



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

CESWG-RDS

2 MAR 2026

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-2025-00693 (MFR 1 of 1)²

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).

Feature Name	Latitude/ Longitude	Size (AC)	Length (LF)	Feature Type	Jurisdiction
sspb021	27.87838° N 97.25698° W	46.39		Traditional Navigable Water (Corpus Christi Bay)	10/404
wspb001	27.92503° N 97.25457° W	1.20		PEM Wetland with no CSC to RPW/TNW	None
sspb018e	27.88380° N 97.25698° W		4,168	R4 Ditch with Relatively Permanent flow that empties into a RPW/TNW	404
wspb003	27.87802° N 97.25709° W	0.61		E2EM1N tidal wetland contiguous with Corpus Christi Bay, a TNW	10/404
wspb004	27.87848° N 97.25908° W	0.46		E2AB3M tidal wetland contiguous with Corpus Christi Bay, a TNW	10/404
wet-dsk-001	28.01550° N 97.08362° W	0.11		E2EM1N tidal wetland contiguous with Corpus Christi Bay, a TNW	10/404
COE Ditch 1	27.88421° N 97.26382° W		660	Ditch excavated from uplands with no connection to RPW	None
COE Ditch 2	27.88803° N 97.26305° W		1,680	Ditch excavated from uplands with no connection to RPW	None
COE Ditch 3	27.88903° N 97.26501° W		2,495	Ditch excavated from uplands with no connection to RPW	None
COE Ditch 4	27.89251° N 97.26022° W		2,927	R4 Ditch with Relatively Permanent flow that is an upstream continuation of Ditch sspb018e (RPW)	404
COE Ditch 5	27.89691° N 97.26107° W		968	Ditch excavated from uplands.	None
COE Pond 1	27.89016° N 97.26429° W	3.29		Pond excavated from uplands with no CSC to RPW/TNW	None
COE Pond 3	27.89374° N 97.26308° W	3.53		Pond excavated from uplands with no CSC to RPW/TNW	None
COE Pond 4	27.89289° N 97.26463° W	2.77		Pond excavated from uplands with no CSC to RPW/TNW	None
COE Pond 7	27.89572° N 97.26008° W	0.09		Pond excavated from uplands with no CSC to RPW/TNW	None
COE Swale 1	27.89196° N 97.25848° W	0.26		Drainage swale with forested cover	None
COE Wetland 1	28.01550° N 97.08362° W	0.59		E2EM1N tidal wetland contiguous with Corpus Christi Bay, a TNW	10/404

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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)
3. REVIEW AREA. The total 426.59-acre sites are located approximately 1 mile east of Gregory along Highway 35 (North Yard), and approximately 3 miles southeast of Gregory along the La Quinta Navigation Channel (Terminal Area) near Gregory, in San Patricio County, Texas.

LATITUDE/LONGITUDE (Decimal Degrees):

North Yard (53.03 acres): 27.92495° North; 97.25491° West

Terminal Area (373.56 acres): 27.88658° North; 97.26132° West

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Corpus Christi Bay⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The relatively permanent ditch marked as COE Ditch 4 (north portion of the Terminal Review Area) and sspb018e (south portion of the Terminal Review Area) are essentially one continuous water feature that flows south into Corpus Christi Bay (TNW). There is an approximate 750-foot portion of this ditch that flows outside of the Review Area that provides a continuation of flow from COE Ditch 4 to sspb018e. A large weir structure sits near the mouth of feature sspb018e that backs water behind it prior to flowing through control gates and over an uncontrolled spillway into Corpus Christi Bay.

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.

