CERTIFIED RETURN RECEIPT MAIL REQUESTED
7010 3090 0001 4462 9549

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

August 9, 2011

REPLY TO ATTENTION OF:

Compliance Section

SUBJECT: **SWG-2010-00869**; Land Tejas Companies, Ltd. Unauthorized Discharge of Fill Material Into Waters of the United States, Discovery at Spring Trails, Montgomery County, Texas

Ms. Sharon Parrish
Environmental Protection Agency (EPA) Region 6
Wetland Section (6WQEM)
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Ms. Parrish:

This concerns our investigation into the unauthorized discharge of fill material in waters of the United States, including adjacent wetlands, associated with the construction of the Discovery at Spring Trails Subdivision (SWG-2010-00869). The developer responsible for the activity is Land Tejas Companies, Ltd. (POC: Mr. James Henrie). The above referenced case is summarized below:

SWG-2010-00869, Discovery at Spring Trails: The approximate 470-acre subdivision is located southeast of the intersection of Riley-Fuzzell Road and Rayford Road in Montgomery County, Texas. The discharge of fill material has impacted greater than ½ acre of waters of the U.S., including adjacent wetlands, without a Department of the Army permit. This estimation has not been verified by an actual delineation but appears accurate. The discharge of fill material is associated with land clearing, and construction of a detention basin and channel using mechanized equipment. Additional acreage of waters of the U.S. may be impacted during the completion of the subdivision. The impacted jurisdictional areas include an adjacent wetland and an unnamed tributary that flows into Spring Creek, a relatively permanent water of the U.S.

On July 13, 2011 Mr. Jim Herrington, EPA, requested this case. Therefore, in accordance with Part III D.1. (c) of the 1989 Memorandum of Agreement between the Department of the Army and the EPA Concerning Federal Enforcement Actions under Section 404 of the Clean Water Act, the EPA is the lead federal enforcement agency.

AUG 15 PM 2:05

CESWG-PE-RC (1145) 15 July 2011

MEMORANDUM FOR THE FILE

SUBJECT: **SWG-2010-00869;** Referral to EPA, Discovery at Spring Trails, Unauthorized Discharge of Fill Material, Montgomery County, Texas

1. We have determined that unauthorized discharges have occurred at the Discovery at Spring Trails residential subdivision resulting in at least two non-permit violations of Section 404 of the Clean Water Act (Section 404) of a verified jurisdictional determination dated 18 May 2007. These violations are described in a memo to the file dated 13 July 2011 and impact greater than ½ acre of waters of the United States, including jurisdictional wetlands.

2. This site is located immediately west of an ongoing, controversial 404 litigation action that the EPA is the lead federal agency working with the Department of Justice. Therefore, for this class of enforcement action and to ensure consistency of the 404 program, this action is being referred to the EPA as the lead federal agency seeking appropriate resolution.

3. Per the 1989 Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement For The Section 404 Program of the Clean Water Act (1989 Enforcement MOA), the EPA will act as the lead enforcement agency where the EPA requests a class of cases or a particular case (Section III.D.1.c). Because this case was requested by Mr. Jim Herrington, USEPA Region VI, the investigation is being referred to EPA for enforcement.

Kenny Jaynes,
Chief, Compliance Section

CESWG-PE-RC (1145) 13 July 2011

MEMORANDUM FOR THE FILE

SUBJECT: **SWG-2010-00869;** Discovery at Spring Trails, Alleged Unauthorized Discharge of Fill Material, Montgomery County, Texas

1. The purpose of this memo is to document a site visit at the Discovery at Spring Trails residential development located in Montgomery County, Texas. This site visit occurred on 5 May 2011 and was conducted by Mr. John Davidson and Mr. Flynt Houston. A complete list of attendees can be found in the administrative record.

2. The following documents were reviewed prior to the site visit:
   a. File D-19076 (SWG-2006-01831)
   b. Aerial Photos: 1995 DOQQ, 2010 NAIP, 2011 Google Earth™
   c. USGS Topographic Maps (Spring and Maedan Quads)

3. Utilizing the final revised delineation map from file D-19076, we concentrated our efforts on investigating the areas deemed jurisdictional in the 18 May 2007 letter. The first area we investigated was the southern portion of WET2 where it meets WB1. A detention basin and drainage channel had been constructed that bisected the WET2/WB1 aquatic resource. It appeared the detention basin, including portions of WET2 and WB1, was scraped using mechanized equipment, which resulted in a discharge of fill material into WET2/WB1 without a Department of the Army (DA) permit.

   Next we investigated WET 2 which is a forested wetland extending north to south within the project area with an approximate size of 13.63 acres. This wetland was determined to be an adjacent wetland to Spring Creek, a traditional navigable water of the United States. Mr Davidson and I inspected the boundaries of this wetland to assess whether any unauthorized fill had been discharged within the delineated boundary. Several GPS points were taken along the edge of the development around WET2. When analyzed in GIS it showed that the development activities had not extended into the western boundary of WET2. Although we found the residential development had avoided most of the wetland area, there was a portion within the northern reach of WET2 that had been cleared by mechanized activity. Using GIS we estimated that approximately 0.5 acres of forested wetland within WET2 had been cleared by mechanized activities which resulted in a discharge of fill within a jurisdictional wetland without a DA permit.

   After visiting this area we returned to the southern portion of the project area where a man-excavated channel had been created immediately adjacent to WB1. Our preliminary review indicated that this excavated channel could have resulted in a discharge of fill within the tributaries confirmed in file D-19076. We walked the entire length of the excavated channel from the detention pond investigated earlier to the southern confluence with WB1. The man-made channel extends from the residential development southward until it connects with the tributary identified as WB1, south of the residential development. At this confluence there was flowing water at the time of the site visit. WET2 and WB1 now flow into the detention basin and excavated channel making a reroute of a tributary subject to Section 404 of the Clean Water Act.

Houston, Michael F SWG

From: Lee Sherrod [lee_sherrod@horizon-esi.com]
Sent: Wednesday, May 11, 2011 1:31 PM
To: Houston, Michael F SWG
Subject: RE: attendees for site visit (UNCLASSIFIED)

Attendees for site visit: 5 MAY 11

James Henrie owner/developer	Land Tejas	Current property
Collin Campbell owner/developer	Land Tejas	Current property
Lee Sherrod	Horizon Env Serv	Consultant to Land Tejas
Clayton Chabannes	Jones & Carter	MUD Engineer
Jonathan Unterreiner	Jones & Carter	MUD Engineer
Greg Anderson	Amegy Bank	Current lender/lien holder
Doug Crosson	Amegy Bank	Current lender/lien holder
Jenny Tinsley	Amegy Bank	Current lender/lien holder
Susie Alford Bank	Burg Oliver	Consultant for Amegy
Bill Goodrum note from Amegy Bank	ForeStar Group	Possible future purchaser of
Craig Knight of note from Amegy Bank	ForeStar Group	Possible future purchaser
Mike Casey investor in project		Current
Flynt Houston Compliance	USACE	Galveston District
John Davidson Compliance	USACE	Galveston District
Jim Herrington Review/Compliance	EPA	Region 6 Wetland

From: Houston, Michael F SWG [mailto:Michael.F.Houston@usace.army.mil]
Sent: Wednesday, May 11, 2011 11:55 AM
To: Lee Sherrod
Subject: attendees for site visit (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Lee,

If you get a chance, could you send me a list of attendees with their affiliation that were present at our site visit on May 5, 2011. We need something for our administrative record.

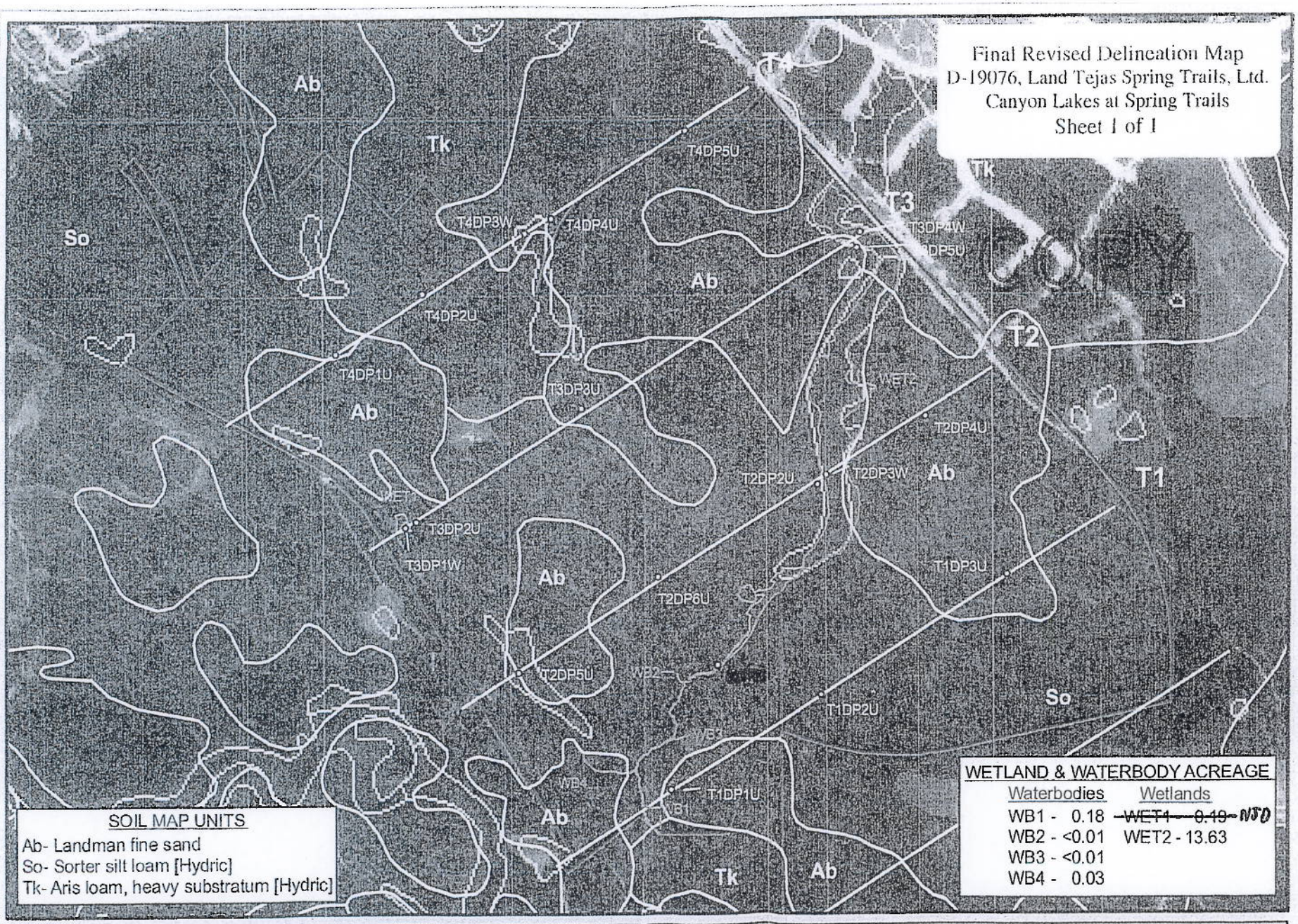
Thanks,

M. Flynt Houston
Regulatory Specialist/Compliance

U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77553
Phone: 409-766-3936
Fax: 409-766-3931

"To assist us in improving our service to you, please complete the survey found at http://per2.nwp.usace.army.mil/survey.html and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you."

Classification: UNCLASSIFIED
Caveats: NONE



ENVIRONMENTAL CONSULTANTS

Canyon Lakes at Spring Trails
Site Layout Map
Montgomery County, Texas Figure 3

Approximate Property Boundary
Wetland
Waterbody
NWI Wetland
Soil
100-yr Floodplain
Data Point
Transect

Background: HGAC True-Color Imagery (2002)
0 450 900 Feet
N

Map Produced May 16, 2007
Project #: 11508-032

DATA FORM
ROUTINE WETLAND DETEF:MINATION
1987 USACE Wetland Delineation Manual

Project Site: Canyon Lakes at Spring Trails — Date: August 29, 2006

Applicant/Owner: Land Tejas Spring Trails, Ltd. — County: Montgomery

Investigator(s): M. Souliere,H. Morton — State: Texas

Community ID: PFO — Transect: 3 — Plot ID: T3DP4W

Do normal circumstances exist on this site? Yes: X No: ____

Is the site significantly disturbed (atypical situation)? Yes: ____ No: X

Is the area a potential problem area? Yes: ____ No: X

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Acer rubrum	T/S	FACW			
Quercus phellos	T	FACW			
Sabal minor	S	FACW			
Berchemia scandens	V	FAC+			
Saururus cernuus	H	OBL			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 100%

Is the hydrophytic vegetation criterion met? Yes: X No: ____

There is positive indication of hydrophytic vegetation at this location due to >50% of all dominant species being indexed as FAC or wetter.

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs X

Other ____

No Data Available ____

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated ____

Saturated in Upper 12 In. ____

Water Marks ____

Drift Lines ____

Sediment Deposits ____

Drainage Patterns in Wetlands ____

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in. X

Water-Stained Leaves X

Local Soil Survey Data ____

FAC-Neutral Test ____

Other (Explain in Remarks) X

Is the hydrology criterion met? Yes: X No: ____

Other: adventitious roots associated with some woody vegetation present. There is positive indication of wetland hydrology based on the presence of water-stained leaves and adventitous roots.

