



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

CESWG - RDN

2 February 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-2024-00369

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.² 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.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ 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 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 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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	Jurisdictional Status
WET-01	PFO	30.091439	-95.037659	53.53	Non-jurisdictional
WET-02	PEM	30.091664	-95.032954	37.33	Non-jurisdictional
WET-03	PEM	30.090742	-95.026765	107.92	Non-jurisdictional
WET-04	PEM	30.085434	-95.027295	114.5	Non-jurisdictional
WET-04	PFO	30.085434	-95.027295	9.02	Non-jurisdictional
WET-05	PEM	30.094959	-95.022428	10.81	Non-jurisdictional
WET-06	PEM	30.096627	-95.027797	100.79	Non-jurisdictional
Swales	Swale	30.082174	-95.026318	0.09	Non-jurisdictional

PFO = Palustrine Forested Wetland; PEM = Palustrine Emergent Wetland

Feature Name	Feature Type	Latitude	Longitude	Linear feet	Jurisdictional Status
S-1 (Cedar Bayou)	RPW stream	30.08449908	-95.02420474	8872.24	Jurisdictional
S-2	RPW stream	30.089942	-95.01905002	2462.06	Jurisdictional
S-3	Non-RPW stream	30.09167303	-95.03482613	1556.45	Non-jurisdictional
D-1	Ditch	30.08078955	-95.03088413	1266.66	Non-Jurisdictional
D-2	Ditch	30.08901728	-95.02677525	4547.6	Non-jurisdictional
D-16	Ditch	30.10662596	-95.0384573	3009.27	Non-jurisdictional
D-22	Ditch	30.09853511	-95.02634814	3093	Non-jurisdictional
D-23	Ditch	30.10722174	-95.03464903	4770.92	Non-jurisdictional
D-24	Ditch	30.09914262	-95.03086654	4143.23	Non-jurisdictional
D-25	Ditch	30.09349115	-95.03447642	2184.91	Non-jurisdictional
D-26	Ditch	30.0936137	-95.03260651	6271.35	Non-jurisdictional
D-27	Ditch	30.09466888	-95.02136947	2014.72	Non-jurisdictional
D-28	Ditch	30.09524501	-95.0234067	1245.71	Non-jurisdictional
D-29	Ditch	30.10371488	-95.04327816	10824.50	Non-jurisdictional
D-30	Ditch	30.10328848	-95.04020051	8446.65	Non-jurisdictional
D-31	Ditch	30.10003438	-95.04009729	2047.10	Non-jurisdictional
D-32	Ditch	30.1013889	-95.03690533	5696.36	Non-jurisdictional
D-33	Ditch	30.09991196	-95.03400601	4524.68	Non-jurisdictional

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D-34	Ditch	30.09975469	-95.03387057	4428.87	Non-jurisdictional
D-37	Ditch	30.10211478	-95.04342945	6050.16	Non-jurisdictional
D-38	Ditch	30.08482708	-95.03085714	2875.22	Non-jurisdictional
D-39	Ditch	30.08958904	-95.03266417	997.46	Non-jurisdictional
D-40	Ditch	30.0916071	-95.03100086	1335.49	Non-jurisdictional
D-41	Ditch	30.093547	-95.023415	468.70	Non-jurisdictional

RPW = Relatively Permanent Water

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- e. 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 is an 1,137-acre tract located approximately 0.8 mile northwest of the intersection of East Grand Parkway North (TX 99) and County Road (CR) 622 in an unincorporated area of Liberty County, Texas; 30.0936, -95.0309.
- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to the review area is Cedar Bayou. The TNW portion of Cedar Bayou starts approximately 11 miles south of the review area and flows south to Galveston Bayou, which is also a TNW. These TNW designations are based on being subject to the ebb and flow of the tide and/or being used for past, present, and future interstate commerce.⁵

⁵ 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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The portion of Cedar Bayou within the review area is a relatively permanent water (RPW) but is outside of the portion of Cedar Bayou that has been designated as a TNW. Cedar Bayou flows from the review area south approximately 11 miles to where it becomes a TNW. From that point, it flows approximately 24 miles south to Galveston Bay.
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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 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

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 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.

⁷ 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.

- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): Approximately 8,872 linear of feet Cedar Bayou and 2,462 linear feet of stream S-2 within the review area are jurisdictional tributaries. These tributaries are RPWs that flow directly to a TNW (Cedar Bayou and Galveston Bay). This determination was based on a desktop review of Google Earth aerial imagery, USGS topographic maps, and National Wetlands Inventory (NWI) maps, which show these streams as perennial features. Observations of water levels and indicators of flow, including the presence of an ordinary high water mark (OHWM), wrack line, and flattened vegetation, were also made at site visits held on 18 June 2025 in the dry season and 19 November 2025 in the wet season. Therefore, Cedar Bayou and stream S-2 were determined to be jurisdictional waters of the US subject to Section 404 of the Clean Water Act.
- 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”).⁸ 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.

The review area contains 21 ditches as described in Section 1 above. Based on a desktop review of aerial imagery, historical USGS topographical maps, and digital elevation model (DEM) imagery, these ditches were constructed for the purpose of crop irrigation (primarily rice fields) and are bordered by small berms. Based on observations made at two site visits held on 18 June 2025 in the dry season and 19 November 2025 in the wet season, these ditches are not RPWs because these ditches did not have indicators of water flowing year-round or seasonally over a majority of the ditch (i.e. dry areas, vegetation growing in ditch, and no clear OHWM). This includes ditches D-1 and D-41, which directly connect

⁸ 51 FR 41217, November 13, 1986.

to Cedar Bayou, but the connections sit at or above the OHWM of the bayou and the ditch elevation slopes upward from Cedar Bayou. These ditches also had vegetation growing within the ditch and did not have water present or indicators of flow within a majority of the ditch reach. Therefore, all 21 ditches identified within the review area do not carry relatively permanent flow over the majority of the ditch reach within the review area and are generally not jurisdictional.

Based on the applicant's wetland delineation, the review area has 3 swales totaling 0.09 acre located along the bank of Cedar Bayou between WET-04 PFO wetlands and the bayou. Swales lack wetland characteristics and do not have a bed and bank characteristic of a tributary. These swales are also positioned above the OHWM of Cedar Bayou. Based on the *Rapanos* guidance, these swales are generally not jurisdictional.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "SWANCC," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with SWANCC. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

There were 6 wetlands identified within the review area, as described in Section 1 above. Based on desktop review of aerial imagery, historical USGS topographical maps, NWI maps, DEM imagery, and the applicant's delineation

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report, as well as two site visits held on 18 June 2025 and 19 November 2025, the following determinations were made:

S-3 is a 1,556-linear-foot stream located between WET-01 to the west and WET-02 to east and connected to ditches D-26 to the north and D-39 to the south. The applicant's delineation report describes this feature as an ephemeral stream, and that it was filled with vegetation and sediment. Historical topographical maps do not show this feature, and it is not evident on DEM imagery as a drainage feature. Based on this information, S-3 is a non-RPW feature and is not jurisdictional.

WET-01 is a 53.5-acre PFO wetland bordered by ditch D-25 to the north, stream S-3 to the east, and a ditch outside of the review boundary to the south. These ditches and stream S-3 are non-RPWs, and ditch D-25 has an upland berm between the ditch and wetland. Therefore, WET-01 is not adjacent to an RPW and is not jurisdictional.

WET-02 is a 37.3-acre PEM wetland bordered by ditch D-25 to the north, stream S-3 to the west, and ditch D-39 to the south. These ditches and streams are non-RPWs, and ditch D-25 and D-39 have upland berms situated between the ditch and wetland. Therefore, WET-02 is not adjacent to an RPW tributary and is not jurisdictional.

WET-03 is a 107.2-acre PEM wetland bordered by ditches D-40 to the west, D-26 to the north, and D-2 to the south, and RPW tributary Cedar Bayou to the east. The ditches are non-RPWs and have upland berms between the ditch and wetland. There are culverts that lead from WET-03 to Cedar Bayou through an upland area along bank of the bayou, but these culverts are positioned above the OHWM of the bayou and do not provide a continuous surface connection to the RPW tributary. Therefore, WET-03 is not adjacent to an RPW and is not jurisdictional.

WET-04 is an approximately 139.4-acre area located to the west of Cedar Bayou containing approximately 114.5 acres of PEM wetlands and 9.02 acres of PFO wetlands. It is bordered by ditch D-2 to the north and is intersected by ditch D-1 to the south. Ditches D-1 and D-2 are non-RPWs, as described in Section 8b above. There is an elevated upland berm along the bank of Cedar Bayou, between the WET-04 PEM wetlands and the bayou. There are swales crossing the berm along the bank of Cedar Bayou between the WET-04 PFO wetlands and the bayou. These swales are positioned above the OHWM of Cedar Bayou and do not provide a continuous surface connection between the WET-04 PFO

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wetlands and an RPW tributary. Therefore, the WET-04 PEM and PFO wetlands are not adjacent to an RPW tributary and are not jurisdictional.

