DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

January 28, 2021

Compliance Branch

SUBJECT: **SWG-2007-01475**, Spoonbill Holdings, LP; Approved Jurisdictional Determination (AJD); Approximate 117-Acre Tract, North and East of the Farm-to-Market (FM) Road 3005 and Salt Cedar Drive Intersection, Galveston, Galveston County, Texas

Mr. Charles Schwarz, III
10190 Katy Freeway
Suite 501
Houston, Texas 77043

Dear Mr. Schwarz:

This is in response to the request for an approved jurisdictional determination (AJD), received September 10, 2020, for an approximate 117-acre site for the proposed Spoonbill Bay Development. The subject site is located north and east of the FM 3005 and Salt Cedar Drive intersection in Galveston, Galveston County, Texas (map enclosed).

Based on a review of the available information, and federal regulations we determined the approximate 97.7-acre site contains four (4) tidal open-waters comprising approximately 20.42 acres, six (6) tidal salt flats comprising approximately 3.03 acres, fifteen (15) tidal herbaceous wetlands comprising approximately 11.12 acres, and twenty-nine (29) freshwater herbaceous wetlands comprising approximately 18.03 acres. Wetlands within the subject site were identified using the Atlantic and Gulf Coastal Plain Region (Version 2.0) to the 1987 Corps of Engineers Wetland Delineation Manual which requires under normal circumstances, a predominance of hydrophytic vegetation, wetland soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem. The three (3) tidal open-waters are subject to the daily tidal ebb and flow and are listed on the Galveston District navigable waters list, and therefore meet the 33 CFR 328.3(a)(1) definition of Clean Water Act (CWA) Section 404 traditional navigable waters (TNWs) and the 33 CFR 329 Rivers and Harbors Act of 1899 (RHA) Section 10 definition of navigable waters. The six (6) tidal salt flats are subject to the annual high tide line and therefore meet the 33 CFR 328.3(a)(1) CWA Section 404 definition of tidal waters. The fifteen (15) tidal herbaceous wetlands either abut West Bay or are subject to the annual high tide and therefore meet the 33 CFR 328.3(a)(4) CWA Section 404 definition of adjacent wetlands. The twenty-nine (29) freshwater herbaceous wetlands are located in a landscape position that would not be flooded/inundated by an (a)(1 - 3) water during a "typical year" and therefore meet the 33 CFR 328.3(b)(1) CWA Section 404 exclusion.

Therefore, a Department of the Army (DA) permit is required for any work in or affecting the identified RHA Section 10 waters and for the discharge of dredged and/or fill material into the identified CWA Section 404 waters within the subject site. This AJD will remain valid for five (5) years from the date of the final letter, unless new information warrants revisiting or re-issuance prior to the expiration date.

The AJD form and map included herein identifies the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for this request. This jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This letter constitutes an AJD for this subject site and is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. If you object to this AJD, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Southwestern Division Office at the following address:

Mr. Elliott Carman
Administrative Appeals Review Officer (CESWD-PD-O)
U.S Army Corps of Engineers, Southwest Division
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Telephone: 469-487-7061; Fax: 469-487-7199

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP; noting the letter date is considered day 1. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If you have questions concerning this matter, please reference file number **SWG-2007-01475** and contact me at the letterhead address, by e-mail at kevin.s.mannie@usace.army.mil, or by telephone at 409-766-3016. To assist us in improving our service to you, please complete the survey found at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0 and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

Sincerely,

Kevin Mannie
Regulatory Project Manager

Enclosures

cc:
Kristi McMillan, CESWG-RD-E, Central Evaluation Unit

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: **SPOONBILL BAY HOLDINGS, LP**	File Number: **SWG-2007-01475**	Date: **1/28/2021**

