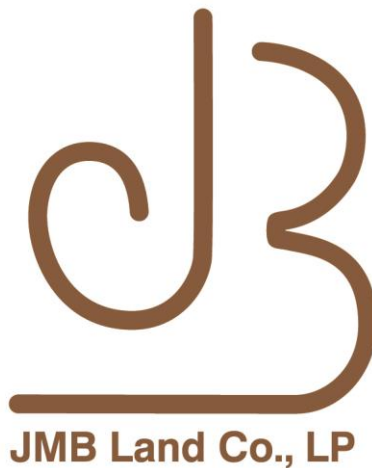


Draft Permittee Responsible Mitigation Plan Bastrop Bayou

SWG -2013-00147

Brazoria County, Texas

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1.0 INTRODUCTION

At the request of Freeport LNG, JMB Land Company, LP (JMBL and/or Consultant), submits this Bastrop Bayou Permittee Responsible Mitigation Plan (BBPRMP) to the U.S. Army Corps of Engineers - Galveston District (CESWG). There are currently no mitigation credits available for unavoidable impacts to palustrine emergent wetlands (PEM) within the proposed wetland impact area located in U.S. Geological Survey Hydrologic Unit Code (HUC) 12040205 (Austin-Oyster). Therefore, Freeport LNG is proposing the BBPRMP to offset/mitigate for the unavoidable impacts to Wetlands and Waters of the U.S. resulting from construction and fill activities associated with the proposed Freeport LNG Liquefaction Project, Dredge Material Placement Area (DMPA and/or Impact Site), in HUC 12040205 and Brazoria County, Texas. JMBL has prepared this BBPRMP in accordance with the regulatory program regulations listed in Section 33 CFR § 332.4(c) and 40 CFR § 230.92.4(c) to establish and operate the proposed Bastrop Bayou PRM Site.

The Bastrop Bayou PRM Site (BBPRM) has the potential to be restored to high quality palustrine emergent wetlands through the implementation of restoration and enhancement mitigation types as defined in 33 CFR § 332.2:

- *Restoration*: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.
- *Enhancement*: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

2.0 PROJECT GOALS AND OBJECTIVES

The goal of this PRM is to restore 116.7 acres and enhance 56.6 acres of PEM to compensate for the in-kind lost to the physical, biological, and chemical IHGM values associated with unavoidable impacts from the DMPA fill (Table 1). The restoration and enhancement of the current Bastrop Bayou PRM site would restore the natural historical herbaceous prairie wetland habitat and provide wetland functions and values not currently realized under the existing conditions. Presently, the proposed PRM site is being used for cattle production and sod farming. In reaching the goals and objectives of the PRM, land use would pivot away from heavily managed agricultural land to herbaceous prairie wetland. The Brazoria National Wildlife Refuge (BNWR) and its objectives would also be served by this conversion (Sanchez 2012). In summary, the proposed PRM would restore hydrology, remove noxious species, and re-vegetate the BBPRM site with native herbaceous prairie wetlands species.

Goals and Objectives of the BBPRMP:

- Remove interior fencing to allow uninhibited wildlife access to BBPRM.

- Remove cattle from the project area.
- Remove noxious species such as Chinese Tallow (*Triadica sebifera*) through aerial application and spot spraying of herbicides.
- Recruitment and seeding of indigenous herbaceous prairie wetlands species.
- Restore the topography, hydrology, and vegetation to improve the water quality of BBPRM’s runoff and in turn its natural hydrologic cycling, sheet flow, and water storage.
- Create herbaceous prairie wetlands, which are threatened by the spread of Chinese tallow, as habitat for wildlife.
- Ensuring the quality of BBPRM habitat through annual vegetation monitoring, noxious invasive species control, and adaptive management if necessary.
- Provide long-term protection through financial assurances and the institution of a conservation servitude.

Table 1: PRM: Current Habitat Types and Land Use

Current land Use	Current Wetland Determination	Proposed Habitat Type	Restoration Type	Acreage
Cattle Pasture	Wetland	PEM	Enhancement	28.4
Invasive Chinese tallow	Wetland	PEM	Enhancement	28.2
Cattle Pasture	Non-Wetland	PEM	Restoration	113.0
Isolated Drainage	Non-Jurisdictional	PEM	Restoration	3.7
Total				173.3

Preliminary jurisdictional boundaries of areas identified as Waters of the U.S., along with the unavoidable proposed project impacts are shown in Figure 2. A request for an approved jurisdictional determination was submitted to the Galveston District in October 2015, and is currently under review.

3.0 IMPACT SITE DESCRIPTION

Freeport LNG Liquefaction Project Dredge Material Placement Area Study Area Number 1 encompasses 196.52 acres located within HUC 12040205 (Austin-Oyster) in Brazoria County, Texas (proposed Impact Site). The Impact Site consists primarily of coastal marsh and is located one mile south of the intersection of Highways 288 and 36 near Freeport (WGS 83, 095° 22' 8.614"W 28° 55' 50.013"N). Freeport LNG is proposing to use the 196.52 acres as a dredge material placement area. Dredge material would originate from the Brazos River.

3.1 Impacted Wetland Habitat Descriptions

The proposed Impact Site, excluding open waterbody areas, is comprised of several palustrine emergent (PEM) and palustrine scrub-shrub (PSS) wetland patches totaling 196.52 (WA001) acres (Appendix A). Of the 196.52 acres, PEM wetland patches comprised 174.71 acres and PSS wetland patches comprised 19.08 acres, with the remaining acreage being open water.

According to the Natural Resources Conservation Service (NRCS) Soil Survey for Brazoria County (USDA 2015), two soil map units are present within the project area – Surfside clay and Velasco clay. Surfside clay consists of very deep, saline soils located on Gulf Coast floodplains and saline prairies. These soils are very poorly drained, occasionally flooded by both fresh and salt water, and are saturated at or near the surface for several months at a time. Surfside clay is listed as a hydric soil on the 2014 NRCS National Hydric Soil List. Velasco clay consists of very deep, saline clays located on Gulf Coast floodplains. These soils are very poorly drained, occasionally flooded by both fresh and salt water, and the zone of water saturation fluctuates from the surface to a depth of 30 inches. Velasco clay is listed as a hydric soil on the 2014 NRCS National Hydric Soil List.

SWCA identified two vegetation community types within the project area including PEM and PSS wetland. Species identified along with their areal coverage, as documented at representative data points, are recorded on the data sheets in Attachment B. A photographic log, depicting representative images of the vegetation communities within the project area, is provided in Appendix C. Examples of dominant species identified within each vegetation community type are listed in the following paragraphs.

PEM Wetland:

PEM wetland community patches were delineated throughout the project area by SWCA on October 5, 2015. The PEM wetland patches are dominated by non-woody vegetation such as grasses and forbs under three feet in height. Dominant herbaceous species include turtleweed (*Batis maritima*), bushy seaside-tansy (*Borrchia frutescens*), Carolina desert-thorn (*Lycium carolinianum*), seaside club-rush (*Schoenoplectus robustus*), salt-meadow cord grass (*Spartina patens*), Gulf cord grass (*Spartina spartinae*), and broad-leaf cat-tail (*Typha latifolia*).

PSS Wetland:

The PSS wetland community patches were delineated in the western and southern portions of the project area. The PSS wetland patches are dominated by woody species greater than three feet in height and less than three inches in diameter at breast height. Dominant woody species include groundsel tree (*Baccharis halimifolia*), Jesuit's-bark (*Iva frutescens*), and Carolina desert-thorn (*Lycium carolinianum*). Herbaceous species are similar to PEM wetland patches with the addition of sweetscent (*Pluchea odorata*).

3.2 Proposed Impact Site Ecological Functions and Values

The Riverine Herbaceous/Shrub HGM Interim Model (IHGM) was used to assess the PEM and PSS wetland values that would be lost due to the DMPA impacts. Acreages are based on all PEM wetland acreage and all PSS wetland acreage identified in the Jurisdictional Determination (2015-00305). The IHGM analysis yielded the existing physical, biological, and chemical functional capacity index (FCI) of each wetland (PEM and PSS) impacted and the number of functional capacity units (FCUs) for each wetland within the DMPA impact area proposed for mitigation are indicated in Attachment B.

4.0 MITIGATION SITE SELECTION

The proposed Bastrop Bayou PRM site was selected due to its potential for the desired habitat type, vicinity to the Impact Site, its location within HUC 12040205 (Austin-Oyster), and its vicinity to the Brazoria National Wildlife Refuge. The PRM site is located 11.1 miles from the DMPA site, within the same HUC (12040205 Austin-Oyster) as the Impact Site. The PRM site is 2.8 miles from the Brazoria National Wildlife Refuge, with cattle pastures and natural wetlands separating the two sites. The proposed site restoration would be a valuable asset to water quality and wildlife within the Western Gulf Coastal Plains Ecoregion III. Wetland functions and values not currently realized under the proposed site's existing conditions have the capacity for high functional lift for offsetting unavoidable impacts when restored. The restoration of this site would provide 173.3 acres of much needed natural prairie habitat (PEM) for many species of concern.

The proposed PRM is located within property owned by JMBL. JMBL has designated the proposed PRM acreage as a standalone project, while proposing a wetland mitigation bank on the surrounding property, which has already been reviewed by the Interagency Review Team and determined to have potential (Attachment F). The purpose of the combined proposal is to allow the PRM to move forward and ultimately manage the entire property as one aquatic resource system for the overall benefit of the watershed. JMBL also maintains a right of first refusal on the adjacent 699 acres, to be assessed at a later date for similar purposes.

4.1 Mitigation Site Description

BBPRM is located approximately 5.5 miles southeast of Angleton, Texas. BNWR is located 2.5 miles to the east of the property. The BBPRM is located at Northing 3,222,345m and Easting 271,441m NAD83 UTM zone 15N (approximate center point) in Brazoria County, Texas, and also in HUC 12040205 Austin-Oyster. Named water ways in the direct vicinity of the BBPRM are Bastrop Bayou, Little Slough, and Big Slough. BBPRM is in the EPA's Level III Ecoregion 34 which is the Western Gulf Coastal Plain. The US EPA describes Ecoregion 34 as largely coastal prairie with wooded areas and adjacent rivers. Topography in and surrounding the PRM is a ridge-swale landscape created by the historic courses of meandering bayous. Some of the higher ridges are forested while most of the swales are herbaceous. Over the last two hundred years the prairie of Brazoria County has been extensively converted to cattle pastures and cropland, the PRM and surrounding properties included.

4.2 Driving Directions

To reach the property from Angleton, Texas, drive south on S. Velasco Street (Highway 288) for 2.2 miles; turn left onto Coale Road (Highway 220); continue on Coale Road for 2.2 miles; turn right onto FM523 S.; continue on FM523 S. for 2.0 miles; turn left onto Fairway Drive; continue on Fairway Drive for 1.4 miles; and the property would be on the right (see Attachment A: Figure 2).

5.0 SITE PROTECTION INSTRUMENT

BBPRM would be protected in perpetuity by a conservation easement pursuant to Texas Natural Resources Code Sections 183.001-183.005. The easement would be held by a

conservation-oriented 501(c)(3) organization: U.S. Land Conservancy. The conservation servitude would be bound to and run with the property title. A type of long-term management fund would be established to provide the resources necessary to monitor and enforce the site protections in perpetuity. The servitude would prohibit activities such as fill discharges, cattle grazing, or other commercial surface development that would diminish the quality or quantity of restored wetlands. A letter of intent to hold the easement and a draft version of the conservation easement are located in Attachment F.

6.0 BASELINE INFORMATION

6.1 General Ecological Characteristics

Current land use of the PRM site consists primarily of cattle pasture, sod farm, and three scrub-shrub areas, two of which are mainly Chinese tallow (*Triadica sebifera*) (Attachment A: Figure 3). Adjacent land use consists primarily of cattle pasture to the east and west, and a landfill to the south. BBPRM would provide very similar habitat for the same species that Brazoria National Wildlife Refuge (BNWR) is striving to protect and preserve.

6.2 Historical Ecological Characteristics

The Coastal Prairie of Texas consisted of 9 million acres in the early 1800s. Since that time, this acreage has been greatly reduced due to cropland, livestock, and urban sprawl. Brazoria County has been affected by all three of these land altering activities (Smeins 1991). The proposed PRM was a prime example of a wetland prairie complex as seen in its historical prairie form in 1930 and 1944 aerial photography (Attachment A: Figures 5 & 6). Post 1970 aerial photography shows the site as cleared and mowed for rice farming. The 72.4 acre reservoir, located on the northeast corner of the property was constructed for rice irrigation. Soon after rice farming was abandoned and the site was utilized for livestock grazing and sod farming.

Review of the historic aerial photography suggests the lack of Mima mounds and natural ponds, therefore no depressional features or mound restoration is proposed. The remnant stream bed contours that run west to east across the site are easily visible on all historic aerials providing micro-topography that would enhance the chemical, physical, and biological functions of the site once they are reconnected and restored.