Applicant: Land Tejas Spring Trails, Ltd. — Plot ID: T3DP4W

SOILS

Map Unit Name (Series and Phase): Aris loam, heavy substratum

Map Type Confirmed? Yes: ____ No: X

If No, Soil Type Encountered: Unknown

Taxonomy (Subgroup): Unknown — Drainage Class: Unknown

Profile Description:

Depth (Inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
0-16		10YR 6/1	10YR 6/8	Common/Distinct	Sandy Clay Loam
		10YR 6/2	7.5YR 4/6	Few/Prominent	

Hydric Soils Indicators:

____ Histosol

____ Histic Epipedon

____ Sulfidic Odor

____ Aquic Moisture Regime

____ Reducing Conditions

X Gleyed or Low-Chroma Colors

____ Concretions

____ High Organic Content In Surface Layer In Sandy Soils

____ Organic Streaking in Sandy Soils

____ Listed on Local Hydric Soils List

____ Listed on National Hydric Soils List

____ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: X No: ____

There is a positive indication of hydric soils due to the presence of a low chroma within the soil matrix

SUMMARY

Hydrophytic Vegetation Present? Yes: X No: ____

Wetland Hydrology Present? Yes: X No: ____

Hydric Soils Present? Yes: X No: ____

Is This Sampling Point Within a Wetland? Yes: X No: ____

Remarks: *This point was determined to be within a wetland due to the presence of all three wetland criteria.*

SEP 21 2006

CONVERSATION RECORD

DATE: 26 April 2011

TIME: 1120

PERSON: Lee Sherrod, Horizon Environmental Services

TYPE: Telephone- 512-431-3562 ☐ incoming ☒ outgoing

SUBJECT: Discussion of case SWG-2010-00869

SUMMARY: Both Kenny Jaynes and I had a conference call with Mr. Sherrod. He informed us that he will be the POC for Land Tejas, Ltd. in regards to environmental issues concerning the Discovery at Spring Trails subdivision. We are planning a site visit with Mr. Sherrod for 5 May 2011 at the subdivision to investigate alleged violations of Section 404 of the Clean Water Act.

M. Flynt Houston

Person documenting Conversation: M. Flynt Houston
Regulatory Specialist
Compliance Section

Houston, Michael F SWG

From: Lee Sherrod [lee_sherrod@horizon-esi.com]
Sent: Tuesday, April 26, 2011 10:33 AM
To: Houston, Michael F SWG
Subject: Discovery at Spring Trails, Montgomery County
Attachments: image001.jpg

Flynt,

I have recently been retained to represent the owners of the Discovery at Spring Trails subdivision. They are in receipt of a phone message from you indicating a potential violation on the subdivision. Please contact me at your earliest convenience to discuss. You can reach me this week at (512)431-3562.

Thanks,

C. Lee Sherrod

Vice President

Horizon Environmental Services, Inc.™

1507 South IH 35

Austin, TX 78741

(512)328-2430

(512)328-1804 fax

(512)431-3562 cell

lee_sherrod@horizon-esi.com <mailto:lee_sherrod@horizon-esi.com>

www.horizon-esi.com <http://www.horizon-esi.com>

logo-3-02-esi

P Please consider the environment before printing this e-mail.

Houston, Michael F SWG

From: Jaynes, Kenny SWG
Sent: Tuesday, April 26, 2011 10:43 AM
To: Fred Pozzuto
Cc: Houston, Michael F SWG
Subject: RE: CCET Env. Assessment - Wetlands (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Fred;

I am aware of the JD letter previously submitted from the Corps and it states that there are some wetland and tributaries on the site along with numerous isolated wetlands on the site. The polygon you identified for us to review for your project does contain wetlands and according to the previous Corps determination (D-19076) the wetlands on your project location are isolated with non known nexus to interstate commerce; and thus not subject to Section 404 of the Clean Water Act.- However based on interactions with other federal agencies E.O. 11990 still was a factor and the wetlands were mitigated for... Please keep informed as to how we can help.

Thanks

Kenny Jaynes

-----Original Message-----
From: Fred Pozzuto [mailto:Fred.Pozzuto@NETL.DOE.GOV]
Sent: Tuesday, April 26, 2011 10:14 AM
To: Keith Davis
Cc: Ernie Harr; Joanne Stover; Donald Geiling; Jaynes, Kenny SWG
Subject: Re: CCET Env. Assessment - Wetlands

Keith:
This is exactly what I had in mind, but we need to show thru from the bottom layer the SWCA mapping to project any of the blue, green, red and yellow boundary lines that may fall within the CCET project map and visa versa on the enlargement. That way the Corps will be easily able to see what is impacted by our project(hopefully nothing). THX.

Fred E. Pozzuto, P.E., P.G.
Environmental Mgr. / NEPA Compliance Officer U.S. Department of Energy National Energy Technology Laboratory Division of Environmental Compliance
304-285-5219 Office
724-255-3637 Cell
fred.pozzuto@netl.doe.gov

>>> "Keith Davis" <kdavis@jason.com> 4/22/2011 4:34 PM >>>

Hi Fred

Take a look at the attached composite figure and see if it does what you had in mind. If you had something different in mind, just let us know.

Keith

----- Original Message -----
From: Fred Pozzuto <mailto:Fred.Pozzuto@NETL.DOE.GOV>
To: Keith Davis <mailto:kdavis@jason.com>
Cc: clobel@ecoedgeusa.com ; mholloway@electrictechnologycenter.com ; Ernie Harr <mailto:eharr@jason.com> ; Joanne Stover <mailto:jastover@jason.com> ; Donald Geiling <mailto:Donald.Geiling@NETL.DOE.GOV> ; Kenny SWG Jaynes <mailto:kenny.jaynes@SWG02.usace.army.mil> ; mdittmer@swri.org
Sent: Tuesday, April 19, 2011 11:49 AM
Subject: Re: CCET Env. Assessment - Wetlands

Keith:

This looks like good news, however, before we proceed finalizing our EA for the CCET project, I would like to see Figure 2-3 from our EA (the solar power site [1.78Ac.] and 40 Lot development) superimposed onto the Final Revised Delineation Map included in this attachment. That way Mr. Jaynes at the Galveston Corps will be able to clearly see where our project is positioned on this approved delineation by Mr. Davidson Galveston District South Unit Leader (Corps File No. D-19076).

I feel that once our project is clearly shown overlaying this previously approved delineation mapping, Mr. Jaynes should be able conclude that our project will not involve any fills into Waters of the U.S. in order to issue a "no permit required" or "no impacts" letter to the DOE that we will be able to include in our Final EA and FONSI.

Fred E. Pozzuto, P.E., P.G.
Environmental Mgr. / NEPA Compliance Officer
U.S. Department of Energy
National Energy Technology Laboratory
Division of Environmental Compliance
304-285-5219 Office
724-255-3637 Cell
fred.pozzuto@netl.doe.gov

>>> "Keith Davis" <kdavis@jason.com> 4/19/2011 12:21 PM >>>

Hi Fred

The letter below came in yesterday when I was on leave. The letter appears to provide verification there are no wetlands in the area of the solar array, battery facility - or in the roughly 20 acres that is shown in Figure 2-3 of the Draft EA.

The map in the attached letter takes a little time to orient, but the curved red line (property boundary) near the top of the map (running SW-NE) is basically where Waterbend Cove Drive is now located. The 13.63 acres of jurisdictional wetlands on the evaluated land is well to the east of the property in which the DOE project would be involved. [Let me know if you have trouble telling where the evaluated land (red outline) is located and I can try to made a rough drawing on a more recent aerial.]

Would you like me to send a note to Kenny Jaynes with the identified file # (D-19076) and see if we're OK on the project? Alternatively, do we need to know what the land developer's intention is with regard to the wetlands even though the wetlands are some distance from the project site?

Keith

Craig

Fred Pozzuto, the DOE NEPA Document Manager, has now had several conversations with the Corps of Engineers on the project and the issue of wetlands. Based on their visit to the site, the Corps believes there may be wetlands in the proposed project area and to resolve the issue, Fred believes there will have to be a formal wetlands delineation performed on the site. That is, unless such an effort has already been accomplished as part of the early planning for the overall development of the Discovery at Spring Trails area.

A formal wetlands delineation would involve people with appropriate expertise investigating and evaluating the site for specific elements such as soils and vegetation that might indicate the presence of wetlands and mapping any such areas. If there are wetlands present, the delineation would also involve determining whether such areas had any linkage to waters of the U.S. to determine if they would be Corps of Engineers or State jurisdiction.

Finally, Fred believes the delineation would likely have to address the block of land that would encompass the proposed solar power site, the battery facility and the 40 building lots that are adjacent to those areas. That is, the block of land (that I calculate as being about 20 acres), bordered by Rayford Road to the southwest, Waterbend Cove Drive to the southeast, and the school property to the northeast.

Are you aware if a formal wetlands delineation has ever been performed on this area? And if you think it has been, can you possibly find and provide us the documentation?

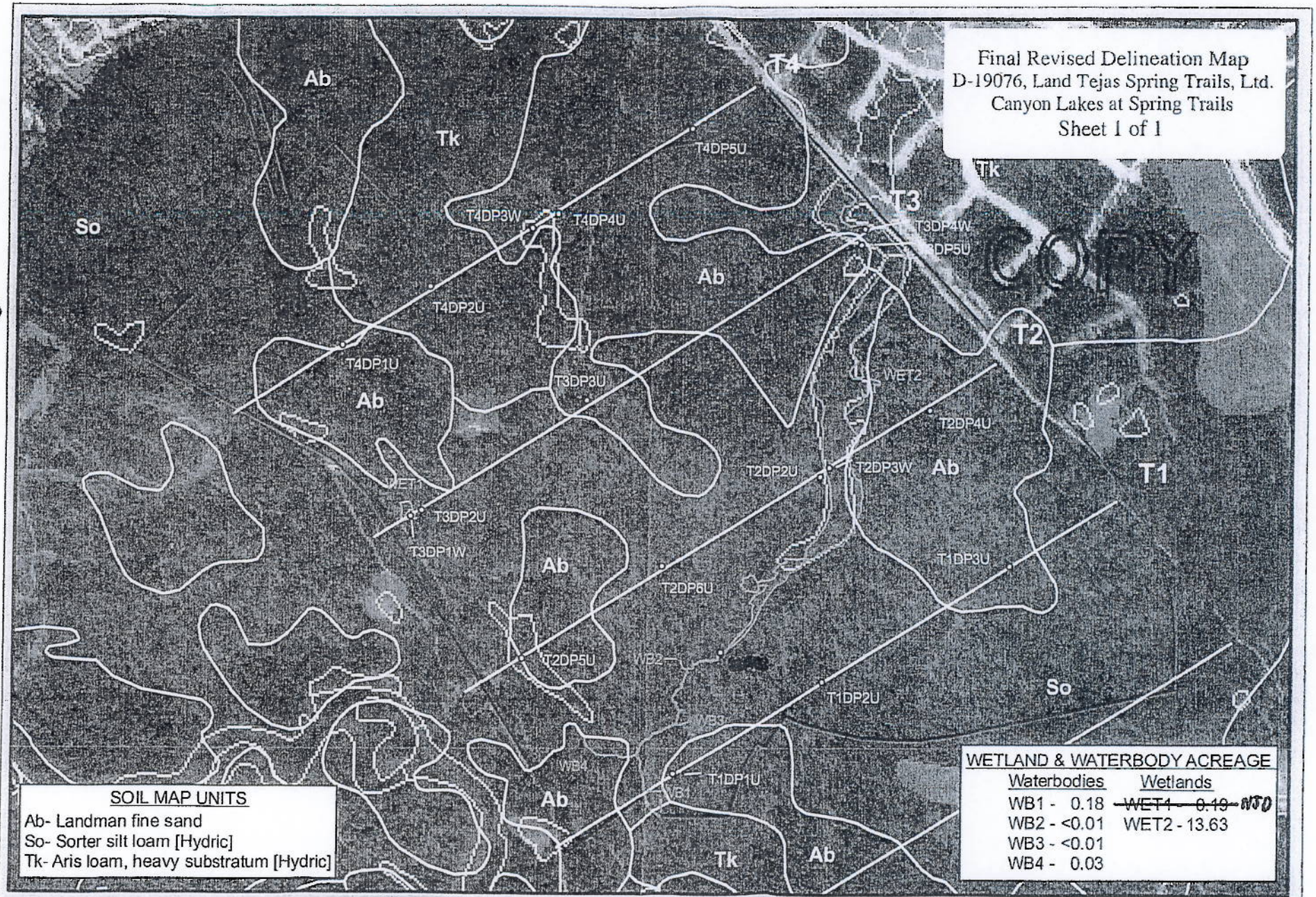
In Fred's discussion with the Corps, he learned that wetlands issues are quite sensitive in this particular area as a result of issues associated with developments to the north and south of Discovery at Spring Trails. I suspect you may already be aware of these but it appears there will continue to be high scrutiny on this topic and we will have to ensure that it is being appropriately addressed before we can close out the Environmental Assessment effort.

Thanks - please let us know what you find.

Keith

Classification: UNCLASSIFIED
Caveats: NONE

Approximate Project Area from D-19076



SWCA ENVIRONMENTAL CONSULTANTS

Canyon Lakes at Spring Trails
Site Layout Map
Montgomery County, Texas Figure 3

Approximate Property Boundary
Wetland
Waterbody
NWI Wetland
Soil
100-yr Floodplain
Data Point
Transect

Background: HGAC True-Color Imagery (2002)
0 450 900 Feet
N
Map Produced May 16, 2007
Project #: 11508-032

4.0 CONCLUSIONS

SWCA conducted a wetland delineation of the proposed project site on various days between August 9 and August 31, 2006. SWCA identified two wetlands, representing 13.82 acres, and 4 waterbodies, representing 0.19 acres, within the boundaries of the proposed project site as depicted on Figures 2 and 3 in Appendix A.