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

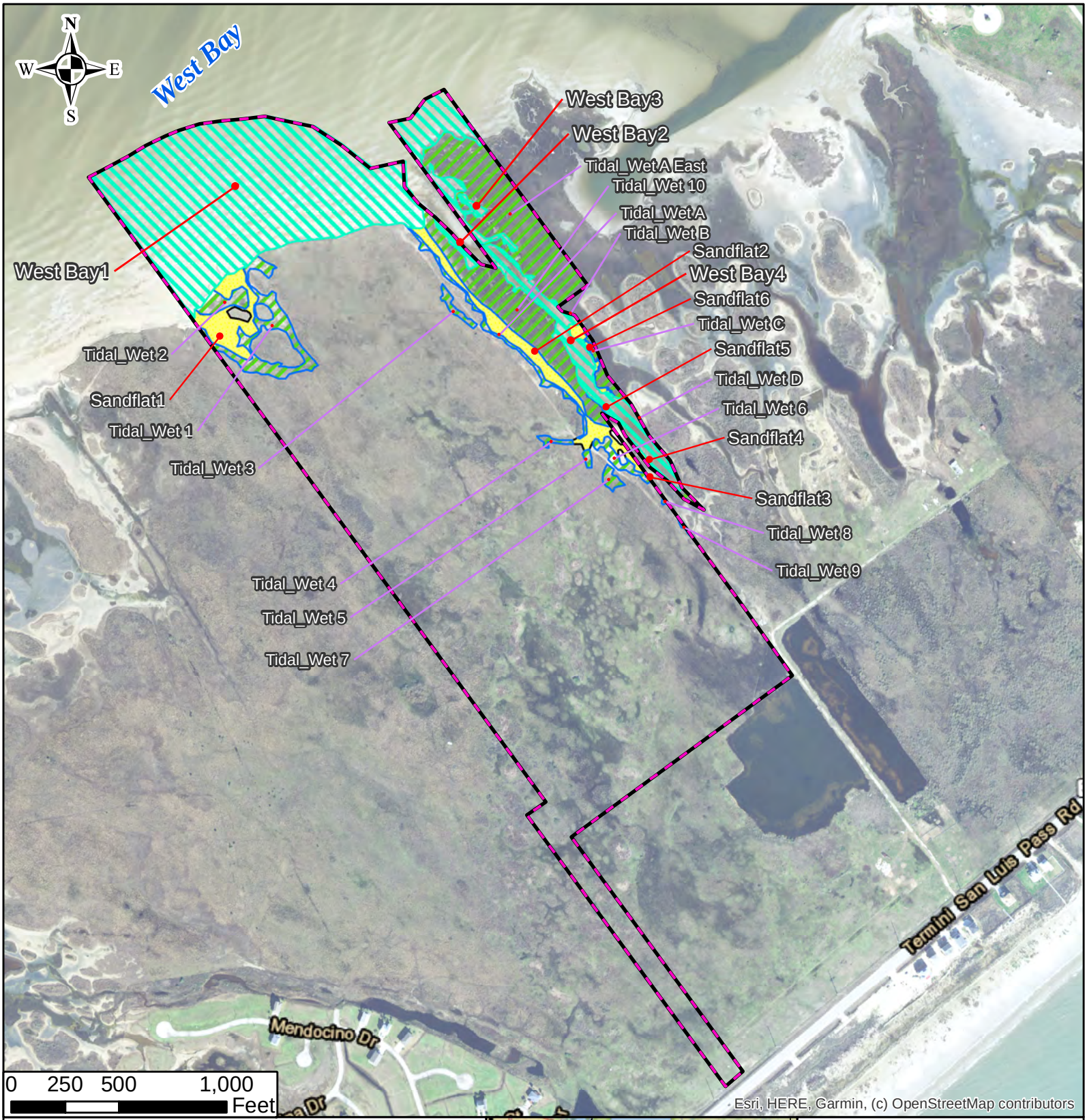
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Kevin S. Mannie, Project Manager Regulatory Division, Compliance Branch (CESWG-RD-C) U.S. Army Corps of Engineers, Galveston District P.O. Box 1229 Galveston, Texas 77553-1229 Telephone: 409-766-3016; Fax: 409-766-3931	Mr. Elliott Carman Administrative Appeals Review Officer (CESWD-PD-O) U.S. Army Corps of Engineers, Southwest Division 1100 Commerce Street, Suite 831 Dallas , Texas 75242-1317 Telephone: 469-487-7061; Fax: 469-487-7199

