

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

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12 August 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2021-00163, Port of Corpus Christi Authority, McCampbell Tract, Aransas Pass, San Patricio County, Texas

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Texas County/Parish: San Patricio City: Aransas Pass

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. See waters table in Section IV B° N, Long.° W;

Universal Transverse Mercator: UTM: , Pick List, Pick List, NAD:

Name of nearest water body: McCampbell Slough

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Port Bay

Name of watershed or Hydrologic Unit Code (HUC): 12100405, Aransas Bay

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- ☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

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

- ☒ Office (Desk) Determination. Date: 11 July 2022
- ☒ Field Determination. Date(s): 29 October 2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[Required]**

- ☒ Waters subject to the ebb and flow of the tide.
 - ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

- ☒ TNWs, including territorial seas
- ☒ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or 9.31 acres

Wetlands: 1,581.65 acres

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual.

Elevation of established OHWM (if known):

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

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

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

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

S1DF-1 is a non-tidal drainage ditch that was excavated from uplands and best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(a) non-tidal drainage and irrigation ditches excavated on dry land."

SPond-1, SPond-2, SPond-5, and SPond-7 are stock ponds excavated from uplands best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing."

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW: **Port Bay**

Summarize rationale supporting determination: Port Bay is a Traditionally Navigable Water (TNW), subject to the ebb and flow of the tide, and bound by the Mean High Water Line (MHW, +1.01 ft NAVD88). Tidal wetlands (S2WET-02T, S2WET-03T, S2DF-1T, S2DF-2T, and S2WET-04T) are subject to the ebb and flow of the tide and below the MHW (1.01 ft NAVD88).

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: Wetlands (AWET-05, OPNWTR, S1WET-02A, S1WET-02B, S1WET-03A, S1WET-03B, S1WET-03C, S1WET-04, S1WET-05, S1WET-07, S2DF-3, S2DF-5, S2WET-01, S2WET-02, S2WET-03, S2WET-04, S2WET-05, S2WET-06, S2WET-07, S2WET-08, S2WET-09, S2WET-10, S2WET-11, S2WET-13, S2WET-14A, S2WET-14B, S2WET-14C, S2WET-15, S2WET-16, S2WET-17, S2WET-18, S2WET-19, S2WET-22, SPond-3, SPond-4, SPond-6, S1DF-2, S2DF-2, S2DF-1A, S2DF-1B, AWET-01, AWET-02, AWET-03, AWET-04, S2WET-12, S2WET-20, S2WET-21) are subject to USACE jurisdiction because they are adjacent to a TNW (first section of McCampbell Slough) subject to the ebb and flow of the tide or within the 100 year floodplain.

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

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

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

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

If the water body⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) General Area Conditions:

Watershed size: **Pick List**
Drainage area: **Pick List**

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

Average annual rainfall: inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

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

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

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

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

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

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

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

- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|---|---|
| ☐ Bed and banks | |
| ☐ OHWM ⁶ (check all indicators that apply): | |
| ☐ clear, natural line impressed on the bank | ☐ the presence of litter and debris |
| ☐ changes in the character of soil | ☐ destruction of terrestrial vegetation |
| ☐ shelving | ☐ the presence of wrack line |
| ☐ vegetation matted down, bent, or absent | ☐ sediment sorting |
| ☐ leaf litter disturbed or washed away | ☐ scour |
| ☐ sediment deposition | ☐ multiple observed or predicted flow events |
| ☐ water staining | ☐ abrupt change in plant community |
| ☐ other (list): | |
| ☐ Discontinuous OHWM. ⁷ Explain: | |

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

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

⁷ Ibid.

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

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

(iii) Chemical Characteristics:

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

Explain:

Identify specific pollutants, if known:

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

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

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

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

Surface flow is: **Pick List**

Characteristics:

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

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

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

(d) Proximity (Relationship) to TNW

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

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

Flow is from: **Pick List**.

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

(ii) **Chemical Characteristics:**

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

Identify specific pollutants, if known:

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

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

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

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

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

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

☒ TNWs: linear feet width (ft), Or, 9.31 acres.