Under Section 404 of the Clean Water Act (CWA), the USACE regulates the discharge of dredged or fill material into "waters of the U.S.", including wetlands. In the 2001 Supreme Court Decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, "isolated" wetlands with no other connection to interstate commerce other than use by migratory waterfowl were determined not jurisdictional under Section 404 of the CWA. Currently, the USACE Galveston District appears to interpret "isolated" wetlands as those located outside the 100-year floodplain and not connected to the surface tributary system via a creek, ditch, or other channel. The USACE maintains jurisdiction under Section 404 of the CWA over "adjacent" wetlands, those that fall within the 100-year floodplain and/or are connected to the surface tributary system.

Based on SWCA's understanding of the USACE Galveston District's interpretation of SWANCC, it is SWCA's professional opinion that neither of the two wetlands identified within the project area would be considered jurisdictional under Section 404 of the CWA due to their location outside of the 100-year floodplain and/or their having no hydrologic connection to a surface tributary system.

It is SWCA's opinion that all 4 identified waterbodies (listed in Table 2) are subject to USACE jurisdiction under Section 404 of the CWA, as they are naturally occurring waterbodies with a hydrologic connection to a "navigable water of the U.S."

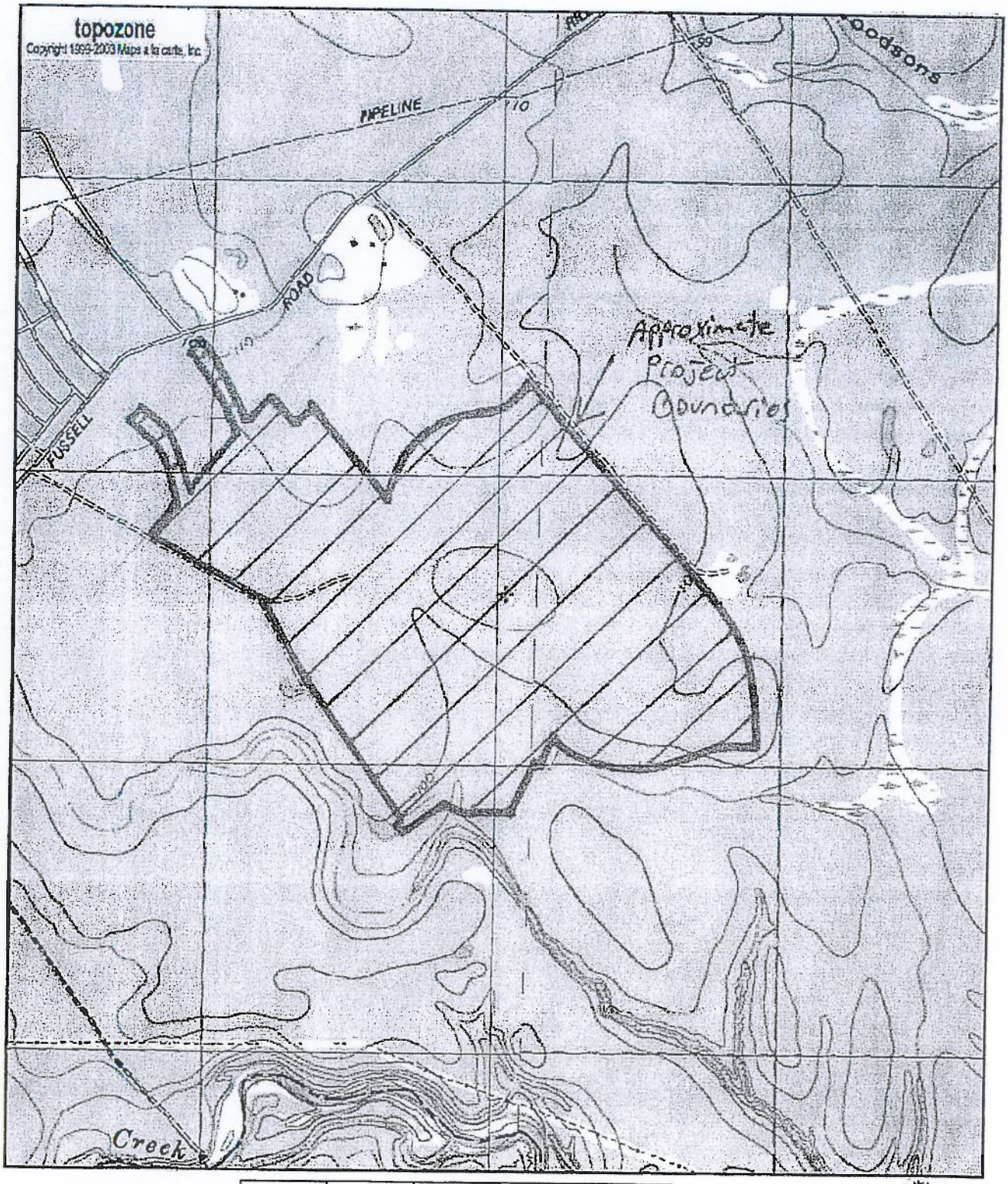
Table 3 provides a summary of the jurisdictional status, according to SWCA's professional opinion, of the wetlands and waterbodies observed on the proposed project site.

Table 3. Summary of Potentially Jurisdictional vs. Non-Jurisdictional Wetlands

Description	Non-jurisdictional Area (Acres)	Jurisdictional Area (Acres)
Wetland	13.82	0.00
Waterbody	0.00	0.19
Total	**13.82**	**0.19**

SWCA's opinions regarding the jurisdictional status of wetlands identified are based on SWCA's understanding of and experience with the USACE Galveston District's interpretation of the SWANCC decision and the joint memorandum issued by the USACE and the U.S. Environmental Protection Agency on January 10, 2003. Only the USACE has final and legal authority in determining the presence of jurisdictional "waters of the U.S." and the extent of their boundaries.

D-19076



0 0.3 0.6 0.9 1.2 1.5 km

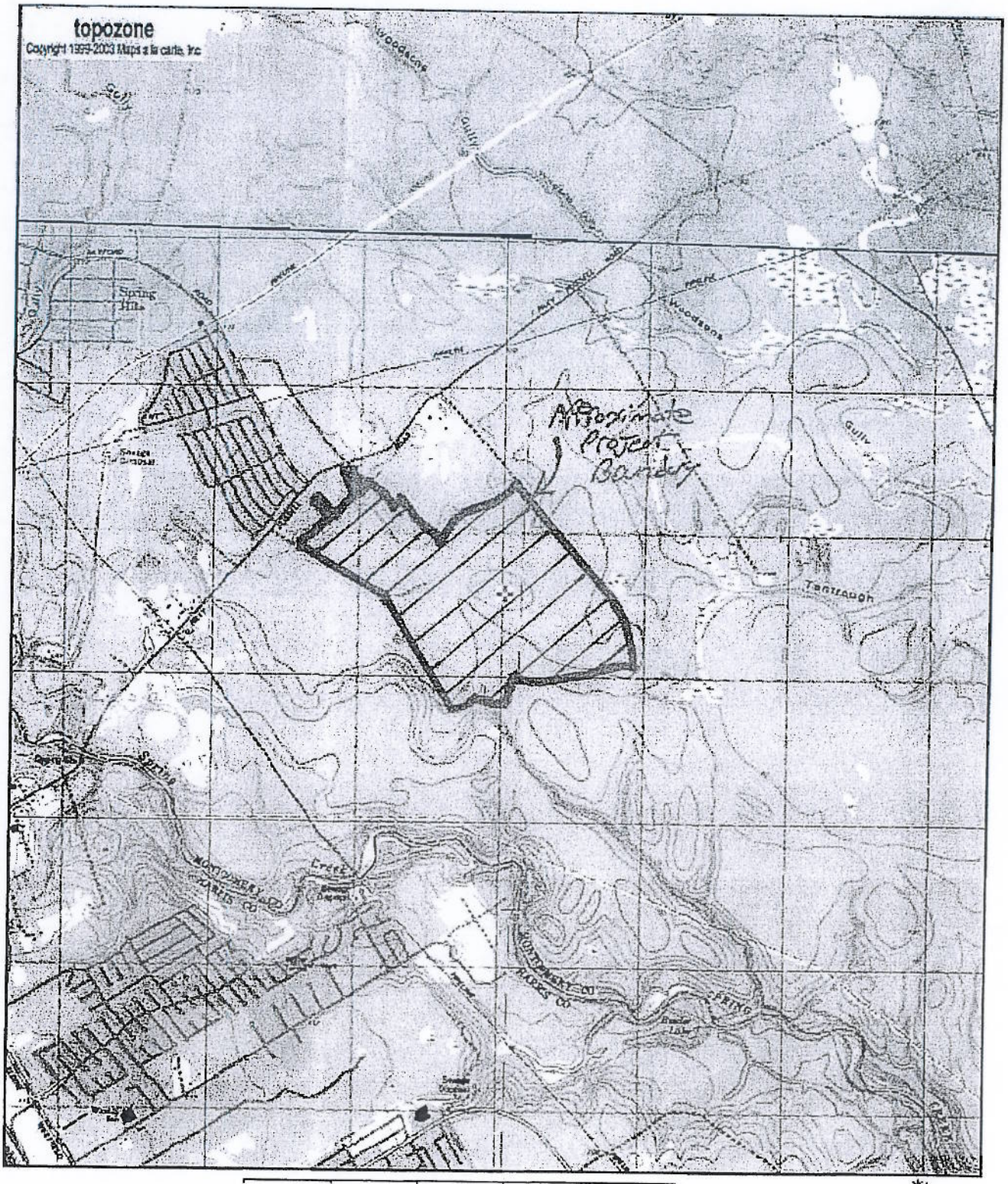
0 0.2 0.4 0.6 0.8 1 mi

30° 06' 11"N, 95° 22' 34"W (NAD83/WGS84)

USGS Spring (TX) Quadrangle 1995

Projection is UTM Zone 15 NAD83 Datum

M=4.058
G=-1.192



0 0.6 1.2 1.8 2.4 3 km

0 0.4 0.8 1.2 1.6 2 mi

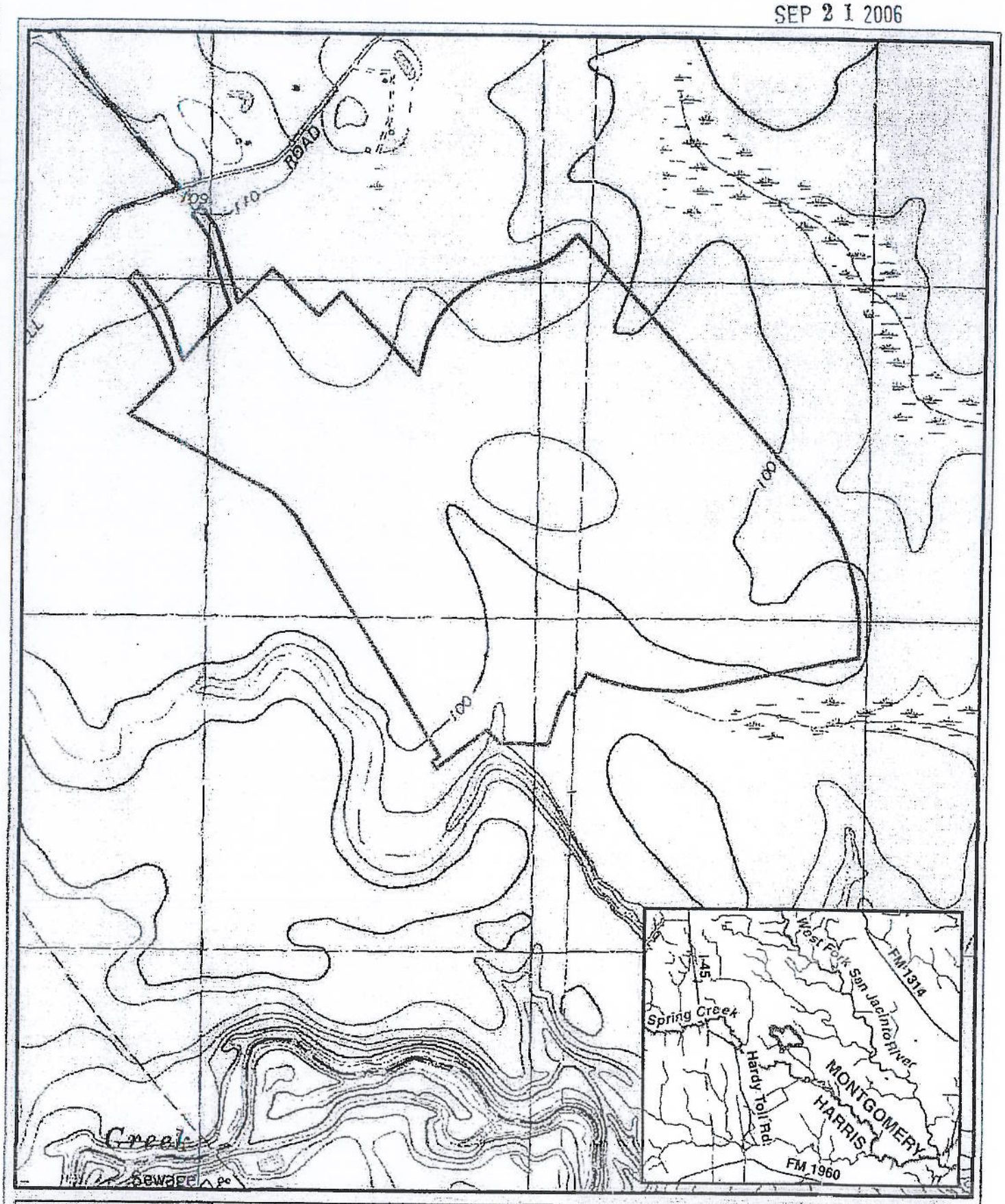
UTM 15 271034E 3332586N (NAD83/WGS84)

