



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

CESWG - RDN

4 March 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),¹SWG-2026-00139²

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.

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2026-00139

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

1. SUMMARY OF CONCLUSIONS.

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	Feature Type	Latitude	Longitude	Acres/Linear Feet	Jurisdictional Status
CAN15	Drainage Ditch	29.87638	-93.99638	0.02-Acres / 247 Linear Feet	Non-Jurisdictional
CAN16	Drainage Ditch	29.87622	-93.99479	0.01-Acres / 674 Linear Feet	Non-Jurisdictional
WET08	PEM	29.87605	-93.99622	0.70-Acres	Non-Jurisdictional
WET11	PSS	29.87591	-93.99629	0.26-Acres	Non-Jurisdictional
WET12	PSS	29.87557	-93.99592	0.65-Acres	Non-Jurisdictional
WET13	PEM	29.87555	-93.99487	0.73-Acres	Non-Jurisdictional
WET14	PSS	29.87581	-93.99481	0.31-Acres	Non-Jurisdictional
WET15	PSS	29.87555	-93.99444	0.81-Acres	Non-Jurisdictional
WET16	PSS	29.87646	-93.99496	1.63-Acres	Non-Jurisdictional
WET17	PSS	29.87698	-93.99531	0.09-Acres	Non-Jurisdictional

PEM: Palustrine Emergent Wetland. PSS: Palustrine Scrub-Shrub Wetland

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)

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2026-00139

- 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 consists of an 8.5-Acre tract of land that encompasses the existing Legend 230-kV Substation located within Port Arthur, Jefferson County, Texas. The review area is directly adjacent to a previously issued Corps Approved Jurisdictional Determination (SWG-2014-00661) which determined all wetlands located within that 214-Acre review area to be non-jurisdictional.

LATITUDE/LONGITUDE (Decimal Degrees): Center,
Latitude: 29.876069° North; Longitude: -93.995334° West

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
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 N/A
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

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.

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2026-00139

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): 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): N/A

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.

CAN15: CAN15 is a 0.02-acres / 247-linear-foot artificially excavated drainage ditch located entirely within low areas that would likely meet the Corps three

⁹ 51 FR 41217, November 13, 1986.

criteria for wetland determination. CAN15 fluctuates from a more defined feature to a less defined drainage path further downstream off-site of this current review area. CAN15 drains through a large wetland area that was previously determined to be non-jurisdictional (SWG-2014-00661) before passing underground through the existing upland berm/levee structure that acts as a barrier between the non-jurisdictional wetland and jurisdictional tributary (Tiger Bayou) previously identified within SWG-2014-00661. CAN15 outflows into Tiger Bayou through an outfall structure that is located above the Ordinary High-Water Mark. Due to these reasons, CAN15 does not hold a continuous surface connection with a relatively permanent water and is therefore considered non-jurisdictional under Section 404 of the Clean Water Act.

CAN16: CAN16 is a 0.01-acres / 674-linear-foot artificially excavated drainage ditch located within the northern portion of the review area. This feature does not have regular inundation/flow and is not considered relatively permanent. CAN16 also does not hold a continuous surface connection with either CAN15 to the west or the relatively permanent water located immediately north of the review area. For these reasons, CAN16 is considered non-jurisdictional under Section 404 of the Clean Water Act.

- 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

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2026-00139

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

WET08, WET11 – WET17: WET08 and WET11-WET17 are all palustrine wetlands that total approximately 5.18 acres and located entirely within the footprint of the review area. These wetlands abut the previously determined non-jurisdictional feature CAN15, and off-site non-jurisdictional wetland features previously determined (SWG-2014-00661). WET08 & WET11- WET17 are separated from the immediately northwards relatively permanent water via upland barriers including berms and an existing roadway. These wetland features lack a continuous surface connection with the off-site relatively permanent waters Tiger Bayou to the west and unnamed tributary to the north. For these reasons, the Corps has determined WET08 & WET11-WET17 to be non-jurisdictional under 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 March 2026
 - b. Wetland Delineation Report: Prepared by Power Engineers, for Entergy Texas, Inc. dated 1 May 2024.
 - c. USACE Texas Southwestern Division Regulatory Viewer. World Imagery with Metadata accessed March 2026.
 - d. USACE Texas Southwestern Division Regulatory Viewer. National Wetlands Inventory & National Hydrography Dataset accessed March 2026.
 - e. USACE Texas Southwestern Division Regulatory Viewer. Digital Elevation Model & Hillshade accessed March 2026.
 - f. SWG-2014-00661 originally issued 20 October 2025 to GT Logistics/GT OmniPort.
 - g. 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.