6.3 Current Ecological Characteristics

6.3.1 Jurisdictional Determination

The jurisdictional determination (JD) request, for the proposed PRM, was submitted on April 16, 2015. On January 22, 2016, an amended JD was submitted. The reference number is SWG 2015-00305. The jurisdictional determination encompasses a larger area than the proposed BBPRM site. The proposed BBPRM contains 56.6 acres of wetland, 116.7 acres of non-wet pasture.

6.3.2 Current Site Vegetation

The BBPRM is currently being managed for cattle grazing. The actively managed areas consist of the levees and pasture. The pasture does have wetland vegetation even with canalization and ditching of the land. The levees and roads have been built up so that they are not affected by the water on the site. The vegetation in these areas consist of St. Augustine Grass (*Stenotaphrum secundatum*) and Angleton Bluestem (*Dichanthium*

aristatum), Gulf Cordgrass (*Spartina spartinae*), Saltmarsh Aster (*Symphyotrichum tenuifolium* var. *aphyllum*)

The unmanaged areas on the property consist of pasture and Chinese tallow forest. The pasture area has remnant prairie species in it, but areas that are not managed have large swaths of Chinese Tallow (*Triadica sebifera*). The scrub-shrub area consists of Baccharis (*Baccharis halimifolia*), Hackberry (*Celtis laevigata*), and Elm (*Ulmus americana*). Some of the wet spaces are affected by ponding due to small levees next to the ditches.

Table 2: Current Vegetation Species List

Scientific Name	Common Name (USDA)	Wetland Indicator Status Atlantic and Gulf Coastal Plain (USDA)
Current vegetation within cleared cow pasture		
<i>Spartina patens</i>	Cordgrass	FACW
<i>Dichanthelium scoparium</i>	Velvet Panicum	FACW
<i>Stenotaphrum secundatum</i>	St. Augustine Grass	FAC
<i>Eleocharis acicularis</i>	Needle Spikerush	OBL
<i>Symphyotrichum tenuifolium</i> var. <i>aphyllum</i>	Saltmarsh Aster	OBL
Current vegetation within scrub/forested areas		
<i>Baccharis halimifolia</i>	Eastern Baccharis	FAC
<i>Sabal minor</i>	Saw Palmetto	FACW
<i>Ulmus americana</i>	American Elm	FAC
<i>Celtis laevigata</i>	Hackberry	FACW
<i>Triadica sebifera</i>	Chinese Tallow	FAC

6.3.3 Current Site Hydrology

BBPRM is located in the Austin-Oyster watershed (HUC 12040205), specifically within the Lower Oyster Creek (HUC 120402050400) drainage area. This region is dominated by ridge-swale topography; natural ridges being only two to three feet higher than the swales. This is evident within the PRM as well. This unique topography gives way to drainage patterns in which water is moved through the sloughs down the elevation gradient. The site's topography currently drains into Bastrop Bayou via man-made drains, a remnant of past agricultural use. Elevated roads, levees, and spoil banks impound water on the site and prevent overbank flooding, hydrologically isolating the site (Attachment A: Figure 15).

Wetlands and un-named drainageways on-site are hydrologically isolated due to spoil banks, elevated roads, and levees. Wetland hydrology on-site is currently driven by direct precipitation and runoff from adjacent properties – spoil banks have been minimally gapped to allow some of the excessive precipitation to flow from the site as runoff. Proposed drainage patterns are discussed in Section 4.2.1 and visually represented in Attachment A: Figure 16.

The BBPRMP project area drains into Bastrop Bayou, which met all water quality requirements except nutrient levels in 2015; nutrient levels are deteriorating according to TCEQ. Bastrop Bayou flows into Bastrop Bay and Oyster Lake, which are currently

impaired by fecal coliform. Removing cattle from BBPRM would eliminate a source of fecal coliform. Additionally, accepting runoff from adjacent areas would filter drainage water from a larger area than the PRM site and further decrease fecal coliform in Bastrop Bayou. Ceasing agricultural activities and degrading spoil banks, roads, and levees would aid in meeting the current and future Total Maximum Daily Loads of the PRM's receiving water bodies by reducing the site's fecal coliform contribution and increasing filtration and plant uptake of nutrients (i.e., nonpoint source pollution prevention). BBPRM would also improve the quality of water flowing into Bastrop Bayou off this site. This would in turn may benefit Brazoria National Wildlife Refuge (BNWR), which is downstream of the PRM.

6.3.4 Existing Soils

The Brazoria County Soil Survey maps BBPRM soils as: Francitas clay, zero (0) to one (1) percent slopes, somewhat poorly drained and Lake Charles clay, zero (0) to one (1) percent slopes, rarely flooded. All of these soil types are listed as hydric soils of Brazoria County on the USDA NRCS National List of Hydric Soils; All States (2014). A wetland delineation conducted in January 2015 confirmed that these soils present hydric indicators and are wetland soils in areas other than the sod field which had been contoured to drain. Figure 11 presents the current soils within the project area.

Table 3: Existing Soils

Soil Name	Soil Code (NRCS)	Acreage of Soil on BBPRM	Percent of Soil on BBPRM
Lake Charles clay	24	120.9	69.7%
Francitas clay	17	52.4	30.3%

According to the Brazoria County Soil Survey and the USDA Web Soil Survey the following soils are found to occur on the PRM, their descriptions are:

- Lake Charles clay (24) is a nearly level soil with slops at 0.1 percent. This soil is very dark gray to a depth of about 50 inches and is slightly acidic in this upper part. It is somewhat poorly drained and the water table in the winter is above the depth of two feet. Surface runoff is very slow and permeability is very slow.
- Francitas clay (17) is a nearly level, slightly saline soil with slopes at 0.3 percent. This soil surface is mildly alkaline and very dark clay about 18 inches thick. The soil is poorly drained and the surface runoff is very slow. The soil has a perched water table above the depth of two feet during the winter.

6.4 Threatened and Endangered Species

The PRM would provide a buffer to future development around the refuge and add to the habitat range for the species, especially the species of concern, which BNWR protects.

Table 4: Endangered and Threatened Species of Concern at BBPRM

Common Name	Scientific Name	State Status (TPW)	Federal Status (FWS)
Whooping Crane	<i>Grus americana</i>	Endangered	Endangered
Wood Stork	<i>Mycteria americana</i>	Threatened	-
White-faced Ibis	<i>Plegadis chihi</i>	Threatened	-
Swallow-tailed Kite	<i>Elanoides forficatus</i>	Threatened	-
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Threatened	-

7.0 DETERMINATION OF CREDITS

This BBPRM would mitigate for unavoidable impacts to wetlands and their physical, biological, and chemical functions and values resulting from construction and fill activities associated with the Freeport LNG Liquefaction Project Dredge Material Placement Area through the restoration and enhancement of the BBPRM site to PEM wetlands. To guarantee all lost wetland function and values are mitigated for, the Riverine Herbaceous/Shrub HGM Interim model (IHGM) was used to calculate compensation requirements. IHGM values were assessed for the impacts to PEM and PSS wetland values and functions from the DMPA. Also, the wetland functions and values to be gained from the BBPRM were assessed by the IHGM. FCI and FCU values for both the impacts and the restoration were generated. Based on the IHGM analysis, it was determined that the BBPRM restoration of 116.7 acres and enhancement of 56.6 acres of PEM wetlands would fully compensate for wetland impacts from the DMPA fill. IHGM details for the DMPA and the BBPRM can be found in Attachment B.

8.0 MITIGATION WORK PLAN

8.1 Site Restoration Plan

In order to achieve the goals and objectives of the BBPRMP and to meet all requirements listed in 33 CFR § 332.8, the PRM workplan proposes to remove cattle, cease sod farming, remove interior fencing, restore hydrology, remove noxious species, re-vegetate with native herbaceous prairie wetlands species, and maintain the re-vegetated PEM with a rotation of prescribed burns (Table 5).

Table 5: Site Restoration Plan and Timeline

Activities to be Completed	Timing	Reasoning
Permit Issued and Conservation Servitude	Start Date	
Spray Tallow Trees	First Summer	Tallow Trees Need to be Leafed Out
Dirt Work	Upon Issuance of Permit	
Establishment of Monitoring Transects	First Summer	Establishment of Monitoring Transects
Prescribed Burn	First Winter then Every 3 Years	6 Months After Spray
Seed Native Vegetation	Spring	
Monitor	Every Year for Years 1-5	

8.1.1 Hydrologic Restoration

To restore the area to a natural hydrologic state and meet the objectives of the BBPRMP, the features draining the site and associated berms would be removed. No long-term structural management requirements are anticipated to assure and sustain hydrology.

The site historically drained into Bastrop Bayou about two miles to the east of the site. Today this connection would be maintained by an easement placed on the existing drainage located on the east side of the reservoir in the northeast portion of the property. This protected drainage way would serve as BBPRM's connection to Bastrop Bayou.

Currently, overbank flooding is impeded by berms. During flood stages sufficient to overtop these impediments, flood waters become impounded behind them. Removal of these berms would contribute to the ability of flood waters on the site to rise and recede in a more natural regime.

Depending on its location, spoil bank material excavated during restoration would be either placed into the man-made ditches to restore the natural hydrologic regime of BBPRM, or removed from the site. The remnant stream bed contours would be returned to their historic grades to act as the drainage ways for the site. Cross sections of all internal drainages to be filled are shown in the Doyle & Wachtstetter Survey (Attachment C).

Upon the restoration of the natural hydrologic conditions the site would experience an increase in hydraulic conductivity, soil organic matter, soil saturation potential, and the formation of redoximorphic features (Collins 2001) conducive to wetland function and value.

8.1.2 Vegetative Restoration

Vegetative recruitment and/or seeding would be used to restore natural vegetation throughout the property. The restoration of the hydroperiod across the property in partnership with vegetative recruitment would create wildlife habitat as well as benefit water quality. Proposed herbaceous prairie wetland restoration areas would be prepared by applying herbicides and, if necessary, tilling soil to remove invasive species prior to recruitment. If necessary, areas that are not showing signs of successful prairie wetland plant establishment would be seeded with a mesic mix appropriate for the ecoregion. Herbaceous prairie wetland habitat would be maintained by prescribed burning on a 2-4 year cycle (Allain 1999). Proposed herbaceous prairie species to be planted on site are listed in Table 6.

Table 6: Proposed PEM Planting List

Scientific Name	Common Name (USDA)	Wetland Indicator Status Atlantic and Gulf Coastal Plain (USDA)
<i>Andropogon gerardii</i>	Big Bluestem	FAC
<i>Andropogon virginicus</i>	Broomsedge Bluestem	FAC
<i>Andropogon glomeratus</i>	Bushy Bluestem	FACW
<i>Chasmanthium latifolium</i>	Inland Sea oats	FAC
<i>Coreopsis tinctoria</i>	Golden Tickseed	FAC
<i>Cyperus esculentus</i>	Yellow Nutsedge	FAC
<i>Dichanthelium scoparium</i>	Velvet Panic Grass	FACW

<i>Eleocharis acicularis</i>	Needle Spikerush	OBL
<i>Eleocharis quadrangulata</i>	Squarestem Spikerush	OBL
<i>Elionurus tripsacoides</i>	Pan American Balsamscale	FACW
<i>Elymus canadensis</i>	Canada Wildrye	FAC
<i>Eryngium yuccifolium</i>	Rattlesnake Master	FAC
<i>Hyptis alata</i>	Clustered Bushmint	OBL
<i>Juncus effusus</i>	Common Rush	OBL
<i>Panicum hemitomom</i>	Maidencane	OBL
<i>Paspalum floridanum</i>	Florida Paspalum	FACW
<i>Paspalum hartwegianum</i>	Hartweg's Paspalum	FACW
<i>Polygonum pennsylvanicum</i>	Pennsylvania Smartweed	FACW
<i>Muhlenbergia filipes</i>	Gulfhairawn Muhly	OBL
<i>Schizachyrium scoparium</i>	Little Bluestem	FAC
<i>Sagittaria papillosa</i>	Nipplebract Arrowhead	OBL
<i>Solidago sempervirens</i>	Seaside Goldenrod	FACW
<i>Spartina patens</i>	Cordgrass	FACW
<i>Sporobolus airoides</i>	Alkali Sacaton	FAC
<i>Sporobolus silveanus</i>	Silveus' Dropseed	FAC
<i>Symphyotrichum tenuifolium</i>	Saltmarsh Aster	OBL
<i>Tridens strictus</i>	Longspike Tridens	FAC
<i>Tripsacum dactyloides</i>	Eastern Gamma	FAC

8.1.3 Noxious Plant Control

Invasive plant species such as Chinese tallow (*Triadica sebifera*) would be removed by selective application of herbicide prior to initial monitoring. The percent cover of invasive plants would be monitored during long-term and short-term success monitoring. If invasive species are found on the site then appropriate action would be taken to eliminate the species.