WET-05 is a 10.8-acre wetland surrounded by ditch D-27 on 3 sides and highway TX-99 to the east. D-27 is a non-RPW ditch and there are upland berms situated between the ditch and wetland and between the ditch and Cedar Bayou along the eastern side. Therefore, WET-05 is not adjacent to an RPW and is not jurisdictional.

WET-06 is a 100.8-acre PEM wetland bordered by ditches D-24, D-22, D-28 and D-26. These ditches are non-RPWs and have upland berms situated between the wetland and the ditch. Therefore, WET-06 is not adjacent to an RPW tributary and is not jurisdictional.

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. Site visits conducted on 18 June 2025 and 19 November 2025.
 - b. USGS Topographic Maps: 7.5-minute Quadrangle – Huffman from 1960, 2016, and 2022, Accessed on 29 October 2025.
 - c. USGS Map 3D Elevation Program (3DEP) Digital Elevation Model (DEM) on the Corps National Regulatory Viewer, Accessed on 15 April 2025.
 - d. National Wetlands Inventory map on the Corps National Regulatory Viewer, Accessed on 15 April 2025
 - e. Google Earth Aerial Imagery from, Accessed on 15 April 2025.
 - f. Antecedent Precipitation Tool, Accessed on 17 June 2025 and 16 November 2025.
 - g. Wetland Delineation Memo – August 2025 Stoesser Properties (West), Liberty County, Texas, prepared by Stantec Consulting Services Inc. and provided by the applicant on 1 October 2025.

10. OTHER SUPPORTING INFORMATION. N/A

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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:



Tasha L Metz, Ph.D.
Regulatory Project Manager

Date: 2 February 2026

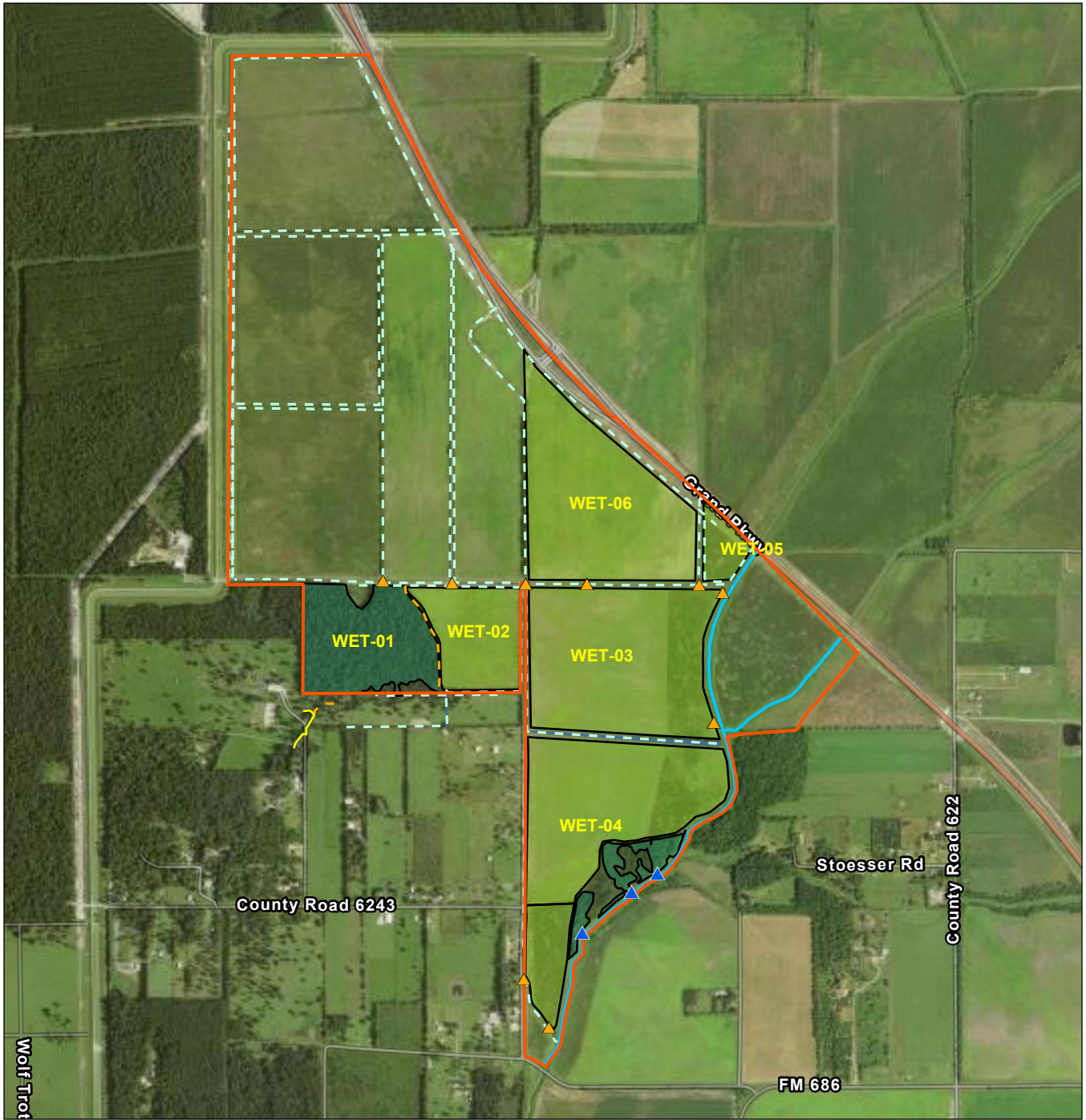
REVIEWED/APPROVED BY:



Andria Davis
Leader, North Branch
Regulatory Division, Galveston District

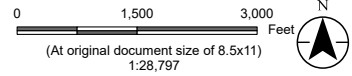
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Notes
 1. Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
 2. Data Sources: Zydeco Solar Layout
 3. Background: NAIP Aerial Imagery

- Legend**
- Project Area
 - ▲ Swale
 - ▲ Culvert
- Streams**
- Ephemeral Stream
 - Intermittent Stream
 - Perennial Stream
 - Ditch
- Wetlands**
- PEM
 - PFO
 - Swale, Ditch, Open water



Project Location
 Stoesser Properties
 Liberty County, TX

Prepared by CRH on 2024-11-14

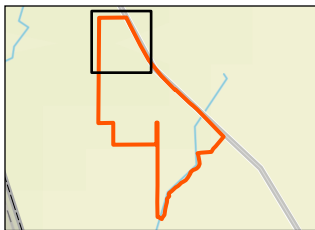
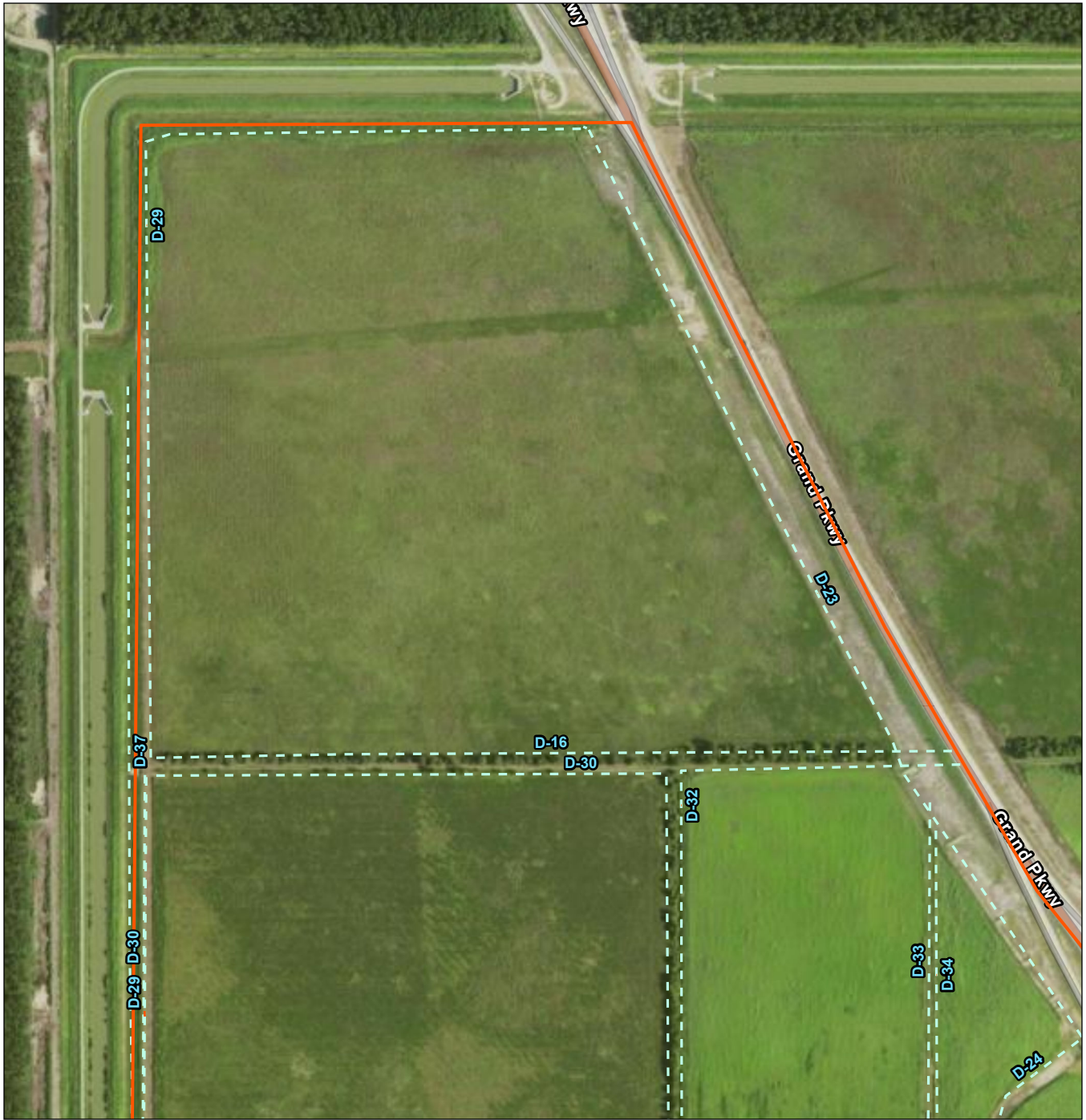
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 Client: Liberty Grand Partners
 Project: Stoesser Properties
 Report: Wetland Delineation Report

