



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON, TEXAS, 77550

SWG-RD-E

5 November 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-2025-00370²

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 in 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. Water Feature 1, EW02, Non-Jurisdictional, 25.927405, -97.368867, 0.85 Acres
 - ii. Water Feature 2, EW03, Non-Jurisdictional, 25.937745, -97.360199, 1.78 Acres
 - iii. Water Feature 3, EW04, Non-Jurisdictional, 25.939217, -97.359509, 0.51 Acres
 - iv. Water Feature 4, EW05, Non-Jurisdictional, 25.952709, -97.328235, 0.98 Acres
 - v. Water Feature 5, EW06, Non-Jurisdictional, 25.952493, -97.327186, 1.87 Acres
 - vi. Water Feature 6, SW01, Non-Jurisdictional, 25.952984, -97.326495, 0.57 Acres
 - vii. Water Feature 7, EW07, Non-Jurisdictional, 25.953479, -97.321497, 6.70 Acres
 - viii. Water Feature 8, SW02, Jurisdictional, Section 404, 25.962233, -97.286911, 0.02 Acres
 - ix. Water Feature 9, EW08, Jurisdictional, Section 404, 25.961926, -97.285649, 1.92 Acres
 - x. Water Feature 10, EW09, Jurisdictional, Section 404, 25.962308, -97.285255, 10.00 Acres
 - xi. Water Feature 11, EW10, Jurisdictional, Section 404, 25.962071, -97.277053, 5.59 Acres

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- xii. Water Feature 12, EW11, Jurisdictional, Section 404, 25.962287, -97.266253, 1.76 Acres
- xiii. Water Feature 13, EW13, Jurisdictional, Section 10/404, 25.964777, -97.233413, 0.44 Acres
- xiv. Water Feature 14, OW01, Jurisdictional, Section 10/404, 25.964571, -97.233577, 0.23 Acres
- xv. Water Feature 15, EW14A, Jurisdictional, Section 10/404, 25.964053, -97.220013, 3.39 Acres
- xvi. Water Feature 16, EW14B, Jurisdictional, Section 10/404, 25.970040, -97.203846, 12.713 Acres
- xvii. Water Feature 17, EW15, Jurisdictional, Section 10/404, 25.964378, -97.221259, 6.53 Acres
- xviii. Water Feature 18, OW02, Jurisdictional, Section 10/404, 25.972343, -97.205939, 13.29 Acres
- xix. Water Feature 19, EW16, Jurisdictional, Section 10/404, 25.965969, -97.212069, 0.13 Acres
- xx. Water Feature 20, EW17, Jurisdictional, Section 10/404, 25.966180, -97.212069, 0.04 Acres
- xxi. Water Feature 21, EW18, Jurisdictional, Section 10/404, 25.966758, -97.210290, 0.81 Acres
- xxii. Water Feature 22, EW19, Jurisdictional, Section 10/404, 25.968276, -97.206465, 0.04 Acres
- xxiii. Water Feature 23, EW20, Jurisdictional, Section 10/404, 25.971801, -97.202452, 0.11 Acres
- xxiv. Water Feature 24, EW21, Jurisdictional, Section 10/404, 25.973128, -97.200805, 0.29 Acres
- xxv. Water Feature 25, EW22, Jurisdictional, Section 10/404, 25.977898, -97.194531, 2.92 Acres

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- xxvi. Water Feature 26, SW03, Jurisdictional, Section 10/404, 25.977707, - 97.195277, 1.04 Acres
- xxvii. Water Feature 27, D02, Non-Jurisdictional, 25.933597, -97.363977, 790 Linear Feet

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. 2008 Rapanos guidance: "In addition, ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries."
 - f. 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.
 - g. The EPA Headquarters and Office of the Assistance Secretary (Civil Works) Memorandum on NWO-2003-60436 and LRB-2001-01386, located https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/juris_info/.
3. REVIEW AREA. The review area is a 135.75-acre tract of land located along the existing Texas State Highway (SH) 4 (Boca Chica Boulevard) from Farm to Market Road 1419 (FM 1419) (Oklahoma Avenue) to LBJ Boulevard with a bike path on the south side of SH 4 from Quicksilver Avenue to LBJ Boulevard in City, Cameron County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees): Center,
Latitude: 25.94799° North; Longitude: 097.287068° West

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. South Bay, Brownsville Ship Channel, Rio Grande River, and Gulf of America.⁶ The above waterbodies are included on the Galveston District Navigable Waters list.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Subject water features SW02, EW08, EW09, EW10, EW 11, EW13, OW01, EW14A, EW14B, EW15, OW02, EW16, EW17, EW18, EW19, EW20, EW21, EW22, and SW03 directly abut jurisdictional features and/or one contiguous single wetland complex off the review site. The water features located on the northern side of SH 4, are part of a contiguous wetland complex that directly abuts South Bay (TNW), Brownsville Ship Channel (TNW), and the Gulf of America (TNW). The wetlands on the south side of SH 4 (EW08, EW10, EW11, EW14a, and EW14b) are considered contiguous with the wetlands on the north side of SH 4 (EW09, EW15, EW16, EW17, and EW18) which abut South Bay (TNW) and Brownsville Ship Channel (TNW).
6. 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

Water Feature 18 (OW02): OW02 is a southward extension of open-water South Bay measuring 13.29 acres and located within a tidal flat along the eastern portion of the review area and both north and south of Texas State Highway 4. This feature directly abuts traditional navigable waters, continuing off-site before depositing into the Brownsville Ship Channel, South Bay, and the Gulf of America. This water

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.

feature is also located within the high tide line, as indicated by vegetation lines. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, OW02 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

7. 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.
 - a. TNWs (a)(1): Water Feature 18 (OW02): OW02 is a southward extension of open-water South Bay measuring 13.29 acres and located within a tidal flat along the eastern portion of the review area and both north and south of SH 4. This feature directly abuts traditional navigable waters, continuing off-site before depositing into the Brownsville Ship Channel, a southern coastal bay, and the Gulf of America. This water feature is also located within the high tide line, as indicated by vegetation lines. OW02 is a water of the U.S. subject to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.
 - b. Interstate Waters (a)(2): N/A
 - c. Other Waters (a)(3): N/A
 - d. Impoundments (a)(4): N/A
 - e. Tributaries (a)(5): **Water Feature 14 (OW01)**: OW01 is a 0.23 acre artificially constructed canal that directly leads southwards to a much larger canal complex. Current and historical imagery show OW01 to hold consistent inundation and a direct flow pathway into a traditionally navigable waterway. OW01 is considered a relatively permanent waterway due to the presence of bed and bank, ordinary high-water marks, and it is tidally influenced. OW01 leads northwards of the

project area before depositing directly into South Bay, which then abuts the Brownsville Ship Channel and Gulf of America. The Corps has determined OW01 to be jurisdictional under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act due to its continuous surface connection with a traditionally navigable waterway.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): **Water Feature 8 (SW02):** SW02 is a 0.02-acre palustrine scrub-shrub wetland located directly north of SH 4. This wetland directly abuts Water Feature 10 (EW09) and is part of an overall larger wetland complex in which drains directly into a traditionally navigable waterway. The Corps has determined SW02 to be considered jurisdictional under Section 404 of the Clean Water Act due to its hydrologic connection to EW09.

