
CITY OF PORT LAVACA

PORT COMMISSION MEETING: April 14, 2022

DATE: 4.14.2022
TO: PORT COMMISSION
CC: JIM RUDELLAT, HARBOR MASTER
FROM: JODY WEAVER, INTERIM CITY MANAGER
SUBJECT: CRG Texas Environmental Services updates

- **Limited Phase II Environmental Site Assessment**
Attached is an email from John Hogue regarding the supplemental work for the Limited Phase II Environmental Site Assessment and the updated response to TCEQ. The report itself is over 130 pages, so I will post it on the Port Commission dashboard of our ClearGov site and provide a link from the Port Commission page of the City website. The direct link is <https://cleargov.com/texas/calhoun/city/port-lavaca/dashboards/1070/port-commission>
- **Wetlands Determination in the old landfill area of the Harbor of Refuge:** A copy of the Preliminary Waters of the U.S. investigation report is attached and is also uploaded to the dashboard. There are some wetlands identified. Should we have the opportunity to lease the areas which are not currently leased, we will need to disclose the location of the wetlands with a copy of this report and if the City and/or a lease would like to bring fill into the area for development, a COE of engineer's permit would be required along with mitigation. Such mitigation could be planting more spartina grass at some location.

Jody Weaver

From: John Hogue <john@crgtexas.com> on behalf of John Hogue
Sent: Monday, April 11, 2022 1:58 PM
To: 'Jody Weaver'
Subject: Draft Report
Attachments: Updated Response to Comments - TCEQ Facility ID No. T3678_032122.pdf; BLOWEST_3086_Port_Lavaca_174_acre_Preliminary_WOTUS_Investigation.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Jody

Attached is the report / updated response for Harbor of Refuge for TCEQ. I wanted to pass it buy you before I send it.

Short story for now...

No real issues identified in soil, to date

There's some low concentration arsenic in shallow gw. Source undetermined. Could be a site, farm or bay source but we'll have to do more work to figure it out. Groundwater appeared to be going toward the bay the day we sampled. Even that shallow zone meets a Class 2 groundwater designation...I thought It would be Class 3! *

I could see TCEQ wanting more soil sample work...to see if we missed any source areas.

Maybe expanding the COCs at least initially (pesticides, herbicides). Also, monitoring the wells for arsenic for a time. Sadly, I think they'll bring it into TRRP (affected groundwater) which will mean completion of an Affected Property Assessment report (APAR), looking at receptors and other potential exposure pathways, determining critical PCLs, etc. Much of what we've done can be used to support the APAR development so we won't be starting from scratch.

Also attached is the wetlands determination document. There's more "wet" out there than I thought so yes, there will need to be COE consultation as development progresses. No surprise really.

I've been rather poor in my agency "reads" of late, so I won't even hazard a guess as to what else they might want. Let me know if you have any comments or would like to discuss.

JHogue

* Class 2 is potentially usable as drinking water
class 3 is NOT " " " " "

John I. Hogue, PG, CHMM, LPST-PM
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Hear the latest from CRG Texas Environmental Services by signing up for our newsletter: <https://www.crgtexas.com/crg-news/>



March 21, 2022

Mr. Kevin Casler
CRG Texas Environmental Services, Inc.
2504 Avenue I
Rosenberg, Texas 77471

RE: Preliminary Waters of the U.S. Investigation
174-acre Property in Port Lavaca, Texas
Calhoun County, Texas

Dear Mr. Casler:

This letter of findings provides the results of a preliminary waters of the U.S. (WOTUS) investigation performed by BIO-WEST, Inc. (BIO-WEST) for the 174-acre subject property in Calhoun County, Texas (Appendix A, Figure 1). The area of this investigation (subject property) is focused on 174 acres of developed and undeveloped property surrounding the Harbor of Refuge, west of Virginia Street in Port Lavaca, Texas. The centermost point of the subject property is approximately 28.594196°, -95.616686° (WGS 1984).