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 Corpus Christi Bay (46.39 acres) is a Traditional Navigable Water subject to the ebb and flow of the daily tide and is presently used for interstate commerce by way of the La Quinta Ship Channel, the Corpus Christi Ship Channel, and the Gulf Intracoastal Waterway. Wetlands wspb003, wspb004, wet-dsk-001, and COE Wetland 1 (1.77 acres total) are tidally influenced estuarine wetlands abutting Corpus Christi Bay, a Traditional Navigable Water subject to the ebb and flow of the daily tide and actively used for interstate commerce.
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):

sspb021 (Corpus Christi Bay, 46.39 ac): Based on data sources listed above, we have determined this feature consists of the open waters of Corpus Christi Bay within the Review Area. Corpus Christi Bay is a Traditional Navigable Water subject to the ebb and flow of the daily tide and is presently used for interstate commerce by way of the La Quinta Ship Channel, the Corpus Christi Ship Channel, and the Gulf Intracoastal Waterway.

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.

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- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5):

Ditches sspb018e and COE Ditch 4 (7,095 LF): These mapped features are two reaches of the same Relatively Permanent Water that enters the Review Area as COE Ditch 4 at the north boundary of the Terminal Area and flows approximately 2,927 linear feet in a generally southerly direction, exits the Review Area on the eastern boundary, flows outside the Review Area approximately 840 feet, then re-enters the Review Area as Ditch sspb018e and flows south approximately 4,168 linear feet to Corpus Christi Bay, a Traditional Navigable Water subject to the ebb and flow of the daily tide that is actively used for interstate commerce. Therefore, this combined feature is considered jurisdictional under Section 404.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7):

Wetlands wspb003, wspb004, wet-dsk-001, and COE Wetland 1 (1.77 ac): Based on data sources listed above and a site visit conducted on 29 January 2026, we have determined that these mapped features consist of tidally influenced estuarine wetlands abutting Corpus Christi Bay, a Traditional Navigable Water subject to the ebb and flow of the daily tide and actively used for interstate commerce.

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.

COE Pond 1, COE Pond 3, COE Pond 4, and COE Pond 7 (7.69 ac): Based on the data sources listed above and a site visit conducted on 29 January 2026, we

⁹ 51 FR 41217, November 13, 1986.

have determined these features are pits initially excavated from dry land to provide construction material and now serve as basins for storm water retention after a precipitation event. There is no presence of a continuous surface connection, nor is there any evidence of sheet flow from these features to an RPW or TNW. The preamble of Section 328.3 (16 November 1986 Federal Register Vol. 51, No. 219) defines waters that are generally non-jurisdictional, including “waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States (see 33 CFR 328.3(a)).” (33CFR 328.3(b)(7))

- 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.

COE Ditch 1, COE Ditch 2, COE Ditch 3, and COE Ditch 5 (5,803 LF): Based on the data sources listed above and a site visit conducted on 29 January 2026, we have determined these features are ditches constructed from uplands that carry ephemeral water towards retention ponds labelled as COE Pond 1, COE Pond 3, and/or COE Pond 4. The ditches do not contain relatively permanent water, are not under tidal influence, and do not act as a tributary to any TNW. The preamble of Section 328.3 (16 November 1986 Federal Register Vol. 51, No. 219) defines waters that are generally non-jurisdictional, including “non-tidal drainage ditches excavated on dry land... Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water (33 CFR 328.3(b)(3)).”

COE Swale 1 (0.26 ac): Based on data sources listed above and a site visit conducted 29 January 2026; this mapped feature is determined to be a drainage swale with no bed or banks that conveys flow into COE Ditch 4 after precipitation events. This swale does not contain relatively permanent water and is not under tidal influence. (33CFR 328.3(b)(8))

- 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

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- 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).