Within a majority of the impounded habitats, Chinese tallow appears to be dominant. To enhance these areas they would be chemically treated. The tree stems would be left in

place to deteriorate naturally within the system. No mechanized land clearing or large logging equipment would be used for the exotic eradication.

JMBL intends to use all prudent efforts: physical, chemical, or mechanical, to eliminate existing invasive/exotic vegetation present such as Chinese tallow (*Triadica sebiferum*) at BBPRM. This noxious vegetation would be treated with herbicides to reduce long-term presence to 5 percent relative cover per WAA. Prior to planting, all Chinese tallow within and immediately surrounding the PRM boundary would be chemically treated with herbicides.

9.0 MAINTENANCE PLAN

Monitoring for exotic and invasive species and the implementation of control techniques would occur annually. Maintenance would also include the annual inspection of hydrologic connections to ensure connectivity has not been blocked by man-made or natural processes. If in fact any blockage has occurred, hand clearing or mechanical clearing of those hydrologic connections would be initiated until the proper hydrologic connection is re-established. Adaptive management would allow for changes to the maintenance plan to maximize success of the PRM area. Prescribed burns would be used to maintain the ecological value of the PRM as necessary; and after performance standards are met, the prescribed burns would be performed by the Land Steward. As the habitat matures, monitoring would continue but exotic species control measures are expected to decline as a steady state self-perpetuating natural ecosystem is established.

10.0 PERFORMANCE STANDARDS

BBPRM would be restored in accordance with the PRM Plan such that it meets the goals and objectives listed in Section 2.0. The following performance standards would be used to measure the success of the restored and enhanced habitat:

- 70 percent areal coverage within designated wetland restoration areas.
- Up to 5 percent relative cover of nuisance, invasive, noxious, and exotic species.
- Site would be restored in accordance with the PRM Plan such that it meets wetland criteria as described in the 1987 Corps of Engineers Wetland Delineation Manual (the 1987 Manual) as well as the November 2010 Regional Supplement for the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region Version 2.0. Performance Standards.

Wetland reestablishment and enhancement areas would be considered successful if after 2 growing seasons, and after the initial construction activities on-site to restore hydrology commence, the PRM site meets the performance standards. If restored and enhanced wetlands fail to meet the performance standards by the 3rd growing season following the start of restoration activities, then additional planting of approved species and maintenance would be required until performance standards are met.

11.0 MONITORING REQUIREMENTS

The monitoring reports would include data sufficient for comparison to the performance standards found in Section 10.0 of this BBPRMP. JMBL shall also include in these reports, a discussion of all activities which took place at the PRM.

11.1 Monitoring Methodology

Permanent vegetative plots would be established along 11 evenly-spaced transects throughout the PEM area. A permanent marker, consisting of a 5ft t-post encased in a 10-foot PVC pipe, would be installed at each of the 48 (2m x 2m) vegetative plots. The plots would be tied in with a GPS to ensure correct placement for the life of the PRM. The linear survey transects and vegetative plots would be established following the completion of all internal dirt work and a baseline vegetation survey would be conducted at or near the end of the first growing season. Percent cover data would be collected using a 2m x 2m quadrat constructed of PVC. The quadrat would be placed with the northwest corner touching the permanent marker and the quadrat sides facing 180 degrees due south and 90 degrees due east. All of this information would be provided in the as-built report.

Monitoring events would collect the following information from each 2m x 2m vegetative plot: 1) date time-frame (begin/end date); 2) name of each species present 3) identification on whether that species is native, non-native, invasive/exotic 4) identification of the wetland status of each species present according to the following categories - Obligate Wetland (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), or Obligate Upland (UPL); and 5) the percent cover of each species present. In addition, the following information would be documented: 1) the average percent cover of native species; 2) the average percent cover of non-native species; 3) the average percent cover of invasive/exotic species; and 4) the average percent cover of species per each wetland status. All monitoring locations would be illustrated on a map supplied to the USACE as part of the annual report.

Throughout each monitoring event, ground level photographs (digital images) would be taken at each vegetative sampling plot. Using the vegetative plot marker as the central point, photographs would be oriented toward the following two compass directions: North and South. These photographs would be included as an attachment to each monitoring report and each photograph would be labeled with the date, plot/station identifier, and the compass direction for that photograph.

11.2 Monitoring Report Requirements and Timing

An as-built report would be submitted within 60 days following completion of all work required. Year 0 is considered the year of commencement of PRM restoration and enhancement activities. Monitoring would commence the following growing season, after the completion of all on-site work. Monitoring would be conducted in the spring of Years 1-5 using the guidelines in Section 11.1 of this BBPRMP.

11.2.1 Baseline: As-Built

An as-built report would be submitted within 60 days following completion of all work required. The as-built report would describe in detail the work performed, and provide at a minimum the following information:

1. POST CONSTRUCTION SURVEY: A survey showing finished grades and plantings with written documentation, plan view, and cross-sectional drawings of all construction and establishment work implemented.
2. VEGETATION PLOT ESTABLISHMENT DATA: 1) date time-frame (begin/end date); 2) the average percent coverage of native species in all plots; 2) the average percent coverage of non-native species in all plots; and the 4) average percent coverage of invasive/exotic species in all plots.
3. OVERVIEW: Detailed descriptions of site preparation, planting procedures, etc.

11.2.2 Monitoring Years 1-5

Monitoring would be conducted in Years 1-5 in the spring of each monitoring year using the guidelines in Section 11.1 of this BBPRMP. All annual reports at minimum would provide the following information:

1. FOLLOW-UP CONSTRUCTION: A description of the condition of any applicable hydrology altering features (culverts, ditches, plugs, etc.) and a general discussion of hydrologic conditions at monitoring stations.
2. VEGETATION COMMUNITY: A summary of the outcome of the vegetative community data collected, which would reference the raw data and statistics in an attachment to the monitoring report. This summary would include, but is not limited to, the following information: 1) date time-frame (begin/end date) of the monitoring event; 2) the average percent coverage per species in all plots; 3) the average percent coverage of native species in all plots; 3) the average percent coverage of non-native species in all plots; 4) the average percent coverage of invasive/exotic species in all plots; 5) the average percent coverage of species per wetland status; and 6) an evaluation on whether this data shows that the vegetative success criteria have been met.
3. VISUAL QUALITATIVE EVALUATION: A summary of the details of the visual qualitative observations performed on the PRM. If additional documentation is collected to substantiate these observations, this information would be included in that documentation as an attachment to the monitoring report and would include references to that attachment in the summary of this information.

12.0 LONG-TERM MANAGEMENT PLAN

After the PRM has met all performance standards, long-term management would be needed to ensure the sustainability of the resource. Freeport LNG or its assignee would be the responsible party for long-term management of the PRM and would provide the necessary funds for maintenance activities. To ensure long-term sustainability of the resource, Freeport LNG or its assignee would burden the property with a perpetual conservation servitude. This servitude would transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the district engineer. The conservation easement would protect the site from any activities that would diminish the quality of restored wetlands on the site. No structures are proposed or would be necessary to assure hydrologic or vegetative restoration.

13.0 ADAPTIVE MANAGEMENT PLAN

Ecological restoration projects are site specific and multiple endpoints are possible owing to the stochastic nature inherent in ecological processes, and the potential influence of offsite human activities. For these reasons, a written report/written request for information could be submitted for review; and upon consultation with the Corps of Engineers and commenting agencies, could lead to: a change in restoration strategy, modified objectives, and adjustments to performance standards and monitoring protocols at any time prior to full project establishment. Once the report is sent to the Corps of Engineers, they would consult with the commenting agencies and provide approval/denial in writing of the written report/written request for information submitted. This adaptive management plan process will ensure flexibility for successful long-term performance of the site.

14.0 FINANCIAL ASSURANCES

Short-term and long-term financial assurances in the form of a bond, escrow account, letter of credit, or casualty insurance would be put in place within 90 days of permit issuance.

To ensure that sufficient funds are available to provide for the perpetual maintenance and protection of the PRM, a “Long-Term Maintenance and Protection” escrow account would be established. This account would be administered by a federally-insured depository that is “well capitalized” or “adequately capitalized” as defined in Section 38 of the Federal Deposit Insurance Act.

15.0 REFERENCES

Code of Federal Regulations, Title 33, Parts 325 and 332 and Title 40, Part 230, as published on pages 19594-19704 in the Federal Register dated 10 April 2008.

United States Department of Agriculture – Natural Resources Conservation Service, Web Soil Survey, Brazoria County, Texas, Retrieved December 2010. http://soils.usda.gov/survey/online_surveys/texas/index.html

United States Department of Agriculture – Natural Resources Conservation Service, PLANTS Database – USDA PLANTS, Retrieved June 2009.

How's the Water? Rep. Houston-Galveston Area Council, 2015. Print. Clean Rivers Program. Basin Highlights Report

EPA. PRIMARY DISTINGUISHING CHARACTERISTICS OF LEVEL III ECOREGIONS OF THE CONTINENTAL UNITED STATES. Tech. no. September, 2013. Print.

Allain, L., M. Vidrine, V.Grafe, C. Allen and S. Johnson, Paradise Lost?: The Coastal Prairie of Texas and Louisiana, U.S. Fish & Wildlife Service and U.S. Geological Survey

Smeins, F. E., D. D. Diamond, and C. W. Hanselka. Natural Grasslands Introduction And Western Hemisphere. Amsterdam-London-New York-Tokyo: Elsevier, 1991. Print. Ch. 13 Coastal Prairie

Collins, M.E. and R.J. Kuehl (2001) Organic Matter Accumulation and Organic Soils in Richardson, J.L and M.J. Vepraskas (eds.) Chapter 6, Wetland Soils. Genesis, Hydrology, Landscapes and Classification. pp. 137-162. Boca Raton, London, New York: CRC Press.

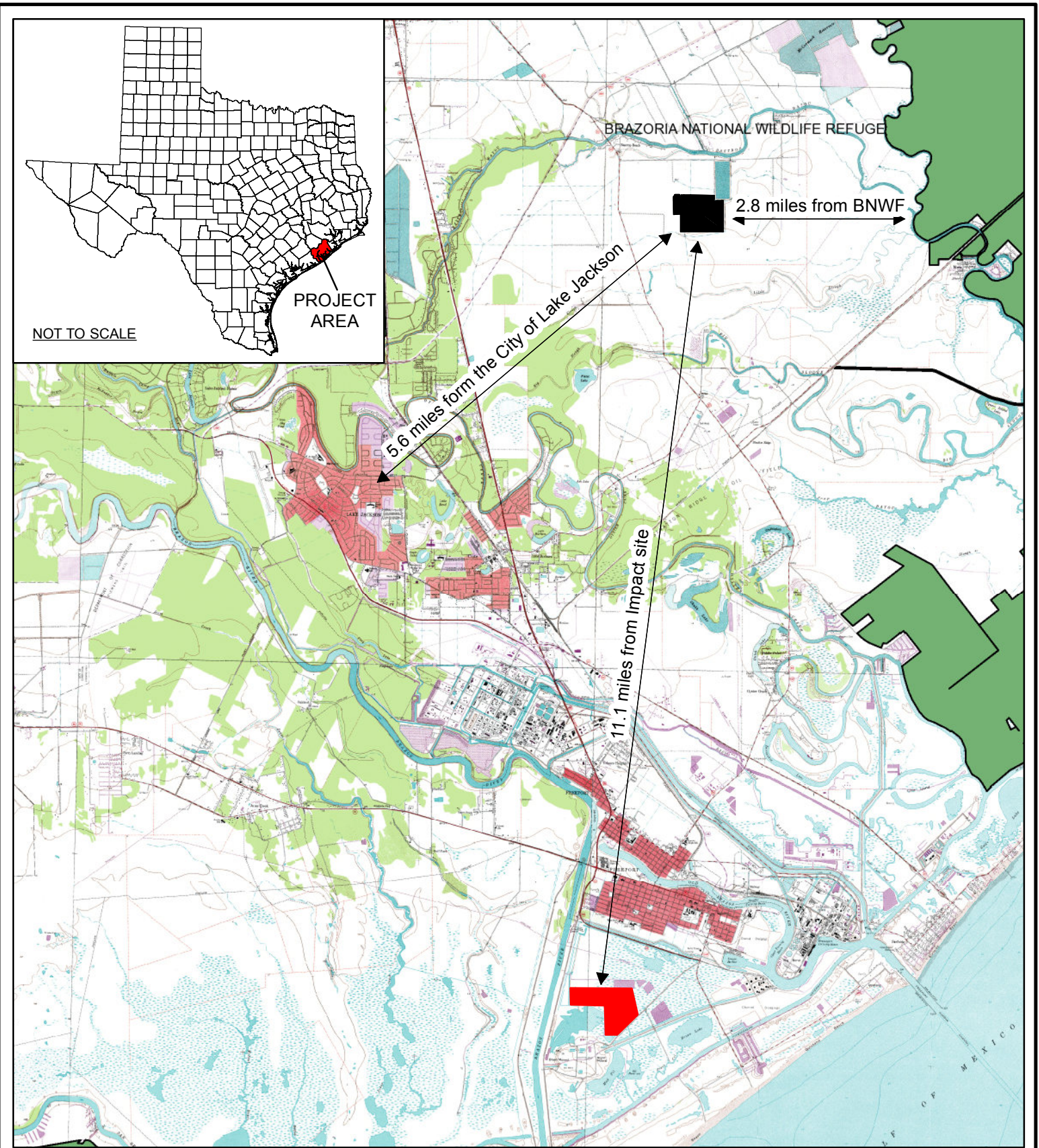
Ryan, Molly. "Boom times on the Bay: Dow, Other Firms Fuel Development South of Houston." 21 Mar. 2014. Web. 22 Mar. 2016.

