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): 12/23/2020
ORM Number: SWG-2018-00957
Associated JDs: SWG-2018-00957 (Rapanos prior PJD & AJD:)
Review Area Location[1]: State/Territory: Texas City: West Orange County/Parish/Borough: Jefferson
Center Coordinates of Review Area: Latitude 30.063880 Longitude -93.78444

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
Cow Bayou	~0.94	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	The area is subject to the ebb and flow of the daily tide and it is also identified with the SWG navigable water list

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
Cow Bayou +	~1	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	This includes the wetlands and waters located waterward of the high tide line of Cow Bayou (a Section 10 water)

[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.
[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
			Section 404 ONLY).	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
SP1OR002	80	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This is a portion of a re-routed tributary that has more than ephemeral flow as reported by consultant and seen on historic aerial photographs.
SP1OR003	2952	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This is a portion of a re-routed tributary that has more than ephemeral flow as reported by consultant and seen on historic aerial photographs

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
WP2OR001	4.73	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This is a contiguous hydrological connected wetland along the northern fringe of Cow Bayou (an TNW)
WP1OR009	0.24	acre(s)	(a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	This is a wetland that does not abut a a)1-a)3 water but it is located in landscape position that would be anticipated to be flooded in a typical year by Cow bayou. This was determined based on a review of site specific information including elevation, and nearby tide gage datum (and in aerial photos).

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Field A (30.066190 & -93.794118; ~ 221 acres)	N/A.	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (last known very active was 2004). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification)
Field B (30.060693 & -93.788533; ~ 316 acres	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (last known very active was 2004). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification)
Field C (30.055107 & -93.780620; ~ 220 acres)	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (currently in a fallow rotation). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification)

[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
Field D (30.070196 & -93.782947; ~ 305 acres)	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (last known very active was 1995). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification).
Field E (30.078515 & -93.777953; ~ 197 acres)	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (last known very active was 1995). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification).
Field F (30.072481 & -93.793832; ~ 9 acres)	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for cattle grazing occasionally (fallow at this time). It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification).
Field G (30.078130 & -93.784328; ~ 68 acres)	N/A	acre(s)	(b)(6) Prior converted cropland.	There are wetlands present as determined in the prior PJD. It has been in agriculture use prior to 23 Dec. 1985 and is in use for hay. It is noted that if when the field is not in agriculture use that the wetlands are located in a landscape position that does not abut an (a)(1)-(a)(3) water, nor would be flooded/inundated by an (a)(1)-(a)(3)

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				water during a "typical year". They are separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier. (NOTE this is a jurisdictional determination and not delineation verification).
Parcel 1 (30.063880 & -93.782947; ~ 163 acres)	N/A	acre(s)	(b)(1) Non-adjacent wetland.	There are wetlands present as determined in the prior PJD. However, they are located above an ephemeral headwater. It is a wetland that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(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. (NOTE this is a jurisdictional determination and not delineation verification).
PIT	N/A.	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	It is an open water borrow pit that is dug out of an ag field and abandoned that is full of water. It is not adjacent, nor an impounded water.
SX 018	2964	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on information provided this feature is a portion of a historic headwater of Hudson Gully. It is a small segment of a historic 1st order tributary that is greater than 20,000 linear feet in the reach with no-perennial flow. This area has been manipulated and hydrology altered throughout the area due to agriculture practices of farming and the construction and expansion of irrigation ditches. These actions have reduced the reach and flow of this feature. USGS maps & aerial photographs support that alterations have occurred and impacted the available hydrology. The flow reported by the consultant indicates that is it ephemeral and we lack any information to dispute these findings.
SX29	2062	linear feet	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-	It is a man-made lentic (does not flow) , irrigation canal, that was excavated and located almost parallel to the Gully. It is not a reroute of Hudson Gully (as originally