Water Feature 9 (EW08): EW08 is a 1.92-acre palustrine emergent wetland located directly south of SH 4. The delineation does not annotate a culvert or other discrete connection between EW08 and EW09; however, the wetland data sheets between these two sites are very similar in hydrology, hydrophytic vegetation, and hydric soil indicators. Furthermore, the historical topographic imagery (specifically dated 1939 and 1955) supplied within the wetland delineation report show no obvious difference in topographic or overall environmental setting between the wetlands north and south of SH 4. Based on the “*Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436*”, EW08 and EW09 are functioning as one wetland. 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 indicator information includes hydrologic connection, similarities in plant communities, slope and topography, soils and hydrologic indicators. Similarly, LRB-2001-01386 states “For purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. For example, if a wetland is divided by a road, a culvert could maintain a hydrologic connection. The agencies may also consider if a subsurface hydrologic connection is maintained, using indicators such as hydric soils, the permeability of the artificial structure, and/or the permeability of the soils below the artificial structure.” LRB-2001-01386 continues to state “Under longstanding agency

practice, a wetland is also delineated as a single wetland if a human-made levee or similar artificial structure divides it, but a hydrologic connection is maintained between the divided wetlands. One example of this concept is a wetland that is divided by a road or railway bed. In this example, evidence of a potential hydrologic connection via a shallow subsurface connection could be observed if the wetland continued to function similarly and retain similar species on either side of the human-made structure. The wetland should thus be delineated as a single wetland for the purposes of assessing wetland adjacency.” Therefore, EW08 is considered one contiguous jurisdictional water with the wetlands on the north side of SH 4 and meets the definition of adjacent because it is abutting South Bay and the Brownsville Ship Channel, traditional navigable waterways. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW08 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Feature 10 (EW09): EW09 is a 10-acre palustrine emergent wetland located directly north of SH 4. This wetland continues off-site into a much larger overall wetland complex which directly abuts South Bay and the Brownsville Ship Channel, traditional navigable waterways. No upland barriers were observed between the boundary of EW09 and/or the larger wetland complex it drains into. The Corps has determined that EW09 shows no distinguishable differences or separation from the large wetland complex off-site and therefore drains directly into a traditionally navigable waterway, South Bay and Brownsville Ship Channel. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW09 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Feature 11 (EW10): EW10 is a 5.59-acre palustrine emergent wetland located directly south of SH 4. The delineation does not annotate a culvert or other discrete connection between EW10 and EW09; however, the wetland data sheets between these two sites are very similar in hydrology, hydrophytic vegetation, and hydric soil indicators. Furthermore, the historical imagery (specifically dated 1939 and 1955) supplied within the wetland delineation report show no obvious difference in topographic or overall environmental setting

between the wetlands north and south of SH 4 prior to the highway's construction. Based on the "*Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436*", EW10 and EW09 are functioning as one wetland. 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. Similarly, LRB-2001-01386 states "For purposes of determining whether a wetland is "adjacent", artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. For example, if a wetland is divided by a road, a culvert could maintain a hydrologic connection. The agencies may also consider if a subsurface hydrologic connection is maintained, using indicators such as hydric soils, the permeability of the artificial structure, and/or the permeability of the soils below the artificial structure." LRB-2001-01386 continues to state "Under longstanding agency practice, a wetland is also delineated as a single wetland if a human-made levee or similar artificial structure divides it, but a hydrologic connection is maintained between the divided wetlands. One example of this concept is a wetland that is divided by a road or railway bed. In this example, evidence of a potential hydrologic connection via a shallow subsurface connection could be observed if the wetland continued to function similarly and retain similar species on either side of the human-made structure. The wetland should thus be delineated as a single wetland for the purposes of assessing wetland adjacency." Therefore, EW10 is considered one contiguous jurisdictional water with the wetlands on the north side of SH 4 and EW10 meets the definition of adjacent because it is abutting South Bay and the Brownsville Ship Channel, traditional navigable waterways. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW10 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Feature 12 (EW11): EW11 is a 1.76-acre palustrine emergent wetland located directly south of SH 4. The delineation does not annotate a culvert or other discrete connection between EW11 and EW09; however, the wetland data

sheets between these two sites are very similar in hydrology, hydrophytic vegetation, and hydric soil indicators. Furthermore, the results with historical imagery (specifically dated 1939 and 1955) supplied within the wetland delineation report show no obvious difference in topographic or overall environmental setting between the wetlands north and south of SH 4 prior to the highways construction. Based on the “*Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436*”, EW11 and EW09 are functioning as one contiguous wetland. 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. Similarly, LRB-2001-01386 states “For purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. For example, if a wetland is divided by a road, a culvert could maintain a hydrologic connection. The agencies may also consider if a subsurface hydrologic connection is maintained, using indicators such as hydric soils, the permeability of the artificial structure, and/or the permeability of the soils below the artificial structure.” LRB-2001-01386 continues to state “Under longstanding agency practice, a wetland is also delineated as a single wetland if a human-made levee or similar artificial structure divides it, but a hydrologic connection is maintained between the divided wetlands. One example of this concept is a wetland that is divided by a road or railway bed. In this example, evidence of a potential hydrologic connection via a shallow subsurface connection could be observed if the wetland continued to function similarly and retain similar species on either side of the human-made structure. The wetland should thus be delineated as a single wetland for the purposes of assessing wetland adjacency.” Therefore, EW11 is considered one contiguous jurisdictional water with the wetlands on the north side of SH 4 and EW11 meets the definition of adjacent because it is abutting South Bay and the Brownsville Ship Channel, traditional navigable waterways. Under the pre-2015 regime and consistent with the Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW11 meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Feature 13 (EW13): EW13 is a 0.44-acre tidally influenced palustrine emergent wetland located directly abutting OW01. OW01 has been determined to be jurisdictional due to its continuous surface connection with the off-site traditionally navigable waterway. Under the pre-2015 regime and consistent with the Rapanos plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW13 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Feature 15 (EW14A): EW14A is a 3.39 acre tidally influenced palustrine emergent wetland located on the eastern portion of the review area and directly south of SH 4. EW14A is separated into two distinct areas flanking the eastern and western edge of EW14B south of SH 4. Directly north of SH 4 is EW15 and OW02 which the Corps has determined to be jurisdictional under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. EW14A has a continuous hydrologic connection via EW15 and OW02. Based on the “*Memorandum to Re-evaluate Jurisdiction for NWO-2003-60436*”, EW14A, EW14B, and EW15 are functioning as one wetland. 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. Similarly, LRB-2001-01386 states “For purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. For example, if a wetland is divided by a road, a culvert could maintain a hydrologic connection. The agencies may also consider if a subsurface hydrologic connection is maintained, using indicators such as hydric soils, the permeability of the artificial structure, and/or the permeability of the soils below the artificial structure.” LRB-2001-01386 continues to state “Under longstanding agency practice, a wetland is also delineated as a single wetland if a human-made levee or similar artificial structure divides it, but a hydrologic connection is maintained between the divided wetlands. One example of this concept is a wetland that is divided by a road or railway bed. In this example, evidence of a potential

