



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

CESWG-RDR

3 October 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SWG-2025-00363²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. W101 (3.12 acres), PEM wetland, 27.6201499 N, 97.2099491 W, abutting/adjacent, jurisdictional, Section 404
 - ii. W102 (3.28 acres), PEM wetland, 27.6192675 N, 97.2088507 W, abutting/adjacent, jurisdictional, Section 404

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. 12 March 2025 Memorandum to the Field Between the U.S. Department of Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act.

3. REVIEW AREA. The review area is located southeast of the intersection of Zahn Road and Boat Ramp Road in Corpus Christi, Nueces County, Texas. Latitude: 27.619707 N, Longitude: 97.209694 W.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Packery Channel⁶

FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. W101 is in effect one contiguous wetland with estuarine wetlands on the west side of Boat Ramp Road through one culvert that is located within W101. W102 is in effect one contiguous wetland with estuarine wetlands on the north side of Zahn Road through one culvert located approximately 550 feet east of the review area. These continuous wetlands are abutting Packery Channel, a TNW.

5. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A
6. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

W101 (3.12 acres): W101 and wetlands outside of the review area to the west are disjointed by Boat Ramp Road with connectivity maintained by a culvert. The verified wetland boundary of W101 abuts the Boat Ramp Road culvert. On 2 October 2025, the Corps conducted a wetland data point on the west side of Boat Ramp Road near the culvert. The location met all three wetland criteria. Hydrological indicators included (but not limited to) high water table at 8 inches and saturation at 0 inches. The dominant hydrophytic vegetation included saltgrass (*Distichilis spicata*, OBL) with non-dominant vegetation being sea oxy-daisy (*Borrchia frutescens*, OBL) and chairmakers bulrush (*Schoenoplectus americanus*, OBL). Soils exhibited the sandy redox (S5) hydric soil indicator. Wetlands on the west side of Boat Ramp Road are tidally influenced by Packery Channel through mudflats to the south. Aerial imagery and site visits confirmed that the boundaries of W101 abuts one culvert where water flows under Boat Ramp Road to wetlands that are abutting Packery Channel through mudflats. Packery Channel is a waterbody that qualifies as a “navigable water of the United States” (33 C.F.R. Part 329) and is (a) subject to the ebb and flow of the tide, and (b) is presently used, and/or has been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

LiDAR, topo, aerial imagery, site visit photos, and wetland delineation field data forms were utilized as part of the analysis to identify that W101 is contiguous with the wetlands on the west side of Boat Ramp Road. Based on the “*Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436*”, the culvert acts as a continuation of wetlands so that W101 is a continuation of wetlands on the west side of Boat Ramp Road. Furthermore, the topographic quads (2010, 2013, 2016, 2019, and 2022 Crane Island SW) reveal wetland characteristics/symbols within the review area. When comparing the topographic quads and the LiDAR 3D mapping, the LiDAR

indicates the continuation of elevation and hydrology of wetlands on either side of Boat Ramp Road extending into the review area as well. The wetlands on either side of Boat Ramp Road have the same mapped tidal flats and there are similarities in plant communities between the disjointed portions of the wetland. Additionally, both wetlands exhibited surface water and aquatic fauna. The EPA Headquarters and Office of the Assistance Secretary (Civil Works) Memorandum on NWO-2003-60436 states that “slopes and topography allow for a shallow subsurface connection from wetlands” on either side of the road and “multiple pieces of evidence to assess whether divided wetland areas are separate, distinct wetlands or are functioning as one wetland” can be assessed to provide valuable information including historic conditions “to determine if a divided wetland is functioning as one wetland”. This valuable information includes hydrologic connection, similarities in plant communities, slope and topography, soils and hydrologic indicators. Therefore, W101 is considered one contiguous jurisdictional water with the wetlands on the west side of Boat Ramp Road. Therefore, W101 meets the definition of adjacent because W101 is abutting Packery Channel, a traditional navigable water. Therefore, the discharge of dredged and/or fill material in W101 is subject to Section 404 of the Clean Water Act.