USGS Spring (TX) Quadrangle

Projection is UTM Zone 15 NAD83 Datum

M=4.058
G=-1.192

SEP 21 2006



SWCA ENVIRONMENTAL CONSULTANTS

Canyon Lakes at Spring Trails
Vicinity Map

Montgomery County, TX

Figure 1

Approximate Property Boundary

Background: USGS 7.5' Topographic Map (Maedan, Spring)

0 500 1,000 Feet

N

Map Produced September 20, 2006
Project #: 11508-032

CESWG-PE-RC (1145)

27 April 2007

MEMORANDUM FOR THE FILE

SUBJECT: D-19076; Jurisdictional Delineation Verification, 473-Acre Tract, Proposed Canyon Lakes at Spring Trails Subdivision, 2.68-Acres, Centennial Park Addition, City of Pearland, Brazoria County, Texas

1. Documents Reviewed:

1) Aerial Photographs:	*1995 Color Infrared Spring & Maedan, Texas* *2002 HGAC True Color*
2) USGS Topographic Map:	*Spring, Texas quad*
3) Historic Topographic Map:	*Not Reviewed*
4) National Wetland Inventory (NWI) Map:	*Digital Download from USFWS Wetland Mapper*
5) FEMA Flood Insurance Rate Map (FIRM):	*Montgomery County, Texas, Panel 685* *Published 19 December 1996*
6) NRCS County Soil Survey:	*Montgomery County, Texas*
7) Determination Submittal:	*SWCA Environmental Consultants (SWCA)*

2. A site visit was conducted on 9 February 2007 for the purpose of verifying a delineation of waters of the United States performed by SWCA. Mr. Mike Souliere and Mr. Brian Fairchild of SWCA were also present for the site visit. The proposed project is to construct the Canyon Lakes at Spring Trails residential subdivision. The 473-acre project tract is located south of Riley-Fuzzel Road approximately 2 miles east of the Hardy Toll Road in southern Montgomery County, Texas.

3. A review of the published data yielded the following results: There are no hydrological features mapped on the USGS topographic map within the project boundaries. The project is located immediately north of an unnamed tributary to Spring Creek and west of 2 mapped wetland areas. The NWI map has three types of wetlands mapped within the project area. Of the seven wetland areas mapped within the project area only one of them extends off of the property. This wetland is along the eastern side of the project area and extends northward off of the project. The project area has PEM1A (Palustrine, Emergent, Persistent, Temporarily Flooded), PSS1C (Palustrine, Scrub Shrub, Broad-Leaf Deciduous, Seasonally Flooded) and PFO4/1A (Palustrine, Forested, Needle-Leaved Evergreen, Broad-Leaved Deciduous, Temporarily Flooded) wetlands mapped within it. The 1995 color infrared aerial and 2002 true color do not show any distinct spectral signatures suggesting wetlands are present. All areas discussed in this memo as being a "wetland" are understood to meet the hydrophytic vegetation, wetland hydrology, and hydric soils criteria of the Corps of Engineers 1987 Wetland Delineation Manual. Not having any distinct wetland signatures could be a function of exactly when the photos were taken. Mr.

site visit no vegetation was observed growing within the channel. So there was an obvious destruction of terrestrial vegetation within the channel. Even in the photos submitted by SWCA the vegetation in the channel in late August is clearly young growth compared to the substantially older trees and shrubs growing along side. Mr. Souliere was informed that we would have to call this channel part of the tributary flowing out of Wet-2. He stated he didn't think it meet the definition of a tributary. When asked what it was if it was not a tributary he stated it was "*concentrated sheet flow*". Mr. Souliere also stated that it was only due to above normal rain fall that the wetland was flowing into the unnamed tributary system. It was determined the channel was a continuation of the already identified unnamed tributary system to Spring Creek. This makes Wet-2 part of a surface tributary system and therefore subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act. We continued up the length of Wet-2 checking several data points and the wetland/upland boundary line. These were found to be reasonably accurate and no changes were requested to the boundary line. Approximately a third of the way up Wet-2 we crossed where a survey crew had already staked out the centerline and the left and right limits of a proposed roadway through Wet-2. On our way back out to where the vehicles were parked we stopped and checked Wet-1. Wet-1 is a small depressional wetland that does not extend off of the project area. It located completely outside the 100-year floodplain of a water of the United States; it does not have a direct surface hydrological connection to a water of the United States, and has no known nexus to interstate commerce. As such, Wet-1 is isolated and not subject to Corps jurisdiction under Section 404 of the Clean Water Act. This concluded the site visit.

6. A meeting was held 6 March 2007 at the Jadwin Building at the request of SWCA to discuss the status of the area between Wet-2 and where SWCA had terminated the unnamed tributary stopped. The meeting was attended by Mr. John Davidson, South Unit Leader, and by Mr. Brian Fairchild and Mr. Mike Souliere of SWCA. In preparation for this meeting a WETS table had been done for the day of the verification using precipitation data from Conroe, Texas. The WETS table scored 13 which indicates the site visit was done during a period of normal precipitation. SWCA brought rainfall data from Bush International Airport that while not exactly the same as from Conroe followed the same trends and the precipitation totals were very similar. January 2007 was wetter than normal while December 2006 was drier, and November 2006 was normal. The site visit was held on the 9th of February and 0.03 inches of rain was recorded in Conroe in the eight days prior to the site visit. One argument made by SWCA is that during August they did their site work right after a very heavy rainfall event and even after that there was no water flowing out of Wet-2 as shown n the photos. Wet-2 is 13.63 acres within the project area. Wet-2 corresponds with the wetland identified on the NWI map that continues off of the project area. The portion of Wet-2 delineated by SWCA has a strong positive correlation with area identified as being a wetland on the NWI map. So it is safe to assume the NWI map fairly accurately represents the area not delineated off of the project area. The portion of Wet-2 located off the project area appears to be about equal in size to that on the project site, so that over all area of the wetland is approximately 26 acres. It is quit possible that this wetland which is identified as being Seasonally Flooded on the NWI map was dried out in late August and simply had enough capacity to absorb the

1 MAY 07
WEITKNNECHT/jrr/3198
CESWG-PE-RC

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

May 1, 2007

REPLY TO ATTENTION OF:

Compliance Section

SUBJECT: **D-19076:** Jurisdictional Delineation Verification, 473-Acre Tract; Proposed Canyon Lakes at Spring Trails Subdivision, 2.68 Acres, Centennial Park Addition, City of Pearland, Brazoria County, Texas

Mr. Mike Souliere
Project Manager/Ecologist
SWCA Environmental Consultants
4888 Langfield Road, Suite 300
Houston, TX 77040-6663

Dear Mr. Souliere:

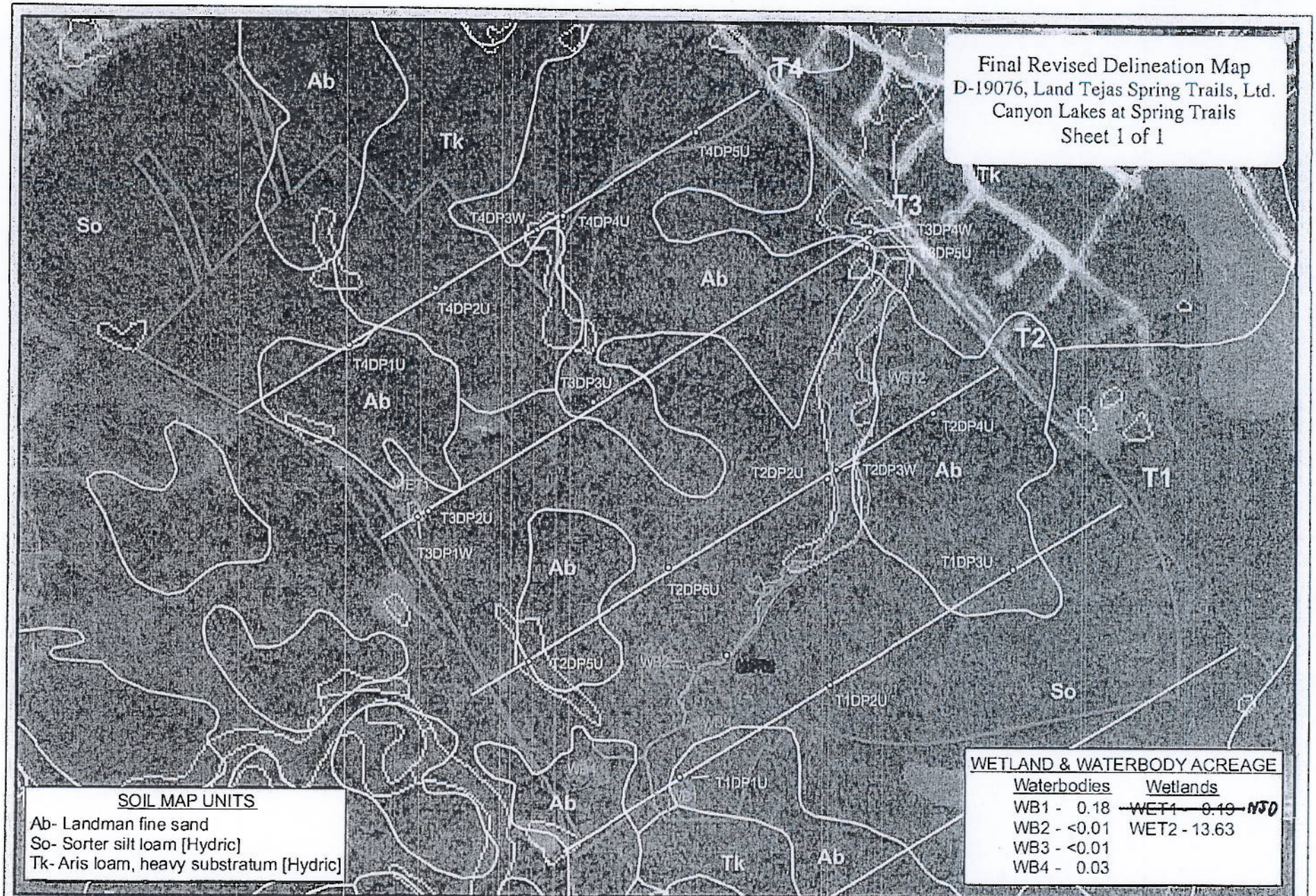
This office received your September 20, 2006, request for a verification of a delineation of waters of the United States on behalf of Land Tejas Spring Trails, Limited who plans construction of the proposed Canyon Lakes at Spring Trails residential subdivision. The 473-acre project tract is located south of Riley-Fuzzel Road approximately two miles east of the Hardy Toll Road in southern Montgomery County, Texas.

As of the date of this letter, we have not received the revised delineation report requested during our April 5, 2007, field visit. If we do not receive the requested information within 15 days from the date of this letter, your verification request will be withdrawn without prejudice. If this action is withdrawn, you may submit a subsequent verification request once a revised delineation report is completed. If you have questions concerning this matter, please reference file number **D-19076** and contact me at the letterhead address or telephone 409-766-3198.

Sincerely,

Glenn Weitknecht
Project Manager

MAY 1 6 2007


Final Revised Delineation Map
D-19076, Land Tejas Spring Trails, Ltd.
Canyon Lakes at Spring Trails
Sheet 1 of 1
T4
T3
T2
T1
Ab
Tk
So
T4DP5U
T4DP3W
T4DP4U
T4DP2U
T4DP1U
T3DP3U
T3DP4W
T3DP5U
T2DP4U
T2DP2U
T2DP3W
T3DP2U
T3DP1W
T2DP6U
T2DP5U
T1DP3U
T1DP2U
T1DP1U
WET1
WET2
WB1
SOIL MAP UNITS
Ab- Landman fine sand
So- Sorter silt loam [Hydric]
Tk- Aris loam, heavy substratum [Hydric]
WETLAND & WATERBODY ACREAGE
Waterbodies
Wetlands
WB1 - 0.18
~~WET1 - 0.19~~ NJD
WB2 - <0.01
WET2 - 13.63
WB3 - <0.01
WB4 - 0.03
SWCA
ENVIRONMENTAL CONSULTANTS
Canyon Lakes at Spring Trails
Site Layout Map
Montgomery County, Texas
Figure 3
Approximate Property Boundary
Wetland
Waterbody
NWI Wetland
Soil
100-yr Floodplain
Data Point
Transect
Background: HGAC True-Color Imagery (2002)
0
450
900 Feet
N
Map Produced May 16, 2007
Project #: 11508-032

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

May 18, 2007

REPLY TO
ATTENTION OF:

Compliance Section

SUBJECT: **D-19076**; Jurisdictional Delineation Verification, 473-Acre Tract, Proposed Canyon Lakes at Spring Trails Subdivision, 2.68 Acres, Centennial Park Addition, City of Pearland, Brazoria County, Texas

Mr. Michael P. Souliere
Project Manager/Ecologist
SWCA Environmental Consultants
4888 Langfield Road, Suite 300
Houston, Texas 77040-6663

Dear Mr. Souliere:

This office received your request dated September 20, 2006, to verify a delineation of waters of the United States performed for Land Tejas Spring Trails, Limited. The proposed project is to construct the Canyon Lakes at Spring Trails residential subdivision. The 473-acre project tract is located south of Riley-Fuzzel Road approximately two miles east of the Hardy Toll Road in southern Montgomery County, Texas.