hydrologic connection via a shallow subsurface connection could be observed if the wetland continued to function similarly and retain similar species on either side of the human-made structure. The wetland should thus be delineated as a single wetland for the purposes of assessing wetland adjacency.” Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW14A meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Feature 16 (EW14B): EW14B is a 12.713-acre tidally influenced palustrine emergent wetland located on the eastern portion of the review area, immediately south of Texas State Highway 4. Directly north of SH4 4 is EW15 and OW02 which the Corps has determined to be jurisdictional under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. EW14B has a direct subsurface connection with OW01 and EW15 via an existing culvert underneath SH 4 located at approximately 25.963567°, -97.223877°. This culvert contains standing water, and the bottom elevation of the culvert is equal to or beneath the bottom elevation of the wetlands and open-water feature, resulting in continuous connection. EW14B also displays a continuous surface connection with an offsite tidally influenced coastal bay complex directly connected to the Rio Grande River (TNW) and Gulf of America (TNW) located south of EW14B. Additionally, historical imagery (specifically dated 1939 and 1955) supplied within the wetland delineation report show no obvious difference in topographic or overall environmental setting between the aquatic resources north and south of Texas State Highway 4 prior to the highway’s construction. 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. Similarly, LRB-2001-01386 states “For purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. For example, if a wetland is divided by a road, a culvert could maintain a hydrologic connection. The agencies may also consider if a subsurface hydrologic connection is maintained, using indicators such as hydric soils, the permeability

of the artificial structure, and/or the permeability of the soils below the artificial structure.” LRB-2001-01386 continues to state “Under longstanding agency practice, a wetland is also delineated as a single wetland if a human-made levee or similar artificial structure divides it, but a hydrologic connection is maintained between the divided wetlands. One example of this concept is a wetland that is divided by a road or railway bed. In this example, evidence of a potential hydrologic connection via a shallow subsurface connection could be observed if the wetland continued to function similarly and retain similar species on either side of the human-made structure. The wetland should thus be delineated as a single wetland for the purposes of assessing wetland adjacency.” Therefore, EW14B is considered one contiguous jurisdictional water with the aquatic resources on the north side of SH 4. Under the pre-2015 regime and consistent with the Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW14B meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Feature 17 (EW15): EW15 is a 6.53-acre tidally influenced palustrine emergent wetland located within the eastern portion of the review area and on the northern side of SH 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW15 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW15 is equally subject to the ebb and flow of the tide. Due to EW15 direct continuous surface connection with OW02, the Corps has determined EW15 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW15 meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Features 19 (EW16): EW16 is a 0.13-acre tidally influenced palustrine emergent wetland located on the eastern portion of the review area and on the northern side of SH 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW16 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW16 is equally subject to the ebb and flow of the tide. Due to EW16 direct continuous surface connection with OW02, the Corps has determined EW16 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the

Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW16 meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Features 20 (EW17): EW17 is a 0.04-acre tidally influenced palustrine emergent wetland located on the eastern portion of the review area and on the northern side of SH 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW17 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW17 is equally subject to the ebb and flow of the tide. Due to EW17 direct continuous surface connection with OW02, the Corps has determined EW17 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW17 meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Features 21 (EW18): EW18 is a 0.81-acre tidally influenced palustrine emergent wetland located on the eastern portion of the review area and on the northern side of SH 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW18 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW18 is equally subject to the ebb and flow of the tide. Due to EW18 direct continuous surface connection with OW02, the Corps has determined EW18 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the Rapanos plurality and Sackett, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW18 meets the definition of adjacent as defined in the pre-2015 regime post Sackett guidance and is a water of the United States.

Water Features 22 (EW19): EW19 is a 0.04-acre tidally influenced estuarine emergent wetland located on the eastern portion of the review area and on the northern side of SH4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW19 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW19 is equally subject to the

ebb and flow of the tide. Due to EW19 direct continuous surface connection with OW02, the Corps has determined EW19 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW19 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Features 23 (EW20): EW20 is a 0.11-acre tidally influenced estuarine emergent wetland located on the eastern portion of the review area and on the northern side of Texas State Highway 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW20 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW20 is equally subject to the ebb and flow of the tide. Due to EW20 direct continuous surface connection with OW02, the Corps has determined EW20 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW20 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Features 24 (EW21): EW21 is a 0.29-acre tidally influenced estuarine emergent wetland located on the eastern portion of the review area and on the northern side of Texas State Highway 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW21 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW21 is equally subject to the ebb and flow of the tide. Due to EW21 direct continuous surface connection with OW02, the Corps has determined EW21 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW21 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Features 25 (EW22): EW22 is a 2.92-acre tidally influenced estuarine emergent wetland located on the eastern portion of the review area and on the

southern side of Texas State Highway 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As EW22 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident EW22 is equally subject to the ebb and flow of the tide. Due to EW22 direct continuous surface connection with OW02, the Corps has determined EW22 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, EW22 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

Water Features 26 (SW03): SW03 is a 1.04-acre tidally influenced estuarine scrub-shrub wetland located on the eastern portion of the review area and on the northern side of Texas State Highway 4. This feature directly abuts OW02 which the Corps has determined to be jurisdictional. As SW03 directly abuts OW02 and OW02 is subject to the ebb and flow of the tide, it is evident SW03 is equally subject to the ebb and flow of the tide. Due to SW03 direct continuous surface connection with OW02, the Corps has determined SW03 to be jurisdictional under Section 404 of the Clean Water Act. Under the pre-2015 regime and consistent with the *Rapanos* plurality and *Sackett*, adjacent wetlands are jurisdictional when they have a continuous surface water connection with traditional navigable waters, the territorial seas, interstate waters, relatively permanent jurisdictional impoundments, or relatively permanent tributaries. Therefore, SW03 meets the definition of adjacent as defined in the pre-2015 regime post *Sackett* guidance and is a water of the United States.

8. 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.

⁹ 51 FR 41217, November 13, 1986.

Water Feature 27 (D02): D02 is a 790 linear foot, non-relatively permanent water (RPW) based on historical imagery, digital elevation model (DEM), and Lidar contours. It is the Corps determination that D02 is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. D02 was constructed wholly out of uplands, drains only dry land, is not a rerouted tributary, has non-relatively permanent flow, and does not extend the ordinary high-water mark (OHWM) of a Water of the United States. Therefore, meets the generally not jurisdictional category for certain ditches under the Rapanos guidance.

- 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).

Water Feature 1 (EW02): EW02 is a 0.85 acre, non-relatively permanent water (RPW) based on historical imagery, digital elevation model (DEM), and Lidar contours. It is the Corps determination that Water Feature 1 (EW02) is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW02 is a roadside depressional ditch that was excavated in uplands to drain adjacent uplands and considered non-jurisdictional. EW02 was also previously found to be non-jurisdictional under SWG-2023-00726 with

similar reasoning. EW02 does not have relatively permanent flow, does not flow into a TNW, is not a water of the United States, and is not subject to Section 404 of the Clean Water Act.

Water Feature 2 (EW03): EW03 is a 1.78 acre, non-relatively permanent water (RPW) based on historical imagery, digital elevation model (DEM), and Lidar contours. It is the Corps determination that Water Feature 2 (EW03) is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW03 is a roadside depressional ditch that was excavated in uplands to drain adjacent uplands and considered non-jurisdictional. EW03 was also previously found to be non-jurisdictional under SWG-2023-00726 with similar reasoning. EW03 does not have relatively permanent flow, does not flow into a TNW, is not a water of the United States, and is not subject to Section 404 of the Clean Water Act.