☒ Wetlands adjacent to TNWs: 1,581.65 acres.

2. **RPWs that flow directly or indirectly into TNWs.**

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

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

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

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

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

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

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

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

☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

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

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

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

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

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

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

Provide estimates for jurisdictional wetlands in the review area: acres

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

Identify water body and summarize rationale supporting determination:

⁸See Footnote # 3.

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

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

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

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

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

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☐ Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
 - ☒ Other: (explain, if not covered above): **S1DF-1 is a non-tidal drainage ditch that was excavated from uplands**

and best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(a) non-tidal drainage and irrigation ditches excavated on dry land."

SPond-1, SPond-2, SPond-5, and SPond-7 are stock ponds excavated from uplands best described in the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), which states, "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States...(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing."

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

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

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

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

SECTION IV: DATA SOURCES.

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

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Wetland delineation report submitted by consultant, dated March 2021 and updated July 2021**
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters’ study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data
 - ☒ USGS 8 and 12 digit HUC maps
- ☐ Galveston District’s Approved List of Navigable Waters
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1925: 1:62,500 Aransas Pass; 1950: 1:250,000 Corpus Christi; 1954: 1:24,000 Aransas Pass; 1956: 1:250,000 Corpus Chirsti; 1960 1:250,000 Corpus Christi; 1971: 1:250,000 Corpus Christi; 2010 1:24,000 Aransas Pass; 2019: 1:24,000 Aransas Pass**

- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey; (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>), accessed 1 June 2022.
- ☒ National wetlands inventory map(s). Cite name: FWS NWI Online Mapper.
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: Panel Number 48409C0465E 4 November 2016
- ☒ 100-year Floodplain Elevation is: +11 feet (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): DigitalGlobe (DG) 20 June 2021; and Google Earth (GE) 1949, 1956, 1961, 1985, 1995, 2003, 2009, and 2020
- or ☒ Other (Name & Date): Photographs from Field Determination, October 2021
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Texas Strategic Mapping Program (StratMap). Middle Coast Lidar, 22 March 2018, Light Detection and Ranging (LiDAR), 1.0-meter Bare Earth Digital Elevation Model (DEM), North American Vertical Datum (NAVD) 1988 (meters).

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Waters Table:

Waters_Name	Latitude	Longitude	Cowardin	Wetland_Acreage	JD_Class
AWET-05	27.88751	-97.22110	PEM	1.563	Jurisdictional
OPNWTR	27.92615	-97.18910	PUB	0.341	Jurisdictional
S1DF-2	27.91048	-97.22680	PEM	0.025	Jurisdictional
S1WET-02A	27.91500	-97.22345	PEM	13.389	Jurisdictional
S1WET-02B	27.91223	-97.22278	PEM	48.200	Jurisdictional
S1WET-03A	27.91087	-97.22909	PEM	4.746	Jurisdictional
S1WET-03B	27.91134	-97.22757	PEM	10.586	Jurisdictional
S1WET-03C	27.90821	-97.22630	PEM	33.040	Jurisdictional
S1WET-04	27.91119	-97.22615	PEM	0.759	Jurisdictional
S1WET-05	27.90931	-97.22004	PEM	5.046	Jurisdictional
S1WET-07	27.90695	-97.21931	PEM	0.575	Jurisdictional
S2DF-2	27.92517	-97.18498	PEM	0.466	Jurisdictional
S2DF-5	27.90329	-97.19986	PEM	0.425	Jurisdictional
S2WET-01	27.92413	-97.20388	PEM	201.478	Jurisdictional
S2WET-02	27.92584	-97.19227	PEM	111.517	Jurisdictional
S2WET-03	27.92706	-97.18558	PEM	24.762	Jurisdictional
S2WET-04	27.92429	-97.18735	PEM	33.594	Jurisdictional
S2WET-05	27.92019	-97.21388	PEM	7.797	Jurisdictional
S2WET-06	27.91880	-97.21256	PEM	1.922	Jurisdictional
S2WET-07	27.91506	-97.19795	PEM	356.643	Jurisdictional
S2WET-08	27.91120	-97.19360	PEM	6.576	Jurisdictional
S2WET-09	27.90660	-97.19726	PEM	15.195	Jurisdictional
S2WET-10	27.90737	-97.19505	PEM	10.336	Jurisdictional
S2WET-11	27.90616	-97.19635	PEM	0.847	Jurisdictional
S2WET-13	27.90474	-97.19724	PEM	6.740	Jurisdictional
S2WET-14A	27.90023	-97.21088	PEM	544.812	Jurisdictional
S2WET-14B	27.91653	-97.21961	PEM	14.312	Jurisdictional
S2WET-14C	27.91620	-97.22125	PEM	0.604	Jurisdictional
S2WET-15	27.90506	-97.20004	PEM	1.132	Jurisdictional
S2WET-16	27.90330	-97.19939	PEM	10.284	Jurisdictional
S2WET-17	27.90306	-97.20150	PEM	12.967	Jurisdictional
S2WET-18	27.90195	-97.20327	PEM	3.067	Jurisdictional