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

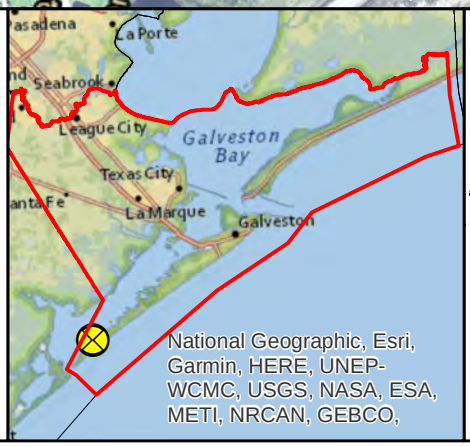
	Date:	Telephone number:
_____ Signature of appellant or agent.		

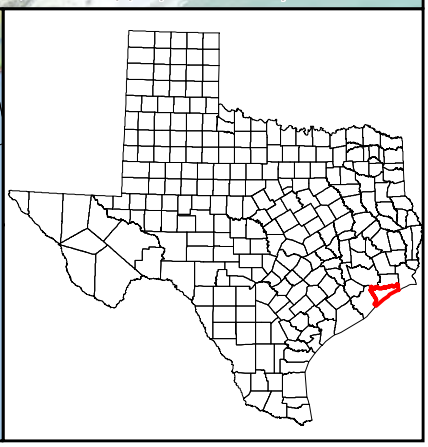


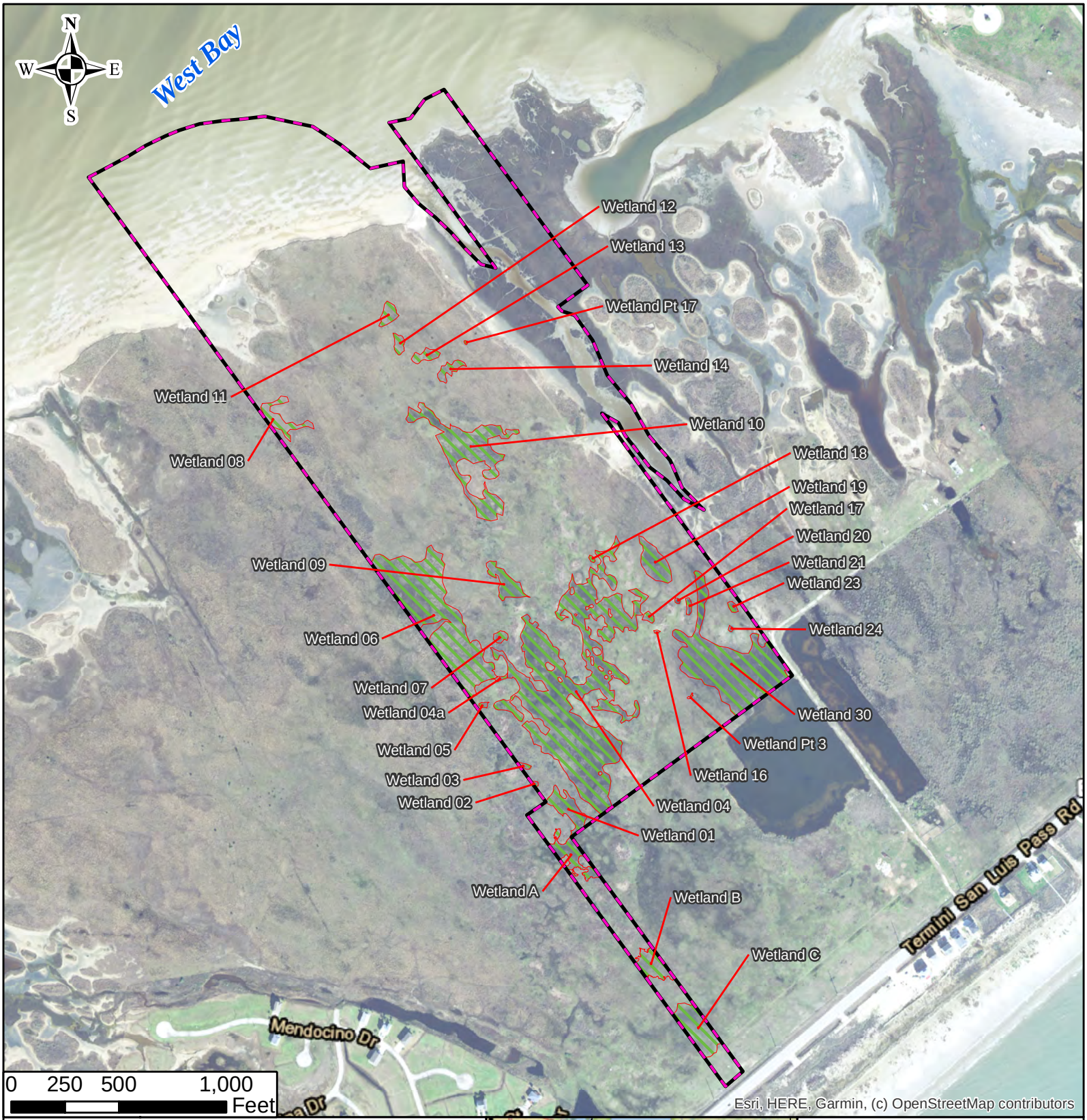
SWG-200701475
Spoonbill Holdings
Approximate 116.6-Acre Site
Approved Jurisdictional Determination
Galveston, Galveston County, Texas

- Review_Area ~ 116.6 ac
- Section 10-404 Waters ~ 20.42 ac
- Section 404 Tidal_Wetlands ~ 11.12 ac
- Section 404 Sandflats ~ 3.03 ac