Water Feature 3 (EW04): EW04 is a 0.51 acre, non-relatively permanent water (RPW) based on historical imagery, digital elevation model (DEM), and Lidar contours. It is the Corps determination that Water Feature 3 (EW04) is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW04 is a roadside depressional ditch that was excavated in uplands to drain adjacent uplands and considered non-jurisdictional. EW04 was also previously found to be non-jurisdictional under SWG-2023-00726 with similar reasoning. EW04 does not have relatively permanent flow, does not flow into a TNW, is not a water of the United States, and is not subject to Section 404 of the Clean Water Act.

Water Feature 4 (EW05): EW05 is a 0.98-acre palustrine emergent wetland, based on historical imagery delineation results, digital elevation model (DEM), and Lidar contours. It is the Corps determination that Water Feature 4 (EW05) is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW05 is part of an overall larger wetland complex that continues northwards towards the Brownsville Ship Channel before terminating within an impoundment that is separated from the nearby traditionally navigable waterway via man-made berms on three sides. Erosional features were noted in which the wetland complex flows into. These erosional features are non-jurisdictional and do not constitute a continuous surface connection with a jurisdictional waterway. Therefore, EW05 is considered non-jurisdictional and not subject to Section 404 of the Clean Water Act.

Water Feature 5 (EW06): EW06 is a 1.87-acre palustrine emergent wetland, based on historical imagery delineation results, digital elevation model (DEM), and Lidar contours. It is the Corps determination that EW06 is not a relatively

permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW06 is part of an overall larger wetland complex that continues northwards towards the Brownsville Ship Channel before terminating within an impoundment that is separated from the nearby traditionally navigable waterway via man-made berms on three sides. Erosional features were noted in which the wetland complex flows into. These erosional features are non-jurisdictional and do not constitute a continuous surface connection with a jurisdictional waterway. Therefore, EW06 is considered non-jurisdictional and not subject to Section 404 of the Clean Water Act.

Water Feature 6 (SW01): SW01 is a 0.57-acre palustrine scrub-shrub wetland, based on historical imagery delineation results, digital elevation model (DEM), and Lidar contours. It is the Corps determination that SW01 is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. SW01 is part of an overall larger wetland complex that continues northwards towards the Brownsville Ship Channel before terminating within an impoundment that is separated from the nearby traditionally navigable waterway via man-made berms on three sides. Erosional features were noted in which the wetland complex flows into. These erosional features are non-jurisdictional and do not constitute a continuous surface connection with a jurisdictional waterway. Therefore, SW01 is considered non-jurisdictional and not subject to Section 404 of the Clean Water Act.

Water Feature 7 (EW07): EW07 is a 6.67-acre palustrine emergent wetland, based on historical imagery delineation results, digital elevation model (DEM), and Lidar contours. It is the Corps determination that EW07 is not a relatively permanent waterway and not a wetland directly abutting a relatively permanent waterway. EW07 is part of an overall larger wetland complex that continues northwards towards the Brownsville Ship Channel before terminating within an impoundment that is separated from the nearby traditionally navigable waterway via man-made berms on three sides. Erosional features were noted in which the wetland complex flows into. These erosional features are non-jurisdictional and do not constitute a continuous surface connection with a jurisdictional waterway. Therefore, EW07 is considered non-jurisdictional and not subject to Section 404 of the Clean Water Act.

9. 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.
 - a. Office evaluation was conducted starting on 11 August 2025 and concluding 14 October 2025.

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- b. Wetland Delineation Report: Prepared by Kimley Horn and Stantec for the Texas Department of Transportation dated August 2025.
 - c. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata first accessed 11 August 2025.
 - d. USACE Texas Southwestern Division Regulatory Viewer. Lidar (3DEP Digital Elevation Model) first accessed 11 August 2025.
 - e. USACE Texas Southwestern Division Regulatory Viewer. Hillshade first accessed 11 August 2025.
 - f. USACE Texas Southwestern Division Regulatory Viewer. first accessed 11 August 2025.
 - g. USACE Texas Southwestern Division Regulatory Viewer. Soils Maps Units first accessed 11 August 2025.
 - h. USACE Texas Southwestern Division Regulatory Viewer. Hydric Soils first accessed 11 August 2025.
 - i. USACE Texas Southwestern Division Regulatory Viewer. Topographic accessed 4 June 2025.
 - j. U.S. Fish and Wildlife Service. 2022. National Wetland Inventory (NWI) Wetlands Mapper. Available online at <https://www.fws.gov/wetlands/data/mapper.html>. first accessed 11 August 2025.
 - k. Google Earth Aerial Imagery first accessed 11 August 2025.
 - l. U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. RDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
10. OTHER SUPPORTING INFORMATION. The EPA Headquarters and Office of the Assistance Secretary (Civil Works) Memorandum on NWO-2003-60436 and LRB-2001-01386.
11. 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

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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:

Sean Dillard

Sean Dillard
Regulatory Project Manager

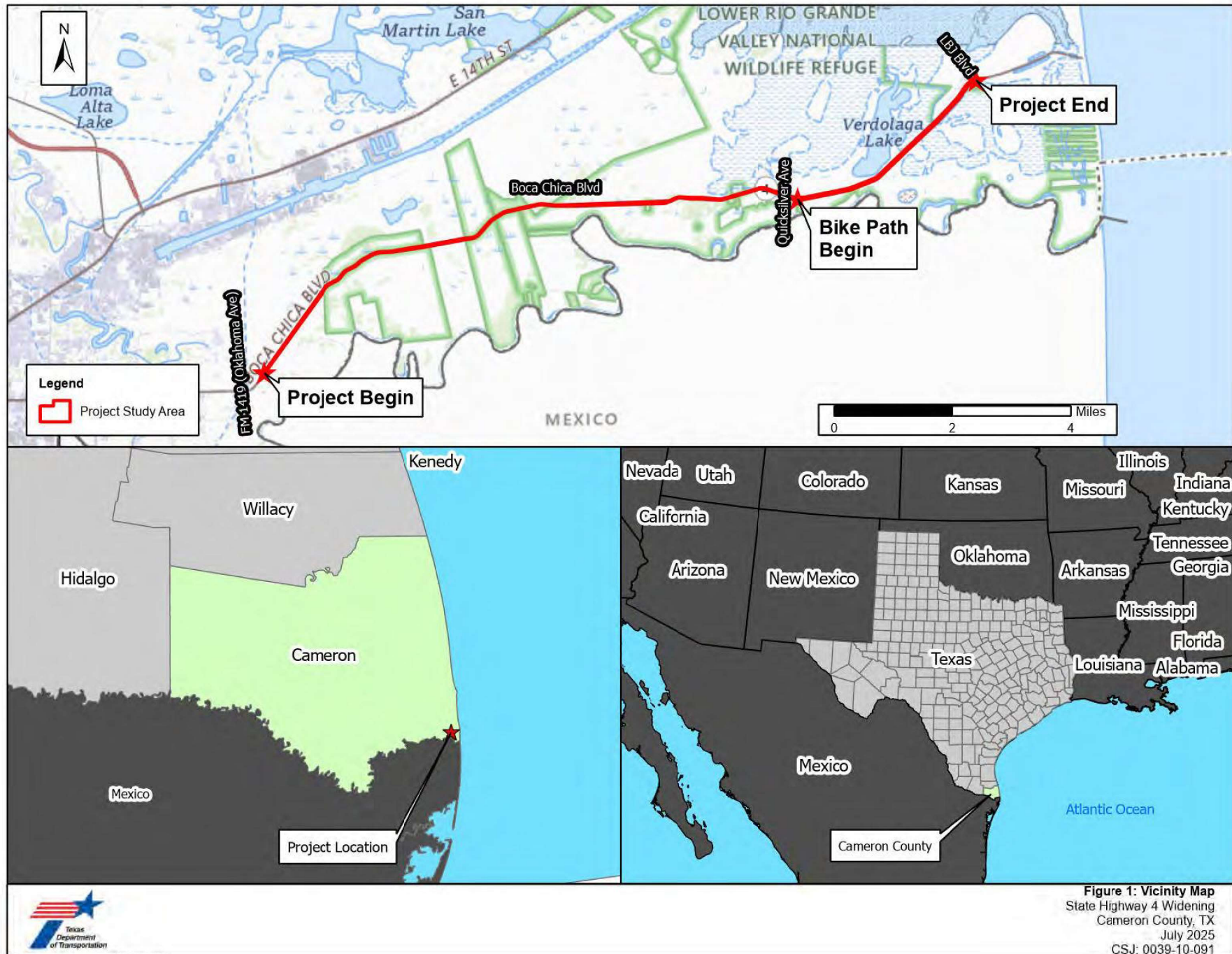
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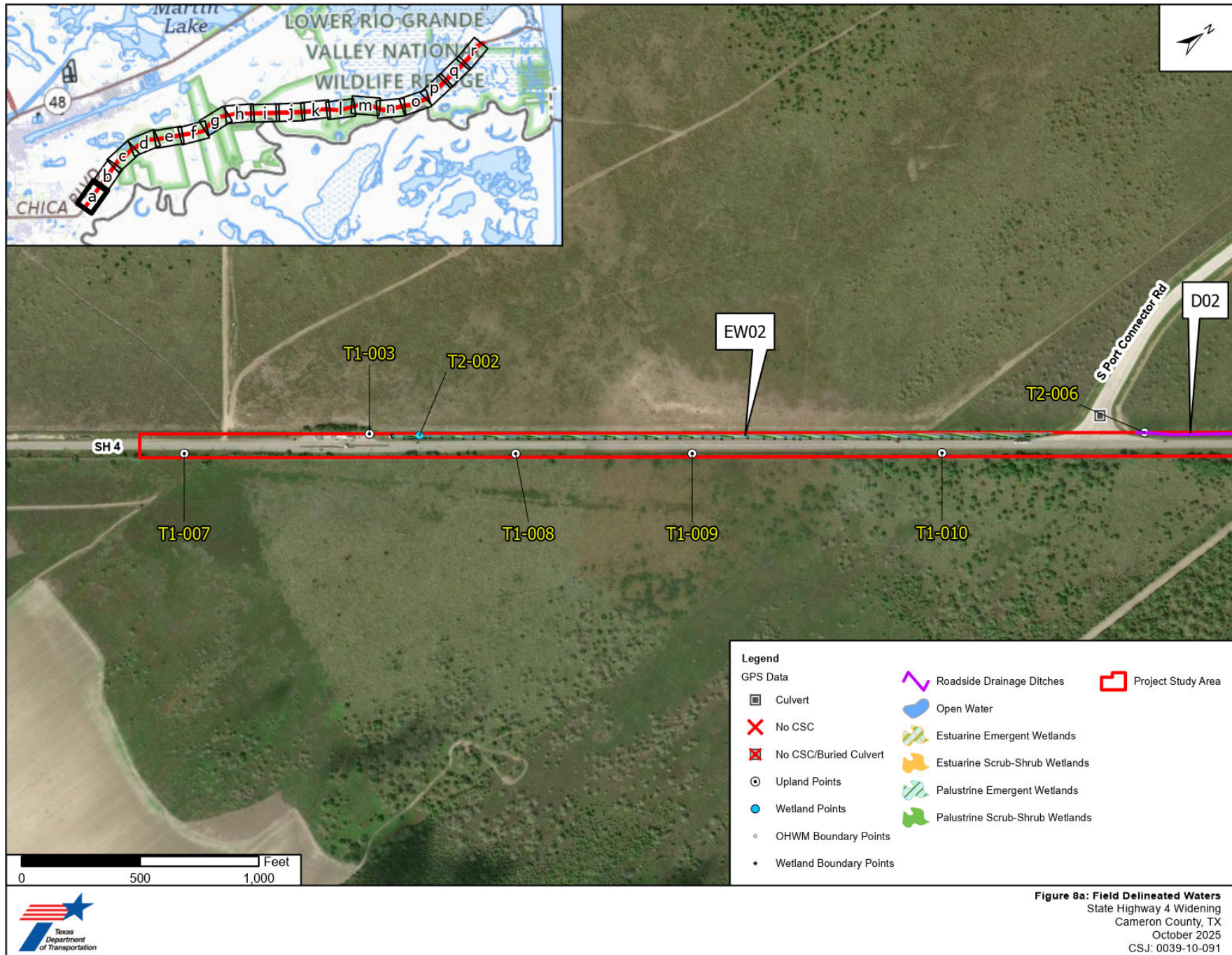
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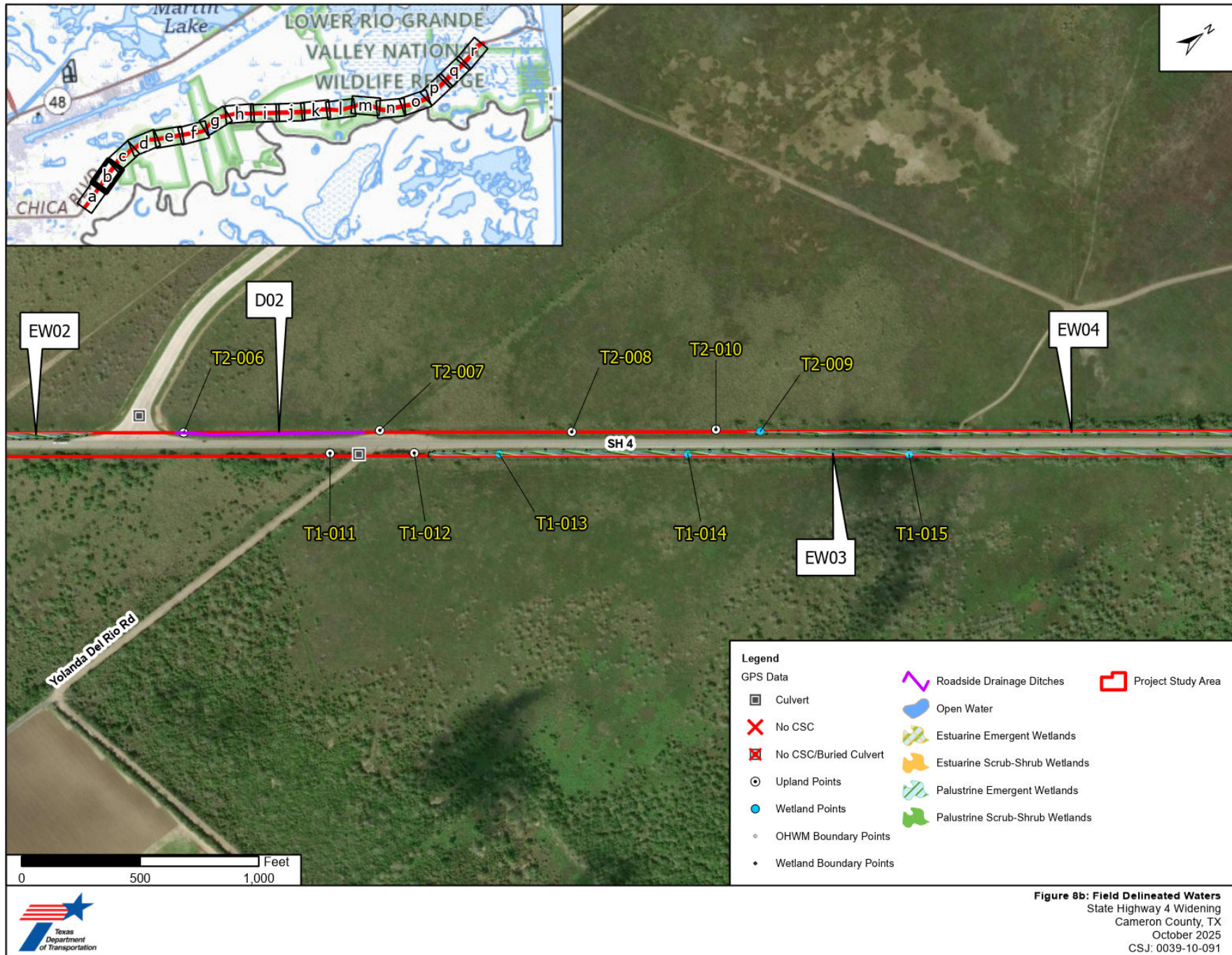
Kara Vick