We concur with the revised delineation of waters of the United States received May 16, 2007. The final revised delineation indicates there are 13.86 acres of waters of the United States located within the project boundaries (see enclosed copy of the final revised delineation in one sheet). Specifically, there are 13.63 acres of adjacent wetlands that meet the hydrophytic vegetation, wetland hydrology, and hydric soils criteria of the United States Corps of Engineers (USACE) 1987 Wetland Delineation Manual and 0.23 acre of open water tributaries to Spring Creek. The wetland is contiguous with, and therefore adjacent to, Spring Creek which is a navigable water of the United States. As such, the adjacent wetland and unnamed tributaries, which together comprise a tributary system, are subject to USACE jurisdiction under Section 404 of the Clean Water Act (CWA). Therefore, **a Department of the Army permit is required to discharge dredged or fill material into the adjacent wetland and unnamed tributaries of Spring Creek located within the project boundaries.**

This verification has been conducted to identify the limits of USACE CWA jurisdiction for the particular site identified in this request. However this verification 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.

The Supreme Court handed down a decision on June 19, 2006, which addressed the scope of Clean Water Act (CWA) jurisdiction over certain waters of the United States, including

wetlands. In the near future, the EPA and USACE intend to issue joint guidance clarifying CWA jurisdiction in light of the decision. Your jurisdictional determination may be affected by this guidance. Therefore, we are issuing you a preliminary jurisdictional determination. You may request a re-determination based on the new guidance when it is issued.

This preliminary jurisdictional delineation verification is based on our February 9, 2007, and March 6, 2007, site visits, your revised delineation report, and a review of recent and historic maps; it is valid for five years from the date of this letter unless new information warrants a revision prior to the expiration date. If you have questions concerning this matter, please reference file number **D-19076** and contact me at the letterhead address or by telephone at 409-766-3933.

Sincerely,

John Davidson
South Unit Leader

DAVIDSON/jrr/3933
CESWG-PE-RC

Enclosures

Houston, Michael F SWG

From: Moni_Belton@fws.gov
Sent: Monday, March 28, 2011 10:41 AM
To: Houston, Michael F SWG
Cc: Arturo_Vale@fws.gov
Subject: Re: Discovery at Spring Trails (UNCLASSIFIED)

Flynt,

A.J. and I met with Craig Lobel, information below, the development representative. He was aware of our habitat and wetland concerns for the property. We asked if he had information from the Corps regarding jurisdiction of wetlands, he said yes, but never provided any documentation to us. Let me know if you need anything else. Thanks, Moni

Craig Lobel
EcoEdge USA
2203 Riva Row Ste 1206
Houston, TX 77380
619.804.0260
clobel@ecoedgeusa.com
www.ecoedgeusa.com

"Houston, Michael F SWG" <Michael.F.Houston@usace.army.mil>

03/28/2011 09:33 AM To
<Moni_Belton@fws.gov>
cc
Subject
Discovery at Spring Trails (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE
Hello, Moni.

Kenny and I went on a site visit at the Discovery at Spring Trails subdivision. We found some areas that met the criteria for wetlands and have some concerns with some other activities. We will be going back. Do you have a point of contact for the subdivision? Anything you have would be helpful.

Thanks,
M. Flynt Houston
Regulatory Specialist/Compliance
U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77553

Phone: 409-766-3936
Fax: 409-766-3931
"To assist us in improving our service to you, please complete the survey found at http://per2.nwp.usace.army.mil/survey.html <http://per2.nwp.usace.army.mil/survey.html> and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you."

Classification: UNCLASSIFIED
Caveats: NONE

CESWG-PE-RC (1145)

28 March 2011

MEMORANDUM FOR THE FILE

SUBJECT: **SWG-2010-00869;** Discovery at Spring Trails, Alleged Discharge of Fill Material, Montgomery County, Texas

1. The purpose of this memo is to document a site visit at the Discovery at Spring Trails residential development located in Montgomery County, Texas. This site visit occurred on 24 March 2011 and was conducted by Mr. Kenny Jaynes and Mr. Flynt Houston.

2. The first portion of our site visit was focused on an undeveloped project area that is under review by the Department of Energy for the construction of a solar energy farm. We traversed the project area and took two sample points. One sample point met the three criteria for a wetland per the Atlantic and Gulf Coastal Plains Supplement to the 1987 Army Corps of Engineers Wetland Delineation Manual. It was observed that there were potentially other areas that would meet Corps wetland criteria, however due to time constraints no other complete samples were taken. It is recommended that another site visit be conducted to assess potential violations of Section 404 of the Clean Water Act, including impacts to adjacent wetlands and jurisdictional headwaters.

M. Flynt Houston

M. Flynt Houston,
Regulatory Specialist
Compliance Section

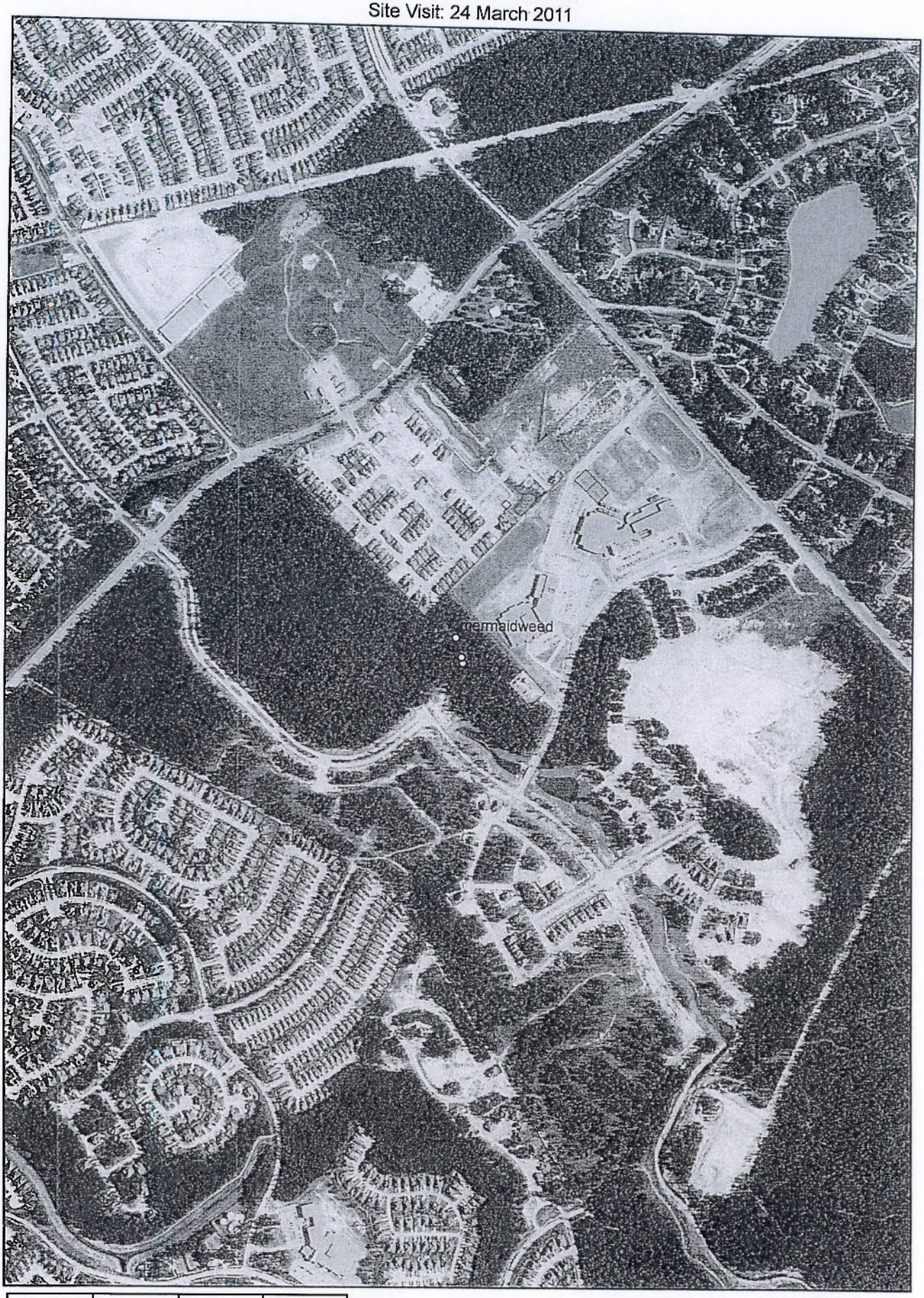
SWG-2010-00869

Site Visit: 24 March 2011

Source: 2010 NAIP (Harris County, TX)

SWG-2010-00869

Site Visit: 24 March 2011



N

0 625 1,250 2,500 Feet

WETLAND DETERMINATION DATA FORM – Atlantic and Gulf Coastal Plain Region

Project/Site: SWG-2010-00869 City/County: Montgomery Co. Sampling Date: 24 MAR 11

Applicant/Owner: Discovery at Spring Trails State: TX Sampling Point: 1

Investigator(s): K. Jaynes, F. Houston Section, Township, Range: ____

Landform (hillslope, terrace, etc.): flat Local relief (concave, convex, none): none Slope (%): —

Subregion (LRR or MLRA): LRRT Lat: 30.3824 Long: -95.3824 Datum: NAD83

Soil Map Unit Name: Tk, Aris loam, heavy substratum NWI classification: NA

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No ____ (If no, explain in Remarks.)

Are Vegetation N, Soil N, or Hydrology N significantly disturbed? Are "Normal Circumstances" present? Yes X No ____

Are Vegetation N, Soil N, or Hydrology N 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 X	No ____	Is the Sampled Area within a Wetland? Yes ____ No X
Hydric Soil Present?	Yes ____	No X	
Wetland Hydrology Present?	Yes ____	No X	

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- ___ Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Aquatic Fauna (B13)
- ___ Marl Deposits (B15) **(LRR U)**
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- ___ Drainage Patterns (B10)
- ___ Moss Trim Lines (B16)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Geomorphic Position (D2)
- ___ Shallow Aquitard (D3)
- X FAC-Neutral Test (D5)
- ___ Sphagnum moss (D8) **(LRR T, U)**

Field Observations:

Surface Water Present?	Yes ____	No X	Depth (inches): —
Water Table Present?	Yes ____	No X	Depth (inches): —
Saturation Present? (includes capillary fringe)	Yes ____	No X	Depth (inches): —

Wetland Hydrology Present? Yes ____ No X

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

Remarks:

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

Sampling Point: 1

Tree Stratum (Plot size: mod.)	Absolute % Cover	Dominant Species?	Indicator Status
1. Triadica sebifera	5	N	FAC*
2. Pinus taeda	25	Y	FAC
3. Quercus nigra	10	Y	FAC
4.			
5.			
6.			
7.			
8.			
	40 = Total Cover		
50% of total cover: ____	20% of total cover: ____		

Sapling/Shrub Stratum (Plot size: mod.)			
1. Ilex vomitoria	10	Y	FAC
2.			
3.			
4.			
5.			
6.			
7.			
8.			
	10 = Total Cover		
50% of total cover: ____	20% of total cover: ____		

Herb Stratum (Plot size: mod.)			
1. Saccharum giganteum	30	Y	FACW
2. Sabal minor	10	N	FACW
3. Polygonum hydropiperoides	2	N	OBL
4. Chasmanthium laxum	25	Y	FAC
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	67 = Total Cover		
50% of total cover: ____	20% of total cover: ____		

Woody Vine Stratum (Plot size: mod.)			
1.			
2.			
3.			
4.			
5.			
	0 = Total Cover		
50% of total cover: ____	20% of total cover: ____		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 5 (A)

Total Number of Dominant Species Across All Strata: 5 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100 (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:
OBL species	____	x 1 = ____
FACW species	____	x 2 = ____
FAC species	____	x 3 = ____
FACU species	____	x 4 = ____
UPL species	____	x 5 = ____
Column Totals:	____ (A)	____ (B)

Prevalence Index = B/A = ____

Hydrophytic Vegetation Indicators:

- ___ 1 - Rapid Test for Hydrophytic Vegetation
- ___ 2 - Dominance Test is >50%
- ___ 3 - Prevalence Index is ≤3.0[1]
- ___ Problematic Hydrophytic Vegetation[1] (Explain)

[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.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (If observed, list morphological adaptations below).

Plot size modified to area of specific community.