Omernik, J., & Griffith, G. (2013). Ecoregions of Texas (EPA). Retrieved from <http://www.eoearth.org/view/article/152207>


Griffith, G.E., Bryce, S.A., Omernik, J.M., Comstock, J.A., Rogers, A.C., Harrison, B., Hatch, S.L., and Bezanson, D., 2004, Ecoregions of Texas (color poster with map, descriptive text, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:2,500,000).

Sanchez, Jennifer, Joseph Lujan, Monica Kimbrough, and Carol Torrex. Texas Mid-coast National Wildlife Refuge Complex Draft Comprehensive Conservation Plan and Environmental Assessment. Brazoria, TX: Texas Mid-coast National Wildlife Refuge Complex, 2012. Print. Brazoria, Fort Bend, Matagorda and Wharton Counties, Texas

Attachment A: Maps and Figures



Legend

 Bastrop Bayou PRM Site



**PROPOSED BASTROP BAYOU
PRM
VICINITY EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.:
Date: 05/09/2018 Author: JKP

FIGURE 1



**Proposed Bastrop Bayou PRM
Brazoria County, Texas**

NAD83 UTM 15N (US Feet)

X = 889,958.3

Y = 10,568,547.6

NAD83 UTM 15N (Meters)

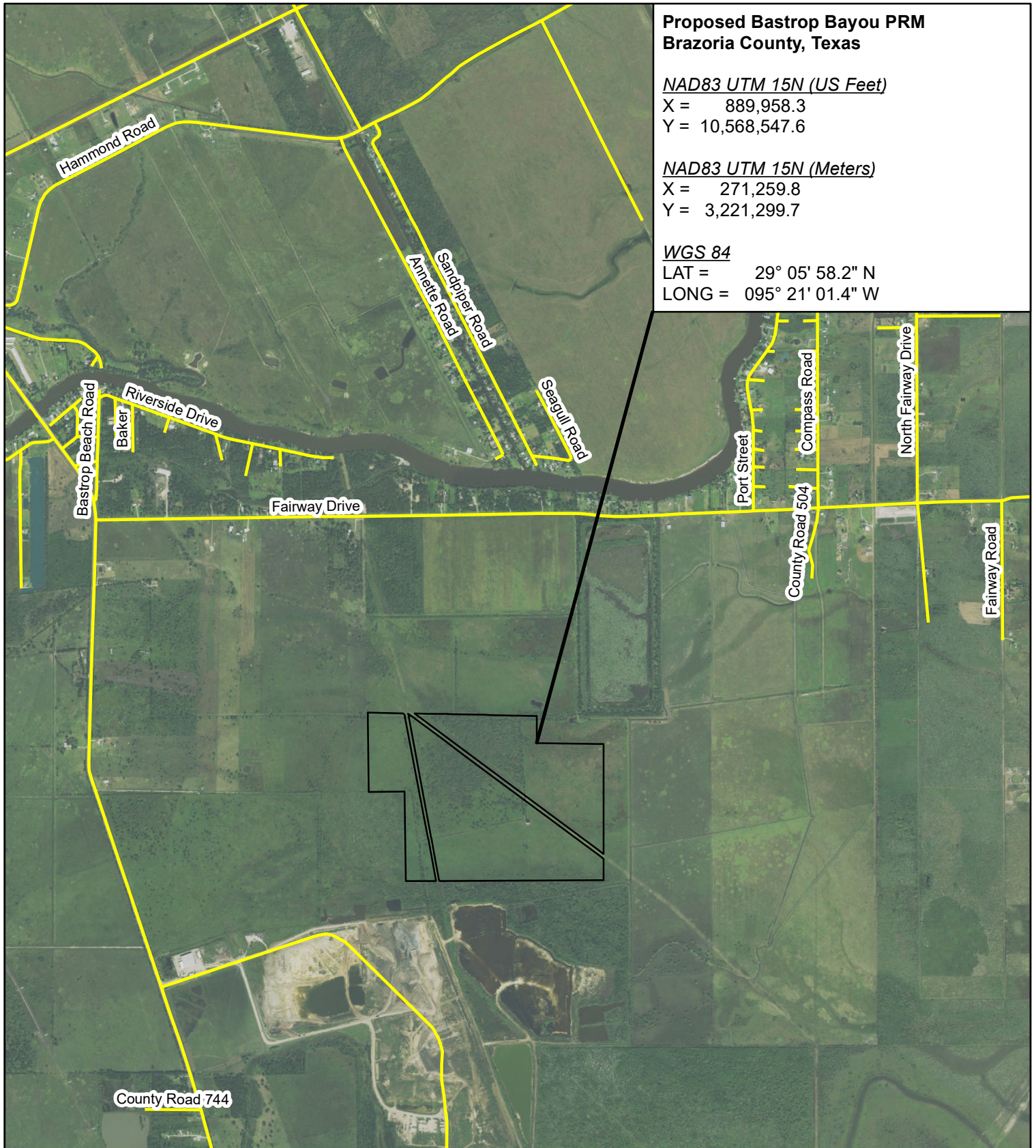
X = 271,259.8

Y = 3,221,299.7


WGS 84


LAT = 29° 05' 58.2" N

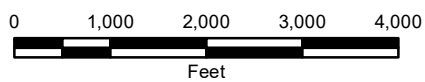
LONG = 095° 21' 01.4" W



Legend

 PRM Boundary (173.3 acres)

 Brazoria County Roads



**PROPOSED BASTROP BAYOU
PRM**

**BOUNDARY W/ 2014 AERIAL IMAGERY EXHIBIT
BRAZORIA COUNTY, TEXAS**

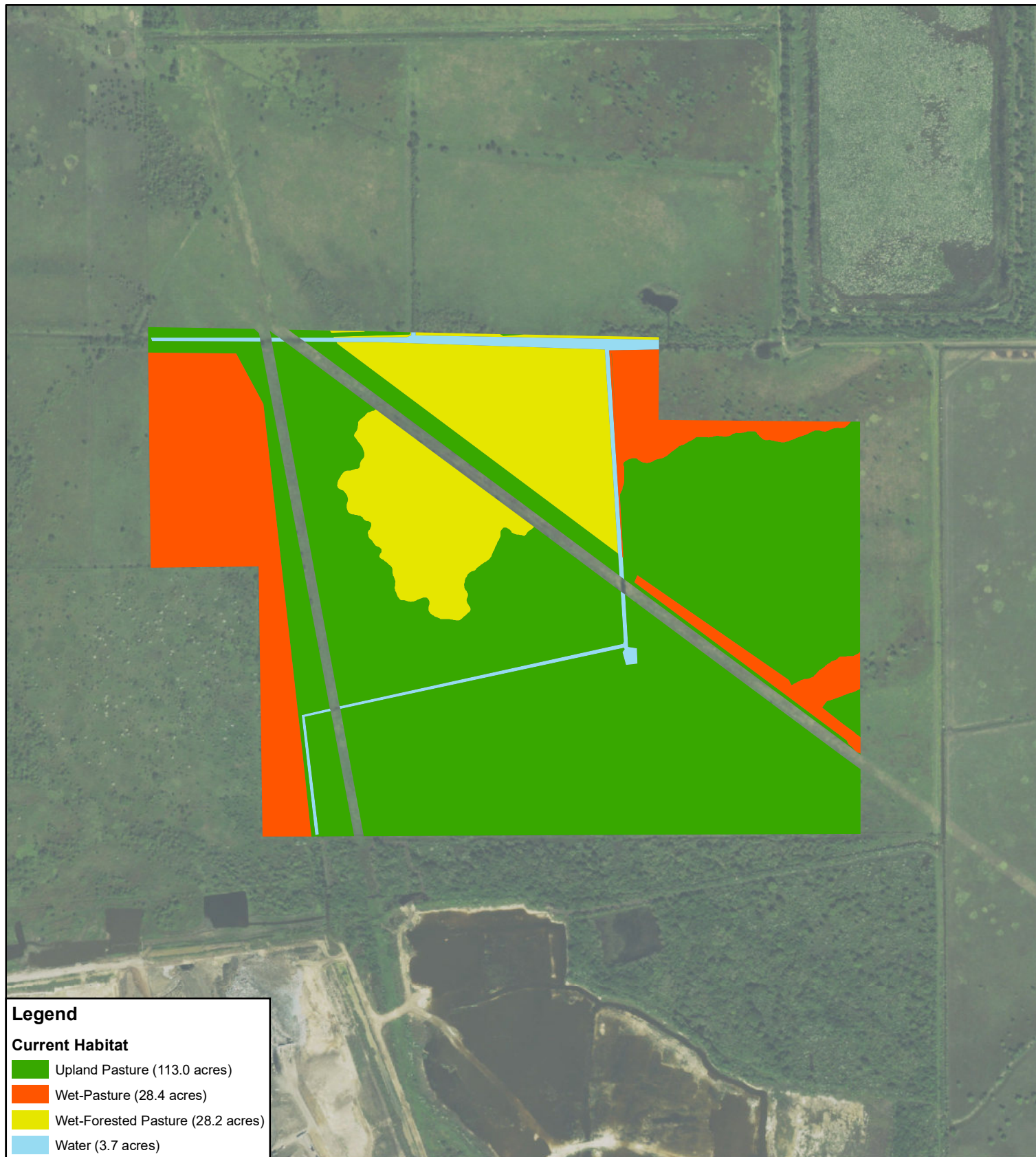
Drawing No.:

Date: 05/09/2018

Author: JKP

FIGURE 2

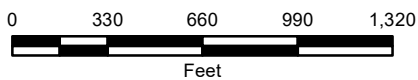




Legend

Current Habitat

- Upland Pasture (113.0 acres)
- Wet-Pasture (28.4 acres)
- Wet-Forested Pasture (28.2 acres)
- Water (3.7 acres)




**PROPOSED BASTROP BAYOU
PRM
CURRENT HABITAT/LAND USE EXHIBIT
BRAZORIA COUNTY, TEXAS**

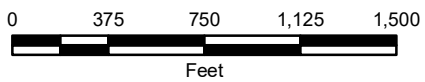
Drawing No.: _____ Author: JKP
 Date: 05/09/2018