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	thought). It has separate hydrology from Hudson Gully and the water in this feature is from precipitation and pumped from Adams Bayou, north of the site. It was constructed as an irrigation canal that were constructed out of non-jurisdiction areas (upland and/or waters) with the primary purpose to provide water to the adjacent agriculture fields. It terminates on the east prior to Foreman Road. This only a portion of the entire irrigation canal. It does not qualify as any of the (a)1-(a)4 waters. It does meet the definition of a "ditch" per NWPR. As such, noting that they are an (a)1 nor (a)2 water they are identified as "non-jurisdictional waters" under the 33 CFR 328 (b) (5); Ditches. If the (b) (5) definition was in question these waters would are non-jurisdictional under b (8); artificial waters.
SX 30	2384	linear feet	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	It is a man-made lentic (does not flow) , irrigation canal, that was excavated and located almost parallel to the Gully. It is not a reroute of Hudson Gully (as originally thought). It has separate hydrology from Hudson Gully and the water in this feature is from precipitation and pumped from Adams Bayou, north of the site. It was constructed as an irrigation canal that were constructed out of non-jurisdiction areas (upland and/or waters) with the primary purpose to provide water to the adjacent agriculture fields. It terminates on the east prior to Foreman Road. This only a portion of the entire irrigation canal. It does not qualify as any of the (a)1-(a)4 waters. It does meet the definition of a "ditch" per NWPR. As such, noting that they are an (a)1 nor (a)2 water they are identified as "non-jurisdictional waters" under the 33 CFR 328 (b) (5); Ditches. If the (b) (5) definition was in question these waters would are non-jurisdictional under b (8); artificial waters.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
SX 04	4765	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This is the upper reaches of a tributary system. This specific segment has less than intermittent flow (as determined by reviewing USGS maps, aerials, site specific information and the consultant report). Note: Greater than ½ of this mapped area is not indicated on any USGS maps of the site. As such, per the NWPR it would classify as a "non-jurisdictional" water as defined at 33 CFR 328.3 (b) (3).
WP1OR001:	0.08	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland, as determined in the prior PJD and it is located east of the road at the north end, but south of FM 1006. It meets the definition of a "ditch" and is also a wetland. It is a wetland that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier .
WP1OR002	0.77	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland, as determined in the prior PJD and it is located northwest of the road and is part of the W "ditch" and depressed triangle created and ponds water. It is a wetland that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR003:	0.04	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland, as determined in the prior PJD and it is located east of the road and is part of the W ditch. It meets the definition of a "ditch" and is also a wetland. It is a wetland that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR004:	0.13	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland as determined in the prior PJD and it is located east of the road and is part of the depressed manicured mowed area. It is a wetland that does not abut an (a)(1)-(a)(3) water. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3)

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR005	0.91	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland (~ ½ is forested) as determined in the prior PJD. It is a wetland that does not abut an (a)(1)-(a)(3) water but is near the borrow pits. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR006	0.02	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland as determined in the prior PJD. It is a wetland that does not abut an (a)(1)-(a)(3) water. It does abut an abandoned borrow pit that is not a jurisdictional water (an (b)(1) water) that was dug/excavated out of a non-jurisdictional area. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR007	0.02	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland as determined in the prior PJD. It is a wetland that does not abut an (a)(1)-(a)(3) water. It does abut an abandoned borrow pit that is not a jurisdictional water (an (b)(1) water) that was dug/excavated out of a non-jurisdictional area. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3) water by more than a single natural or man-made barrier.
WP1OR008:	0.03	acre(s)	(b)(1) Non-adjacent wetland.	It is a wetland as determined in the prior PJD. It is a wetland that does not abut an (a)(1)-(a)(3) water. It does abut an abandoned borrow pit that is not a jurisdictional water (an (b)(1) water) that was dug/excavated out of a non-jurisdictional area. It is not located in a landscape position that would be flooded/inundated by an (a)(1)-(a)(3) water during a "typical year"(well above the contiguous 5' elevation). It is separated from an (a)(1)-(a)(3)