Imagery: 2018 National Agriculture Imagery Program (NAIP), 1.0-meter Near Color
Note: Review area reflects neither property boundaries nor ownership.







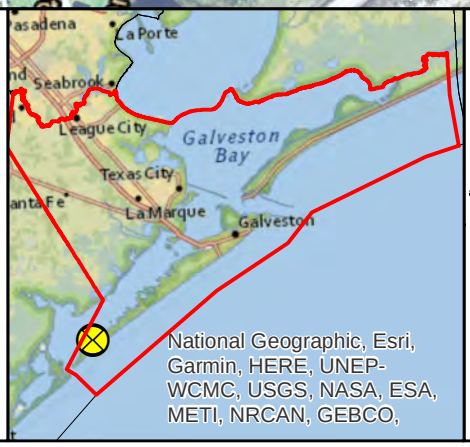
SWG-200701475
Spoonbill Holdings
Approximate 116.6-Acre Site
Approved Jurisdictional Determination
Galveston, Galveston County, Texas

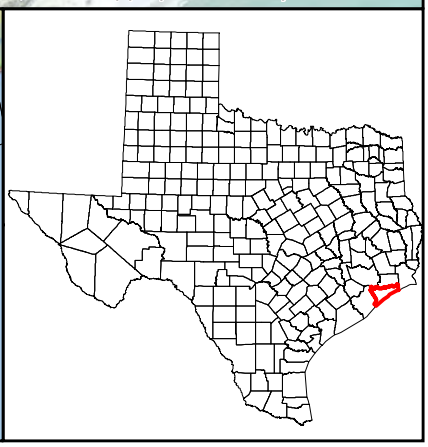
Review_Area ~ 116.6 ac

Non-Adjacent_Wetlands ~ 18.0 ac

Imagery: 2018 National Agriculture Imagery Program (NAIP), 1.0-meter Near Color

Note: Review area reflects neither property boundaries nor ownership.