FIGURE 3





Legend
 PRM Boundary

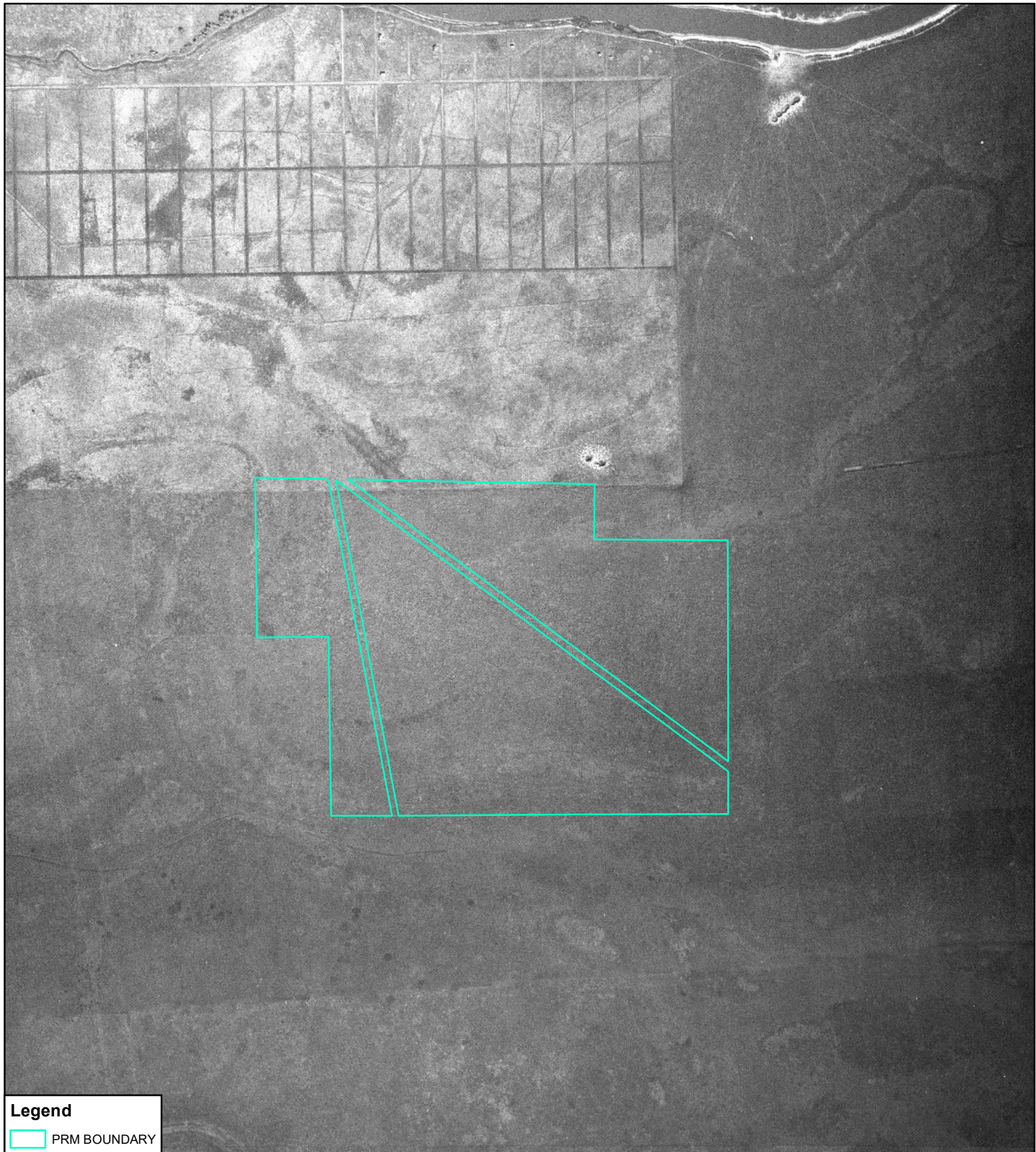


**PROPOSED BASTROP BAYOU
 MITIGATION BANK**
 2014 NATURAL COLOR IMAGERY
 BRAZORIA COUNTY, TEXAS

Drawing No.:
 Date: 05/10/2018 Author: JKP

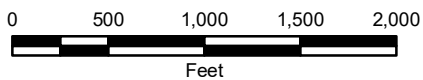
FIGURE 4





Legend

 PRM BOUNDARY



**PROPOSED BASTROP BAYOU
PRM
1930 AERIAL IMAGERY EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.:

Date: 05/10/2018

Author: JKP

FIGURE 5





Legend

 PRM BOUNDARY



**PROPOSED BASTROP BAYOU
PRM**

**1944 AERIAL IMAGERY EXHIBIT
BRAZORIA COUNTY, TEXAS**

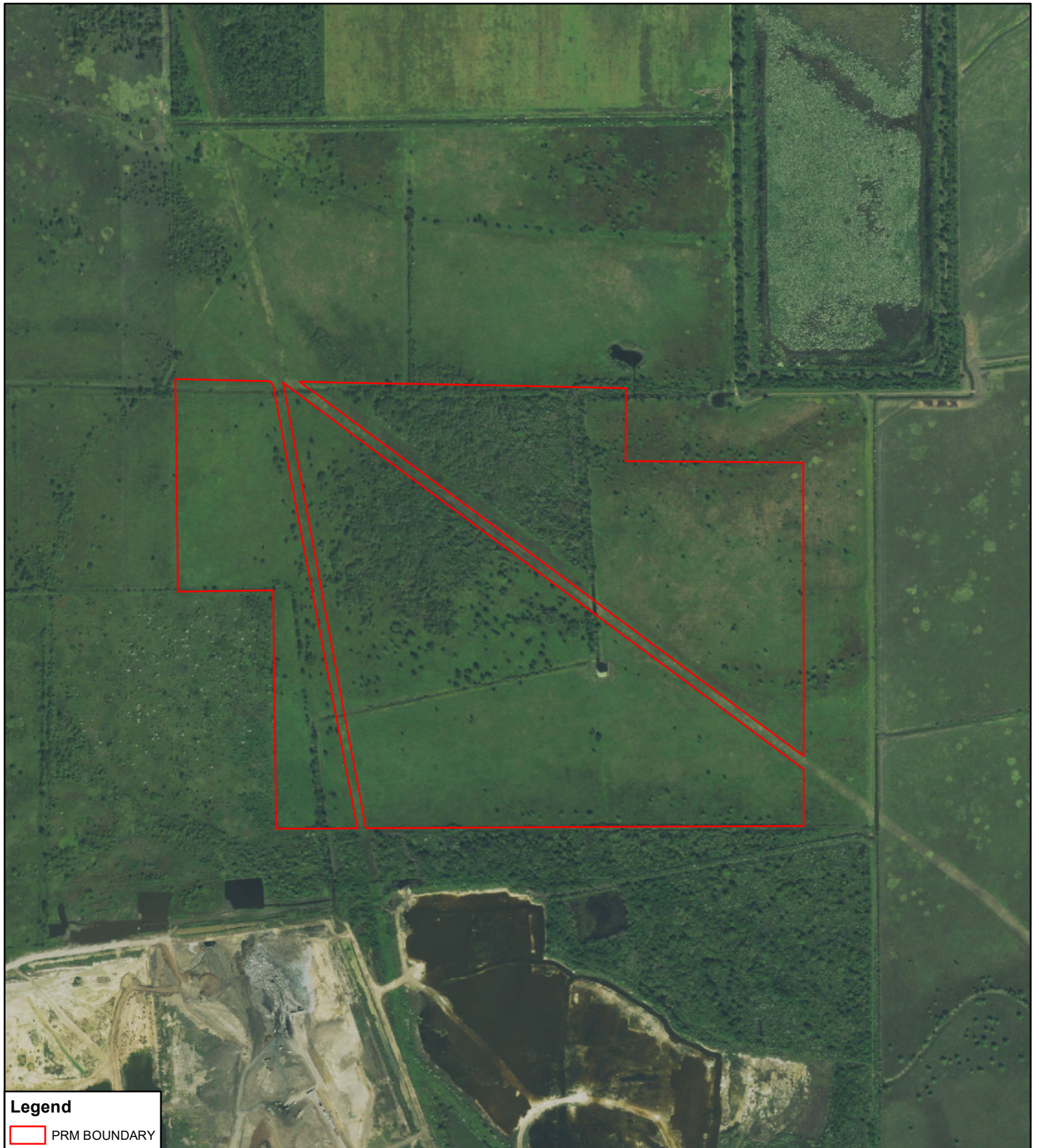
Drawing No.:


Date: 05/10/2018

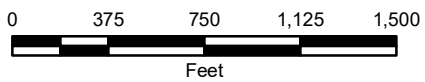
Author: JKP

FIGURE 6





Legend
 PRM BOUNDARY




**PROPOSED BASTROP BAYOU
 PRM**
 2014 AERIAL IMAGERY
 BRAZORIA COUNTY, TEXAS

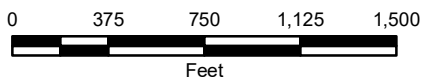
Drawing No.:
 Date: 05/10/2018 Author: JKP