Limited Wetlands Investigation

Waters of the United States, which includes wetlands, are regulated by the Clean Water Act (CWA) under the authority of the United States Army Corps of Engineers (USACE) and the United States Environmental Protection Agency (EPA). A considerable number of court rulings and regulatory agency guidance documents have historically sought to more clearly define the limits of USACE and EPA jurisdiction under Section 404 of the CWA. On June 19, 2006, the Supreme Court of the United States in the consolidated cases *Carabell v. United States* and *Rapanos v. United States*, 547 U.S. 715 (2006), issued a divided opinion seeking to interpret the term WOTUS. On June 5, 2007, the USACE and EPA issued a Memorandum of Agreement and joint guidance post-Rapanos with the intent to establish a detailed methodology in making jurisdictional determinations. On December 2, 2008 the USACE and EPA released additional guidance in determining whether they have jurisdiction over potential WOTUS based upon the U.S. Supreme Court's decision. The intent of the various court rulings and guidance documents were to more clearly define and develop a process to determine whether a body of water is or is not a WOTUS.

The purpose of the study was to determine the approximate sizes and locations of areas that could potentially be classified as WOTUS, which includes, but is not limited to, wetlands and creeks/streams. To classify an area as a wetland, specific technical criteria with regards to vegetation, soils and hydrology must be met. Study methods included the following: 1) review of U.S. Geological Survey topographic maps, Natural Resources Conservation Service maps and local county soil survey maps; 2) review of historical color, black and white, and infrared aerial photographs; and 3) review of the U.S. Federal Emergency Management Agency floodplain maps and National Wetland Inventory maps. A wetland delineation according to the 2010

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region was **not** conducted. However, a field verification visit was conducted within the subject property to confirm the presence or absence of WOTUS as well as to determine the boundaries of each feature, if present.

If the technical criteria are met, an evaluation is conducted to determine whether or not the USACE and/or EPA would call the area in question a WOTUS and thus claim jurisdiction. To classify a WOTUS as adjacent, the Rapanos Guidance states that one of the following three criteria is satisfied:

- There is an unbroken surface or shallow sub-surface connection to jurisdictional waters. This hydrologic connection may be intermittent.
- They are physically separated from jurisdictional waters by man-made dikes/barriers, natural river berms, beach dunes, and the like.
- Their proximity to a jurisdictional water is reasonably close, supporting the science-based inference that such wetlands have an ecological interconnection with jurisdictional waters.

Almost all naturally occurring rivers, streams, and tributaries feeding said rivers and streams will most likely be considered WOTUS. However, certain man-made ditches, road side ditches, and upland drainage ditches constructed in and draining only uplands may not be considered jurisdictional, especially with the absence of an ordinary high-water mark (OHWM). The OHWM is the line on the shore established by the fluctuations of water and is indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. An OHWM combined with a defined bed and bank can be used by the USACE to determine the jurisdictionality of creeks, streams, channels, and other linear waters of the U.S.

According to U.S. Geological Survey Topographic Maps (*Port Lavaca East, Texas*), the landscape within the subject property is relatively flat but then develops a heavy slope heading south-southeast towards Lavaca Bay. In addition, two linear drainage features are present within the subject property draining to Lavaca Bay.

The U.S. Fish and Wildlife Service National Wetland Inventory (NWI) maps were referenced to identify any features present within the subject property (Figure 3). According to the NWI maps, multiple NWI features are present within the subject property. During the field verification visit, many of these features were confirmed as wetlands, however several areas located on a peninsula in the eastern portion of the subject property, noted on NWI maps as a wetland complex, are not present.

It is the professional judgement of BIO-WEST that the linear drainage features that tie directly into Lavaca Bay are potentially jurisdictional features within the subject property. Additionally, it is BIO-WEST's professional judgement that all of the wetlands found on the subject property would be considered jurisdictional because of the direct connection to and physical distance from a traditionally navigable water and relatively permanent water, many are directly adjacent to either the drainages or Lavaca Bay, and are located within the mapped 100-year floodplain of

Lavaca Bay. These findings were interpreted from a desktop evaluation of historical aerial photography, infrared aerial imagery, national wetlands inventory data, county soils maps, and United States Geological Service Topographic maps of the area, and field verification.