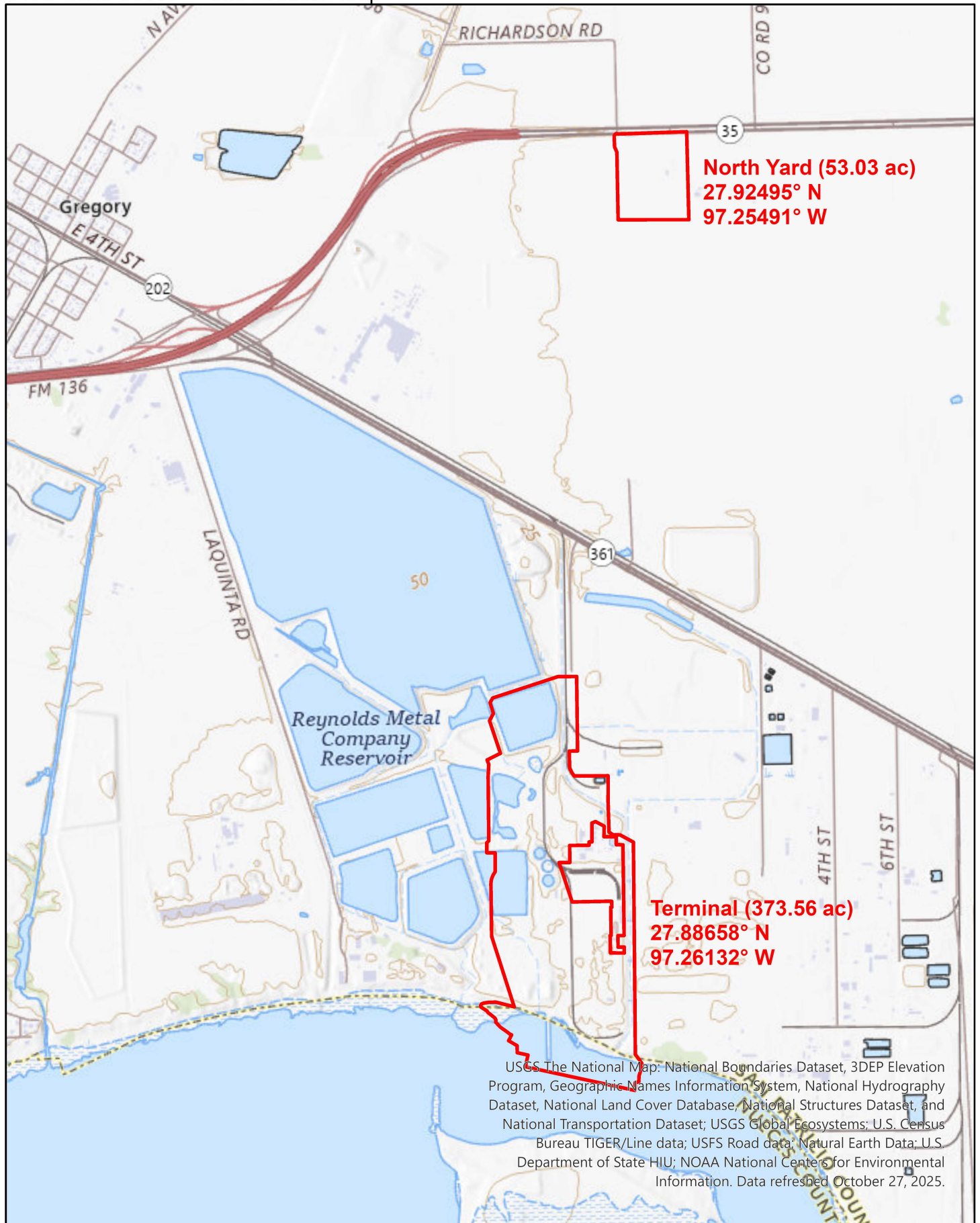
The provided LiDAR, topo and other data sources (NHD maps, aerial imagery, site photos and the wetland delineation field data forms) were utilized as part of the desktop analysis to identify that the review and surrounding area includes depressional wetlands that are surrounded by uplands with no more than overland sheet flow exiting the wetlands. There is a lack of a possible connection to relatively permanent waters as there is an absence of any swales, erosional features, ditches or culverts.