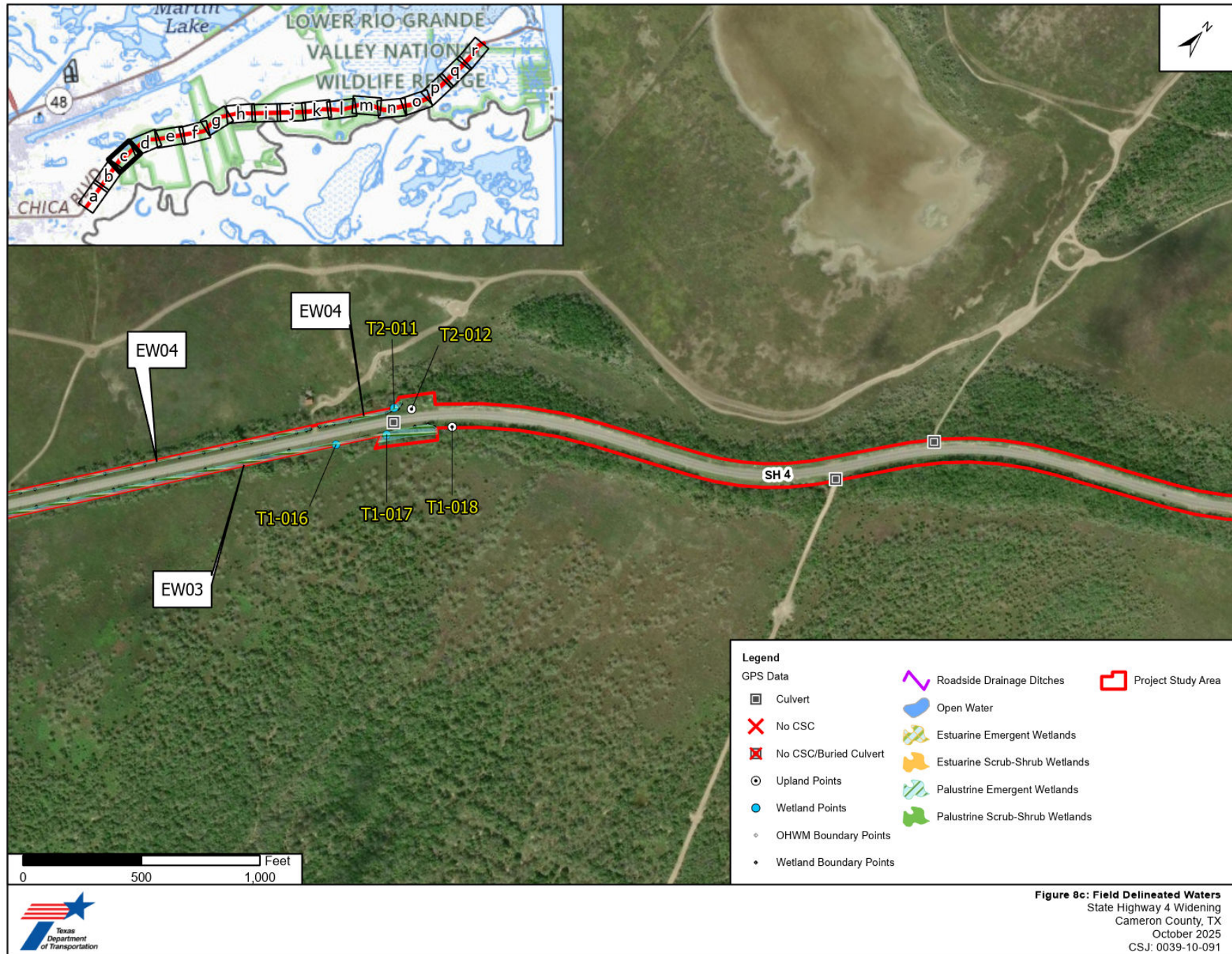
Kara Vick
Lead, Corpus Christi Regulatory Field Office
Regulatory Division, Galveston District

