register of Historic Places? <input type="checkbox"/> Yes, name of property or district: <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown		
In the space below or as an attachment, describe each building, structure, or landscape feature within the project area or area of potential effect that is 45 years of age or older.		
ADDRESS	DATE OF CONSTRUCTION	SOURCE FOR CONSTRUCTION DATE
ADDRESS	DATE OF CONSTRUCTION	SOURCE FOR CONSTRUCTION DATE
ADDRESS	DATE OF CONSTRUCTION	SOURCE FOR CONSTRUCTION DATE

Attachments

[Please see detailed instructions regarding attachments.](#)

Include the following with each submission:

- Project Work Description
- Maps
- Identification of Historic Properties
- Photographs

For Section 106 reviews only, also include:

- Consulting Parties/Public Notification
- Area of Potential Effects
- Determination of Eligibility
- Determination of Effect

Submit completed form and attachments to the address below. Faxes and email are not acceptable.

Mark Wolfe
State Historic Preservation Officer
Texas Historical Commission
P.O. Box 12276, Austin, TX 78711-2276 (mail service)
108 W. 16th Street, Austin, TX 78701 (courier service)

For SHPO Use Only

Hardin County HMGP 4332-0232 Lumberton Detention Pond Project

Date, time and orientation are all included on individual photos.

For more information, please contact us at greg@mptx-inc.com





☀ 130°SE (M) ● 30.248890°N, 94.218299°W ±13ft ▲ 46ft



15 Dec 2021, 4:15:54 PM



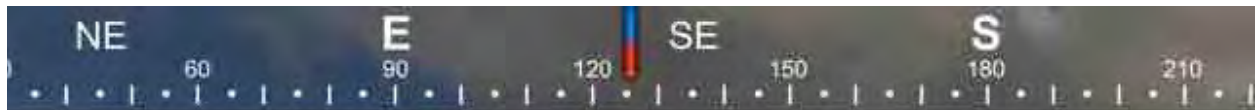
☀ 318°NW (M) ● 30.248056°N, 94.217598°W ±13ft ▲ 40ft