S2WET-19	27.89544	-97.20446	PEM	47.781	Jurisdictional
S2WET-22	27.88914	-97.20729	PEM	3.972	Jurisdictional
SPond-3	27.91128	-97.22630	PUB	0.278	Jurisdictional
SPond-4	27.90812	-97.21373	PUB	0.337	Jurisdictional
SPond-6	27.92078	-97.19058	PUB	0.211	Jurisdictional
S2DF-1A	27.89807	-97.20454	PEM	9.651	Jurisdictional
S2DF-1B	27.91438	-97.19325	PEM	9.190	Jurisdictional
AWET-01	27.91481	-97.20526	PEM	0.140	Jurisdictional
AWET-02	27.89635	-97.20204	PEM	1.900	Jurisdictional
AWET-03	27.89637	-97.20037	PEM	0.441	Jurisdictional
AWET-04	27.89675	-97.20075	PEM	0.398	Jurisdictional
S2WET-12	27.90596	-97.19181	PEM	7.677	Jurisdictional
S2WET-20	27.89956	-97.19929	PEM	0.993	Jurisdictional
S2WET-21	27.89926	-97.19815	PEM	3.588	Jurisdictional
S2DF-1T	27.92594	-97.18840	PEM	3.013	Jurisdictional
S2DF-2T	27.92650	-97.18723	PEM	0.180	Jurisdictional
S2WET-02T	27.92820	-97.18787	E2EM	1.928	Jurisdictional
S2WET-03T	27.92828	-97.18667	E2EM	4.045	Jurisdictional
S2WET-04T	27.92594	-97.18828	E2EM	0.139	Jurisdictional
S1DF-1	27.90836	-97.22974	Ditch	0.123	Non-Jurisdictional
SPond-1	27.91436	-97.22950	PUBx	0.076	Non-Jurisdictional
SPond-2	27.91465	-97.22870	PUBx	0.598	Non-Jurisdictional
SPond-5	27.91924	-97.22109	PUBx	0.665	Non-Jurisdictional
SPond-7	27.90578	-97.19279	PUBx	0.239	Non-Jurisdictional

On a separate AJD form dated 22 June 2022, two isolated wetlands (S1WET01 and S1WET06) found to be non-jurisdictional are recorded with concurrence received from EPA 5 July 2022.

Three drainage ditches on the property (S2DF-3, S2DF-4, and S2DF-7) were reviewed separately under a preliminary jurisdictional determination (PJD), dated 30 August 2021 and are considered jurisdictional under Section 404 of the Clean Water Act.

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

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12 August 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2021-00163, Port of Corpus Christi Authority, Isolated Wetlands S1WET01 and S1WET06, Approved Jurisdictional Determination, Aransas Pass, San Patricio County, Texas

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Texas** County/Parish: **San Patricio** City: **Aransas Pass**

Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. **See Feature Wetland Locations listed in Section IV B.** ° N, Long. ° W;

Universal Transverse Mercator: UTM: , N., E., NAD:

Name of nearest water body: **McC Campbell Slough**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **N/A**

Name of watershed or Hydrologic Unit Code (HUC): **12100405; Aransas Bay**

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

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

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

☒ Office (Desk) Determination. Date: **1 June 2022**

☒ Field Determination. Date(s): **29 October 2021**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

☐ Waters subject to the ebb and flow of the tide.