W102 (3.28 acres): W102 and wetlands to the north are disjointed by Zahn Road with connectivity maintained by a culvert. A site visit conducted on 8 September 2025 verified W102 continuous outside of the review area to three concrete culverts approximately 540 feet from the review area boundary. Hydrophytic vegetation included saltmeadow cordgrass (*Sporobolus pubilus*), gulfdune paspalum (*Paspalum monostachyum*), starrush whitetop (*Rhynchospora colorata*), and common cattail (*Typha latifolia*). Hydrological indicators included surface water, geomorphic position, and algal mats. This wetland leads up to the culvert on the south side of Zahn Road with black mangrove covering the entrance of the concrete culverts. Wetlands located to the north of Zahn Road are part of a permittee responsible mitigation site that is tidally influenced by Packery Channel through a bridge located on State Highway 361. These wetlands held approximately 6 – 12 inches of standing water with dominant vegetation being sea oyster and saltgrass. The presence of primary hydrological indicators and hydrophytic vegetation observed during the 8 September 2025 site visit was used to assume the presence of hydric soils using the protocol detailed in the 1987 Wetland Delineation Manual Section D Subsection 1: Onsite Inspection unnecessary.

LiDAR, topo, aerial imagery, site visit photos, and wetland delineation field data forms were utilized as part of the analysis to identify that W102 is contiguous with the wetlands on the north side of Zahn Road through a culvert. The wetlands on the west side of Boat Ramp Road are abutting Packery Channel through a State Highway 361 bridge and are tidally influenced. Based on the “*Memorandum to Re-*

evaluate Jurisdiction for NWO-2003-60436", the culvert acts as a continuation of wetlands so that W102 is a continuation of wetlands on the west side of Boat Ramp Road. Furthermore, the topographic quads (2010, 2013, 2016, 2019, and 2022 Crane Island SW) reveal wetland characteristics/symbols within the review area. When comparing the topographic quads and the LiDAR 3D mapping, the LiDAR indicates the continuation of elevation and hydrology of wetlands on either side of Zahn Road extending into the review area as well. The wetlands on either side of Zahn Road have the same mapped tidal flats and there are similarities in plant communities between the disjointed portions of the wetland. Additionally, both wetlands exhibited primary hydrologic indicators and hydrophytic vegetation. The EPA Headquarters and Office of the Assistance Secretary (Civil Works) Memorandum on NWO-2003- 60436 states that "slopes and topography allow for a shallow subsurface connection from wetlands" on either side of the road and "multiple pieces of evidence to assess whether divided wetland areas are separate, distinct wetlands or are functioning as one wetland" can be assessed to provide valuable information including historic conditions "to determine if a divided wetland is functioning as one wetland". This valuable information includes hydrologic connection, similarities in plant communities, slope and topography, and hydrologic indicators. Due to this, W102 is considered one contiguous jurisdictional water with the wetlands on the north side of Zahn Road and meets the definition of adjacent because W102 is abutting Packery Channel, a traditional navigable water. Therefore, the discharge of dredged and/or fill material in W102 is subject to Section 404 of the Clean Water Act. Packery Channel is a waterbody that qualifies as a "navigable water of the United States" (33 C.F.R. Part 329) and is (a) subject to the ebb and flow of the tide, and (b) is presently used, and/or has been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

7. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

⁹ 51 FR 41217, November 13, 1986.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
 - d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
 - e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
 - f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A
8. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
- 1. Wetland Delineation Report: 13.8-acre tract at Boat Ramp Road and Zahn Road, Corpus Christi, Nueces County, Texas.
 - 2. Google Earth Aerials accessed 12 September 2025 dated: 1956, 1979, 1985, 1990, 2002, 2004, 2007, 2016, 2017, 2020, 2021, 2022, 2023, 2024, 2025.
 - 3. USGS Topographic Map/Scale: Corpus Christi 1:24,000: 1950, 1956, 1960, 1966, 1984, 1989 and Crane Islands SW; 1:24,000: 2010, 2013, 2016, 2019, 2022.
 - 4. Natural Resources Conservation Service (NRCS) Soil Survey: Soil Survey titled: Nueces County, Texas; NRCS Website accessed on 15 September 2025.

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5. US Fish and Wildlife Service (FWS) National Wetland Inventory (NWI): Web Mapper dated 5 September 2025.
6. 3D Hydrography Program (3DHP) – USGS National Mapper accessed 5 September 2025.
7. ORM2 Database
9. OTHER SUPPORTING INFORMATION. The EPA Headquarters and Office of the Assistance Secretary (Civil Works) Memorandum on NWO-2003-60436,
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

PREPARED BY:

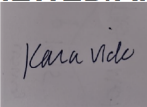
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Ashley Bogrand
Regulatory Project Manager

Date: _____

REVIEWED/APPROVED BY:


Kara Vick

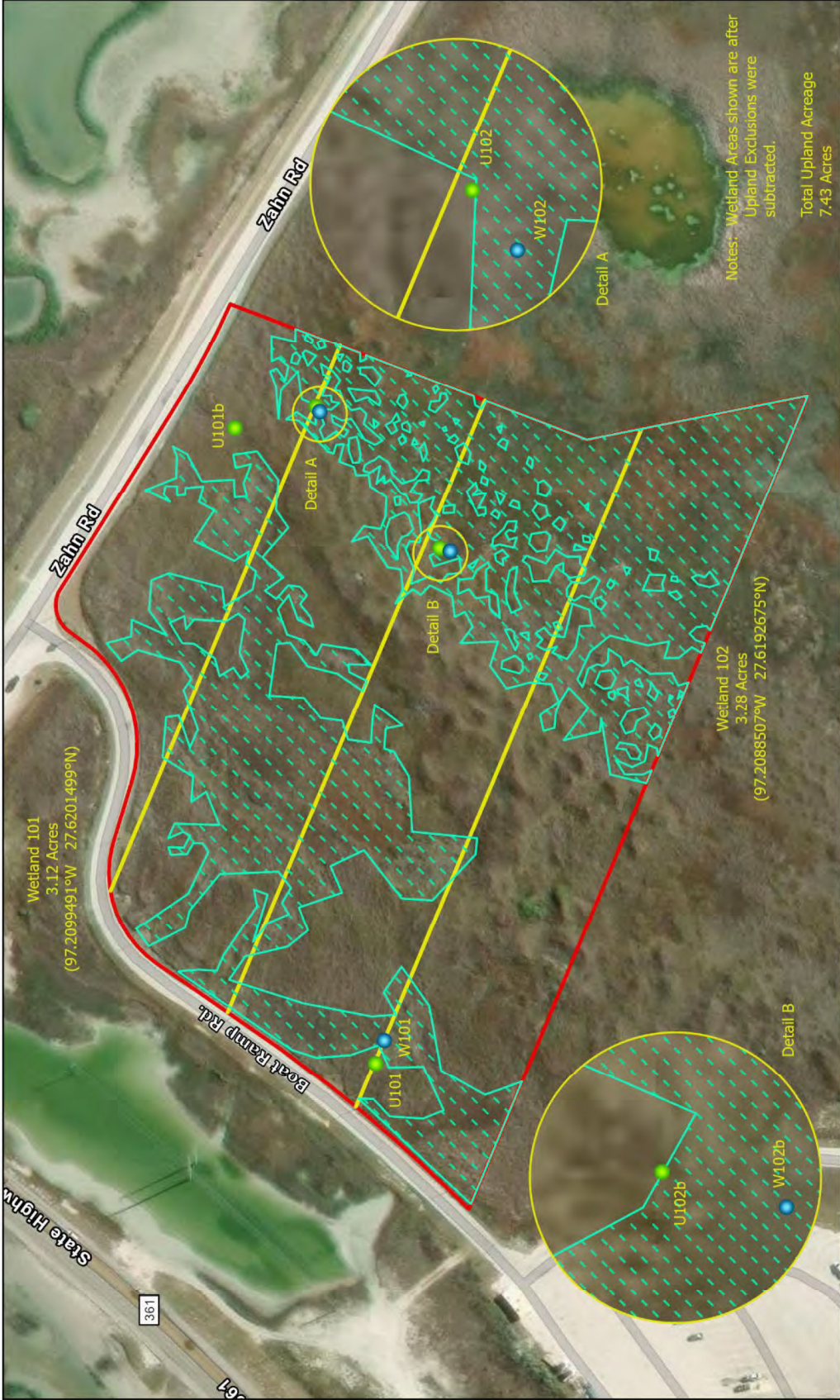
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Kara Vick
Team Lead
Corpus Christi Regulatory Field Office
Regulatory Division, Galveston District

