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): 8/30/2021
ORM Number: SWG-2013-01011
Associated JDs: N/A
Review Area Location[1]: State/Territory: Texas City: Port Aransas County/Parish/Borough: Nueces
Center Coordinates of Review Area: Latitude 27.808513 Longitude -97.079058

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.	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.	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.	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.	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.	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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
PEM-1	0.05	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-2	0.01	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-3	0.05	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-4	0.13	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-5	0.34	acre(s)	(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).	PEM-5 is an upland man-made drainage ditch not constructed in a (c)(1) or (a)(4). This ditch is not a water of the US. PEM-5 is an area drainage ditch that drains stormwater runoff from nearby residential area.

[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
PEM-6	0.01	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-7	1.20	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-8	7.63	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-9	0.12	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-10	0.02	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.
PEM-11	0.13	acre(s)	(b)(1) Non-adjacent wetland.	This 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 not physically separated from an (a)(1) – (a)(3) water only by a natural berm, bank, dune, or similar natural feature; or is not physically separated from an (a)(1) – (a)(3) water only by an artificial dike, barrier, or similar artificial structure.

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: ERGIS, 21 Jan 2021
  This information is and is not sufficient for purposes of this AJD.
  Rationale: Corps site visit was necessary to confirm consultant's delineation and reported site conditions.
- ☐ Data sheets prepared by the Corps: Title(s) and/or date(s).
- ☒ Photographs: Aerial and Other: Google Earth 31 Jan 2020; Corps site visit, 5 May 2021
- ☐ Corps site visit(s) conducted on: 5 May 2021
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): SWG-2013-01011, 11 Jun 2015
- ☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.
- ☐ USDA NRCS Soil Survey: Title(s) and/or date(s).
- ☒ USFWS NWI maps: Wetland Mapper, accessed 31 Aug 2021
- ☒ USGS topographic maps: Port Aransas, Texas; 2016

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Port Aransas, Texas topographical map, 2016; US Geological Survey National Map LIDAR data flown 2018. Elevation in Meters (NAVD88). LiDAR elevation readings in the review area are shown to be within 8 centimeters of elevation difference from the National Geodetic Survey's "2R8 A" Benchmark, located approximately 2600 feet northwest of the review area boundary.
USDA Sources	N/A.
NOAA Sources	N/A
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	FEMA/FIRM panel 4854980006F, 30 Sep 1992

B. Typical year assessment(s): Per NOAA's tidal gauge at Port Aransas (the closest tidal gauge representative of the Gulf of Mexico to the review area), the Mean Monthly Maximum Tide (October receiving the highest reading) measured at NOAA's Port Aransas Tidal Gauge (8775237) between 2012 and 2020, is 0.882 meter (2.89 feet) NAVD88, approximately 3.11 feet lower than the lowest portion of all the wetlands in the review area except PEM- 5, and therefore, not a source for inundation in a typical year for those wetlands. For PEM-5, Lidar data indicates that its elevation is 0.61 meter, which is low enough to receive inundation during the seasonal high tides of a typical year; however, upland ditches are excluded waters (see II.D. above).

C. Additional comments to support AJD: We found PEM-5 in the Review area flooded at the time of the Corps site visit due to seasonal high tide inundation from Corpus Christi Bay with marine species present (e.g. Clibanarius vittatus, Cyprinodon variegatus). Accordingly, we determined that PEM-5 is subject to Section 404. The FEMA/FIRM map for this area shows the entire Review Area to be in Zone AE, which is within the 100-year flood zone for the Gulf of Mexico (GOM) and Corpus Christi Bay (CCB). However, the Review Area is separated from the GOM, the closest (a)(1) Water, by more than a single natural or man-made barrier. The Review Area is also separated from CCB by more than a single natural barrier, except

for PEM-5 which connects directly to CCB via a drainage canal. Tidal inundation of the surrounding wetlands by PEM-5 is blocked by the artificial barrier along the banks of PEM-5 formed by the sidecast material when PEM-5 was excavated. The source of hydrology for the wetlands surrounding PEM-5 appears to be precipitation runoff from the surrounding area and/or from percolated groundwater associated with a high water table.