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

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[Required]**

1. Waters of the U.S.

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

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

Wetlands: acres

c. Limits (boundaries) of jurisdiction based on: **Not Applicable.**

Elevation of established OHWM (if known):

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

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

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



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

There are two (2) depressional isolated wetlands comprising approximately 2.88 acres within the subject site. The nearest water is McCampbell Slough, a TNW, located approximately 7,200 linear feet east of the subject site.

McCampbell Slough maintains a tidal connection to Port Bay, also a TNW at this location.

Based on a review of multiple exhibits, the 2018 Texas StratMap 1.0-meter light detection and ranging (LiDAR) bare earth digital elevation model, topographical maps, historical aeriels, the U.S. Fish and Wildlife Service National Wetland Inventory map, the U.S. Department of Agriculture National Cooperative Soil Survey (NCSS) map data, and the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), there appear to be no discrete surface hydrological connections between the subject wetlands and any water of the U.S. The exact boundaries (as standard with isolated wetlands) were not verified, but the feature polygons were examined via aerial photography and LiDAR elevation data to ensure that they are closed polygons surrounded by uplands.

- The subject wetlands are all located outside the 1% annual flood risk zone (100-year floodplain) of any water of the U.S.
- The subject wetlands are neither currently used, nor have been used in the past, nor susceptible to use for interstate or foreign commerce
 - The subject wetlands are not subject to the ebb and flow of the daily tide.
 - The subject wetlands do not cross interstate or tribal boundaries.
 - There are no indications that these "Isolated*" wetlands would 1) affect or be used by any interstate or foreign travelers for recreational or other purposes, 2) affect or be used for fish or shellfish that could be taken and sold in interstate or foreign commerce, or 3) be involved in any direct current use or potential use for industrial purposes by industries in interstate commerce.
 - The subject wetlands are not impoundments of any water of the U.S.
 - The subject wetlands are not part of a surface tributary system to any water body.
 - The subject wetlands are not part of the territorial seas.
- The subject wetlands are not located "Adjacent**" to waters of the U.S. (other than waters that are themselves wetlands).
- The subject wetlands are not located reasonably close to a water of the US as to infer it is "ecologically adjacent"; for the wetlands to be determined to "reasonably close", they must be in a geomorphic position such that an ecologic interconnectivity is beyond speculation or insubstantial for a known biologic species that requires both, the subject wetlands and the nearest known waterbody (a known water of the U.S. other than an adjacent wetland) to fulfill spawning and/or life cycle requirements. There are no known species in this geo-region that require both these wetlands under review and the nearest known waterway to fulfill their life cycle requirements, therefore these wetlands are ecologically isolated.

*33 CFR 330.2 (e): Isolated waters means those non-tidal waters of the U.S. that are:

(1) Not part of a surface tributary system to interstate or navigable waters of the US; and

(2) Not adjacent to such tributary waterbodies.

** 33 CFR 328.3 (a)(7) adjacent wetlands: Federal regulations, specifically 33 CFR 328.3 c) defines "ADJACENT" as: bordering, contiguous or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

In summary, the subject wetlands have been identified per the Atlantic and Gulf Coastal Plain Region Supplement of the 1987 Corps of Engineers Wetland Delineation Manual. The subject wetlands are not inseparably bound to a water of the U.S., are not adjacent to any water of the U.S., and do not have a discrete hydrological surface connection to any water of the U.S. The site wetlands are "isolated" with no known nexus to interstate commerce and as such it is the Corps draft determination that the subject site wetland would not be subject to federal jurisdiction under Section 404 of the Clean Water Act (Section 404) or Section 10 of the Rivers and Harbors Act (Section 10).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

If the water body⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) **General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☐ Tributary flows directly into TNW.