CESWG - RDN

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2026-00139

10. OTHER SUPPORTING INFORMATION. N/A

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 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
Regulatory Project Manager

Date: 4 March 2026

REVIEWED/APPROVED BY:



Andria Davis
Leader, North Branch
Regulatory Division, Galveston District

Date: 4 March 2026



 Property Boundary

Source(s): World Imagery: Vantor
World Street Map: Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, NPS, USFWS
Hybrid Reference Layer: Esri Community Maps Contributors, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

0 1,240 Feet



Site Location Map
Entergy Texas, Inc.
Legend 230-kV Substation Expansion
Port Arthur, Jefferson County, TX

Geosyntec
consultants

Baton Rouge, LA

February 2026

Figure
1



 Property Boundary



1,040
Feet

Aerial Imagery Map

Entergy Texas, Inc.
Legend 230-kV Substation Expansion
Port Arthur, Jefferson County, TX

Geosyntec
consultants

Figure

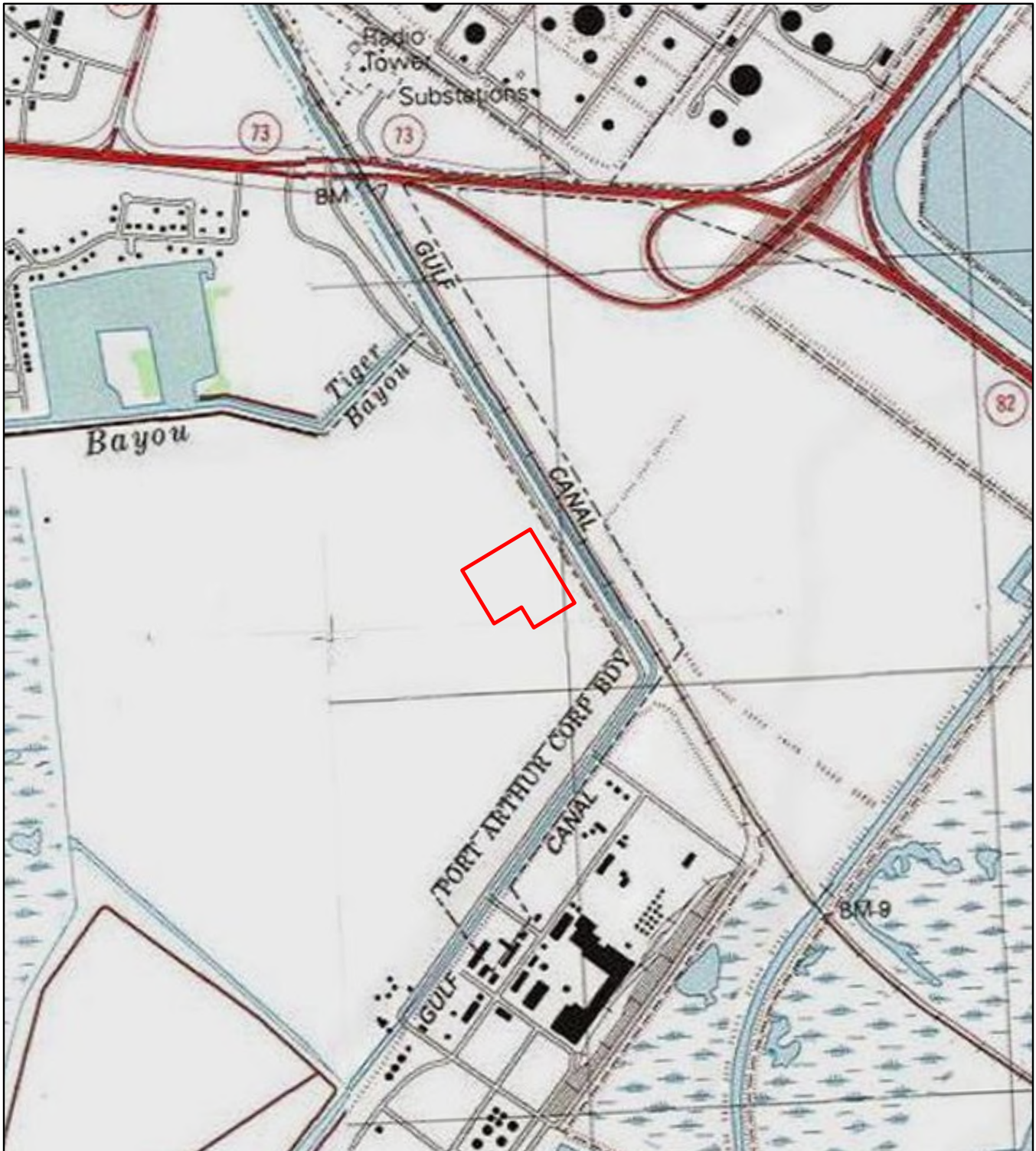
2


GXE10396

February 2026

Source(s): Source: Esri, USDA FSA, Source: Esri, Vantor, Earthstar Geographics, and the GIS User Community, Esri Community Maps Contributors, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

X:\BATON ROUGE\Entergy\Legend 230 kV Substation Expansion\GIS\aprx\AJD Request Legend 230kv Substation Expansion.aprx 2/23/2026 5:23 PM



 Property Boundary



USGS Topographic Map

Entergy Texas, Inc.
Legend 230-kV Substation Expansion
Port Arthur, Jefferson County, TX