Triadica sebifera considered FAC in Galveston District

SOIL

Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	Matrix %	Redox Features Color (moist)	Redox %	Type[1]	Loc[2]	Texture	Remarks
0 - 4½"	10YR 3/2	100	—	—	—	—	[illegible]	
4½ - 6	10YR 6/2	95	7.5YR 5/6	5	C	M	[illegible]	[illegible]
6 - 12+	10YR 6/2	95	7.5YR 5/6	5	C	M	loam	

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains. [2]Location: 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)**
- ___ 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 Loamy Soils (F20) **(MLRA 149A, 153C, 153D)**

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) **(LRR O)**
- ___ 2 cm Muck (A10) **(LRR S)**
- ___ Reduced Vertic (F18) **(outside MLRA 150A,B)**
- ___ Piedmont Floodplain Soils (F19) **(LRR P, S, T)**
- ___ Anomalous Bright Loamy Soils (F20) **(MLRA 153B)**
- ___ Red Parent Material (TF2)
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators 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:

WETLAND DETERMINATION DATA FORM – Atlantic and Gulf Coastal Plain Region

Project/Site: [illegible] City/County: [illegible] Sampling Date: [illegible]

Applicant/Owner: [illegible] State: TX Sampling Point: [illegible]

Investigator(s): [illegible] Section, Township, Range: _____

Landform (hillslope, terrace, etc.): [illegible] Local relief (concave, convex, none): [illegible] Slope (%): —

Subregion (LRR or MLRA): LRR T Lat: 30.067 Long: -95.3854 Datum: NAD

Soil Map Unit Name: [illegible] NWI classification: N/A

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No _____ (If no, explain in Remarks.)

Are Vegetation N, Soil N, or Hydrology N significantly disturbed? Are "Normal Circumstances" present? Yes X No _____

Are Vegetation N, Soil N, or Hydrology N 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 X	No _____	Is the Sampled Area within a Wetland? Yes X No _____
Hydric Soil Present?	Yes X	No _____	
Wetland Hydrology Present?	Yes X	No _____	

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- X Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Aquatic Fauna (B13)
- ___ Marl Deposits (B15) (LRR U)
- ___ Hydrogen Sulfide Odor (C1)
- X Oxidized Rhizospheres along Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- ___ Drainage Patterns (B10)
- ___ Moss Trim Lines (B16)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Geomorphic Position (D2)
- ___ Shallow Aquitard (D3)
- X FAC-Neutral Test (D5)
- ___ Sphagnum moss (D8) (LRR T, U)

Field Observations:

Surface Water Present?	Yes _____	No X	Depth (inches): —
Water Table Present?	Yes _____	No X	Depth (inches): —
Saturation Present? (includes capillary fringe)	Yes _____	No X	Depth (inches): —

Wetland Hydrology Present? Yes X No _____

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

Remarks:

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

Sampling Point: 2

Tree Stratum (Plot size: mod.)	Absolute % Cover	Dominant Species?	Indicator Status
1. Quercus phelos	30	Y	FACW
2. Pinus taeda	20	Y	FAC
3.			
4.			
5.			
6.			
7.			
8.			
	50 = Total Cover		

50% of total cover: _____ 20% of total cover: _____

Sapling/Shrub Stratum (Plot size: mod.)			
1. Triadica sebifera	10	Y	FAC*
2. Liquidambar styraciflua	5	Y	FAC
3.			
4.			
5.			
6.			
7.			
8.			
	15 = Total Cover		

50% of total cover: _____ 20% of total cover: _____

Herb Stratum (Plot size: mod.)			
1. Polygonum hydropiperoides	7	N	OBL
2. Saccharum giganteum	30	Y	FACW
3. Smilax bona-nox	3	N	FAC
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	40 = Total Cover		

50% of total cover: _____ 20% of total cover: _____

Woody Vine Stratum (Plot size: mod.)			
1.			
2.			
3.			
4.			
5.			
	— = Total Cover		

50% of total cover: _____ 20% of total cover: _____

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 5 (A)

Total Number of Dominant Species Across All Strata: 5 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100 (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:
OBL species		x 1 =
FACW species		x 2 =
FAC species		x 3 =
FACU species		x 4 =
UPL species		x 5 =
Column Totals:	(A)	(B)

Prevalence Index = B/A = _____

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

___ 2 - Dominance Test is >50%

___ 3 - Prevalence Index is ≤3.0[1]

___ Problematic Hydrophytic Vegetation[1] (Explain)

[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.

Hydrophytic Vegetation Present? Yes X No _____

Remarks: (If observed, list morphological adaptations below).

Sample plot is approximately 10'x30' to reflect ecological community

*Triadica sebifera considered FAC in Galveston District.

SOIL

Sampling Point: 2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	Matrix %	Redox Features Color (moist)	Redox %	Type[1]	Loc[2]	Texture	Remarks
0-2	10YR 5/2	100	—	—	—	—	[illegible]	
2-6	10YR 5/2	90	7.5YR 4/4	5	C	M,PL	[illegible]	
			7.5YR 4/2	5	C	M,PL		
6-12+	10YR 5/2	70	7.5YR 4/4	30	C	M	scl	mottles [illegible]

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains. [2]Location: 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)**
- ___ Loamy Mucky Mineral (F1) **(LRR O)**
- ___ Loamy Gleyed Matrix (F2)
- X 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 Loamy Soils (F20) **(MLRA 149A, 153C, 153D)**

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) **(LRR O)**
- ___ 2 cm Muck (A10) **(LRR S)**
- ___ Reduced Vertic (F18) **(outside MLRA 150A,B)**
- ___ Piedmont Floodplain Soils (F19) **(LRR P, S, T)**
- ___ Anomalous Bright Loamy Soils (F20) **(MLRA 153B)**
- ___ Red Parent Material (TF2)
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

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

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes X No ___

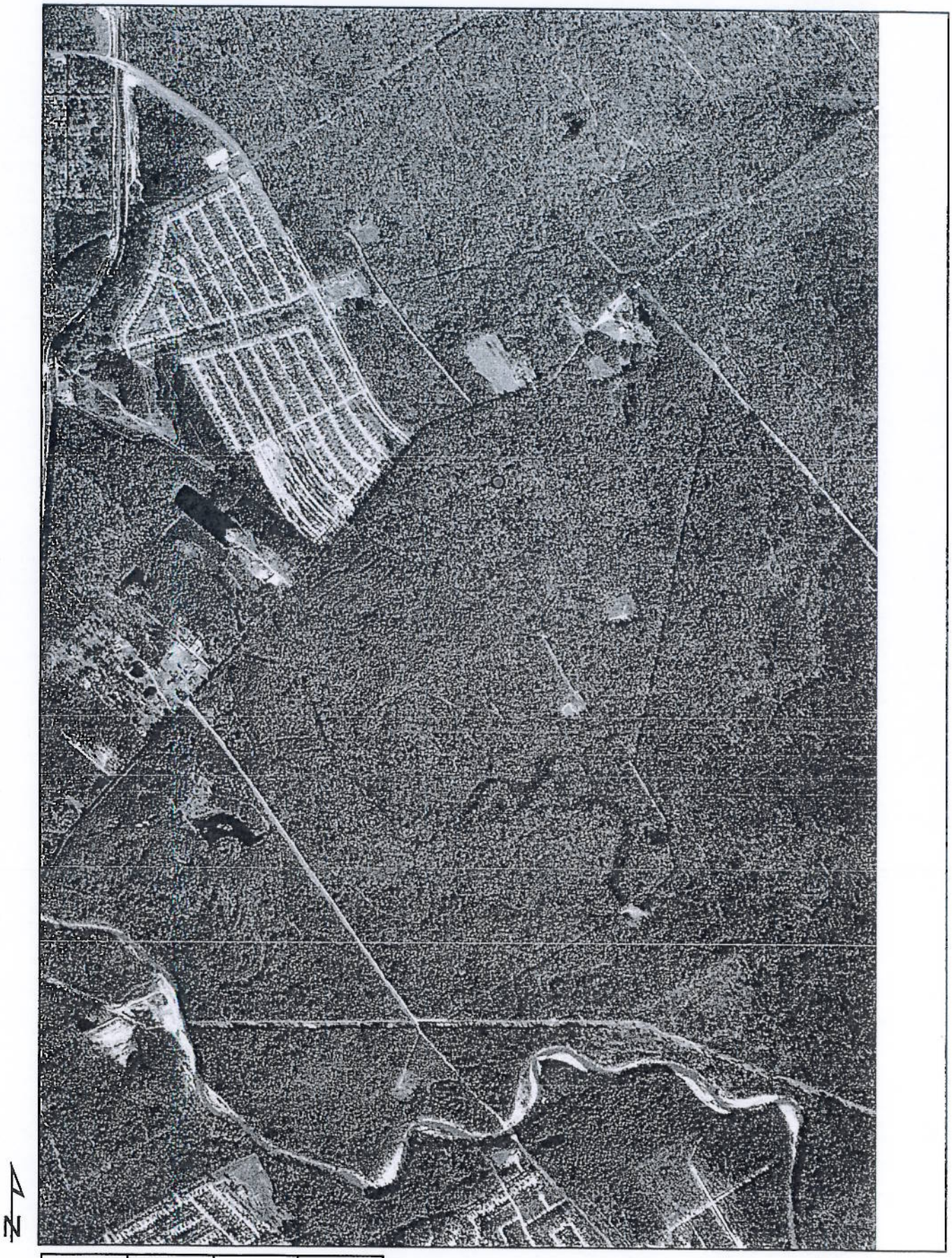
Remarks:

Soil more [illegible] below 12"

SWG-2010-00869

Site Visit: 24 MAR 11

Source: 2010 NAIP (Harris County, TX)



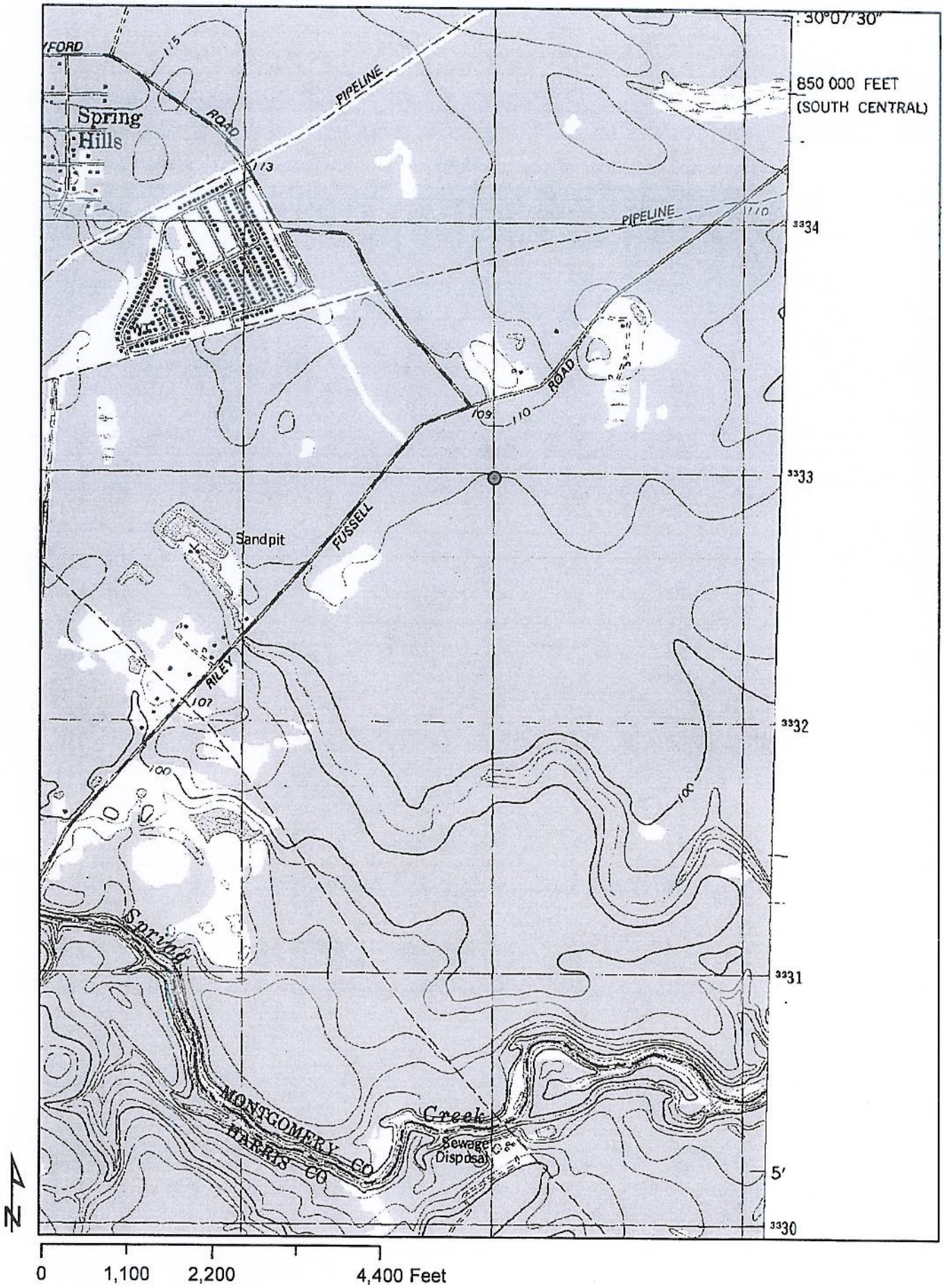
Source: 1995 DOQQ (Spring, TX)