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Figure No.
1

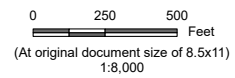
Title
Delineation Mapbook November 2025

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Project Location Stoesser Properties
 Liberty County, TX

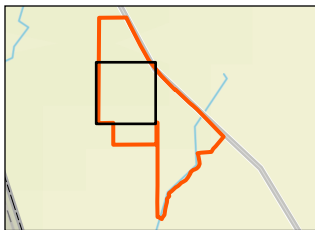
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Client/Project Client 235301481
 Liberty Grand Partners
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Project Report Wetland Delineation Report

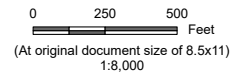
Figure No. 1

Title
Delineation Mapbook November 2025



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 Liberty County, TX

Prepared by CRH on 2024-11-14

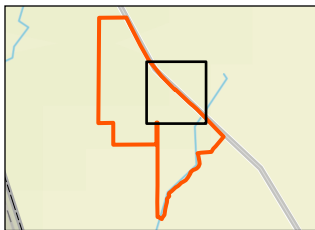
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Project Report Wetland Delineation Report

Figure No. 1

Title
Delineation Mapbook November 2025

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Project Location Stoesser Properties
 Liberty County, TX

Prepared by CRH on 2024-11-14

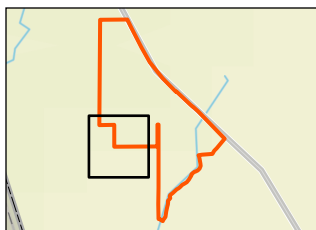
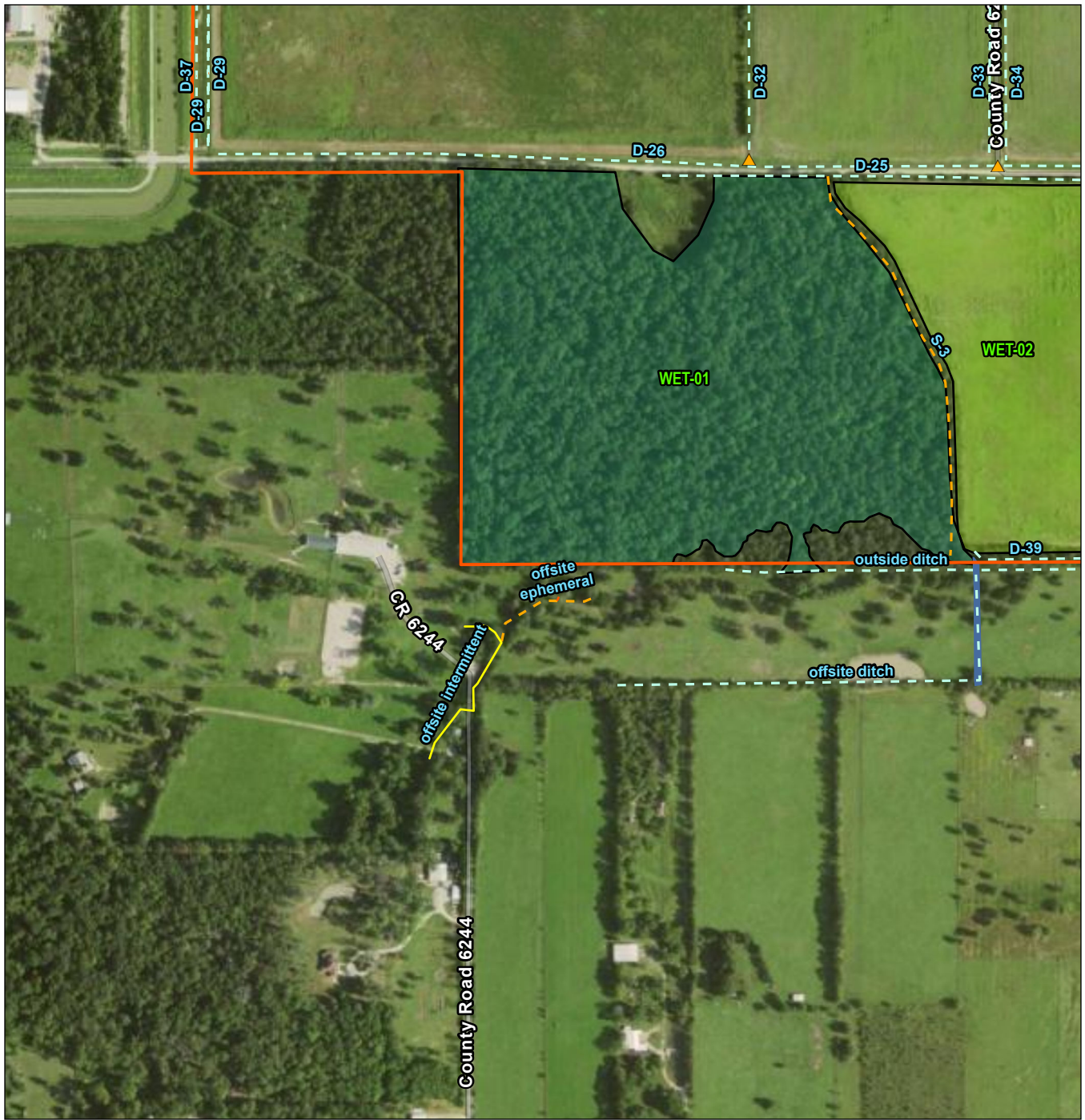
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Report Wetland Delineation Report

Figure No. 1

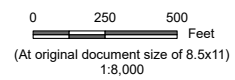
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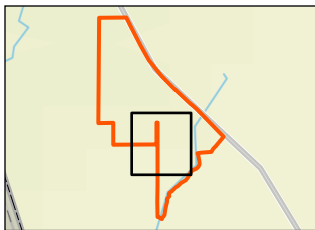


Project Location Stoesser Properties
 Liberty County, TX
 Prepared by CRH on 2024-11-14

Client/Project Liberty Grand Partners
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Report Wetland Delineation Report
Figure No. 1

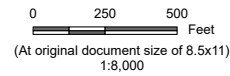
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Delineation Mapbook November 2025

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Notes
 1. Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
 2. Data Sources: Zydeco Solar Layout
 3. Background: NAIP Aerial Imagery

- Legend**
- Project Area
 - ▲ Swale
 - ▲ Culvert
 - Streams**
 - Ephemeral Stream
 - Intermittent Stream
 - Perennial Stream
 - Ditch
 - Wetlands**
 - PEM
 - PFO
 - Swale, Ditch, Open water