FIGURE 7





Legend
 PRM BOUNDARY

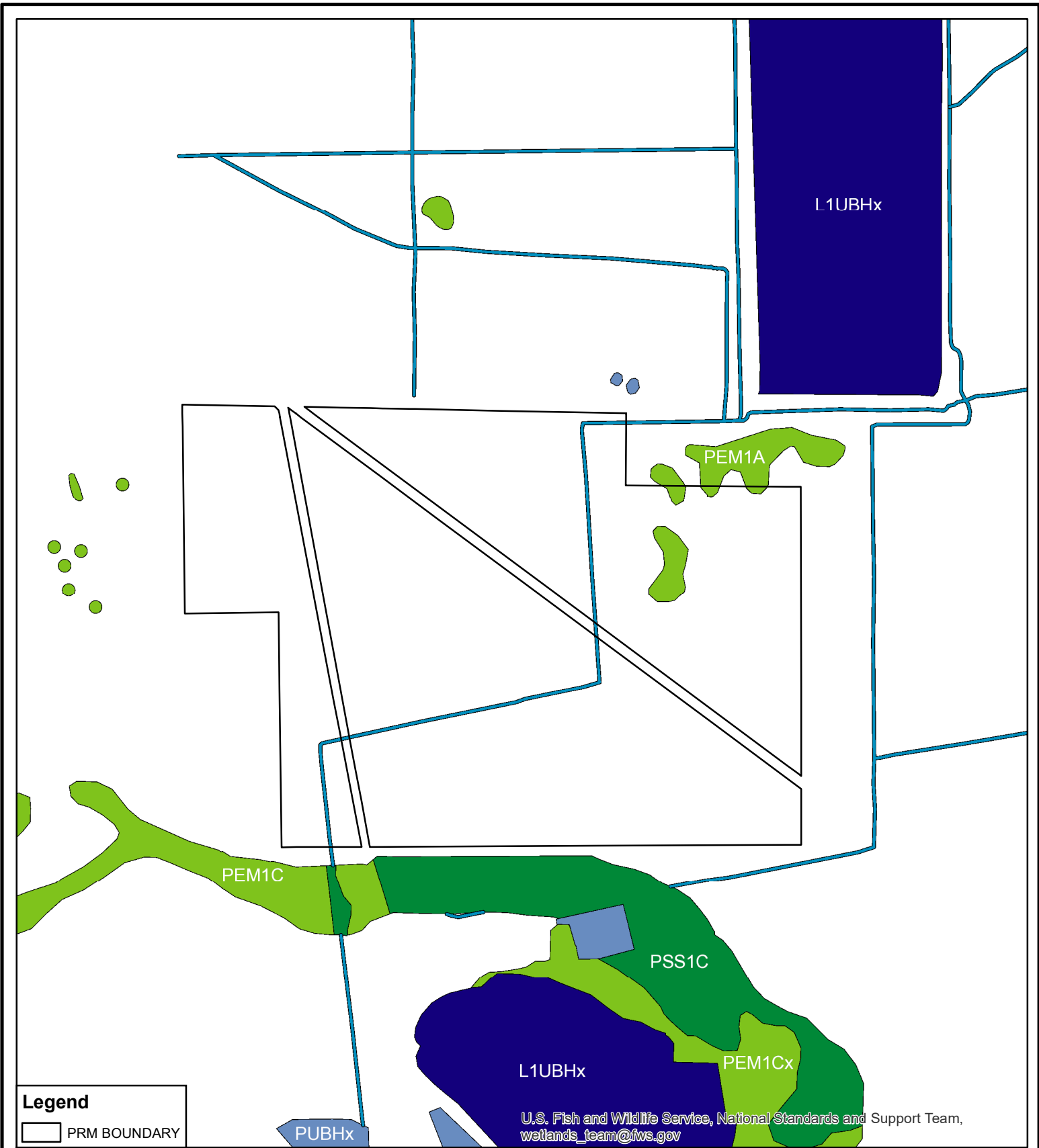


**PROPOSED BASTROP BAYOU
 PRM
 2009 CIR IMAGERY
 BRAZORIA COUNTY, TEXAS**

Drawing No.:
 Date: 05/10/2018 Author: JKP

FIGURE 8





Legend

□ PRM BOUNDARY

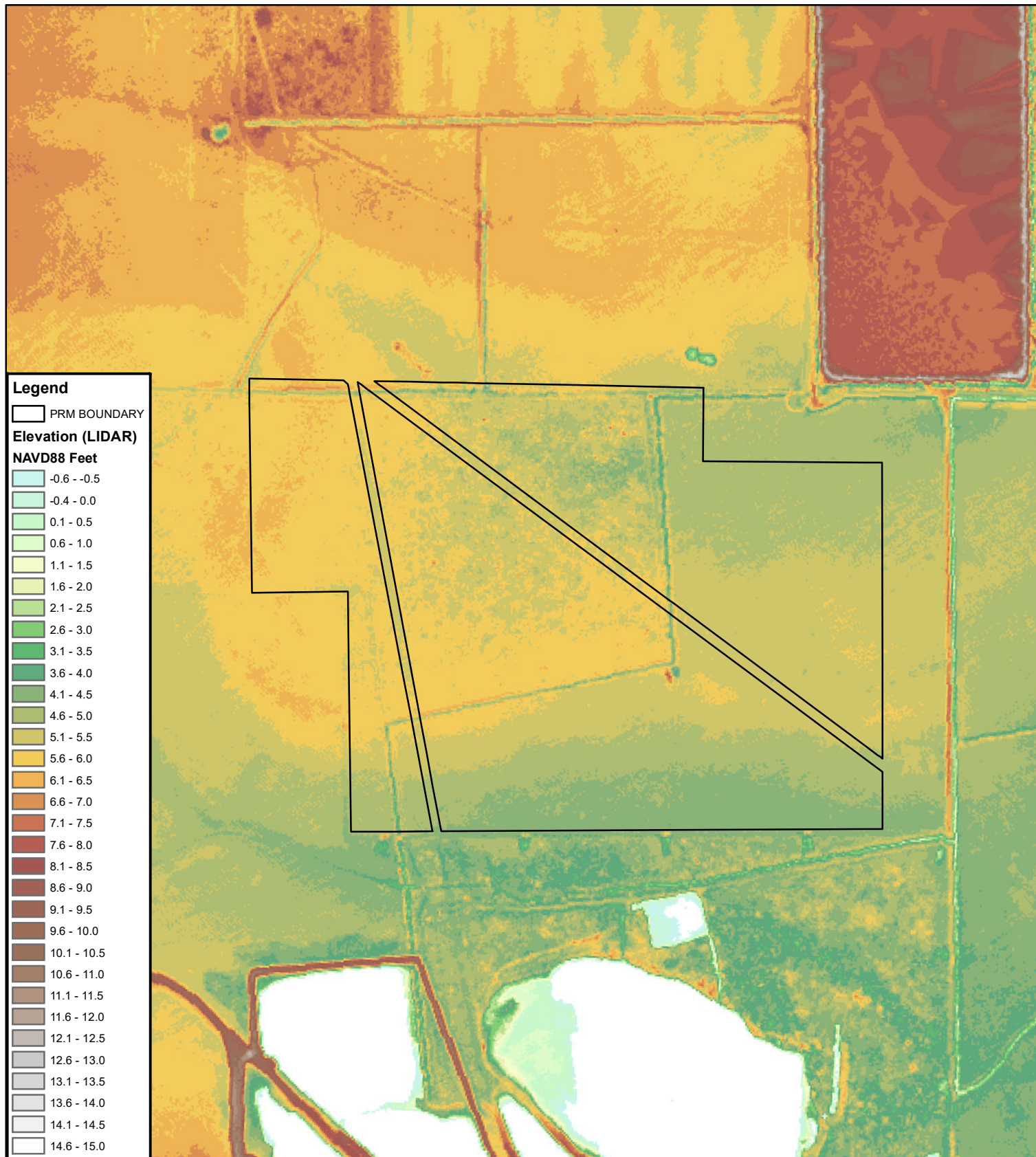
**PROPOSED BASTROP BAYOU
PRM
NATIONAL WETLAND INVENTORY EXHIBIT
BRAZORIA COUNTY, TEXAS**

Date: 05/10/2018

Author: JKP

FIGURE 9





Legend

□ PRM BOUNDARY

Elevation (LIDAR)
NAVD88 Feet

-0.6 - -0.5
-0.4 - 0.0
0.1 - 0.5
0.6 - 1.0
1.1 - 1.5
1.6 - 2.0
2.1 - 2.5
2.6 - 3.0
3.1 - 3.5
3.6 - 4.0
4.1 - 4.5
4.6 - 5.0
5.1 - 5.5
5.6 - 6.0
6.1 - 6.5
6.6 - 7.0
7.1 - 7.5
7.6 - 8.0
8.1 - 8.5
8.6 - 9.0
9.1 - 9.5
9.6 - 10.0
10.1 - 10.5
10.6 - 11.0
11.1 - 11.5
11.6 - 12.0
12.1 - 12.5
12.6 - 13.0
13.1 - 13.5
13.6 - 14.0
14.1 - 14.5
14.6 - 15.0

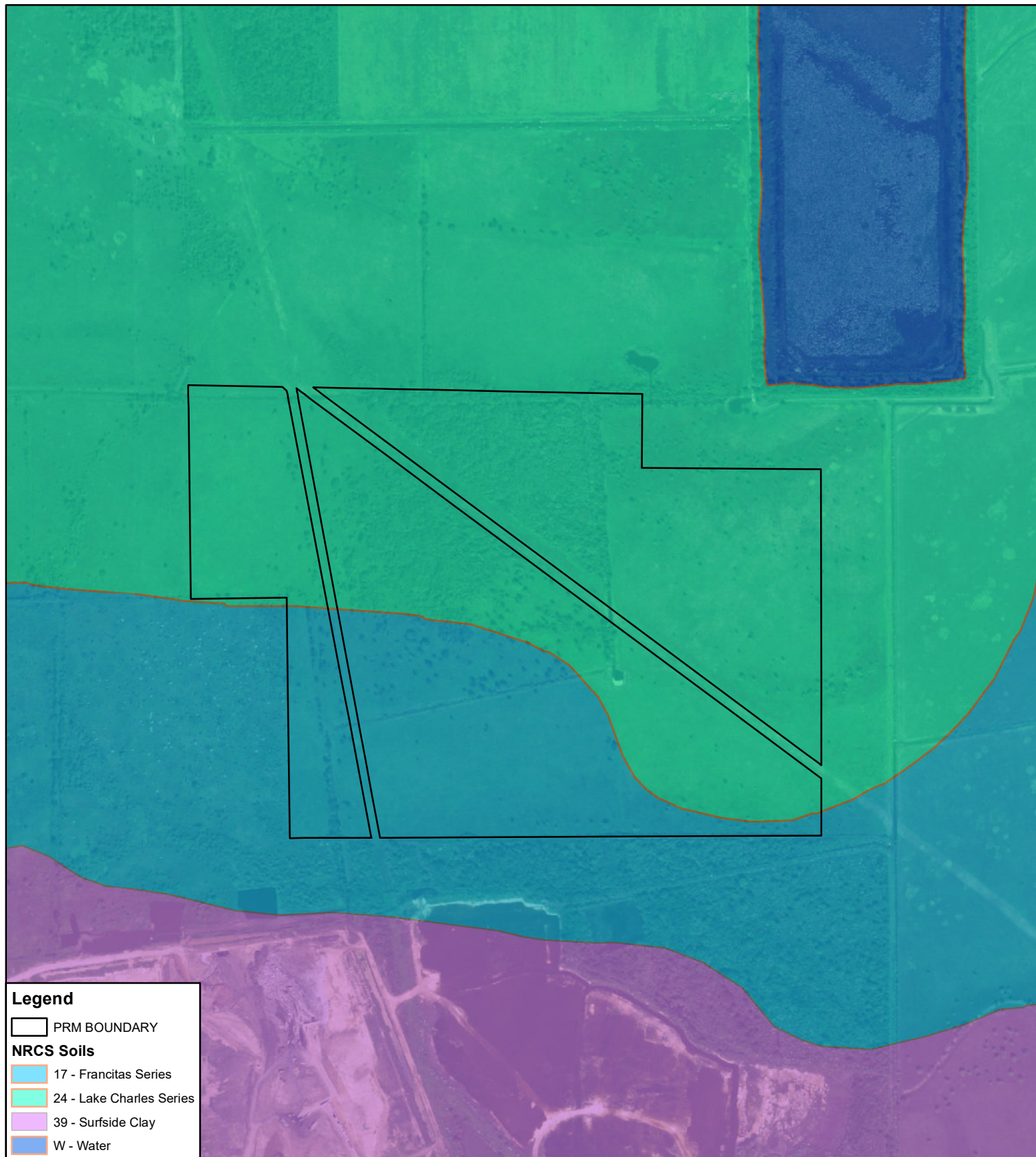
**PROPOSED BASTROP BAYOU
PRM**

**ELEVATION/LIDAR EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.: _____
Date: 05/10/2018 Author: JKP

FIGURE 10

JMB
JMB Companies, Inc.

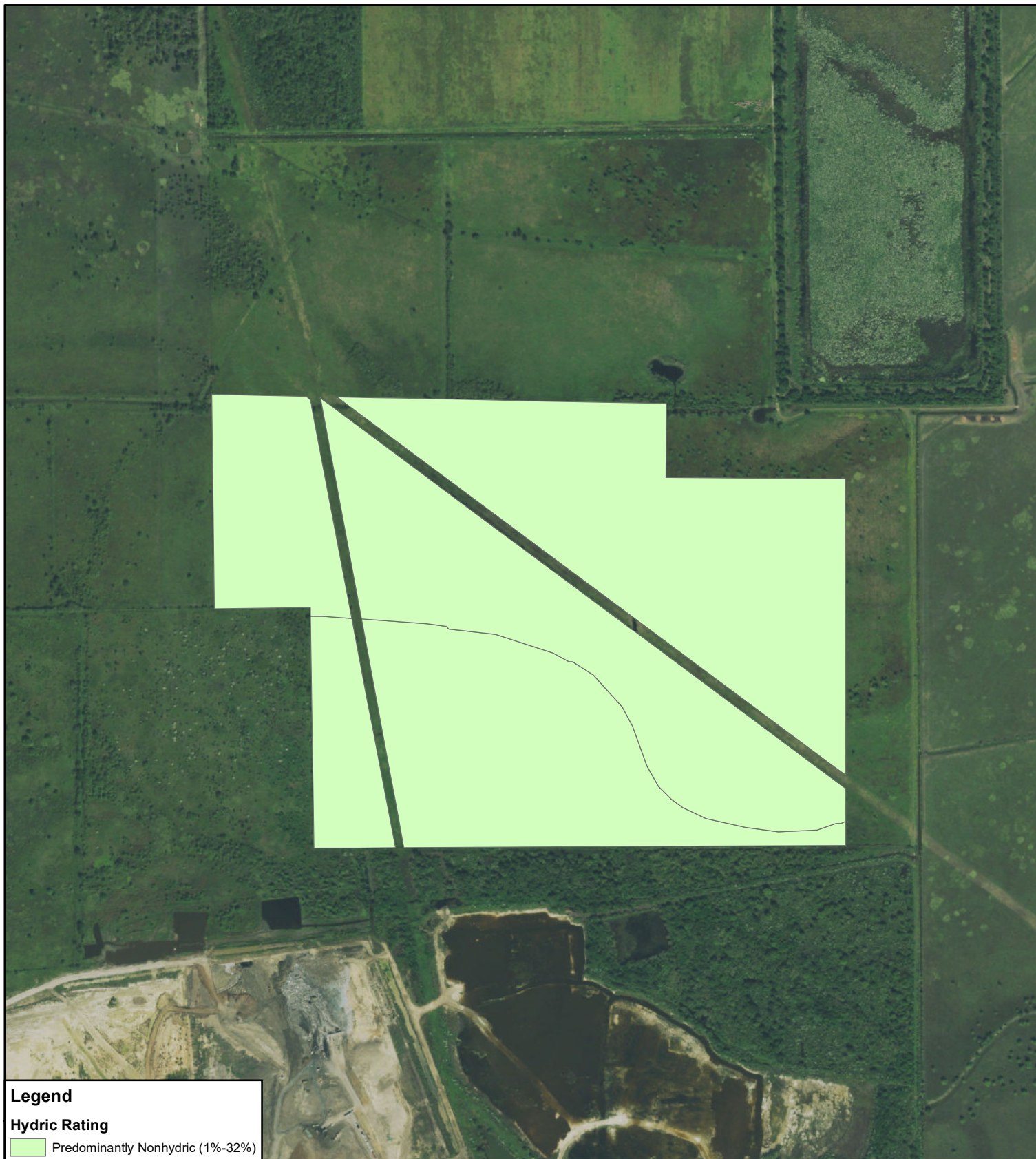


**PROPOSED BASTROP BAYOU
PRM
NRCS SOILS EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.:
Date: 05/10/2018 Author: JKP

FIGURE 11





Legend
Hydryc Rating
 Predominantly Nonhydryc (1%-32%)