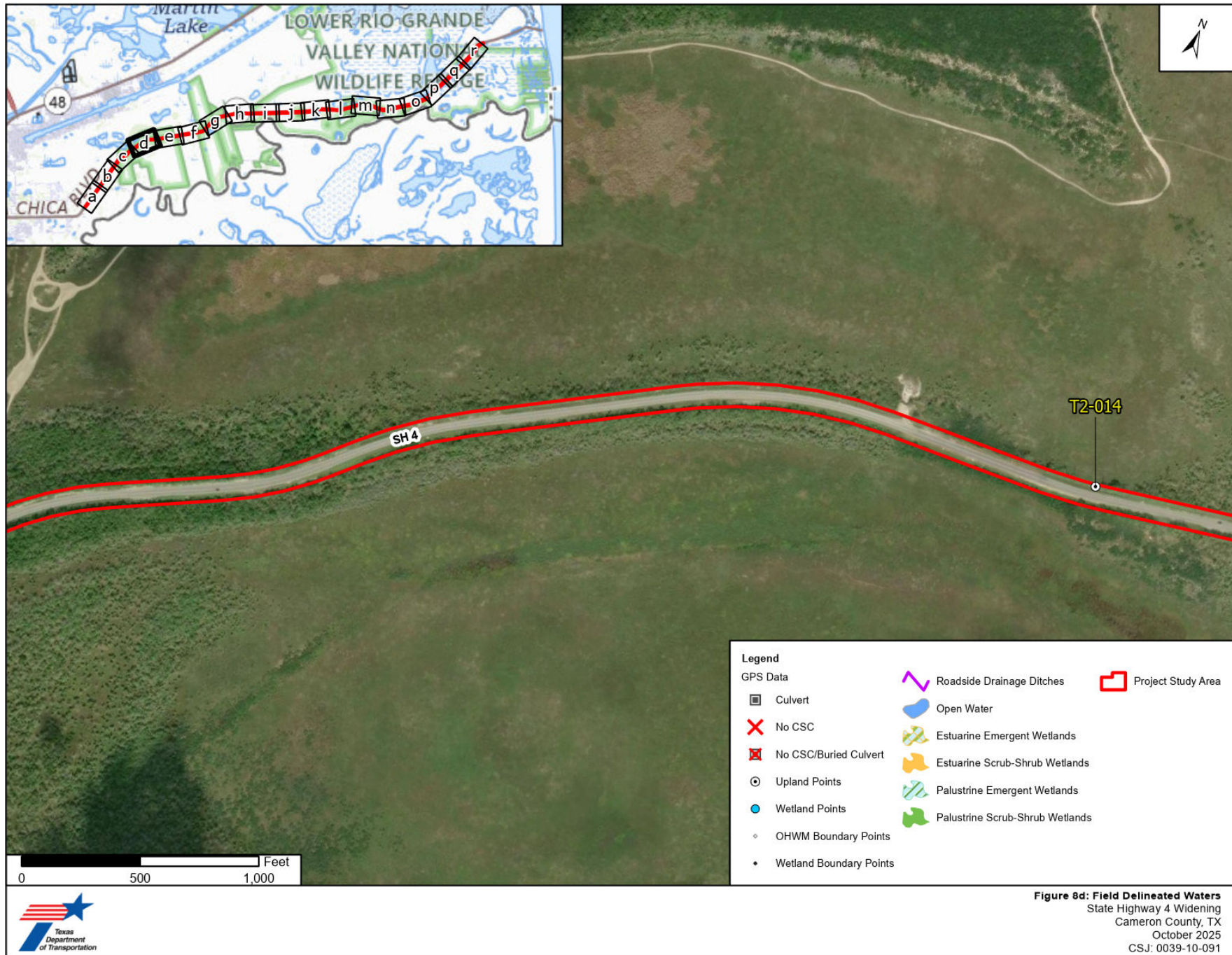
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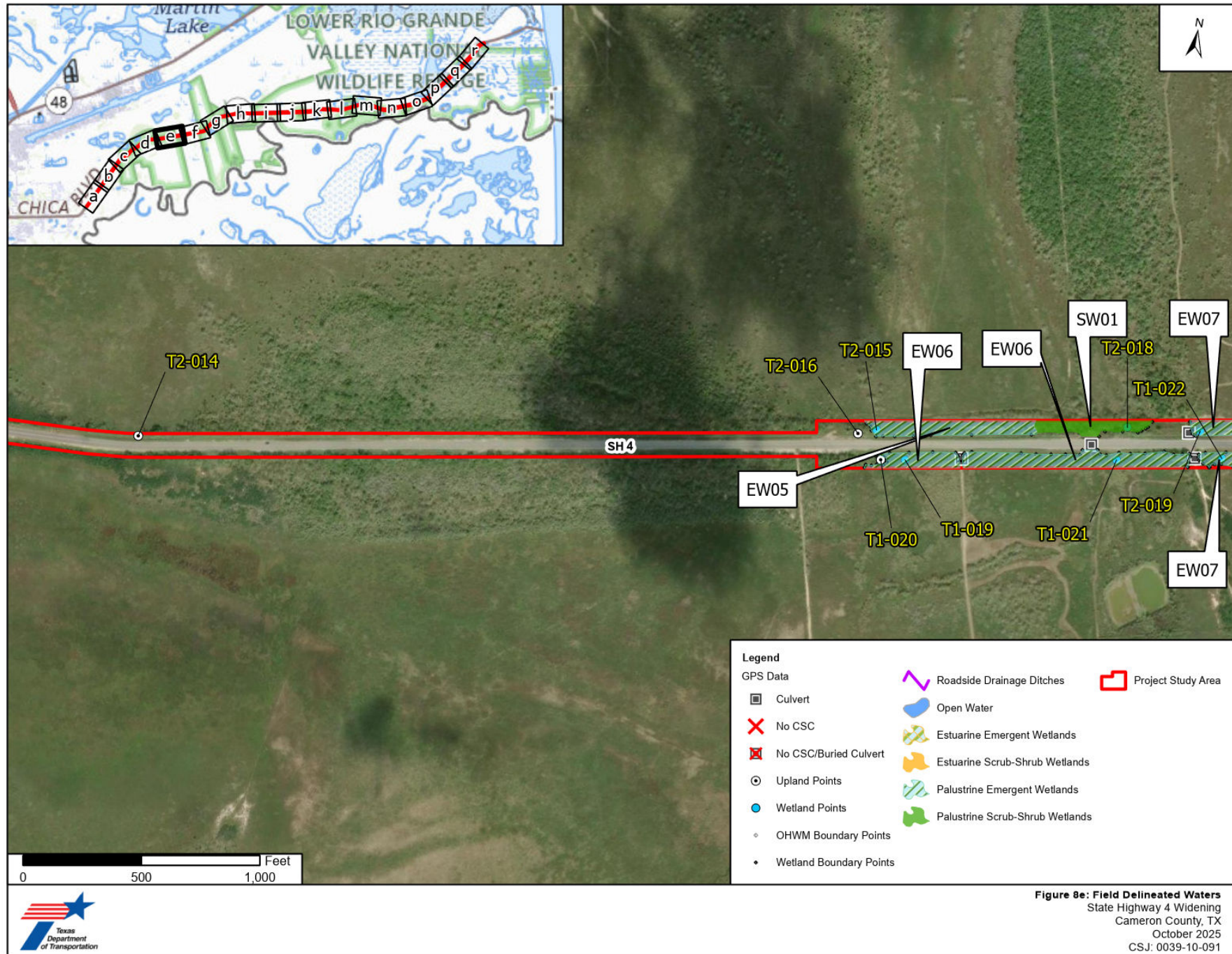