Project Location Stoesser Properties
 Liberty County, TX

Prepared by CRH on 2024-11-14

Client/Project Client 235301481
 Liberty Grand Partners
 Stoesser Properties

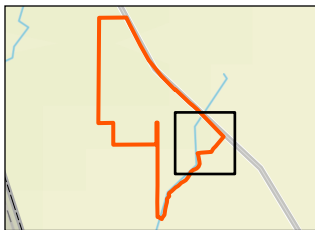
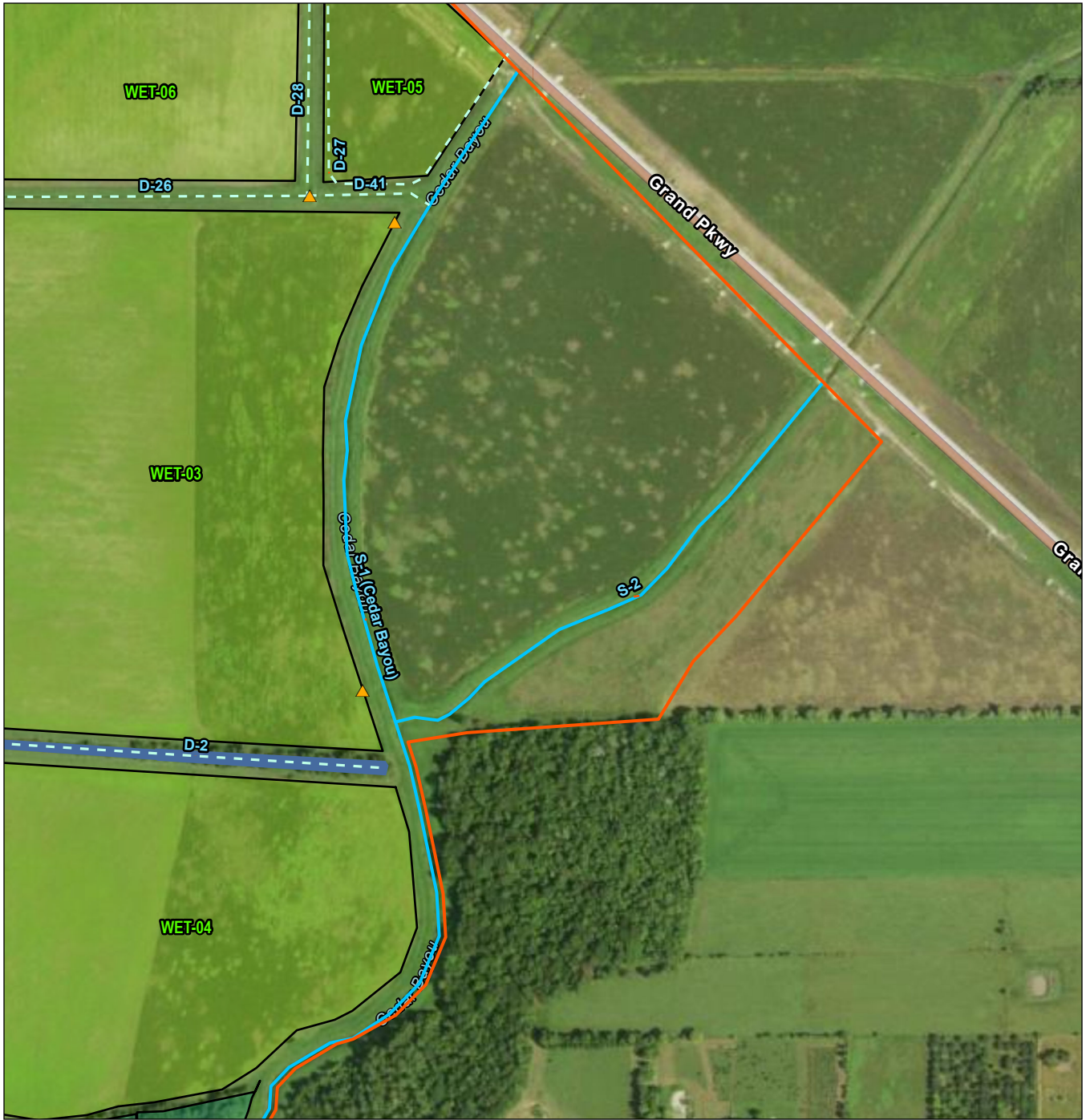
Project Report Wetland Delineation Report

Figure No. 1

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Delineation Mapbook November 2025