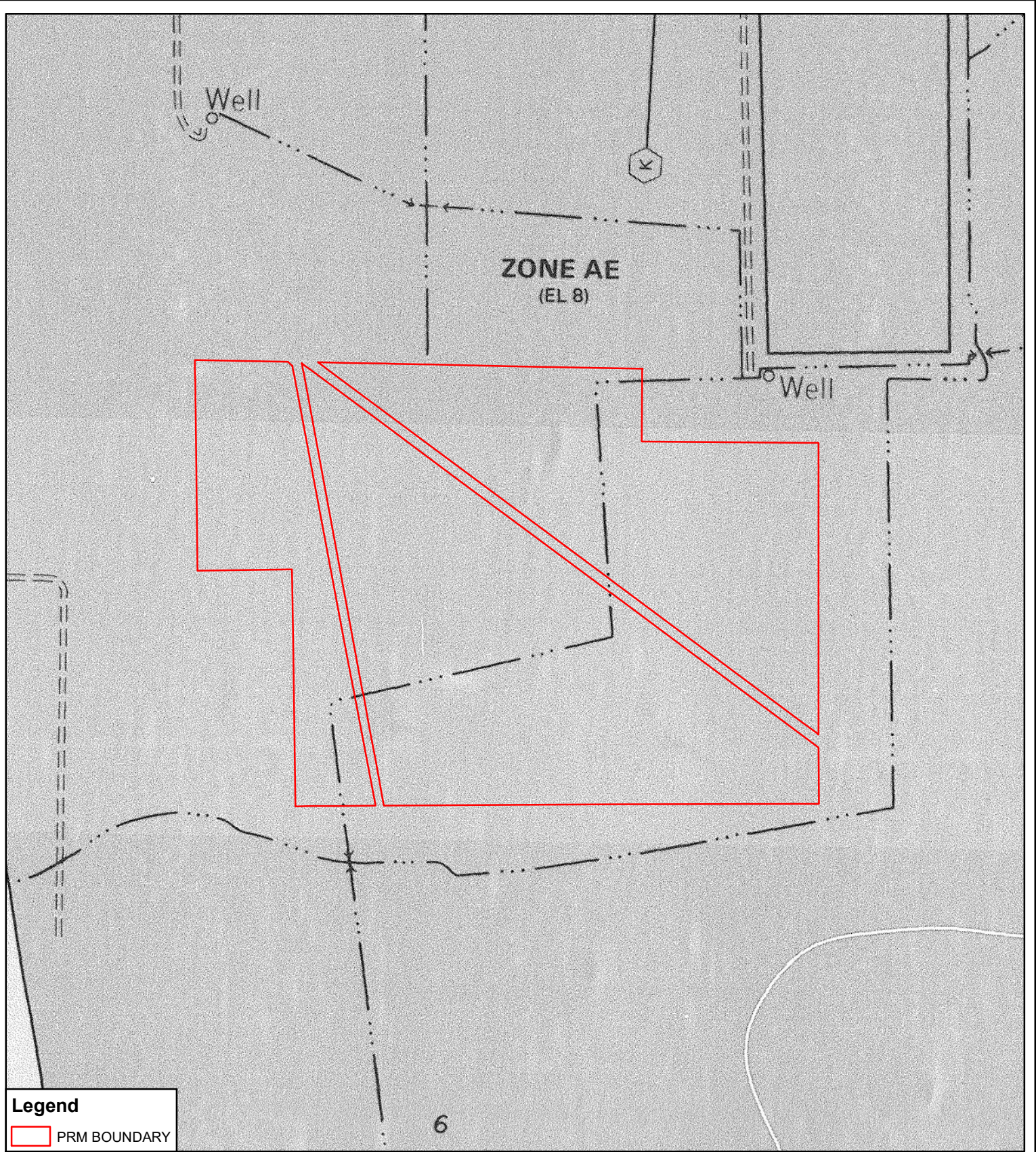



**PROPOSED BASTROP BAYOU
 PRM
 NRCS HYDRIC SOIL RATING EXHIBIT
 BRAZORIA COUNTY, TEXAS**

Drawing No.: _____ Author: JKP
 Date: 05/10/2018

FIGURE 12





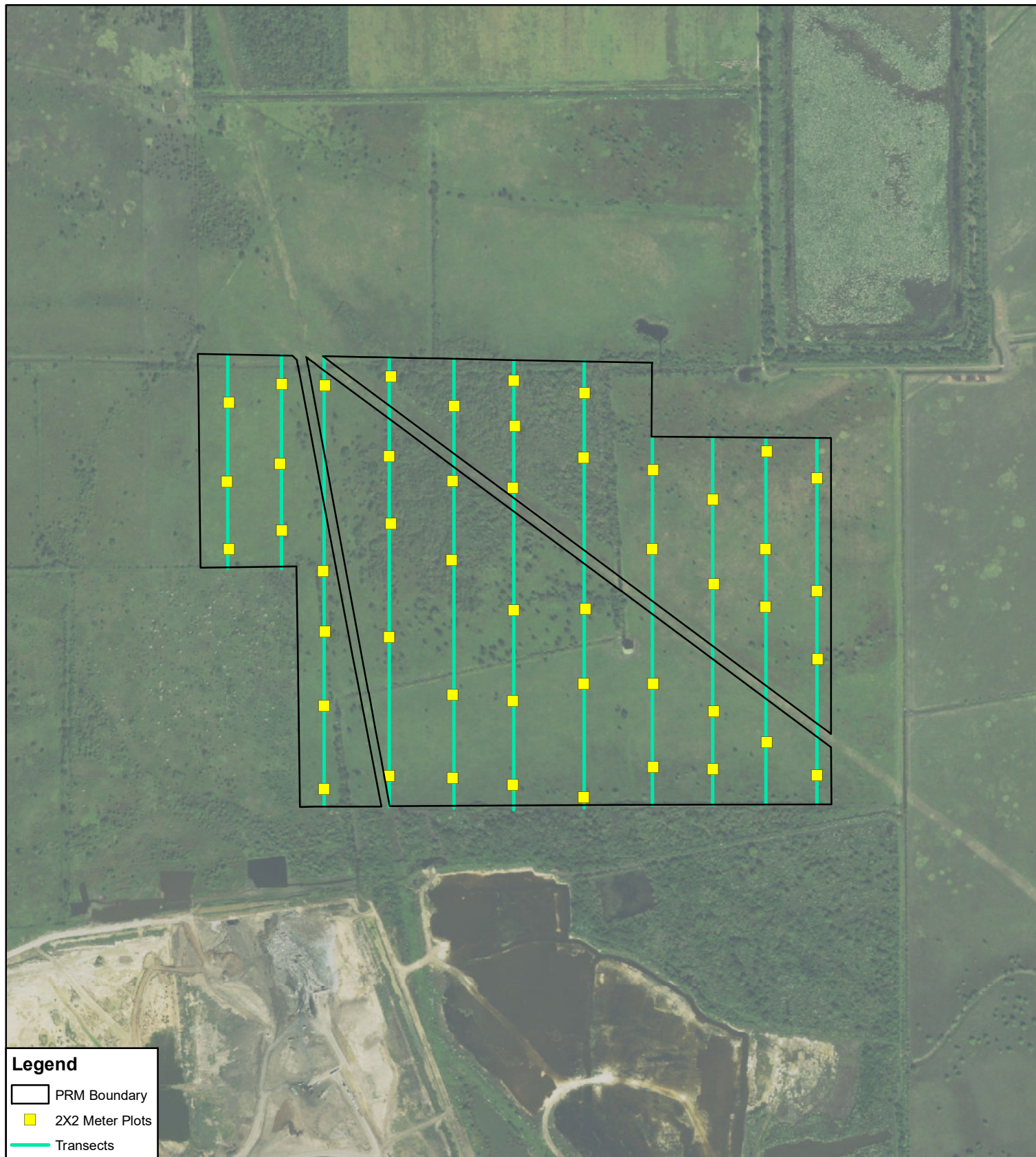
Legend
 PRM BOUNDARY

**PROPOSED BASTROP BAYOU
 PRM
 FLOOD INSURANCE RATE MAP EXHIBIT
 BRAZORIA COUNTY, TEXAS**




Date: 05/10/2018 Author: JKP

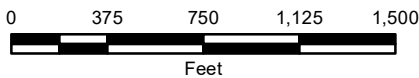
FIGURE 13





Legend

-  PRM Boundary
-  2X2 Meter Plots
-  Transects

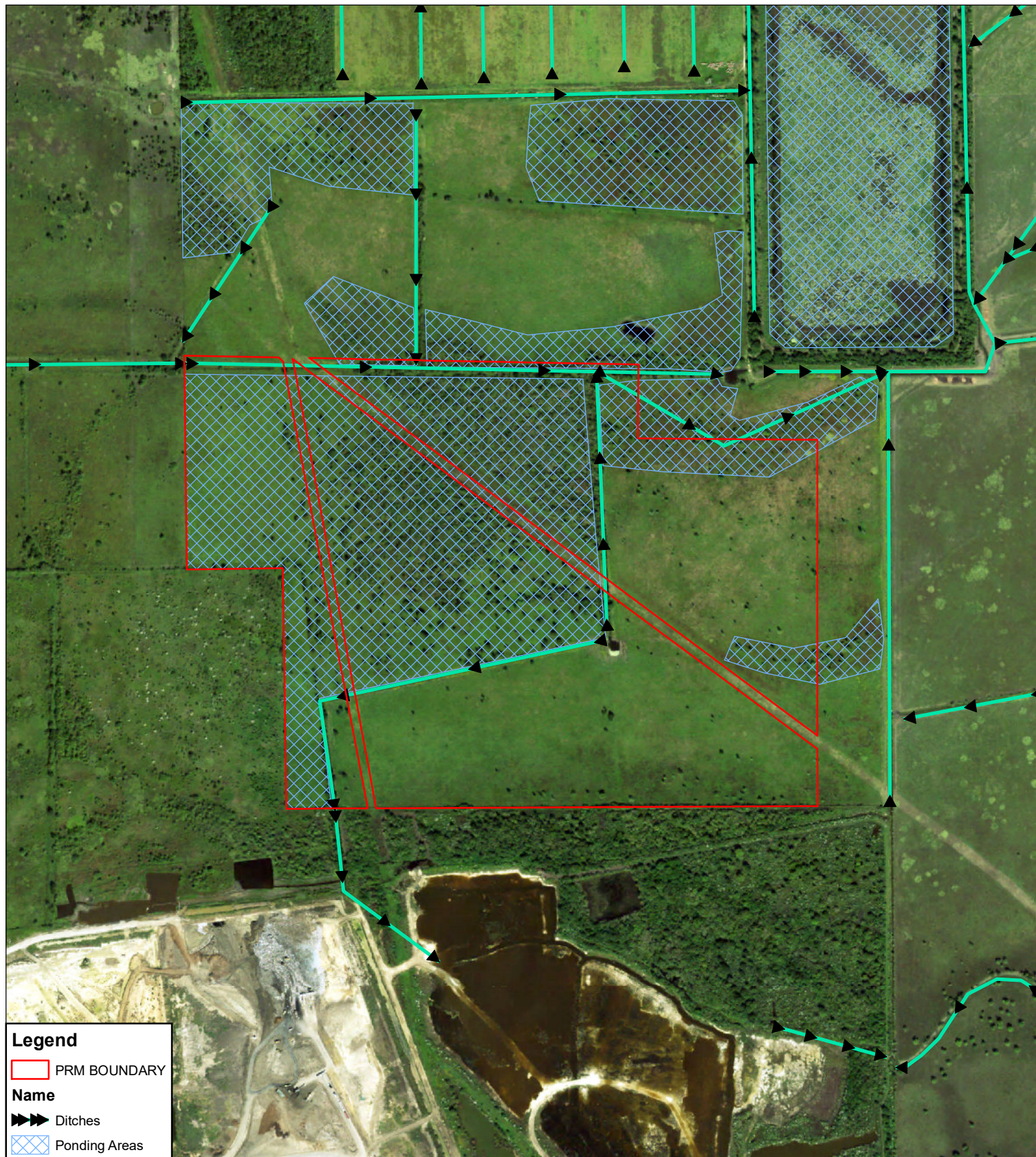


**PROPOSED BASTROP BAYOU
PRM
MONITORING EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.:
Date: 05/09/2018 Author: JKP