Wetland wspb001 (0.08 ac): Based on data sources listed above, we have determined this palustrine wetland resides in a small depressional area entirely within the review area that collects rainwater from the surrounding countryside. There is no presence of a continuous surface connection, nor is there any evidence of sheet flow from this wetland to an RPW or TNW. In accordance with 33 CFR Part 328.3, a wetland is considered a WOUS when it is adjacent to waters identified in paragraph (a)(1)-(a)(3) of the federal regulations. In accordance with pre-2015 regulatory regime in light of *Sackett v. EPA*, a wetland is considered adjacent if connected by a continuous surface connection, meaning that the wetland must physically abut or touch the paragraph (a)(1) or relatively permanent water, or be connected to the paragraph (a)(1) or relatively permanent water by a discrete feature (i.e. non-jurisdictional ditch, swale, pipe, or culvert).

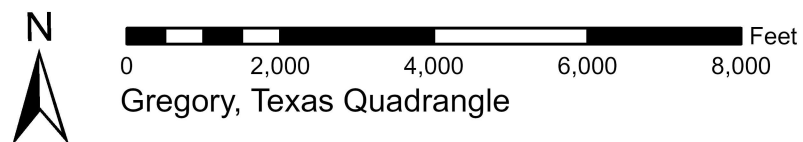
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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Wetland Delineation Report prepared by Environmental Resources Management, Inc., 12 December 2025
 - b. Aerials (2002, 2017, 2023; source: Google Earth; and December 2025 from applicant)
 - c. USGS Topographic Map 1:24,000 Gregory, Texas (2022)
 - d. USGS LiDAR: South Texas (2018) Vertical Accuracy (cm): 4.5 - Tested to meet vertical root mean square error (RMSEz) in open terrain.
 - e. Web Soil Survey Hydric Rating Map for San Patricio County, Texas (NRCS website accessed 6 JAN 2026)
 - f. National Wetland Inventory (NWI) (USFWS website accessed 6 JAN 2026)
 - g. Site Visit conducted 29 JAN 2026
 - h. National Hydrologic Dataset (NHD) – 12110201 North Corpus Christi Bay
 - i. ORM2 Database: Approved Jurisdictional Determination (AJD) for Project SWG-2015-00767 for the Review Area just north of this project's Terminal Review Area.
10. OTHER SUPPORTING INFORMATION. N/A



USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HIU; NOAA National Centers for Environmental Information. Data refreshed October 27, 2025.