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				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: Jacobs .
  This information is and is not sufficient for purposes of this AJD.
  Rationale: N/A or describe rationale for insufficiency (including partial insufficiency).
- ☒ Data sheets prepared by the Corps: Kara Vick (prior JD)
- ☒ Photographs: Aerial: Google Earth 21 Feb 89 to 31 Aug 2020
- ☒ Corps site visit(s) conducted on: see prior JD
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): SWG-2018-00957 (PJD & AJD under Rapanos)
- ☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.
- ☒ USDA NRCS Soil Survey: Jefferson County soil survey
- ☒ USFWS NWI maps: Orangefield NWI
- ☒ USGS topographic maps: Orangefield USGS (1943,1957,1970, 1974, 2010, & 2012)

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	Tides and Currents Website
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Lidar provided by JACOBS

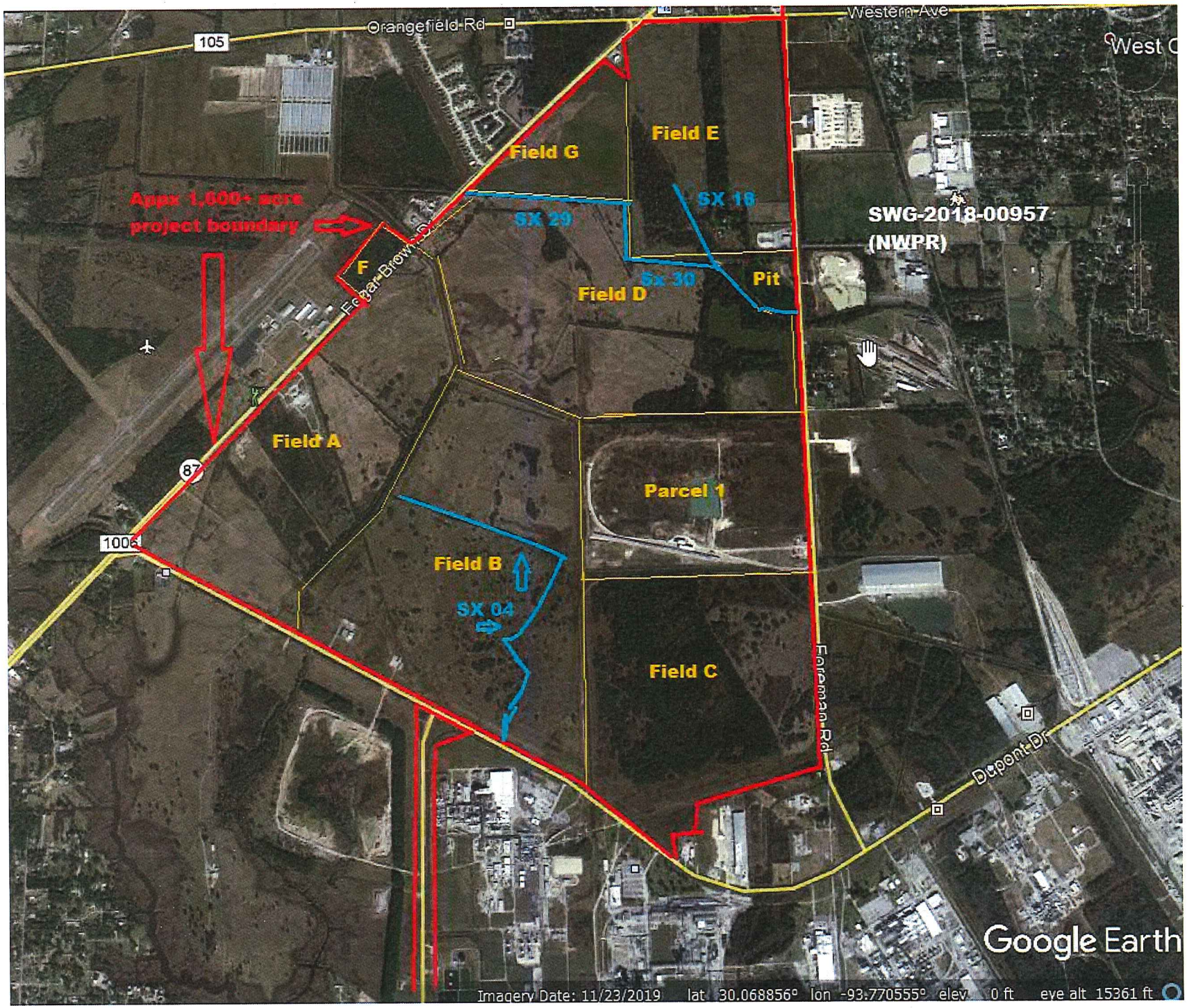
B. Typical year assessment(s): The tide gauge information closest to the site was reviewed. The data was analyzed. The monthly high tides were reviewed to obtain the highest water levels of the years (excluding when the gauges were incapacitated by a storms) to attempt to address those areas that would be inundated by flooding by the nearby tidal waterway in a "typical year". The highest tidal elevation, based upon a monthly average, occurs in October. (October is normally does not have many tropical systems). The October average was amarginally less than 5' so we used 5' elevation to determine the extent of those areas potential flooded by na a)1 water (Cow Bayou) in a typical year

