



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

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 09-NOV-2020

ORM Number: SWT-2020-00475

Associated JDs: N/A

Review Area Location¹:

State/Territory: Texas City: Leary County/Parish/Borough: Bowie County

Center Coordinates of Review Area: Latitude 33.462773 Longitude -94.205387

II. FINDINGS

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

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

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

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

C. Clean Water Act Section 404

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

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

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

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

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

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

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

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

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

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

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

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



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
2020-00475, ES-1	695 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that ES-1 is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation. ES-1 is not identified on the USGS topographic map.
2020-00475, ES-1A	70 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that ES-1A is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation. ES-1A is not identified on the USGS topographic map.
2020-00475, ES-1B	69 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that ES-1B is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation. ES-1B is not identified on the USGS topographic map.
2020-00475, EW-1	0.026 acres	(b)(1) Non-adjacent wetland	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that EW-1 does not meet the definition of "adjacent wetlands". EW-1 is associated with Pond-1, referenced below. EW-1 has no direct hydrologic surface connection to any jurisdictional waters.
2020-00475, FW-1	0.015 acres	(b)(1) Non-adjacent wetland	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that FW-1 does not meet the definition of "adjacent wetlands". FW-1 is a small depressional wetland near ES-1, referenced above. FW-1 has no direct hydrologic surface connection to any jurisdictional waters.
2020-00475, FW-2	0.0037 acres	(b)(1) Non-adjacent wetland	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that FW-2 does not meet the definition of "adjacent wetlands". FW-2 is a small depressional wetland near ES-1, referenced above. FW-2 has no direct hydrologic surface connection to any jurisdictional waters.
2020-00475, FW-3	0.026 acres	(b)(1) Non-adjacent wetland	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that FW-3 does not meet the definition of "adjacent wetlands". FW-3 is associated with ES-1B, referenced above. FW-3 has no direct

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			hydrologic surface connection to any jurisdictional waters.
2020-00475, Pond-1	0.15 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that Pond-1 was excavated in uplands; and, it is not an impoundment of a jurisdictional water. Pond-1 has no direct hydrologic surface connection to any jurisdictional waters.
2020-00475, Stormwater Retention Pond	0.3 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Evaluation of the Terracon delineation report, USGS topographic maps, and Google Earth aerial imagery (1995-2019), supports that this stormwater retention pond was excavated in uplands; and, it is not an impoundment of a jurisdictional water. This stormwater retention pond has no direct hydrologic surface connection to any jurisdictional waters.

III. SUPPORTING INFORMATION

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

Information submitted by, or on behalf of, the applicant/consultant: Terracon Consultants, Inc., *Preliminary Waters of the United States Delineation, Proposed Love's Travel Stop, Leary, Bowie County, Texas*, dated July 23, 2020.

This information is sufficient for purposes of this AJD.

Data sheets prepared by the Corps: N/A

Photographs: Google Earth, 1995-2019

Corps Site visit(s) conducted on: N/A

Previous Jurisdictional Determinations (AJDs or PJDs): N/A

Antecedent Precipitation Tool: provide detailed discussion in Section III.B.

USDA NRCS Soil Survey: Bowie County, Texas, Web Soil Survey, Accessed Nov. 6, 2020

USFWS NWI maps: N/A

USGS topographic maps: Leary, Texas, 1:24,000, 1954; Leary, Texas, 1:24,000, 2019

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

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- B. Typical year assessment(s):** APT results were obtained for July 21, 2020, coinciding with the Terracon delineation report; the result was a wetter than normal value of 16. Evaluation of these APT results and the Terracon delineation report, supports that the ephemeral conditions of ES-1, ES-1A, and ES-1B, described by Terracon Consultants, were not the result of abnormally dry conditions.
- C. Additional comments to support AJD:** The Terracon Consultants delineation report identifies the ephemeral flow regime of ES-1, ES-1A, and ES-1B. These streams are not depicted on 1:24,000 USGS topographic maps.

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