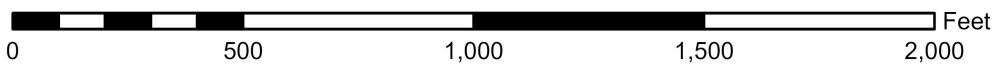




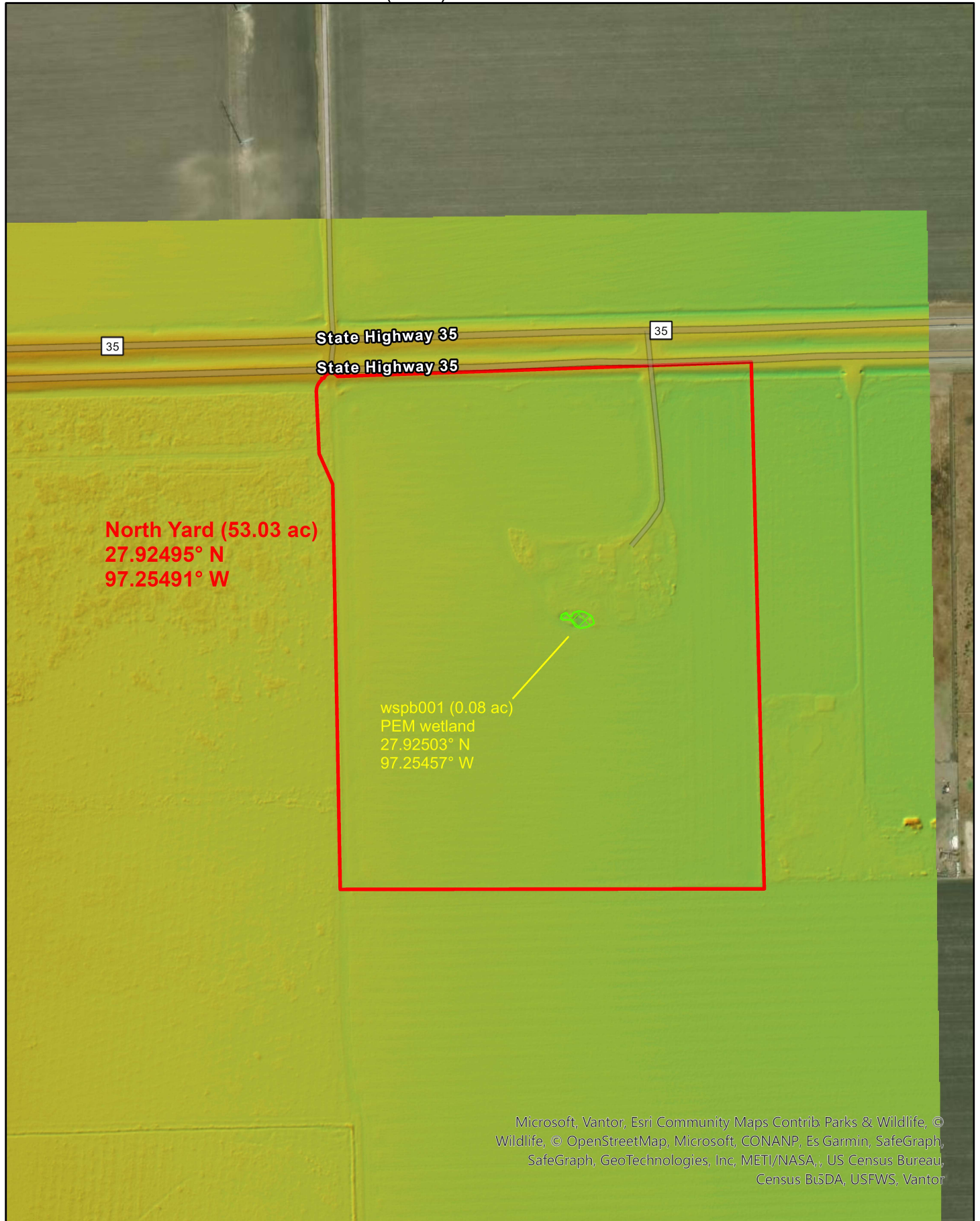
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wspb001 (0.08 ac)
PEM wetland
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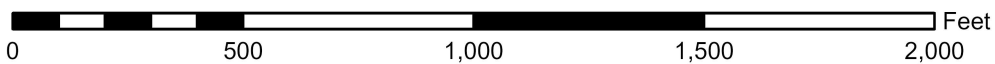
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Gregory, Texas Quadrangle