Conclusions and Findings

- The preliminary WOTUS investigation and field verification revealed the subject property contains two linear drainage features connecting to Lavaca Bay as well as portions of Lavaca Bay. The subject property also contains multiple wetlands, consisting of palustrine emergent and estuarine emergent wetlands. It is the professional judgement of BIO-WEST that the drainage features, all of the wetlands, and Lavaca Bayou would be considered jurisdictional by the USACE, BIO-WEST's experience, and the most up to date EPA and USACE guidance.

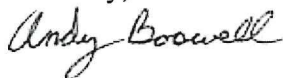
The USACE and the EPA are the final authority over the jurisdictional status of both wetlands and waters of the U.S. per Section 404 of the Clean Water Act. The findings discussed in this report are the professional judgment of BIO-WEST and have not been verified by the aforementioned regulatory government agencies.

Professional Recommendations

It is BIO-WEST's professional judgment that in accordance with the findings of this investigation and the potential for site development, agency coordination would be required if any WOTUS are impacted.

BIO-WEST greatly appreciates the opportunity to provide environmental services. If you have any questions, please feel free to contact us at (832) 990-2940.

Sincerely,



Andy Boswell
Senior Ecologist & Senior Project Manager



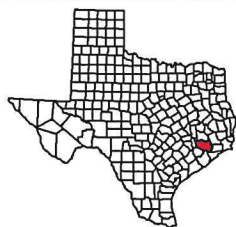
Sean Johnson
Environmental Scientist

Literature Cited

- Environmental Laboratory. 1987. *Corps of Engineers Wetlands Delineation Manual*, Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.
- Environmental Laboratory. 2010. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region*, ed. J.S. Wakeley, R.W. Lichvar, and C.V. Noble. ERDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
- [FEMA] Federal Emergency Management Administration. 2022. Flood Map Service Center, Calhoun County, TX. Accessed in March 2022 at <https://msc.fema.gov/portal>
- [USDA] U.S. Department of Agriculture, Natural Resources Conservation Service. 2022. Web Soil Survey. Accessed March 2022 at <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- [USDA] U.S. Department of Agriculture, Natural Resources Conservation Service. 2015. Lists of Hydric Soils. <http://soils.usda.gov/use/hydric/>.
- [USFWS] U.S. Fish and Wildlife Service. 2022. National Wetlands Inventory. Accessed March 2022 at <http://www.fws.gov/wetlands/>.
- [USGS] U.S. Geological Survey. 1952. *Port Lavaca East, Texas*. 7.5' Quadrangle topographic map.
- [WTI] Wetland Training Institute, Inc. 2012. *Nationwide Permits Complete: 2012 Edition*. Robert J. Pierce and Sam Collinson, eds., David E. Dearing, contributing author.

Appendix A

Figures



Legend

- ★ Survey Area Location
- County Boundary


Prepared by: 



Figure 1.0
Vicinity
Calhoun County, Texas



Legend

Survey Area - 174 acres


Prepared by: 