15 Dec 2021, 4:17:22 PM



☀ 36°NE (M) ● 30.248051°N, 94.217599°W ±13ft ▲ 39ft



☀ 126°SE (M) ● 30.248050°N, 94.217597°W ±13ft ▲ 38ft







☀ 35°NE (M) ● 30.245778°N, 94.215609°W ±13ft ▲ 34ft



15 Dec 2021, 4:20:29 PM



☀ 136°SE (M) ● 30.245770°N, 94.215603°W ±13ft ▲ 34ft



15 Dec 2021, 4:20:36 PM

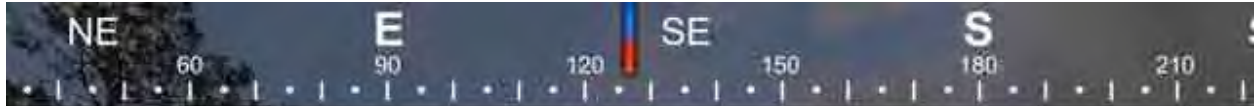




☀ 28°NE (M) ● 30.244653°N, 94.214625°W ±13ft ▲ 40ft



15 Dec 2021, 4:23:14 PM



☀ 127°SE (M) ● 30.244646°N, 94.214620°W ±13ft ▲ 39ft



15 Dec 2021, 4:23:20 PM

SE S SW W
20 150 180 210 240 270 300

☀ 214°SW (M) ● 30.244645°N, 94.214628°W ±13ft ▲ 38ft



W NW N NE
240 270 300 330 0° 30 60

☀ 329°NW (M) ● 30.243993°N, 94.215309°W ±13ft ▲ 25ft





☀ 64°NE (M) ● 30.243991°N, 94.215305°W ±13ft ▲ 26ft



☀ 130°SE (M) ● 30.243986°N, 94.215308°W ±13ft ▲ 28ft





☀ 198°S (M) ● 30.243987°N, 94.215310°W ±13ft ▲ 29ft



15 Dec 2021, 4:25:35 PM



☀ 226°SW (M) ● 30.243984°N, 94.215312°W ±13ft ▲ 28ft



15 Dec 2021, 4:25:38 PM

NW N NE E SE
330 0 30 60 90 120

☀ 45°NE (M) ● 30.242904°N, 94.214760°W ±13ft ▲ 26ft



15 Dec 2021, 4:27:35 PM

SE S SW W
120 150 180 210 240 270 300

☀ 212°SW (M) ● 30.242894°N, 94.214764°W ±13ft ▲ 25ft



15 Dec 2021, 4:27:41 PM



☀ 258°W (M) ● 30.242895°N, 94.214774°W ±13ft ▲ 26ft



15 Dec 2021, 4:27:45 PM



☀ 314°NW (M) ● 30.242905°N, 94.214779°W ±13ft ▲ 23ft



15 Dec 2021, 4:27:52 PM



☼ 336°NW (M) ● 30.242429°N, 94.215823°W ±16ft ▲ 31ft



15 Dec 2021, 4:30:10 PM



☼ 306°NW (M) ● 30.242458°N, 94.215827°W ±13ft ▲ 32ft



15 Dec 2021, 4:30:25 PM

**FEMA PUBLIC NOTICE OF AVAILABILITY
HARDIN COUNTY
LUMBERTON DETENTION POND PROJECT
HARDIN COUNTY, TEXAS
HMGP-4332-0232-TX**

Interested persons are hereby notified that Hardin County has applied to the Federal Emergency Management Agency (FEMA), through the Texas Division of Emergency management (TDEM), for Hazard Mitigation Grant Program (HMGP), under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA's Hazard Mitigation Grant Program provides grants to states and local governments to implement long-term hazard mitigation measures that reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster. This notice also serves as FEMA's final notice in compliance with Executive Order 11990 for the Protection of Wetlands (44 CFR Part 9).

FEMA proposes to provide funding to Hardin County to reduce, or mitigate, the impact of flooding events to structures and infrastructure, displacement costs, life-safety factors in Hardin County and surrounding areas. The County aims to reduce or eliminate flood losses to residential and commercial properties and protect the lives of those affected by flooding events. Hardin County proposes the 42-acre expansion of an existing 30-acre detention pond. Construction would involve sub-surface disturbance and removal of soil and clearing of approximately 4.5 acres of standing trees. The resulting detention complex would serve as a large-scale 'catch basin', receiving flood water inflows from an adjacent drainage channel, temporarily storing them, and thereby significantly reduce and slow the amount of flood water discharged into downstream channels and reduce flood water surface elevation for the surrounding area. Excavation of the proposed detention pond would range between 6-18 feet in depth with 3 to 1 embankment slopes utilizing erosion prevention until vegetation is established. Conveyance channels will be constructed to direct runoff from Adler ditch through the upper portion of the detention pond to the lower portion of the detention pond. The pond outlet will discharge into the existing detention pond to allow for longer detention. A concrete low flow swale will be constructed to direct runoff to the control structures and minimize erosion. This project would mitigate, but not entirely eliminate potential flood impacts in the future. Importantly, this project would significantly reduce potential flood impacts for a waste-water facility directly downstream.

A draft Environmental Assessment (EA) has been prepared to assess the potential impacts of the proposed action and alternatives on the human and natural environment in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500 – 1508), FEMA's Instruction 108-1-1 for implementing NEPA, the National Historic Preservation Act, Executive Order 11988, Executive Order 11990, and 44 CFR Part 9. The draft EA evaluates alternatives that provide for compliance with applicable environmental laws. The alternatives evaluated include (1) No Action; (2) the Proposed Action described above.

The draft EA is available for review and comment at Hardin County Courthouse: 300 W Monroe Street, Kountze TX 77625, and Lumberton City Hall: 836 N Main St, Lumberton, TX 77657,

from 8:00 a.m. to 5:00 p.m. Monday-Friday. An electronic version of the draft EA can also be requested from Subha Pandey, FEMA Region 6, at subha.pandey@fema.dhs.gov, or viewed on FEMA's website at <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/nepa-repository>

The comment period will begin on **July X, 2023**, and end 30 days later by close of business **July X, 2023**. Written comments on the draft EA can be mailed or emailed to Subha Pandey, Environmental Protection Specialist, FEMA Region 6, 800 N Loop 288, Denton, TX 76209, subha.pandey@fema.dhs.gov. If no substantive comments are received, the draft EA will become final and a Finding of No Significant Impact (FONSI) will be issued for the project. Substantive comments will be addressed as appropriate in the final documents.

All other questions regarding disaster assistance should be directed to FEMA's Helpline at 1-800-621-3362 or visit www.DisasterAssistance.gov.