SWG-2010-00869

N

0 1,100 2,200 4,400 Feet

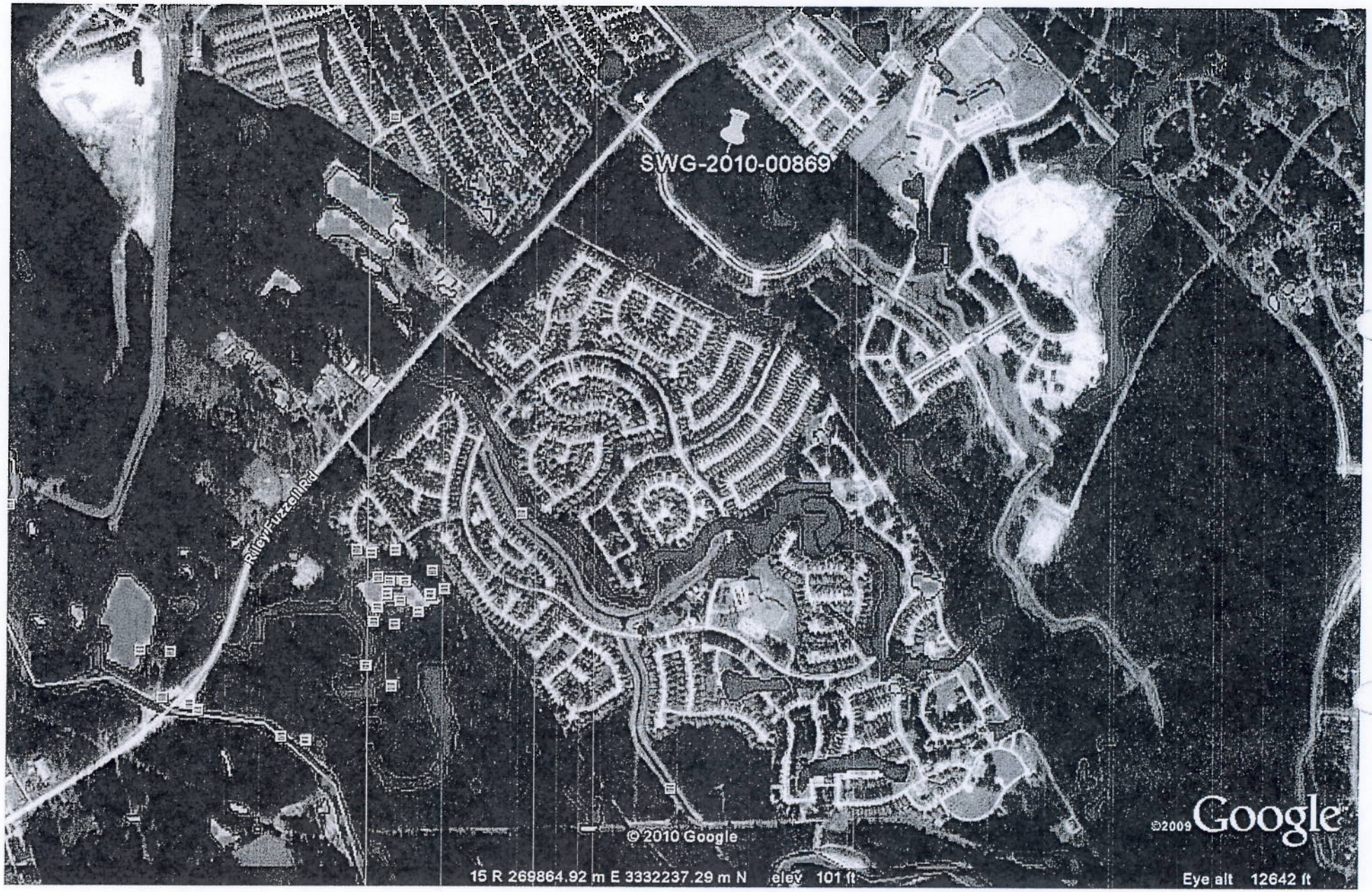
Source: 2004 NAIP (Spring, TX)



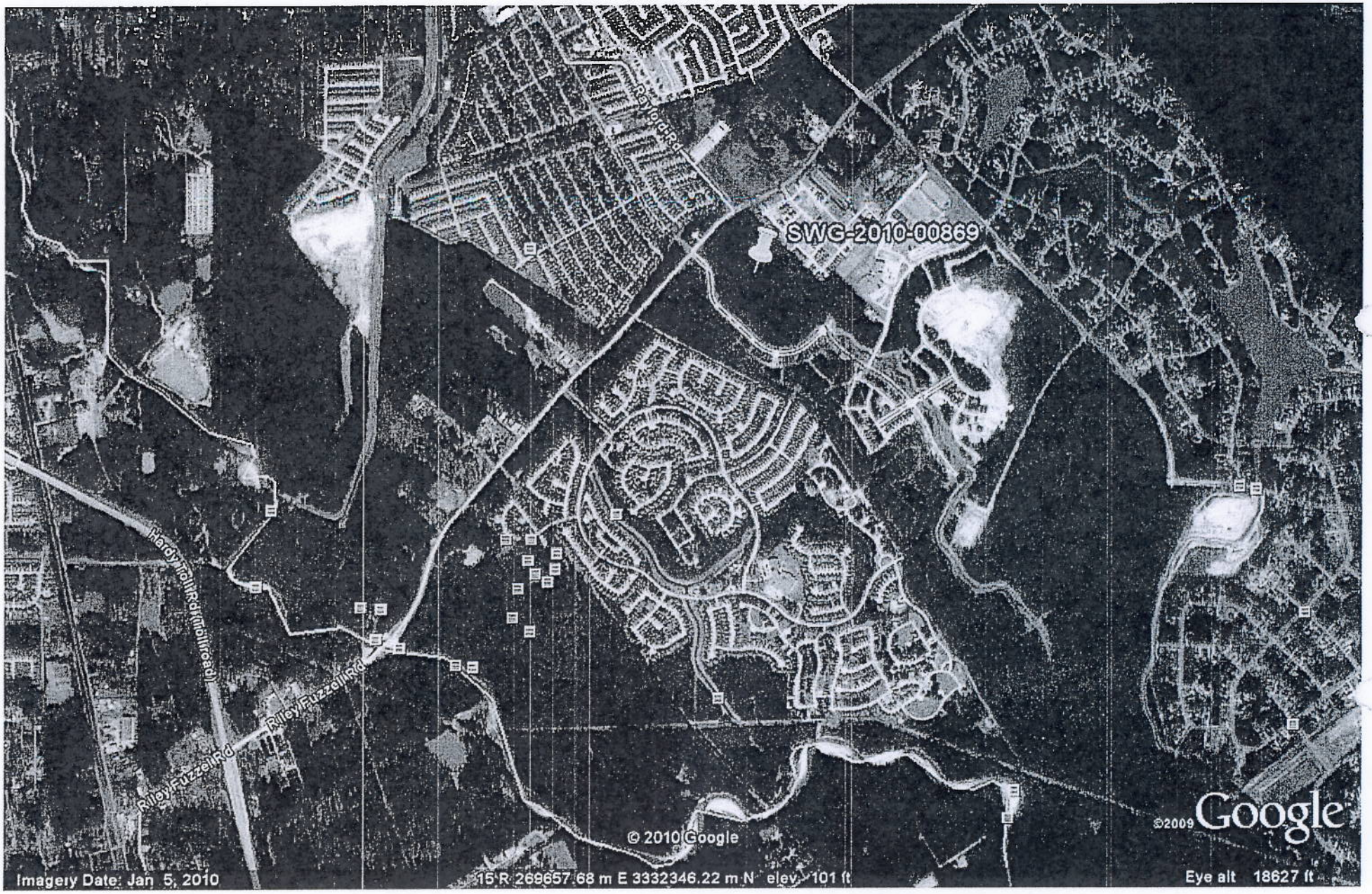
0 1,100 2,200 4,400 Feet

Source: USGS Topographic Map (Spring Quad)

SWG-2010-00869



SWG-2010-00869



SWG-2010-00869

UNAUTHORIZED ACTIVITY REPORT FORM

Reported by: USFWS (Mon Belton) Date: 9-23-10 Time:
Telephone Number: (281) 286 8282

Responsible Party: Unknown

Telephone Number: Section: 404 10 404/10 103 (circle one)

Waterbody: wetlands City: ~~[illegible]~~ County: Mont.
Location: Located SE of intersection Bayford Rd & Riley Fuzzel

Description: land clear & fill wetlands
(*NOTE FWS would like to accompany during site visit)

Report taken by: Kerry Jones

Activity assigned to: Flynt

SWG Form 467a
12 February 1996(Rev)

UNAUTHORIZED ACTIVITY RE

Reported by: USFWS (Mon Bellow) Date: 9
Telephone Number: (281) 286 8282

Responsible Party: Unknown

Telephone Number: _____ Section: 404 1

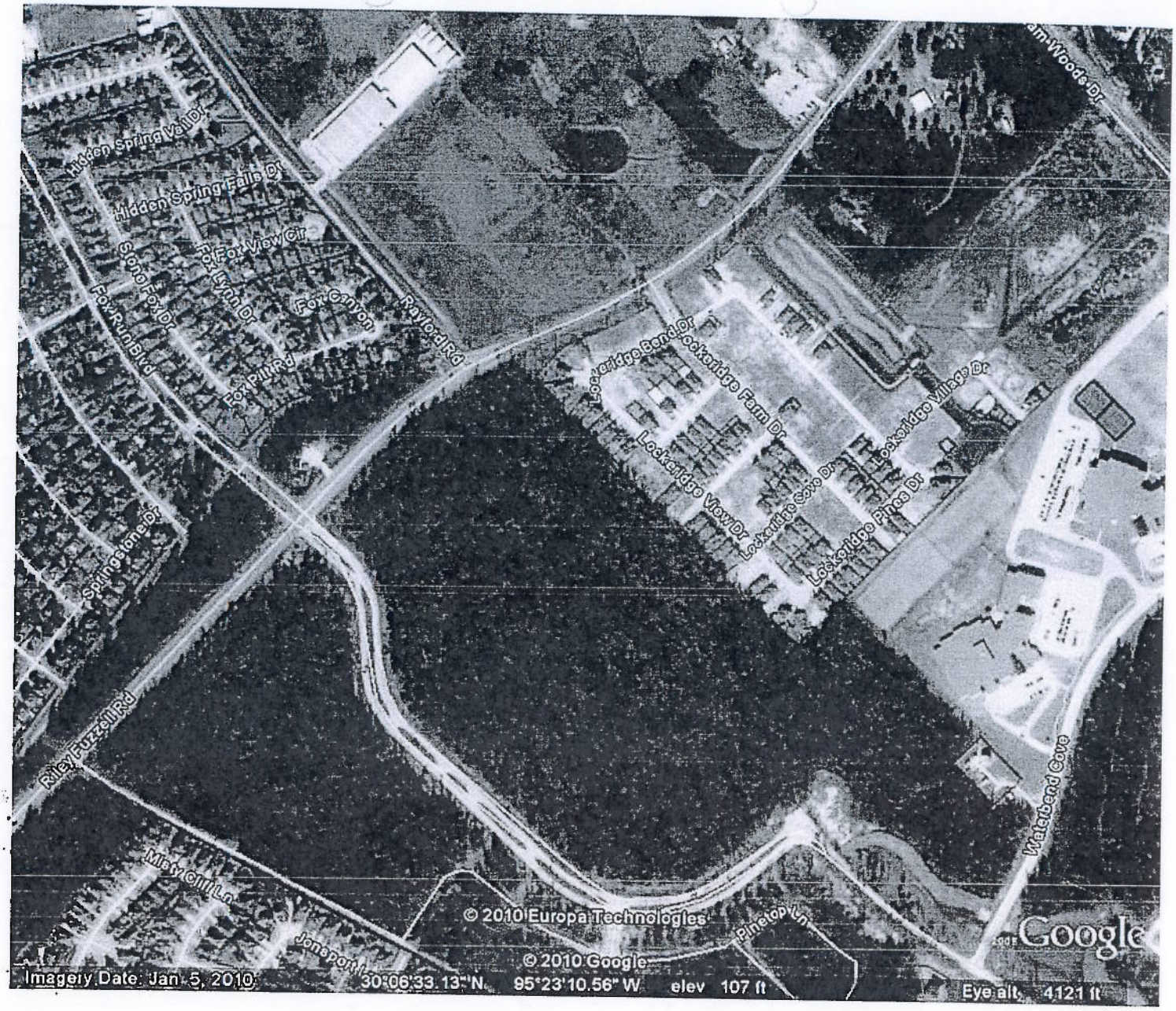
Waterbody: wetlands City: ~~Conroe~~
Location: Located SE of intersection

Description: land clear & fill
*NOTE FWS would like to accom

Report taken by: Kenny Jones

Activity assigned to: Flynt

SWG Form 467a
12 February 1996(Rev)


Hidden Spring Falls Dr
Fox View Cir
Fox Lynn Dr
Fox Canyon
Fox Run Blvd
Fox Pitt Rd
Taylorsville Rd
Lookridge Bend Dr
Lookridge Farm Dr
Lookridge Village Dr
Lookridge View Dr
Lookridge Cove Dr
Lookridge Pines Dr
Springstone Dr
Riley Fuzzell Rd
Misty Cliff Ln
Jonaport
Pinetop Ln
Waterbend Cove
© 2010 Europa Technologies
© 2010 Google
Imagery Date: Jan 5, 2010
30°06'33.13" N 95°23'10.56" W elev 107 ft
Eye alt 4121 ft
Google

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAR 16 2012

Certified Mail-Return Receipt Requested (7007 1490 0002 3734 1356)

Land Tejas Spring Trails, Ltd.
c/o Land Tejas Companies, Ltd.
Attn: James Henrie
2450 Fondren, Suite 210
Houston, Texas 77063

Re: Administrative Order, Docket Number CWA-06-2012-2718

Dear Mr. Henrie:

Enclosed is an Administrative Order ("Order") issued by the Environmental Protection Agency, Region 6 ("EPA") to Land Tejas Companies, Ltd ("Respondent") citing violations of the Clean Water Act ("Act"), 33 U.S.C. § 1251 et seq., resulting from dredged and fill activities involving wetlands located at Discovery at Spring Trails subdivision in Spring, Montgomery County, Texas ("site"). Your compliance with the provisions of this Order is required.