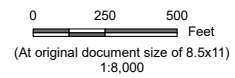
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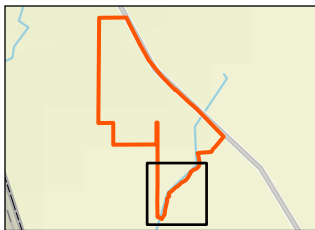
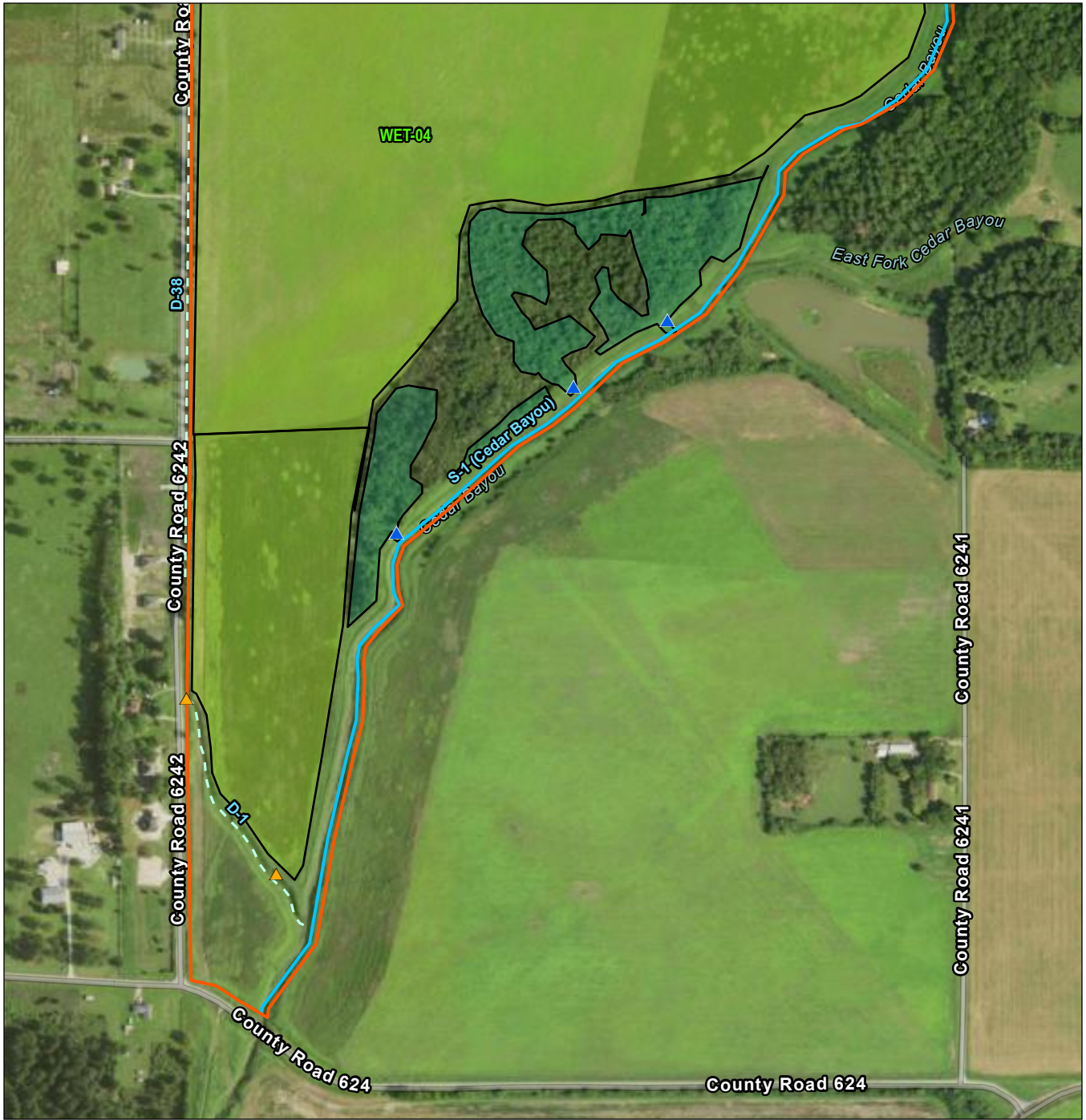
Project Location Stoesser Properties Liberty County, TX
Prepared by CRH on 2024-11-14

Client/Project Liberty Grand Partners 235301481
Client Stoesser Properties
Project Liberty Grand Partners
Report Wetland Delineation Report

Figure No. 1
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Delineation Mapbook November 2025

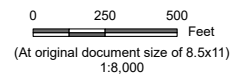
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Project Location
 Stoesser Properties
 Liberty County, TX

Prepared by CRH on 2024-11-14

Client/Project
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Figure No.
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