Geosyntec
consultants

Figure

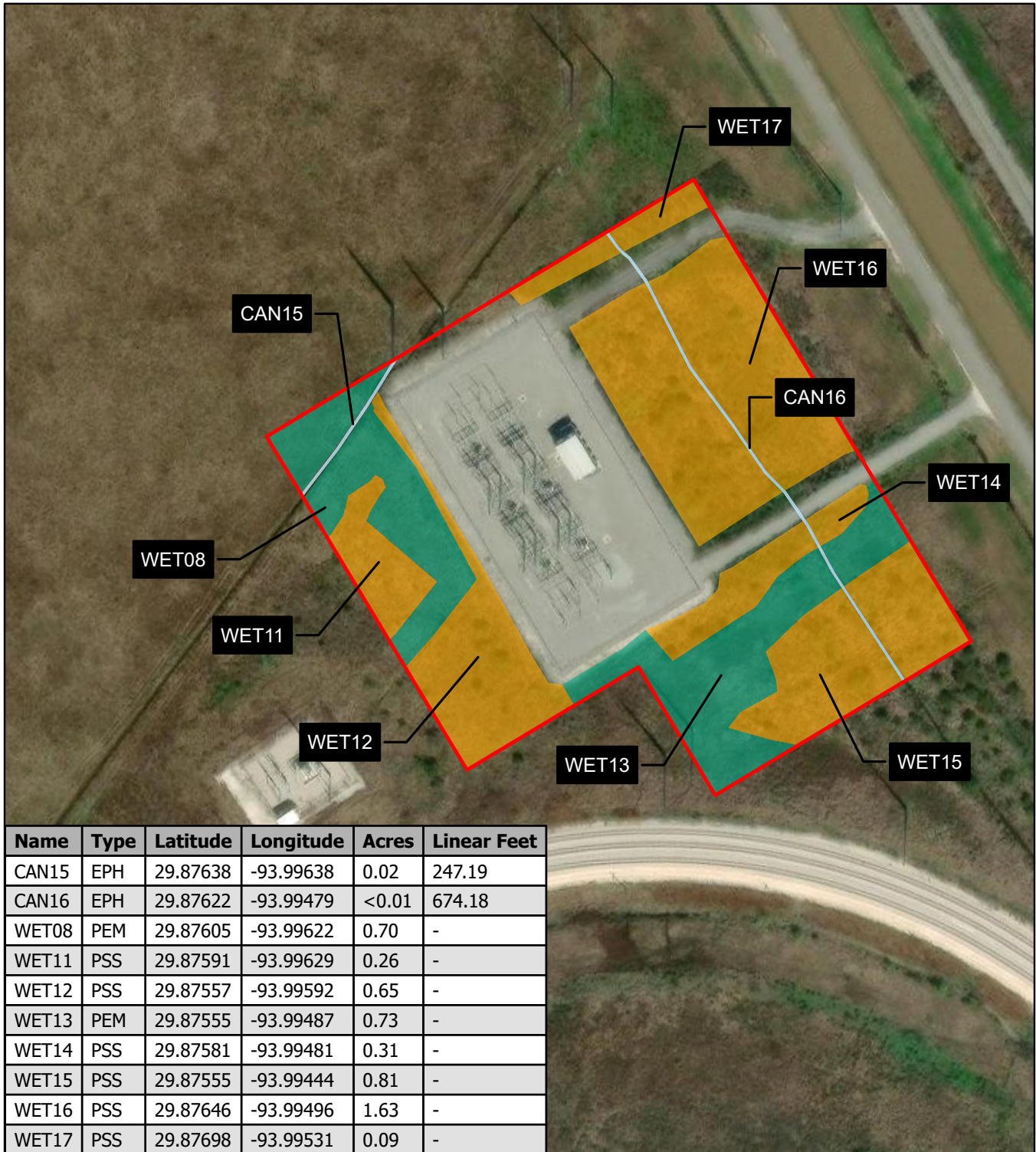
3

Source(s): Copyright: © 2013 National Geographic Society, i-cubed, Esri
Community Maps Contributors, Texas Parks & Wildlife, CONANP, Esri, TomTom,
Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, US
Census Bureau, USDA, USFWS



GXE10396

February 2026



Name	Type	Latitude	Longitude	Acres	Linear Feet
CAN15	EPH	29.87638	-93.99638	0.02	247.19
CAN16	EPH	29.87622	-93.99479	<0.01	674.18
WET08	PEM	29.87605	-93.99622	0.70	-
WET11	PSS	29.87591	-93.99629	0.26	-
WET12	PSS	29.87557	-93.99592	0.65	-
WET13	PEM	29.87555	-93.99487	0.73	-
WET14	PSS	29.87581	-93.99481	0.31	-
WET15	PSS	29.87555	-93.99444	0.81	-
WET16	PSS	29.87646	-93.99496	1.63	-
WET17	PSS	29.87698	-93.99531	0.09	-

Property Boundary

Power-Delineated Aquatic Resources

- EPH
- PEM
- PSS

Source(s): Vantor

POWER Wetland Delineation Map

Entergy Texas, Inc.
 Legend 230-kV Substation Expansion
 Port Arthur, Jefferson County, TX

Figure

6

GXE10396
February 2026

N

0 160 Feet