Figure 2.0
Location
Calhoun County, Texas

Project: 174-acre Lavaca Property

Project No: 3086

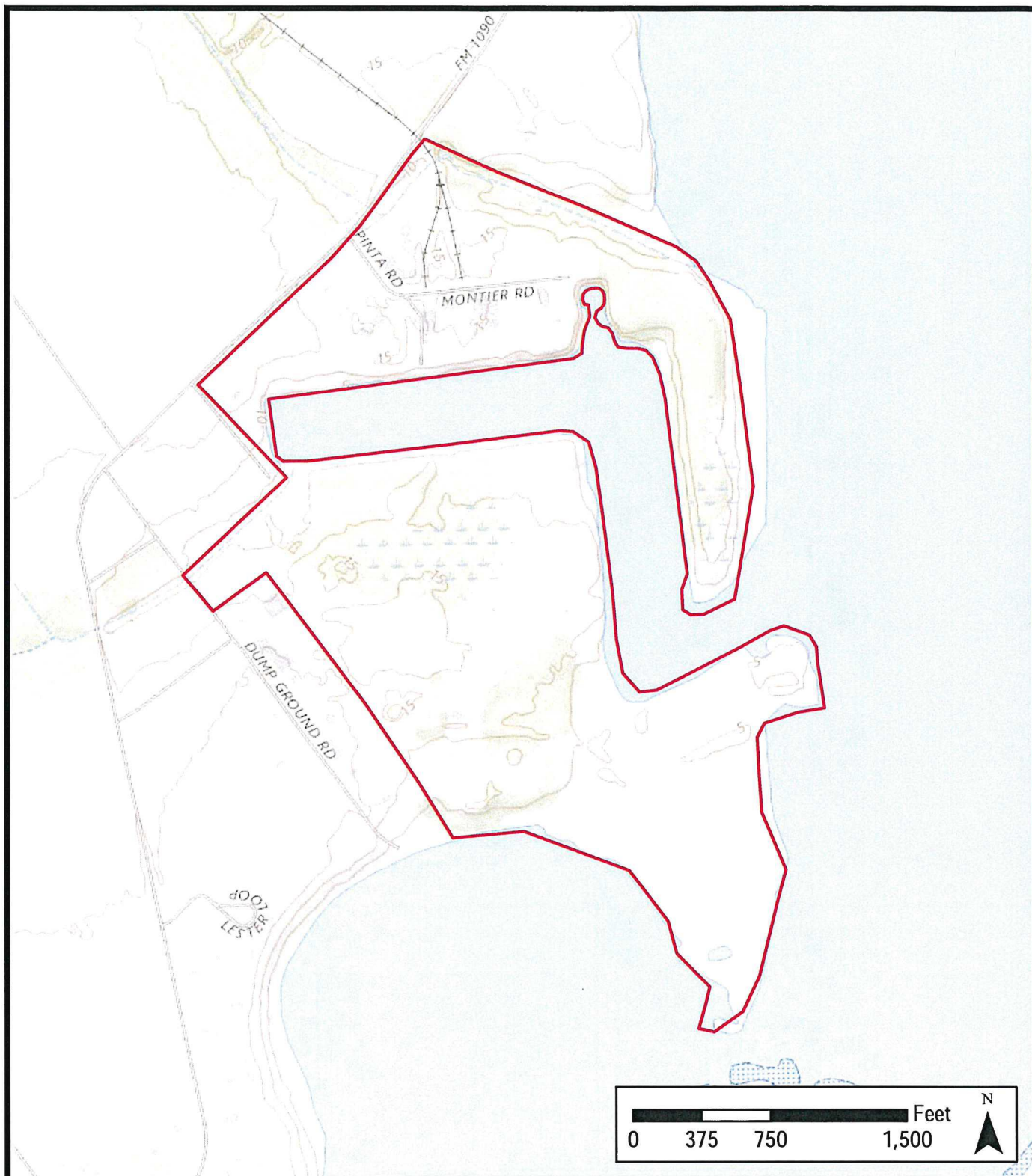
Date Drawn: 3/18/2022

Source: ESRI World Street Map

Scale: 1 in = 2,500 feet

Projection: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet

Drawn by: JHG



Legend

Survey Area

Prepared by:



CRG Texas
Environmental Services

Figure 3.0
Topographic
Calhoun County, Texas

Project: 174-acre Lavaca Property

Project No: 3086

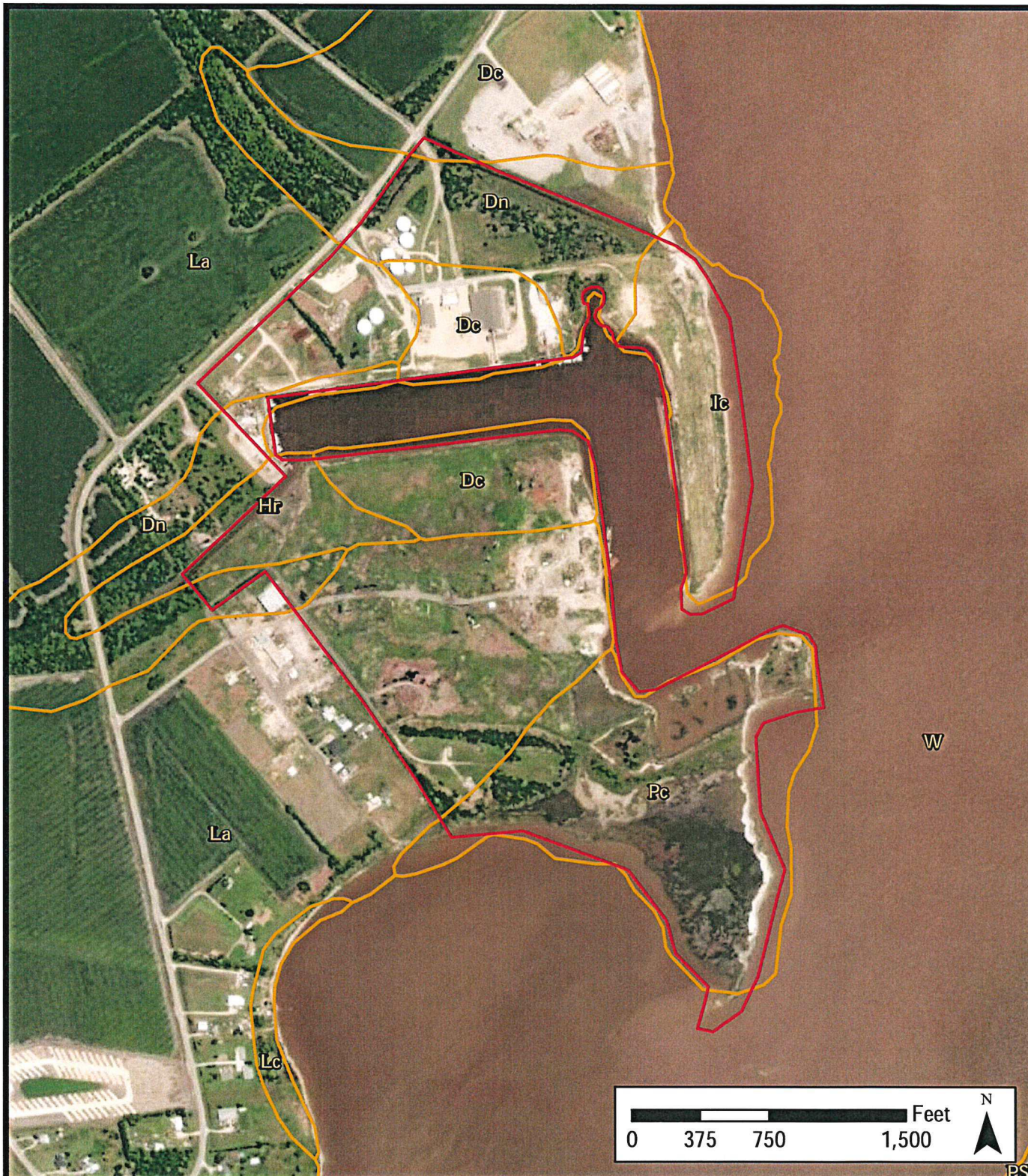
Date Drawn: 3/18/2022

Source: USGS Topo

Scale: 1 in = 750 feet