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

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

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

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

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

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

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

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

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

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

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

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

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

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

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

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

☐ Dye (or other) test performed:

Tributary has (check all that apply):

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

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

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

(iii) **Chemical Characteristics:**

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

Explain:

Identify specific pollutants, if known:

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

⁷Ibid.

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

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

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

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

Surface flow is: **Pick List**

Characteristics:

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

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

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

(d) Proximity (Relationship) to TNW

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

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

Flow is from: **Pick List**.

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

(ii) **Chemical Characteristics:**

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

Identify specific pollutants, if known:

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

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

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

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

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

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
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Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
☐ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

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

Identify type(s) of waters:

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

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

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

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

Identify type(s) of waters:

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

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

☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

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

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

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

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

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

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

Provide estimates for jurisdictional wetlands in the review area: acres

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

Identify water body and summarize rationale supporting determination:

⁸See Footnote # 3.

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

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

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

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

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

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

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

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☒ Wetlands: 2.88 acres.

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

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

SECTION IV: DATA SOURCES.

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

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland delineation report submitted by consultant, dated March 2021.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters’ study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data
 - ☒ USGS 8 and 12 digit HUC maps
- ☐ Galveston District’s Approved List of Navigable Waters
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5-minute and 15-minute, and 1-degree topographic quadrangle maps: 1925: 1:62,500 Aransas Pass; 1950: 1:250,000 Corpus Christi; 1954: 1:24,000 Aransas Pass; 1956: 1:250,000 Corpus Chirsti; 1960 1:250,000 Corpus Christi; 1971: 1:250,000 Corpus Christi; 2010 1:24,000 Aransas Pass; 2019: 1:24,000 Aransas Pass
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey; (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>), accessed 1 June 2022.
- ☒ National wetlands inventory map(s). Cite name: FWS NWI Online Mapper. (<http://www.fws.gov/wetlands/data/mapper.HTML>), accessed 18 August 2021.
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: Panel Number 48409C0465E 4 November 2016
- ☒ 100-year Floodplain Elevation is: +11 feet (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): DigitalGlobe (DG) 20 June 2021; and Google Earth (GE) 1949, 1956, 1961, 1985, 1995, 2003, 2009, and 2020

or ☐ Other (Name & Date):

☐ Previous determination(s). File no. and date of response letter:

☐ Applicable/supporting case law:

☐ Applicable/supporting scientific literature:

☒ Other information (please specify): Texas Strategic Mapping Program (StratMap). Middle Coast Lidar, 22 March 2018, Light Detection and Ranging (LiDAR), 1.0-meter Bare Earth Digital Elevation Model (DEM), North American Vertical Datum (NAVD) 1988 (meters).

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Feature Wetland Locations:

Wetland S1WET01: Lat. 27.91399° N, Long. 97.22866° W;

Universal Transverse Mercator: UTM: 14N, 3088936 N., 674316 E., NAD: 83

Wetland S1WET06: Lat. 27.90605° N, Long. 97.22531° W;

Universal Transverse Mercator: UTM: 14N, 3088061 N., 674659 E., NAD: 83

There are two (2) depressional isolated wetlands comprising approximately 2.88 acres within the subject site. The nearest water is McCampbell Slough, a TNW, located approximately 7,200 linear feet east of the subject site. McCampbell Slough maintains a tidal connection to Port Bay, also a TNW at this location.

Based on a review of multiple exhibits, the 2018 Texas StratMap 1.0-meter light detection and ranging (LiDAR) bare earth digital elevation model, topographical maps, historical aerials, the U.S. Fish and Wildlife Service National Wetland Inventory map, the U.S. Department of Agriculture National Cooperative Soil Survey (NCSS) map data, and the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), there appear to be no discrete surface hydrological connections between the subject wetlands and any water of the U.S. The exact boundaries (as standard with isolated wetlands) were not verified, but the feature polygons were examined via aerial photography and LiDAR elevation data to ensure that they are closed polygons surrounded by uplands.