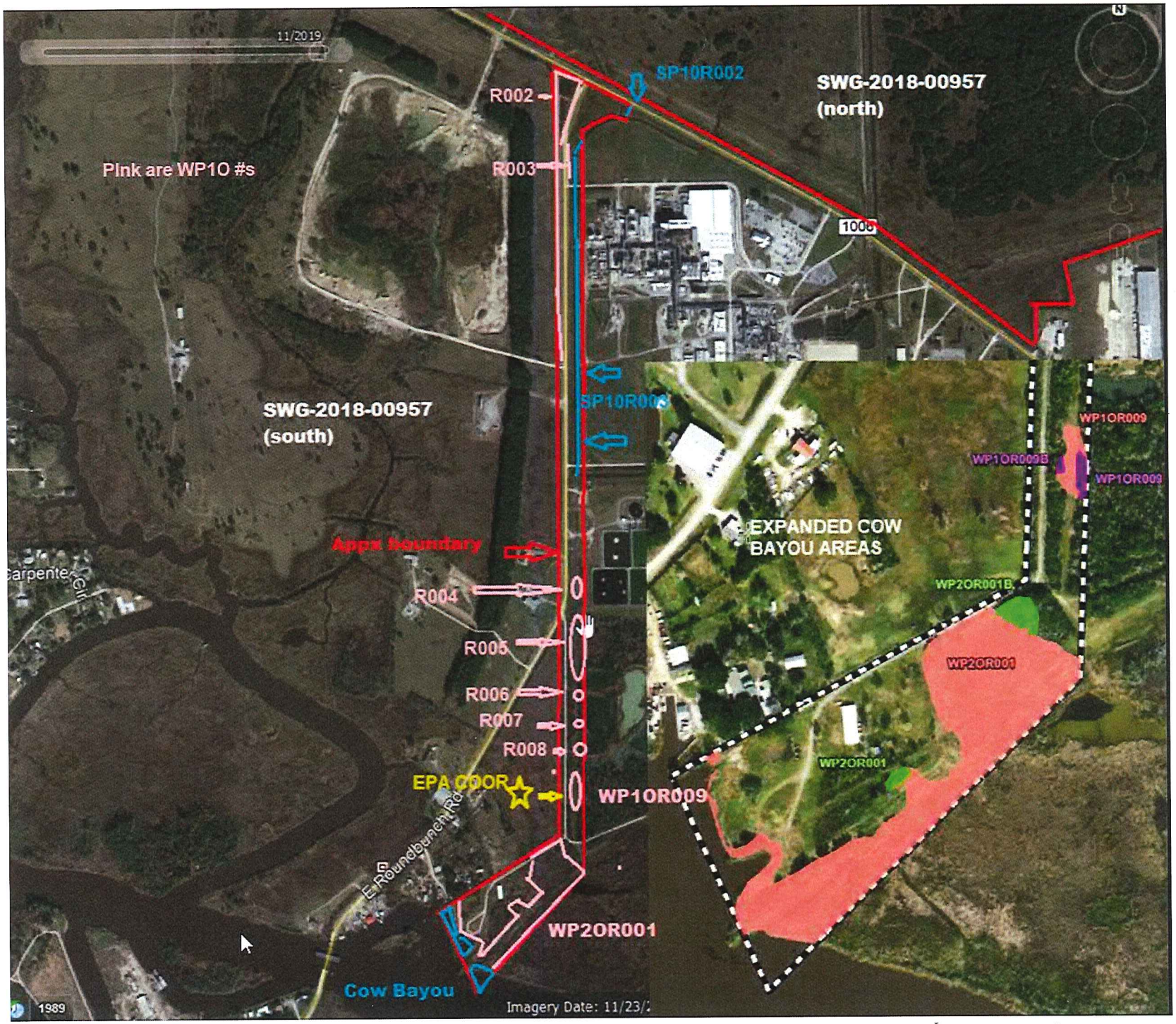
The LiDAR elevations for the project site reveal all but one wetland (specifically WP1OR009 a 0.24 acre wetland) on the site are located above the base elevation above the 5-foot NAVD 88 elevation. Therefore, indicating that the major of the wetlands on the site do NOT get inundated from flooding of Cow Bayou in a "typical year".