Projection: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet

Drawn by: JHG



Legend

- ▬ Survey Area
- ▬ NRCS Soils


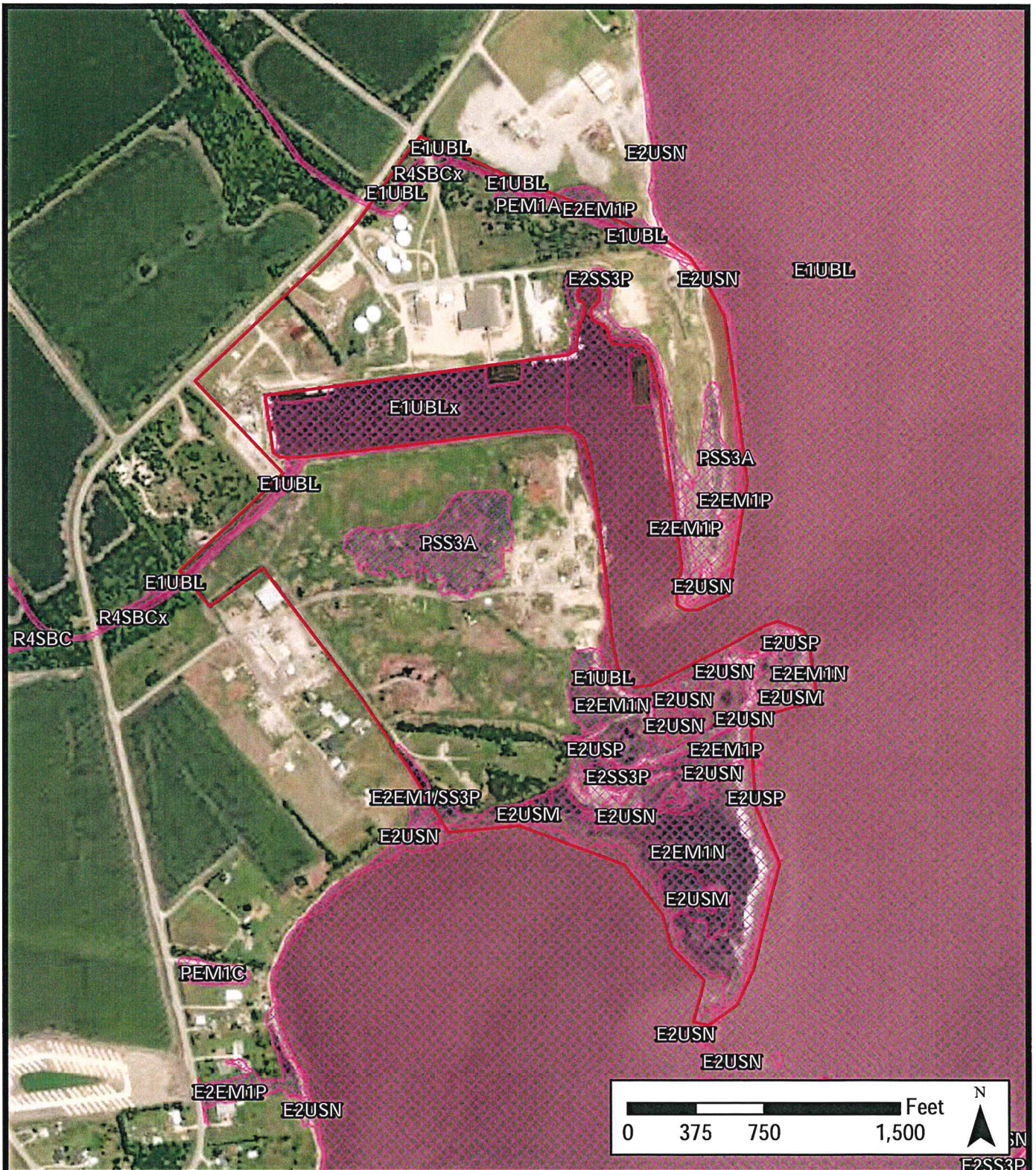
Prepared by: 



Figure 4.0
NRCS Soils
Calhoun County, Texas



Legend

- Survey Area
- NWI Feature

Prepared by:



Figure 5.0
National Wetland Inventory
Calhoun County, Texas

Project: 174-acre Lavaca Property

Project No: 3086

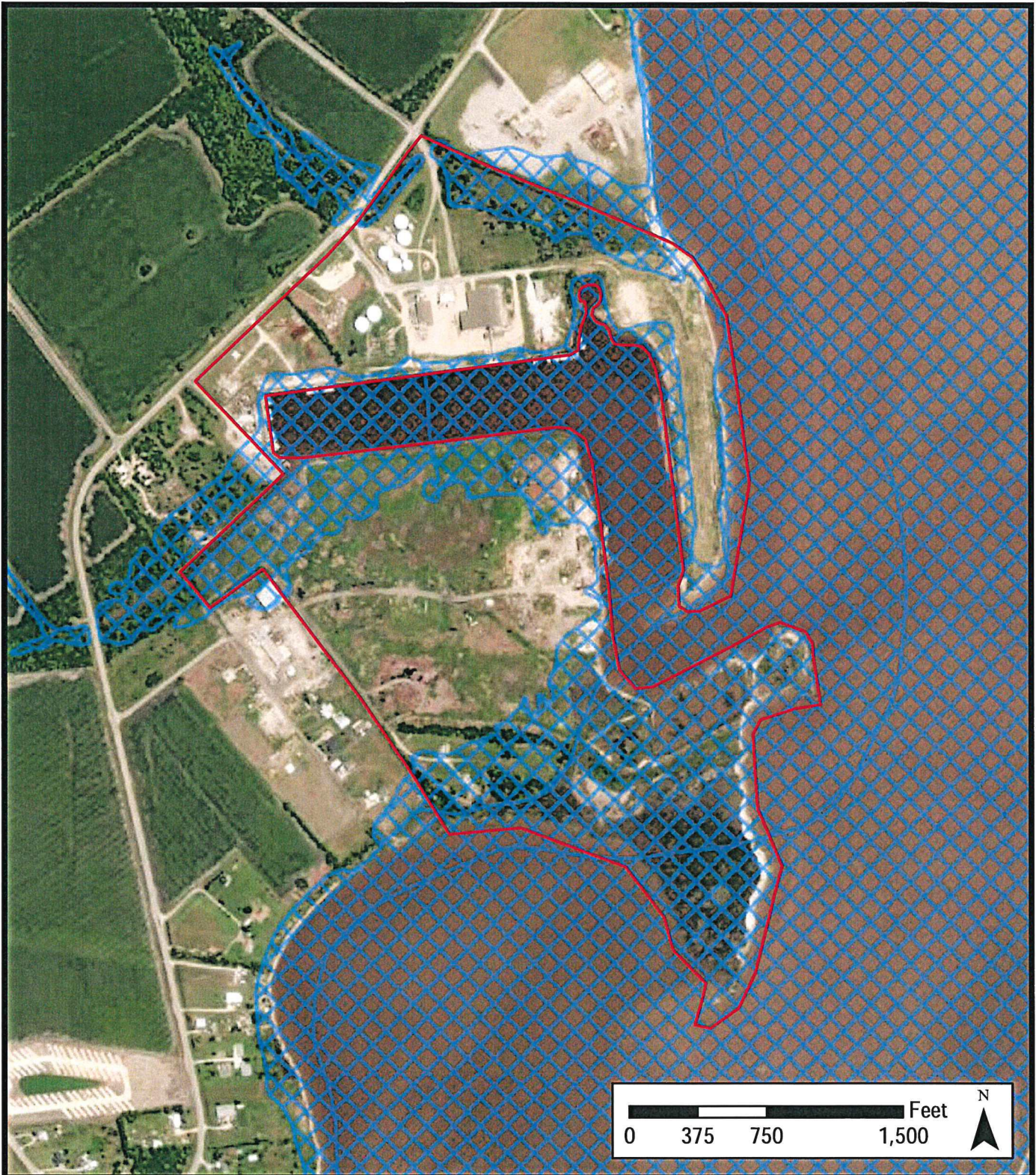
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Source: ESRI Imagery, USFWS

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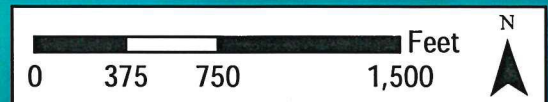


- Legend**
- Survey Area
 - 100-Year Floodplain

Prepared by:



Figure 6.0
FEMA
 Calhoun County, Texas



Legend
 Survey Area



Figure 7.0
Color Infrared
Calhoun County, Texas

Prepared by:

Project: 174-acre Lavaca Property

Project No: 3086

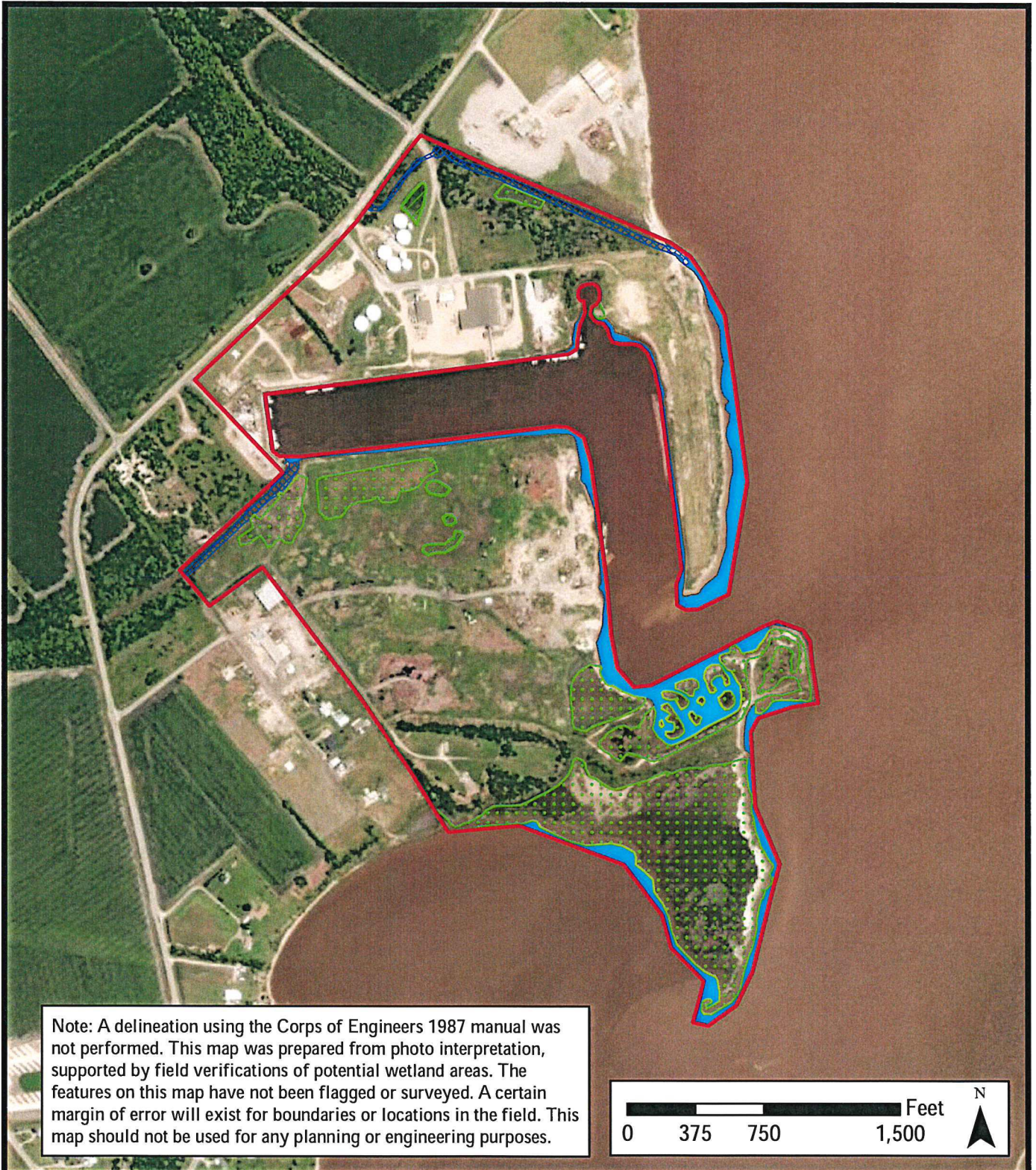
Date Drawn: 3/18/2022

Source: TNRIS NAIP 2016 CIR

Scale: 1 in = 750 feet

Projection: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet

Drawn by: JHG



Legend

- Survey Area
- E2EM Wetland
- Tributary
- PEM Wetland
- Open Water

Prepared by:



Figure 8.0
Potential WOTUS
Calhoun County, Texas