U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 1/28/2021
ORM Number: SWG-2007-01475
Associated JDs: SWG-2007-01475 (completed 7/18/2017)
Review Area Location[1]: State/Territory: TX City: Galveston County/Parish/Borough: Galveston
Center Coordinates of Review Area: Latitude 29.121947 Longitude -95.083181

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☒ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
West Bay 1	17.29	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	This area is part of West Bay subject to the daily tidal ebb and flow up to the mean tide line and as part of West Bay is included with an area identified within the SWG navigable waters list.
West Bay 2	0.205	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	This area is part of West Bay subject to the daily tidal ebb and flow up to the mean tide line and as part of West Bay is included with an area identified within the SWG navigable waters list.
West Bay 3	0.626	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	This area is part of West Bay subject to the daily tidal ebb and flow up to the mean tide line and as part of West Bay is included with an area identified within the SWG navigable waters list.
West Bay 4	2.3	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	This area is part of West Bay subject to the daily tidal ebb and flow up to the mean tide line and as part of West Bay is included with an area identified within the SWG navigable waters list.

C. Clean Water Act Section 404

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
West Bay 1	17.29	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	This area is subject to the daily tidal ebb and flow to the mean high tide and is also subject to the RHA Section 10.
West Bay 2	0.205	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	This area is subject to the daily tidal ebb and flow to the mean high tide and is also subject to the RHA Section 10.
West Bay 3	0.626	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	This area is subject to the daily tidal ebb and flow to the mean high tide and is also subject to the RHA Section 10.
West Bay 4	2.3	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	This area is subject to the daily tidal ebb and flow to the mean high tide and is also subject to the RHA Section 10.
Sandflat 1	1.21	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 ONLY).	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.
Sandflat 2	1.53	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.

[3] A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
			foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 ONLY).	
Sandflat 3	0.01	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 ONLY).	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.
Sandflat 4	0.04	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 ONLY).	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.
Sandflat 5	0.03	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 ONLY).	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.
Sandflat 6	0.21	acre(s)	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide	This feature lies above the West Bay, an (a)(1) water, mean tide line but below the annual high tide line and is therefore subject to inundation from West Bay in a typical year.

U.S. ARMY CORPS OF ENGINEERS
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APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
			(CWA Section 404 ONLY).	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Tidal Wetland 1	1.343	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 10	3.04	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 2	0.374	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 3	0.158	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 4	0.085	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 5	0.057	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 6	0.257	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 7	0.143	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 8	0.013	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland 9	0.027	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland A	0.414	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Tidal Wetland A East	4.75	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland B	0.01	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland C	0.08	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.
Tidal Wetland D	0.37	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is contiguous with and subject to the annual high tide of West Bay, an (a)(1) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 01	0.373	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 02	0.014	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 03	0.026	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 04	6.801	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a “typical year”. It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 04a	0.023	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3)

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 05	0.020	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 06	3.180	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 07	0.063	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 08	0.308	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 09	0.322	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 10	1.703	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 11	0.141	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 12	0.085	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 13	0.123	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 14	0.133	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 16	0.007	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 17	0.043	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 18	0.014	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 19	0.415	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 20	0.011	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 21	0.037	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 23	0.037	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 24	0.009	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland 30	2.784	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland B	0.339	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland C	0.627	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland Pt 17	0.005	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
Wetland Pt 3	0.006	acre(s)	(b)(1) Non-adjacent wetland.	This wetland feature does not abut an (a)(1 - 3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1 - 3) water during a "typical year". It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: AJD request and supporting information received 10 September 2020.