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant from a point source into waters of the United States without permit authorization issued under the Act. Section 309(a) of the Act, 33 U.S.C. § 1319(a), authorizes the EPA to issue administrative orders requiring compliance with the Act and regulations promulgated thereunder.

EPA has determined that Respondent violated the Act by discharging pollutants to waters of the U.S. without permit authorization. The enclosed Order requires that Respondent take certain action(s), as specified, to comply with the Act. EPA is authorized to issue an administrative order pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), including the assessment of a civil penalty, at a later date, for the violations alleged in this Order.

If you have any questions, I suggest that you contact Jim Herrington of my staff at (254) 770-6595.

Sincerely yours,

WK Honker

William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Enclosure

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

cc: Mr. Kenny Jaynes,
Galveston District Office
U.S. Army Corps of Engineers

Land Tejas Spring Trails, Ltd.
c/o Horizon Environmental Services, Inc.
Attn: Lee Sherrod
1507 South IH 35
Austin, Texas 78741

Mr. Rodney Tow
Chapter 11 Trustee
26219 Oak Ridge Drive
The Woodlands, Texas 77384

Discovery Trails, LLC
c/o Forest Financial, Ltd
407 Julie Rivers Drive
Sugarland, Texas 77478

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of:	§	
	§	Docket No. CWA 06-2012-2718
Land Tejas Spring Trails, Ltd.	§	
c/o Land Tejas Companies, Ltd.	§	
	§	Proceeding Under Section 309(a) of
	§	
	§	the Clean Water Act
Respondent	§	

ADMINISTRATIVE ORDER

I. AUTHORITY

1. The following findings of fact and conclusions of law are made and order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator has delegated the authority to issue this Order to the Regional Administrator, EPA Region 6, who has further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. Land Tejas Spring Trails, Ltd. c/o Land Tejas Companies, Ltd (Respondent), is a Texas limited partnership under the laws of the State of Texas, and therefore considered a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3. At all times relevant to the violations alleged herein, Respondent owned real property located at 2711 Riley Fuzzel Road, Spring, Texas (subject property).

4. On multiple dates between May 2007 and December 2008, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, to "discharge dredged material" and/or "discharge fill material," as defined by

Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2 from point sources, including heavy equipment, in, on and to approximately 0.5 acres of forested wetlands and approximately 4,000 linear feet of stream channels within the subject property in connection with the development of a residential subdivision. The 0.5 acre of wetlands and 4,000 feet of streams impacted by Respondent's activities are identified on the attached aerial photograph. The impacted wetlands and streams were adjacent to, hydrologically connected to, or had a significant nexus to Spring Creek, a navigable-in-fact body of water.

5. Each piece of heavy equipment used during excavation or construction activities which resulted in a discharge acted as a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

6. The dredged and fill material discharged was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

7. At all times relevant to the violations alleged herein, the wetlands and tributaries referred to in paragraph 4, *supra,* were "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

8. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the U.S., except with authorization of and in compliance with a permit issued under the Act.

9. At all times relevant to the violations alleged herein, Section 404 of the Act, 33 U.S.C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for

the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters of the U.S.

10. At no time relevant to the discharges alleged in paragraph 4, *supra*, did Respondent have a permit issued by the Corps of Engineers which authorized the discharges alleged in paragraph 4.

11. Each unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12. Based on these Findings of Fact and Conclusions of Law, EPA finds that Respondent committed the violations alleged herein.

III. ORDER

13. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority vested in Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States and to:

a. within thirty (30) days of receipt of this Order, submit a plan to the EPA for the restoration of the 0.5 acre of impacted wetlands and 4,000 linear feet of stream channels. The plan should be submitted to Jim Herrington, EPA Region 6, 808 East Blackland Road, Temple, Texas 76502-6712. Respondent shall commence implementation of the plan within 30 days following EPA's approval of the plan. If Respondent fails to submit an acceptable plan or fails to successfully implement a plan upon approval, a restoration plan will be developed by EPA which Respondent will implement within 30 days.

IV. GENERAL PROVISIONS

14. Issuance of this Order shall not be deemed an election by EPA to forego any administrative action or judicial civil or criminal action to seek penalties, fines, or other relief under the Act for the violations alleged herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

15. If EPA issues an administrative complaint, or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be ordered to pay a monetary penalty. If a criminal judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary fine and/or imprisonment.

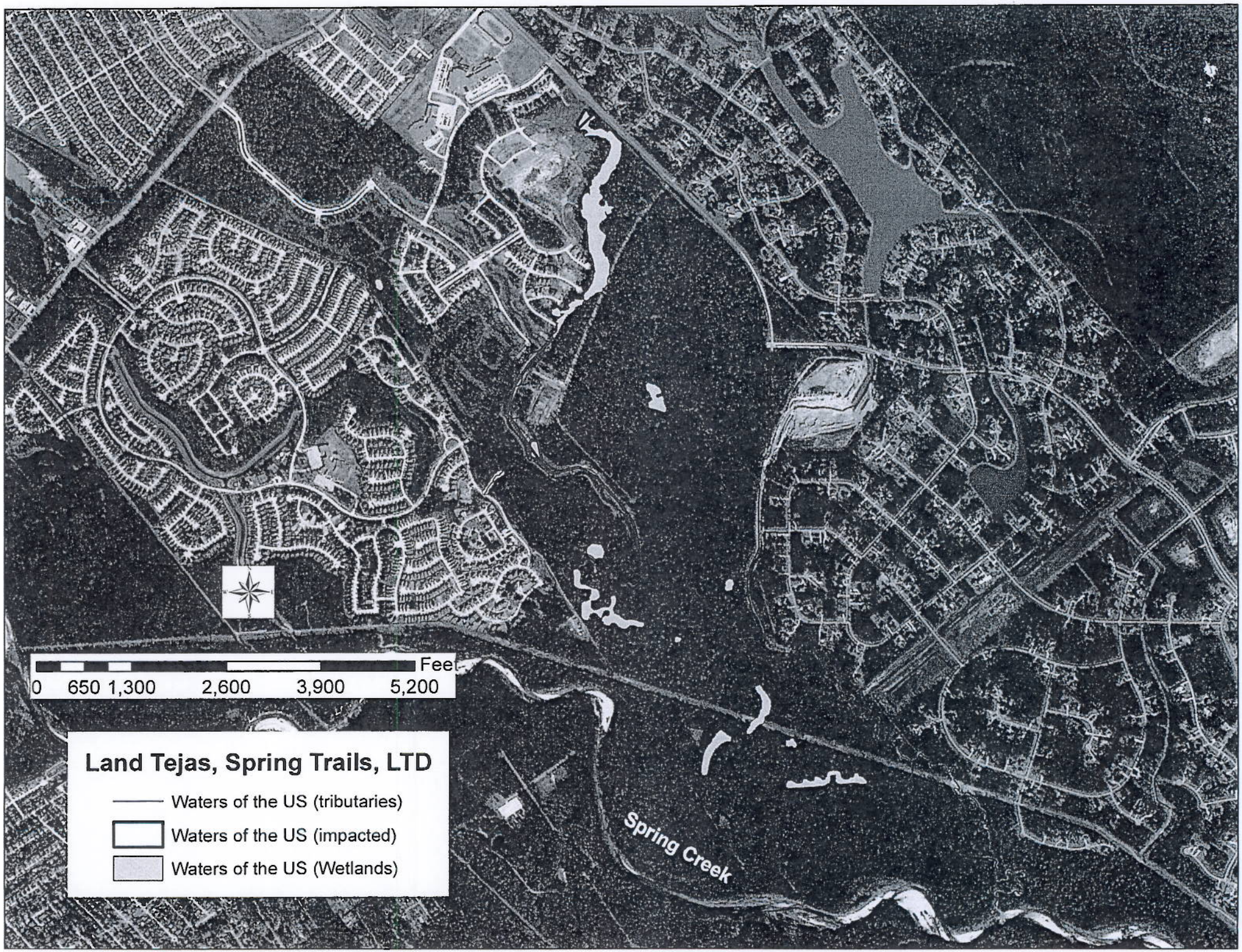
16. Failure to comply with this Order can result in civil penalties of up to $37,500 per day of violation.

17. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with all applicable local, state, and federal laws.

18. The effective date of this Order is the date it is received by Respondent.

Issued: _____

_____
William K. Honker, P.E.
Acting Director
Water Quality Protection Division


Land Tejas, Spring Trails, LTD
Waters of the US (tributaries)
Waters of the US (impacted)
Waters of the US (Wetlands)
0 650 1,300 2,600 3,900 5,200
Feet
Spring Creek

September 14, 2011 – Site visit to Discovery at Spring Trails.

G-BP-1 – A portion of WB-1 was cut-off and excavated into the new channel. Severe erosion was occuring on the left descending bank of the new channel in the vicinity of where the old channel pre-existed. The old channel remnant had an OHWM approximately 4' wide-average

G-BP-2 – same as BP-1

G-BP-3 – A wetland was incorporated into the new channel. Severe erosion on the left bank of new channel. Remnant of old channel had an OHWM approximately 4' wide average. New channel 50' top width veg. Typha latifolia & Sagittaria. Depth of old channel is 1' deep. Surrounding vegetation Sweetgum, water oak, and Yaupon.

G-BP-4 dam in new channel with 4 or 5 culverts, emergency spillway into old remnant channel. Similar vegetation as BP-3. A beaver dam has formed below the culverts.

G-BP-5 – Confluence of old and new channel. 6' wide OHWM, 0.5' deep with a clear OHWM. Veg is Polygonum hydropiperoides, Sesbania, Echinochloa, Juncus. Riparian veg is Yaupon, water oak, and pine. Some red maple & red oak.

G-BP-6 – 0.5 acre of wetland fill (Wet 2). Hydrolea ovata, Juncus, Pluchea, Buttonweed. Area was mechanized land cleared & graded but otherwise not filled.

BP-7 – Detention pond in the new channel that has replaced a portion of WB-1. Old channel – 4' OHWM, scoured bottom w/ tallow & Yaupon/Sweetgum.

Present: Lee Sherrod – Horizon Environmental, James Henkie – Land Tejas, and Michael Preiss, P.E. – Page Dawson Engineers

Jim Harrington – EPA

DATA FORM
ATYPICAL SITUATIONS

Applicant Name: Land Tejas Spring Trails, LTD Date: 9-14-2011 BP-6

Project Name: Discovery at Spring Trails Location: North side of Weitz near Birnamwood Drive.

A. VEGETATION:

1. Type of Alteration:
Mechanized Land clearing + grading.
2. Effect on the Vegetation:
Removal of trees.
3. Previous Vegetation: water oak, willow oak, loblolly pine, red maple, sabal and tallow.

DATA POINT:

4. Hydrophytic Vegetation? YES ✓ NO ____

B. HYDROLOGY:

1. Type of Alteration:
Slight drainage from a constructed ditch.
2. Effect on the Hydrology:
Minimal drainage.
3. Previous Hydrology: ponding + saturation.

DATA POINT: indicators: some fluting, sediment + C4.

4. Wetland Hydrology? YES ✓ NO ____

C. SOILS:

1. Type of Alteration:
Some grading + mixing of soil + tree root removal.
2. Effect on the Soils:
Compaction + dessication from loss of veg.
3. Previous Soils:
Hydric, F-3

DATA POINT:

Depth Inches	Munsell Matrix Color	Mottle Color	Mottle Abundance	Texture
0-18"	10YR 5/3	7.5YR 4/6	2%	Sandy loam - clay loam
				problematic.

4. Hydric Soils? YES ✓ NO ____

Draft - For Attorney Review - Do Not Release Land Tejas

PENALTY CALCULATION FOR 404 VIOLATION

STEP	No Action	Notes/Assumptions	Restored	Notes/Assumptions
ECONOMIC BENEFIT			0	
1. Use BEN to calculate econ. benefit =				
GRAVITY				
Set Multiplier (500/1,500/3k - 10k)			500	
A Factors (Scale 0-20)				
Harm to Human Health or Welfare			1	
Extent of Aquatic Env Impact			1	
Severity of Impacts to Aquatic Env			1	
Unique/Severity of Affected Resource			1	
Secondary or Off-Site Impacts			5	
Duration of Violation			5	
B Factors (0-20)				
Degree of Culpability			1	
Compliance History of the Violator			1	
Need for Deterrence			1	
2. Preliminary Gravity (A + B) x M		17x500	8,500	
ADJUSTMENTS TO GRAVITY				
a. Recalcitrance (+ 0 - 200%)			0	
b. Quick Settlement (-10%)	-10%	-10%	-10%	-10%)
c. Other Factors As Justice May Require				
3 d. FINAL ADJUSTMENTS (3a+3b+3c)			850	
4. PRELIMINARY PENALTY (1+2+3d)			7,650	
Litigation Considerations (-10%)				
Inability to Pay				
Penalty Settlement Bottom-Line			7,650	
Proposed Penalty (To start negotiations)			37,500	