- The subject wetlands are all located outside the 1% annual flood risk zone (100-year floodplain) of any water of the U.S.
- The subject wetlands are neither currently used, nor have been used in the past, nor susceptible to use for interstate or foreign commerce
- The subject wetlands are not subject to the ebb and flow of the daily tide.
- The subject wetlands do not cross interstate or tribal boundaries.
- There are no indications that these "Isolated*" wetlands would 1) affect or be used by any interstate or foreign travelers for recreational or other purposes, 2) affect or be used for fish or shellfish that could be taken and sold in interstate or foreign commerce, or 3) be involved in any direct current use or potential use for industrial purposes by industries in interstate commerce.
- The subject wetlands are not impoundments of any water of the U.S.
- The subject wetlands are not part of a surface tributary system to any water body.
- The subject wetlands are not part of the territorial seas.
- The subject wetlands are not located "Adjacent*" to waters of the U.S. (other than waters that are themselves wetlands).
- The subject wetlands are not located reasonably close to a water of the US as to infer it is "ecologically adjacent"; for a water/wetland to be determined to "reasonably close" it must be in a geomorphic position such that an ecologic interconnectivity is beyond speculation or insubstantial for a known biologic species that requires both, the subject wetlands and the nearest known waterbody (a known water of the U.S. other than an adjacent wetland) to fulfill spawning and/or life cycle requirements. There are no known species

in this geo-region that require both these wetlands under review and the nearest known waterway to fulfill their life cycle requirements, therefore this water/wetland is ecologically isolated.

*33 CFR 330.2 (e): Isolated waters means those non-tidal waters of the U.S. that are:

- (1) Not part of a surface tributary system to interstate or navigable waters of the US; and
- (2) Not adjacent to such tributary waterbodies.

** 33 CFR 328.3 (a)(7) adjacent wetlands: Federal regulations, specifically 33 CFR 328.3 c) defines "ADJACENT" as: bordering, contiguous or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

In summary, the subject wetlands have been identified per the Atlantic and Gulf Coastal Plain Region Supplement of the 1987 Corps of Engineers Wetland Delineation Manual. The subject wetlands are not inseparably bound to a water of the U.S., are not adjacent to any water of the U.S., and do not have a discrete hydrological surface connection to any water of the U.S. The site wetlands are "isolated" with no known nexus to interstate commerce and as such it is the Corps draft determination that the subject site wetland would not be subject to federal jurisdiction under Section 404 or Section 10.

Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: 8/30/2021

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Port of Corpus Christi Authority

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWG-2021-00163

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: Texas County/parish/borough: San Patricio City: Aransas Pass

Center coordinates of site (lat/long in degree decimal format):

Lat.: 27.914670° Long.: -97.205076°

Universal Transverse Mercator: 14

Name of nearest waterbody: McCampbell Slough

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

☒ Office (Desk) Determination. Date: 8/30/2021

☐ Field Determination. Date(s):

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
S2DF-3	27.921087°	-97.201473°	2.04	non-wetland	404
S2DF-4	27.903169°	-97.197418°	0.42	non-wetland	404
S2DF-7	27.887745°	-97209852°	0.82	non-wetland	404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- ☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: Maps dated 8/30/2021
- ☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report. Rationale: _____
- ☐ Data sheets prepared by the Corps: _____
- ☐ Corps navigable waters' study: _____
- ☐ U.S. Geological Survey Hydrologic Atlas: _____
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Aransas Pass
- ☒ Natural Resources Conservation Service Soil Survey. Citation: accessed 8/17/2021
- ☒ National wetlands inventory map(s). Cite name: accessed 8/17/2021
- ☐ State/local wetland inventory map(s): _____
- ☒ FEMA/FIRM maps: Map Number 48409C0465E November 4, 2016
- ☒ 100-year Floodplain Elevation is: +11 feet NAVD88
- ☒ Photographs: ☒ Aerial (Name & Date): DigitalGlobe (DG) 20 June 2021
or ☒ Other (Name & Date): Google Earth (GE) 1949, 1956, 1961, 1985, 1995, 2003, 2009, and 2020
- ☐ Previous determination(s). File no. and date of response letter: _____
- ☐ Other information (please specify): _____

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.



30 AUG 2021

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.