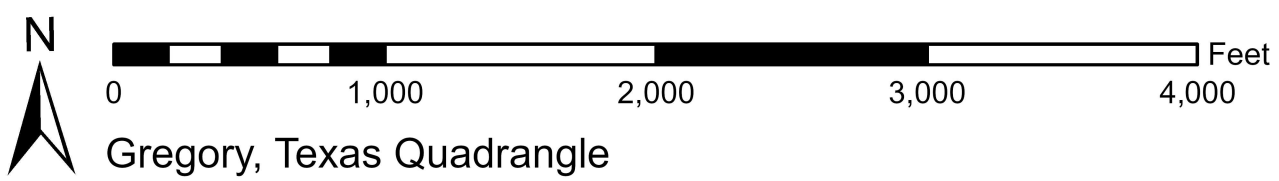
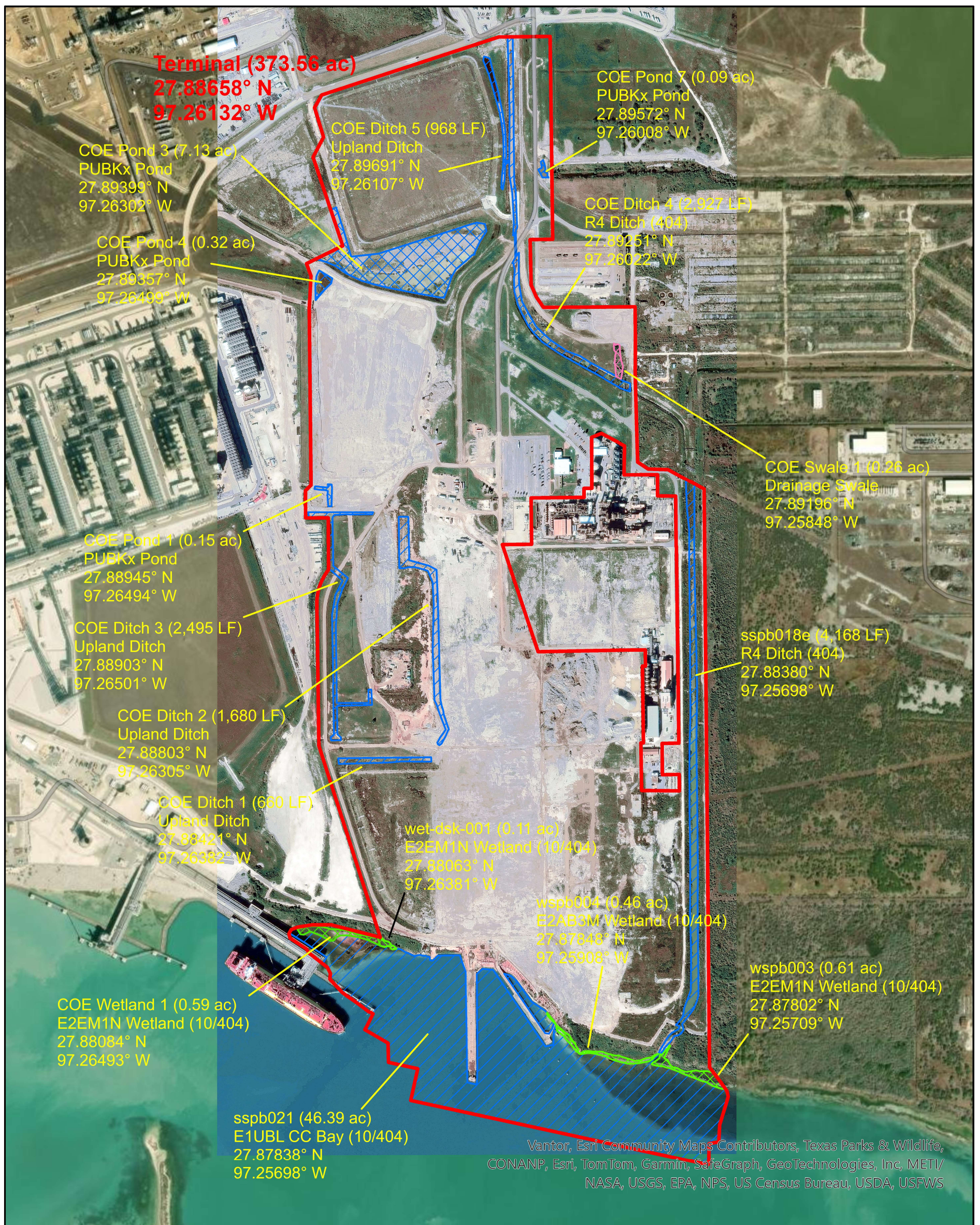