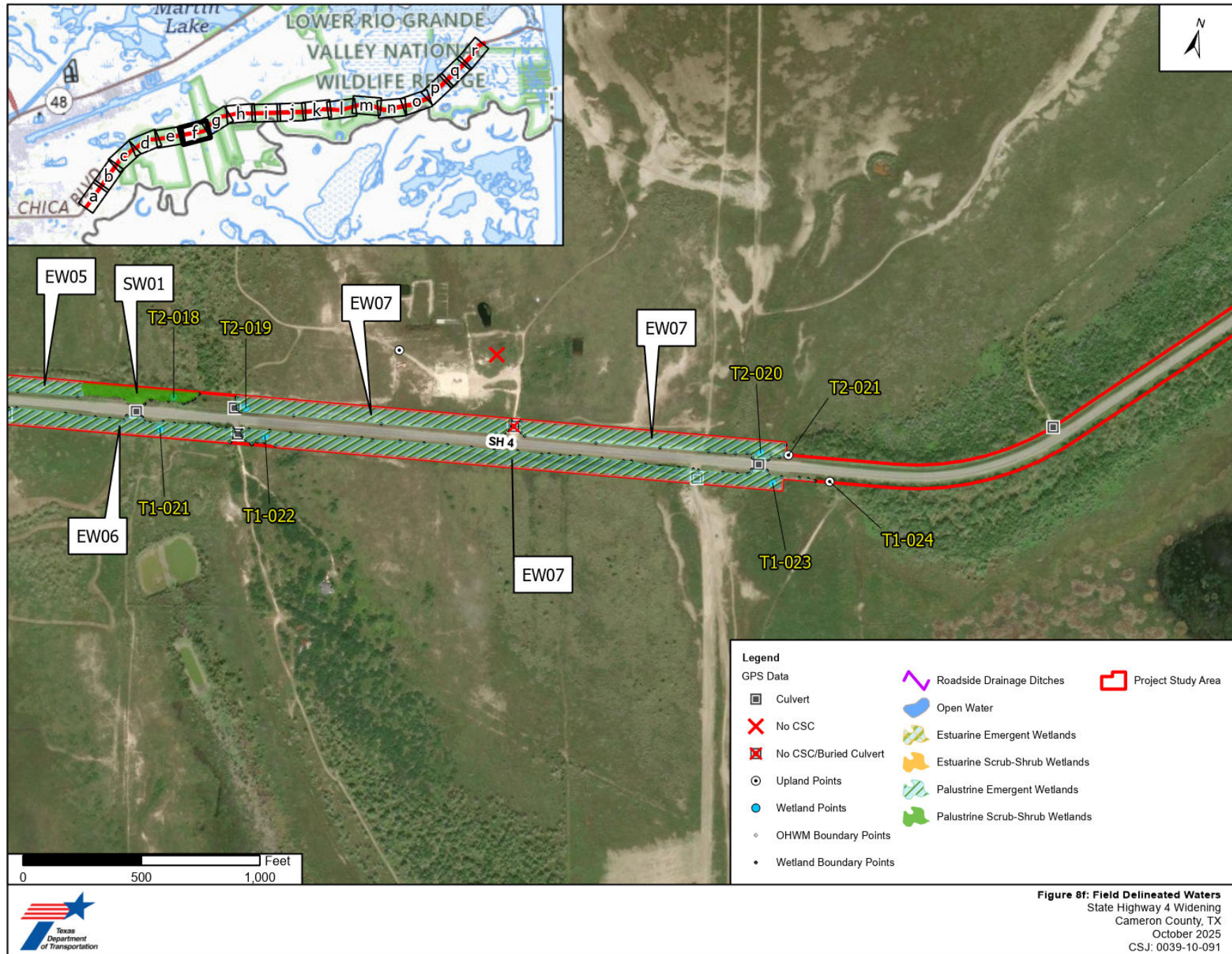


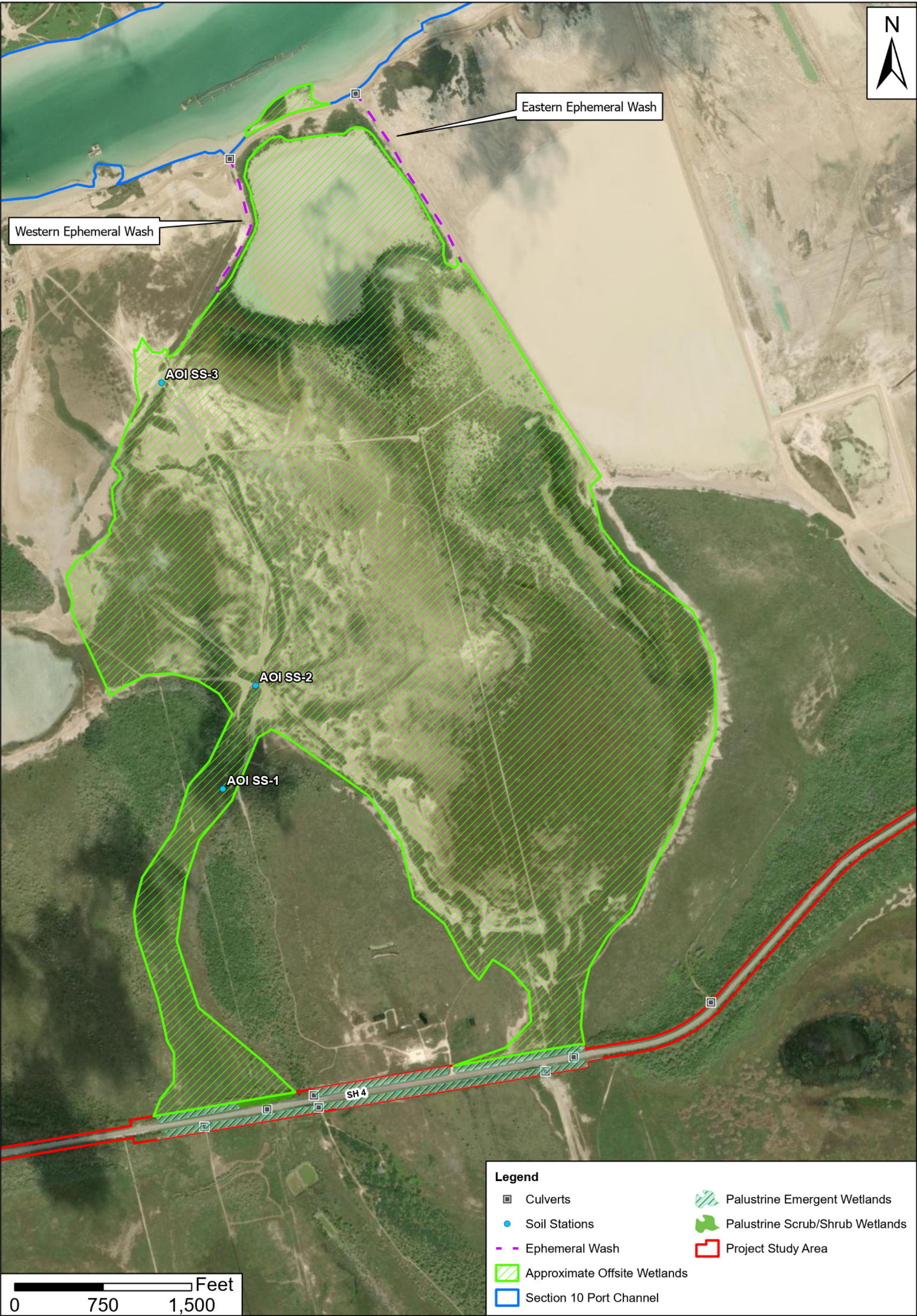












Kimley»Horn

Port Channel Offsite Connection Map
State Highway 4 Widening
Cameron County, TX
October 2025
CSJ: 0039-10-091

Aerial Source: Maxar (2023)
Data Source: Stantec (2022); Kimley-Horn