This information is and is not sufficient for purposes of this AJD.
Rationale: Previous 2017 AJD was used.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: 2015 Texas Orthoimagery Program (TOP), 0.5-meter Color Infrared (CIR); 2018 National Agriculture Imagery Program (NAIP) 1.0-meter and 0.6-meter CIR; Google Earth Aerial Images, 1953-2018.

☐ Corps site visit(s) conducted on: Date(s).

☒ Previous Jurisdictional Determinations (AJDs or PJDs): SWG-2007-01475

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: Web Soil Survey, National Cooperative Soil Survey – Galveston County, Texas

☐ USFWS NWI maps: Title(s) and/or date(s).

☐ USGS topographic maps: Title(s) and/or date(s).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Previous AJD, SWG-2007-01475 (18 July 2017).
State/Local/Tribal Sources	N/A.
Other Sources	Texas Strategic Mapping (StratMap) Program, 2018 Upper Texas Coast, 0.5-Meter Light Detection and Ranging (LiDAR) Bare Earth Digital Elevation Model.

B. Typical year assessment(s): The four nearest NOAA Center for Operational Oceanographic Products and Services (CO-OPS) tide stations to the project site are Pier 21 (8771450), Galveston Bay Entrance (8771341), Galveston Railroad Bridge (8771486), and San Luis Pass (8771972). Data for each station was analyzed for the time frame of 2001 to 2020 to cover the contemporary tidal epoch (18.6 years). The Pier 21 and Galveston Bay Entrance stations were active and had data covering the 19-year time frame, however, the Galveston Railroad Bridge and San Luis Pass stations had less than 8 years of data.

- The Pier 21 tide station, located in the Galveston Ship Channel, was out of service in September 2008 from Hurricane Ike
- The Galveston Bay Entrance tide station, located at the North Jetty, was out of service from September 2008 to May 2011, also from Hurricane Ike.
- The Galveston Railroad Bridge tide station, located at the Galveston Island Causeway Bridge, has been active since 2013.
- The San Luis Pass tide station, located at the southwest end of Galveston Island, has been active since 2015.

The monthly maximum high tides were averaged to obtain the highest water levels of the years to determine the anticipated tidal flood inundation areas in a typical year. The highest tide elevation, based on the monthly average occurred most often in October, which typically has few tropical storm systems, at all four tide stations. The October average maximum for the Pier 21 station was +2.86 feet NAVD88, the Galveston Bay Entrance station was +3.01 foot NAVD88, the Galveston Railroad Bridge station was +3.08 feet NAVD88 and the San Luis Pass station was +3.10 feet NAVD88, all being within 0.24 feet.The LiDAR elevations for the freshwater wetlands within the project site were all above a base elevation of +3.5 feet NAVD88. As such, the freshwater wetlands on the project site are a minimum of 0.5 foot above the average highest tides of the year and subject to neither Gulf of Mexico nor West Bay inundation in a typical year.

C. Additional comments to support AJD: Approved Jurisdictional Determination SWG-2007-01475 was conducted under the SWANCC and Rapanos guidance, finalized on 18 July 2017. Site conditions have not changed since the previous determination, therefore the previous wetland delineation still accurately characterizes the site. That previous AJD found that all the waters and wetlands within the subject site were waters of the United States subject to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and/or Section 404 of the Clean Water Act (Section 404).

Based on the previous delineation and AJD, and current federal regulation, we determined the subject site contains forty-eight (48) aquatic resources comprised of five (5) tidal open waters subject to Sections 10 and 404, three (3) sandflats subject to Section 404, twelve (12) adjacent wetlands subject to the West Bay annual high tide, and twenty-eight (28) non-adjacent wetlands.

Due to site complexity the AJD map is divided into two maps, one each for jurisdictional and excluded aquatic resources.