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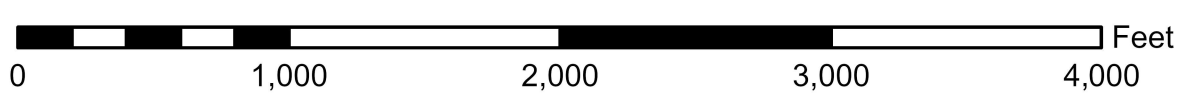
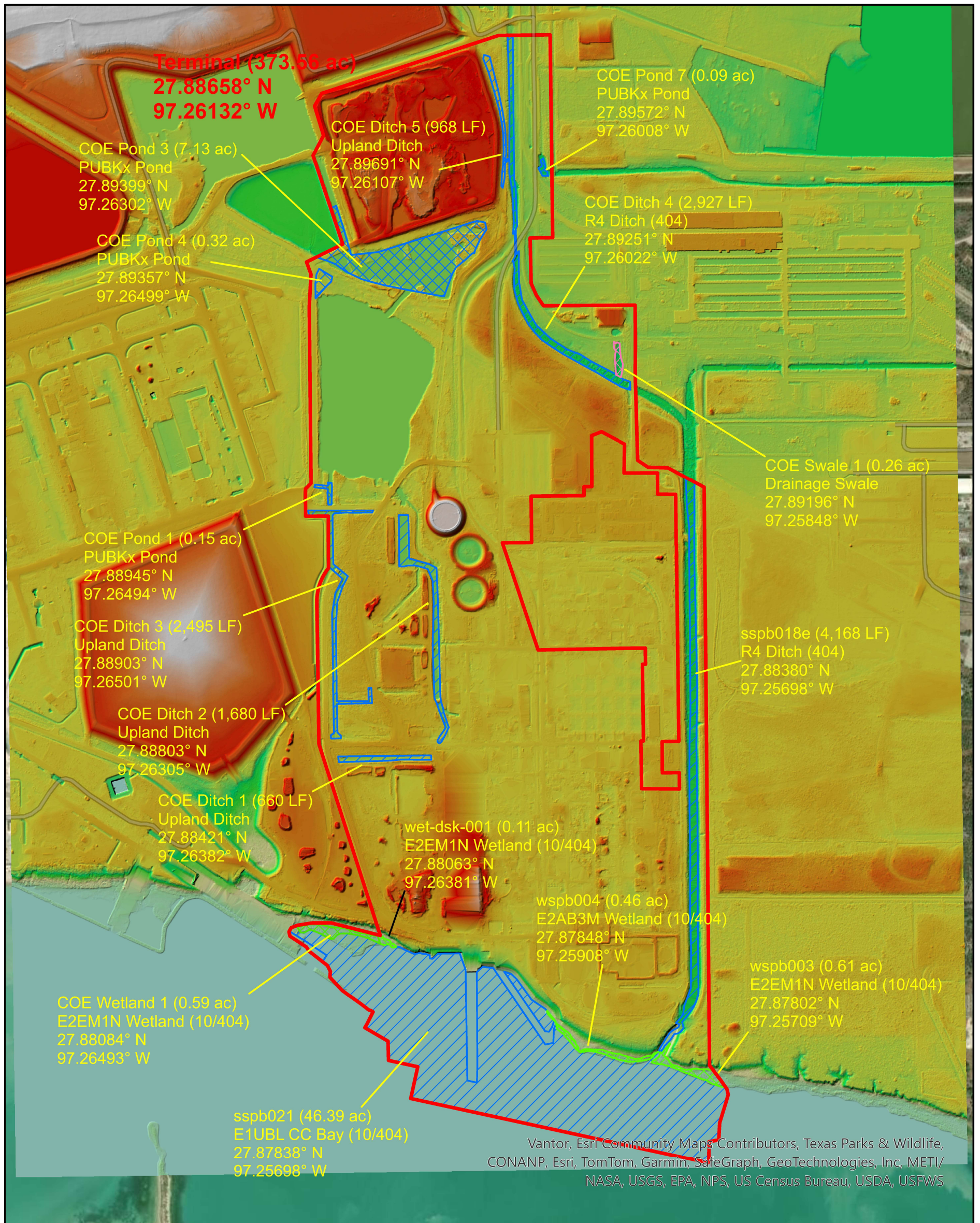


Gregory, Texas Quadrangle

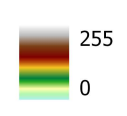
SWG-2025-00693 Review Area - Terminal (373.56 ac) (Aerial flown December 2025)



SWG-2025-00693 Review Area - Terminal (373.56 ac) LiDAR Flown 2018



Elevation (ft)



SWG-2025-00693 Review Area - Terminal (373.56 ac) Topographic Map

