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): 8/3/2021
ORM Number: SWG-2021-00073
Associated JDs: N/A
Review Area Location[1]: State/Territory: Texas City: Rockport County/Parish/Borough: Aransas
Center Coordinates of Review Area: Latitude 28.077638 Longitude -97.083292

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
S-10	1.63	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	Copano Bay is listed on the Galveston District's List of Navigable Waters and is subject to the daily ebb and flow of the tide.

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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	0.04	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 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.

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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	.50	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This wetland feature abuts/touches Salt Lake, which is a tidal, perennial (a)(1) water. Therefore, per 33 CFR 328.3(c), the wetland is abutting to navigable waters (Salt Lake) and is subject to jurisdiction under Section 404 of the CWA
Wetland 1A	0.08	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This wetland feature abuts/touches Salt Lake, which is a tidal, perennial (a)(1) water. Therefore, per 33 CFR 328.3(c), the wetland is abutting to navigable waters (Salt Lake) and is subject to jurisdiction under Section 404 of the CWA

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 2	0.11	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
Wetland 3	0.36	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
Wetland 4	0.68	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
Wetland 5	0.04	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1)

[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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				– (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
Wetland 6	0.99	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
Wetland 7	0.06	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) – (a)(3) water; is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year; is physically separated from an (a)(1) – (a)(3) water only by an artificial barrier, or similar artificial structure.
S-10	1.63	acre	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The feature is a constructed or excavated channel used to convey water. The ditch does not meet the definition of an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. The ditch does not relocate a tributary nor is it constructed in a tributary. This feature was observed to be an excavated feature constructed in uplands and is not inundated by a water of the U.S. in a typical year.

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: Wetland delineation submitted by Belaire 7 June 2021

This information is and is not sufficient for purposes of this AJD.
Rationale: The Corps cannot verify the validity of submitted documents until the completion of the AJD determination.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: Site photos and Google Earth aerial (1951,1972,1995,2007,2009,2020) submitted by Belaire on 7 June 2021

☐ Corps site visit(s) conducted on: Date(s).

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

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

☒ USDA NRCS Soil Survey: Web Soil Mapper (San Patricio and Aransas County) submitted by Belaire on 7 June 2021

☒ USFWS NWI maps: NWI (Sunset Shore Development) submitted by Belaire on 7 June 2021

☒ USGS topographic maps: USGS QUAD Map: Rockport 2019, Texas, submitted by Belaire on 7 June 2021

Other data sources used to aid in this determination:

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Data Source (select)	Name and/or date and other relevant information
USGS Sources	LIDAR (Sunset Shores Development) submitted by Belaire on 7 June 2021
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	FEMA Panel 48007C0240G Effective 17 February 2016 submitted by BEI on 4 May 2021

B. Typical year assessment(s): BEI delineated the High Tide Line (HTL) and Mean High Water Line (MHWL) along the canal's shoreline to assist with a jurisdictional evaluation of on-site wetlands consistent with the 2020 Navigable Waters Protection Rule (NWPR). NOAA's closest tidal gauge to Copano Bay is at Rockport (Station ID # 8774770) (approximately 1.7 miles east of the review area), the Mean High Water (MHW) (defined as the average of the month with the highest occurence in one calendar year over a 18.5-year period that was observed using the most recent recorded National Tidal Data from 2000 to 2020) for Aransas Bay is 1.61 feet NAVD88. HTL elevation was determined to be +2.65 feet NAVD 88 for the project area. The lowest elevation point within the review area for Wetlands 2,3,4,5,6, and 7 is listed as +6 feet well above the +2.65 HTL elevation average.

C. Additional comments to support AJD: There is approximately total of 0.58 acre of emergent wetlands (Wetland 1 (0.08 acre) and Wetland 1-A (0.50 acre) contiguous with the shoreline of the channel within the review area. Under normal circumstances these wetlands exhibit a predominance of hydrophytic vegetation, wetland hydrology, and hydric soils, as defined in the 1987 Corps of Engineers Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement (Version 2.0). Therefore, per 33 CFR 328.3(c) these wetlands are adjacent to navigable waters (Salt Lake) and are subject to jurisdiction under Section 404 of the Clean Water Act (CWA).

Wetlands 2,3,4,5,6, and 7 are not considered abutting and are separated from the closest WOUS by only one natural barrier that does not allow a direct surface hydrologic connection due to their geomorphic positions (wetlands 2 thru wetland 7) located above the flood elevation for Salt Lake. Based upon LiDAR elevations, these wetlands are positioned at elevations higher than the HTL elevation of +1.61 feet NAVD 88 and therefore would not be inundated by a WOUS during a typical year. Review of current and historical aerial photographs, LiDAR data, and topographic maps support that these wetland features are not flooded by the canal in a typical year even prior to site disturbances. Even following atypical circumstances such as Hurricane Harvey, which had reported significant tidal surge in Copono Bay, inundation of these wetlands was not observed on aerial imagery. Hydrology at these wetland features likely occurs only as a result of precipitation and potentially a high-water table during times of excessive rainfall. Wetlands 2 through 7 would are not considered jurisdictional WOUS under the 2020 NWPR.

There is approximately 1.63 acres of open waters (S-10) within the review area that is subject to the ebb and flow of the tide.