Date: _____



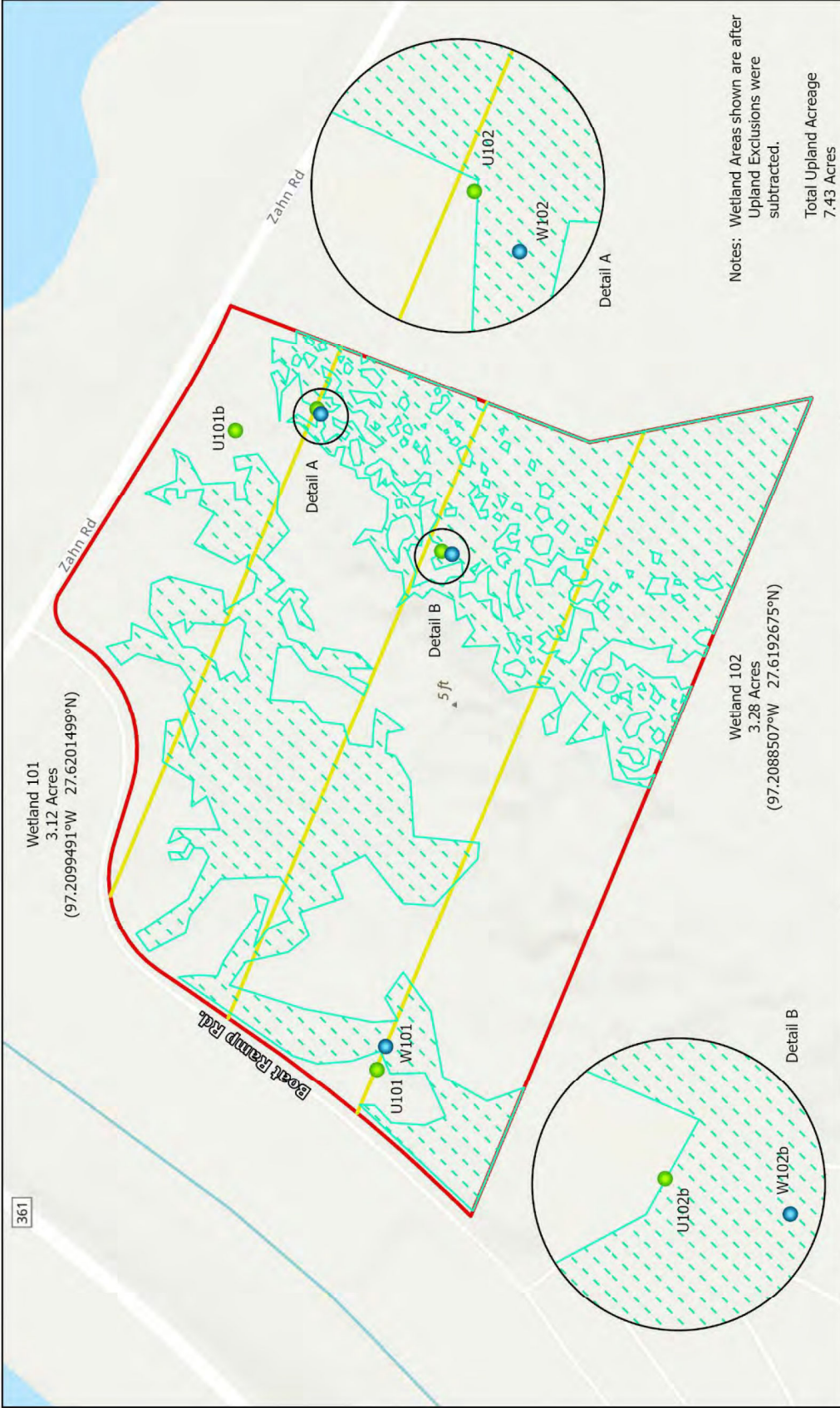
  	Legend  Property Boundary	FLEMING PROPERTY WETLAND DELINEATION NUECES COUNTY, TEXAS Location: Zahn Road County: Nueces County, Texas Application By: Map Date: June 24, 2025 SWG - FIGURE 1
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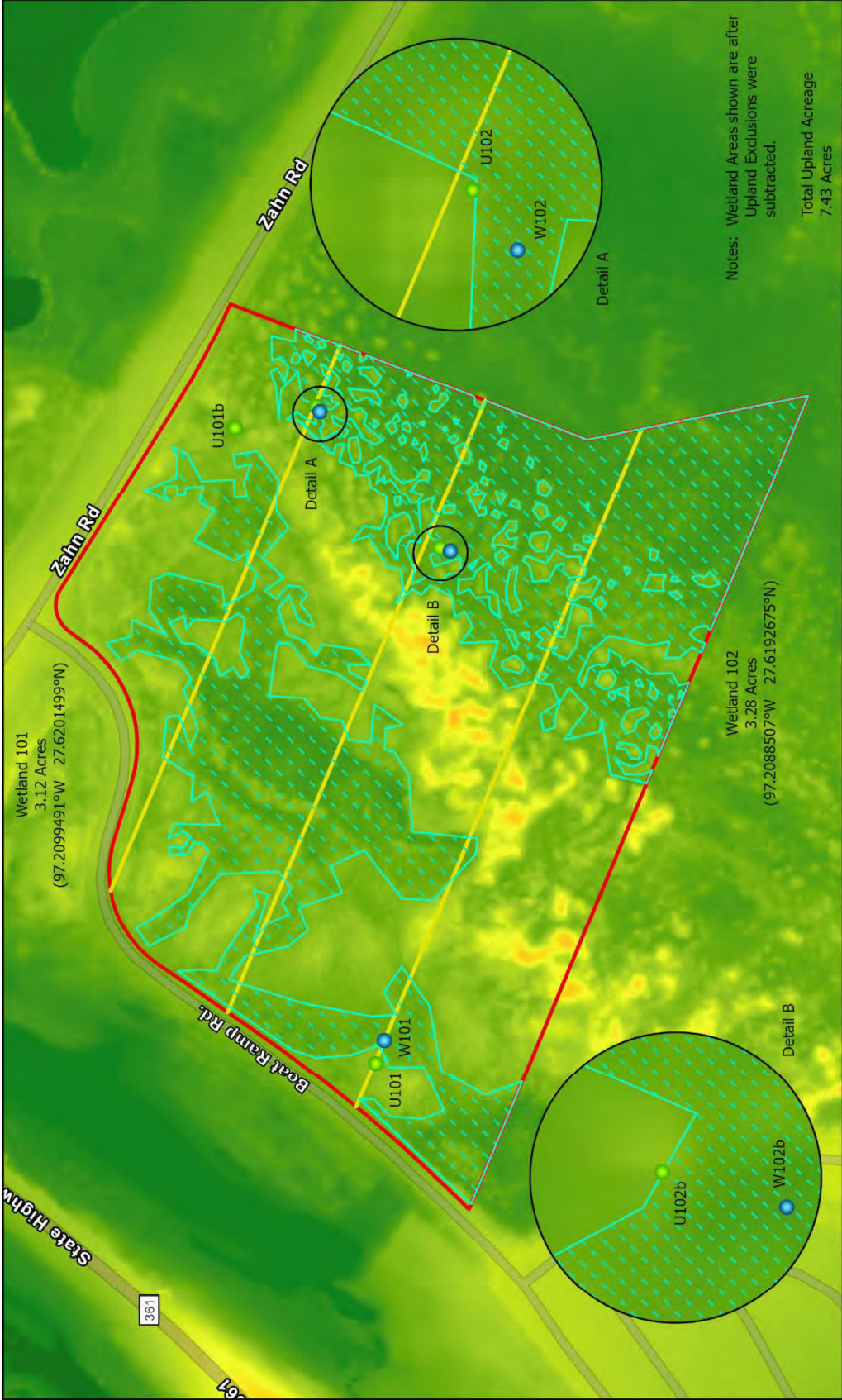
Notes: Wetland Areas shown are after Upland Exclusions were subtracted.