C. Additional comments to support AJD: It the Corps determination that that there is a total of 4.97-acres of adjacent wetlands, 3,032 lf of tributary and approximate 1 acre of the open waters of Cow Bayou on the CP Chem 1600+ acre tract.

The jurisdictional waters include:
- COW BAYOU & Abutting wetlands: 4.73-acres of abutting wetlands (WP2OR001) and the open waters of Cow Bayou (SP2OR001: 0.94-acre). NWPR: 33 CFR 328.3 a)1 water with a)4 abutting wetlands. (NOTE also portions that tidal are also subject to Section 10 of the Rivers and Harbors Act.)
- WP1OR009: 0.24 (0.02 forested) --- NWPR: 33 CR 328.3 a)4 adjacent wetlands due to the fact that it would be flooded in typical year form the nearby a)1 water.
- SP1OR002 (80 lf) & SP1OR003 (2,952 lf)-- 33 CR 328.3 a)2 tributaries that have more than ephemeral flow.

There are many other aquatic features that have been identified on the 1600+ acre tract; but they have determined to be non-jurisdictional aquatic features under the NWPR.


Orangefield Rd
105
Western Ave
West C
Field G
Field E
SX 16
SX 29
Appx 1,600+ acre
project boundary
SWG-2018-00957
(NWPR)
F
Sx 30
Pit
Field D
Field A
87
Parcel 1
100
Field B
SX 04
Field C
Foreman Rd
Dupont Dr
Google Earth
Imagery Date: 11/23/2019 lat 30.068856° lon -93.770555° elev 0 ft eye alt 15361 ft


11/2019
R002
SP10R002
SWG-2018-00957
(north)
Pink are WP1O #s
R003
1008
SWG-2018-00957
(south)
SP10R003
WP1OR009
WP1OR009B
WP1OR009
EXPANDED COW
BAYOU AREAS
Apps Boundary
R004
WP2OR001B
R005
WP2OR001
R006
R007
R008
WP2OR001
EPA COOR
WP1OR009
E Roundbunch Rd
WP2OR001
Cow Bayou
1989
Imagery Date: 11/23/