Total Upland Acreage
7.43 Acres

FLEMING PROPERTY WETLAND DELINEATION NUECES COUNTY, TEXAS	
Location: Zahn Road County: Nueces County, Texas Application By: Map Date: June 24, 2025	
Legend	
Wetland Sample Plot	Upland Sample Plot
Wetland (6.40 Acres Total)	Transect Lines
Property Boundary (13.82 Acres Total)	
SOURCE: CEI FIELD SURVEY JUNE 17-20, 2025 BASE: WORLD IMAGERY, ESRI, DATUM: NAD83	
SWG -	FIGURE 2



 SOURCE: CEI FIELD SURVEY JUNE 17-20, 2025 BASE: WORLD IMAGERY, ESRI, DATUM: NAD83	Legend - Wetland Sample Plot - Upland Sample Plot - Wetland (6.40 Acres Total) - Transect Lines - Property Boundary (13.82 Acres Total)	FLEMING PROPERTY WETLAND DELINEATION NUECES COUNTY, TEXAS Location: Zahn Road County: Nueces County, Texas Application By: Map Date: June 24, 2025
SWG -		FIGURE 3



FLEMING PROPERTY WETLAND DELINEATION NUECES COUNTY, TEXAS Location: Zahn Road County: Nueces County, Texas Application By: Map Date: June 24, 2025	Legend - Wetland Sample Plot - Upland Sample Plot - Wetland (6.40 Acres Total) - Transect Lines - Property Boundary (13.82 Acres Total)		SOURCE: CEI FIELD SURVEY JUNE 17-20, 2025 BASE: WORLD IMAGERY, ESRI, DATUM: NAD83
SWG -		FIGURE 4	