FIGURE 14





Legend

PRM BOUNDARY

Name

Ditches

Ponding Areas

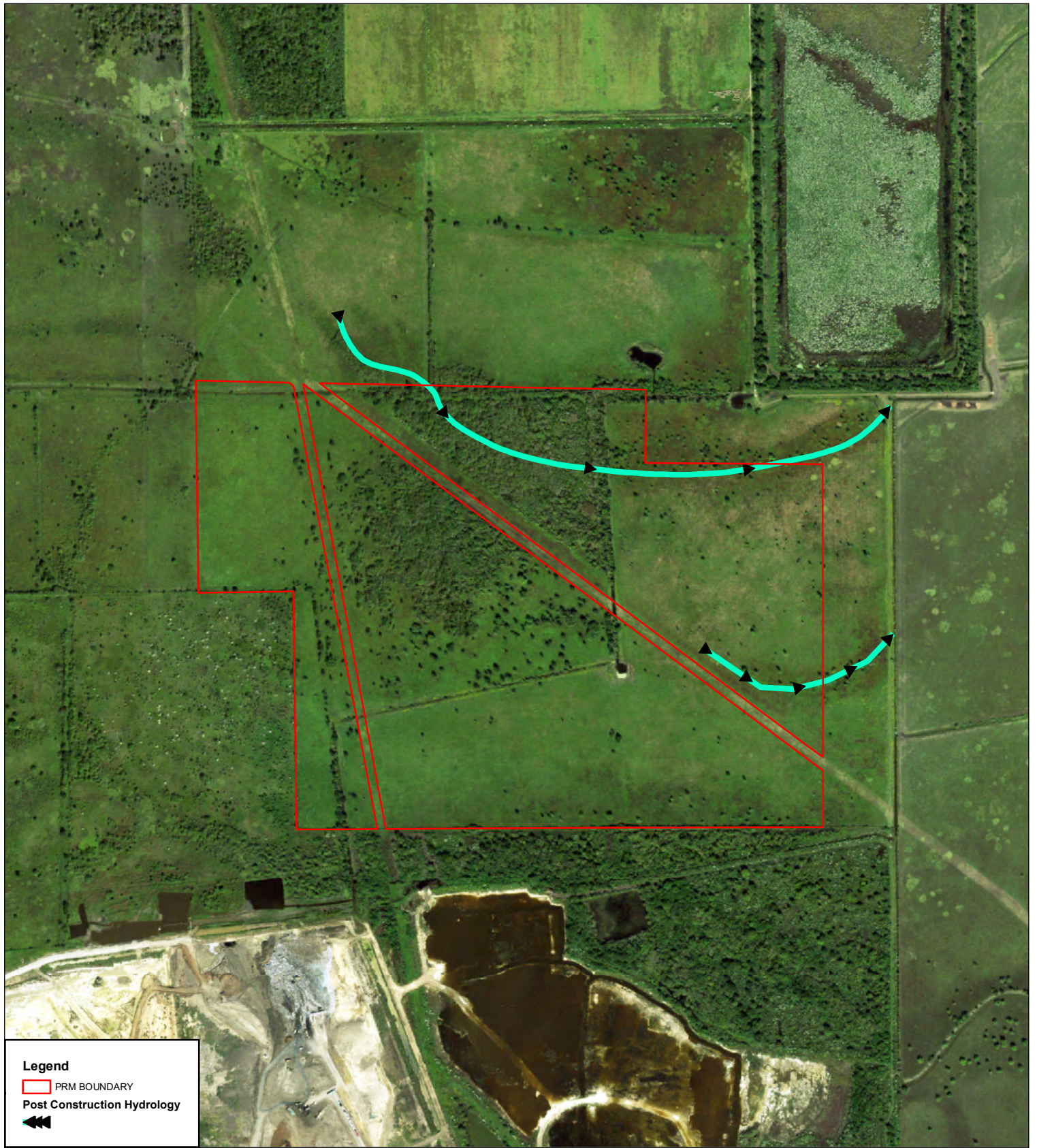


**PROPOSED BASTROP BAYOU
PRM
CURRENT HYDROLOGY
BRAZORIA COUNTY, TEXAS**

Drawing No.:
Date: 05/10/2018 Author: JKP

FIGURE 15





Legend
 PRM BOUNDARY
 Post Construction Hydrology

0 375 750 1,125 1,500
 Feet

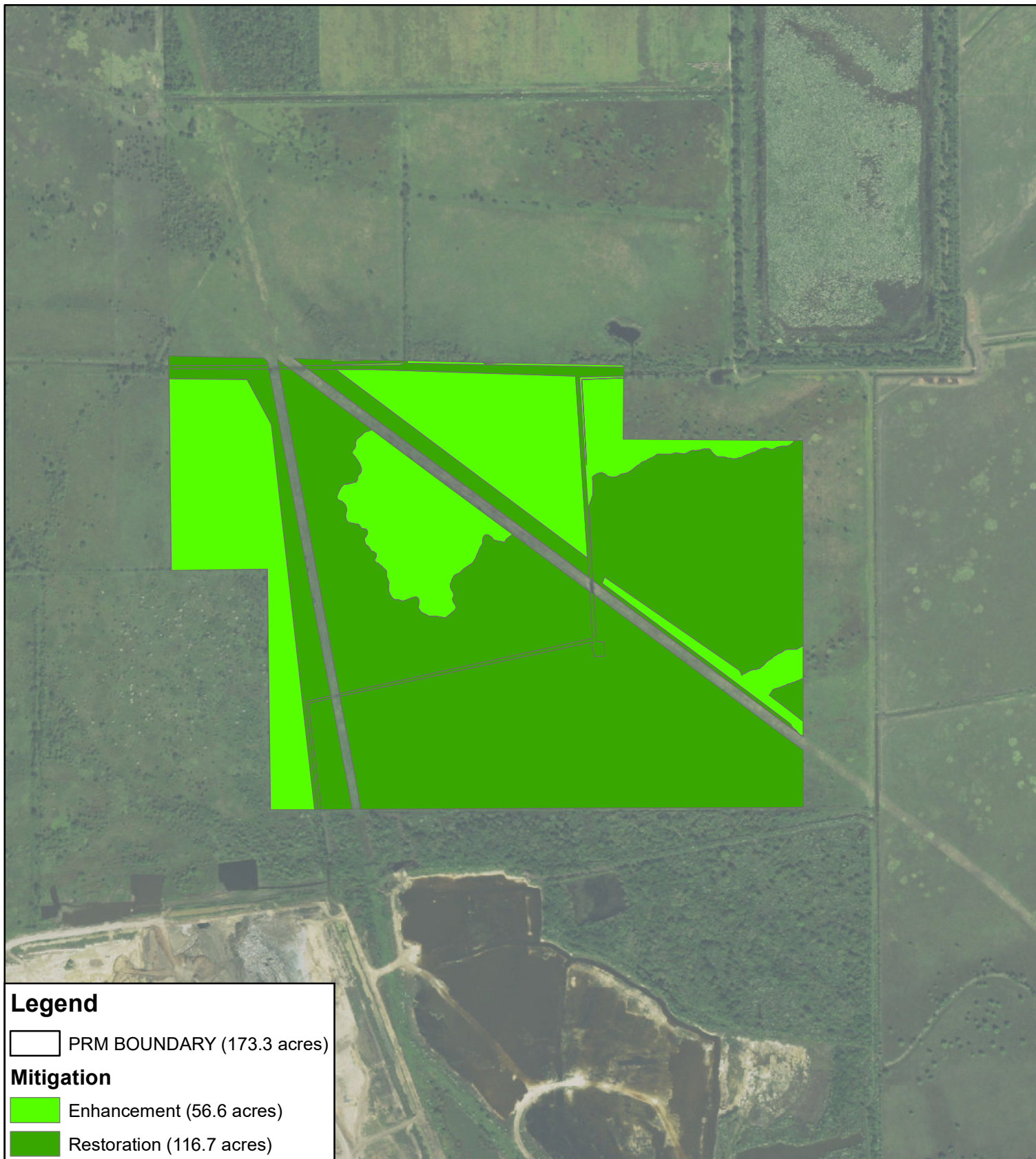


**PROPOSED BASTROP BAYOU
 PRM**
 POST CONSTRUCTION HYDROLOGY
 BRAZORIA COUNTY, TEXAS

Drawing No.:
 Date: 05/10/2018 Author: JKP

FIGURE 16






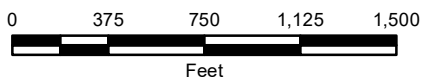
Legend

 PRM BOUNDARY (173.3 acres)

Mitigation

 Enhancement (56.6 acres)

 Restoration (116.7 acres)



**PROPOSED BASTROP BAYOU
PRM
MITIGATION TYPE EXHIBIT
BRAZORIA COUNTY, TEXAS**

Drawing No.:

Date: 05/09/2018

Author: JKP

FIGURE 17



Attachment B: IHGM Worksheet

Current Proposed Mitigation with 56.6 acres Enhancement, 116.7 acres Restoration

Proposed 196.5 Acres Impacts with 173.3 Acres of PRM			
	Physical	Biological	Chemical
Impact FCUs	61.657	104.175	60.056
PRM FCUs	83.859	105.808	77.13
Net Gain	22.202	1.633	17.074

Attachment C: Survey

NOTE: PRM AREA BOUNDARY IS BASED OFF SHAPE FILE RECEIVED FROM CLIENT DATED JUNE 8, 2018, TITLED "B&PRM BOUNDARY 05092018".



X-SEC NO.	DWG. NO.
1-3	A2-JMBC002-64961801-2
4-6	A2-JMBC003-64961801-2
TABLE	A2-JMBC004-64961801-2

APPLICATION BY:
JMB LAND CO., LP FOR
THE BASTROP BAYOU, PRM SITE
BRAZORIA COUNTY, TEXAS

JMB LAND CO., LP

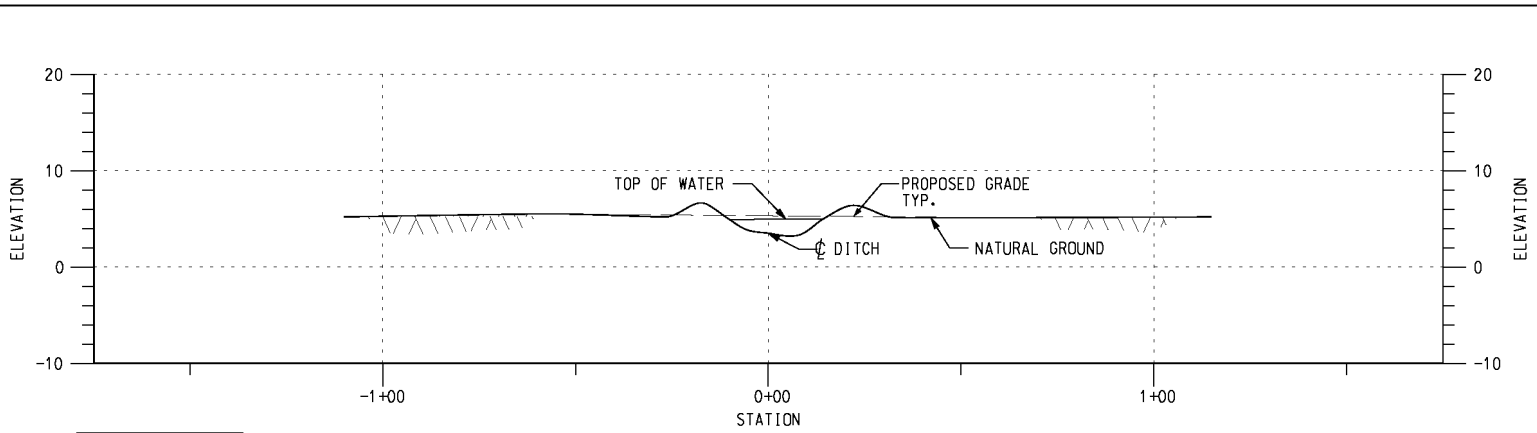
NOTES:

- COORDINATES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, (NAD 83).
- ALL ELEVATIONS SHOWN ARE NORTH AMERICAN VERTICAL DATUM (NAVD88) AND ARE BASED ON NGS MONUMENT "PLANT B 2" AT ELEVATION 4.80 FEET.
- ALL DISTANCES SHOWN ARE HORIZONTAL SURFACE DISTANCES, (SF= 0.999875413).

DATE: 6/11/2018 TIME: 3:44:19 PM USER: Untitled Workspace
 G:\WORK\JM Burguieres Co\Evans Lake Topo\Revised Bank and PRM Area\PRM\64961801-2 (Proposed Graded)

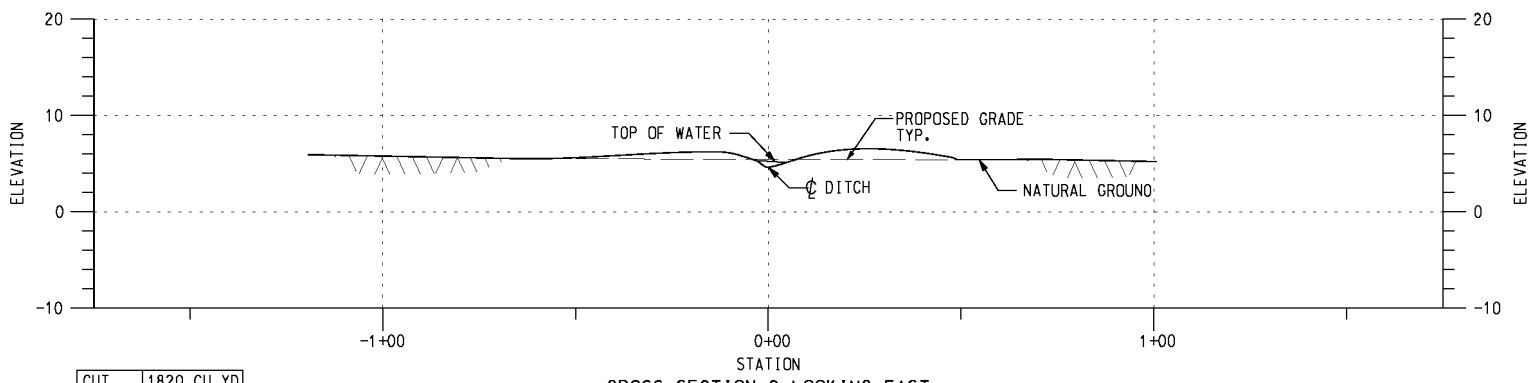
Doyle & Wachtstetter, Inc.
Surveying and Mapping GPS/GIS
 131 COMMERCE STREET, CLUTE, TEXAS 77531
 OFFICE : 979.265.3622 FIRM NO. : 10024500 FAX : 979.265.9940

BY	DATE	JOB NO.	PERMIT NO.
DRAWN: JDD	06/07/18		
CHKD: KTD	06/08/18	6496-18-01	A2-JMBC001-64961801-2
APPD:			



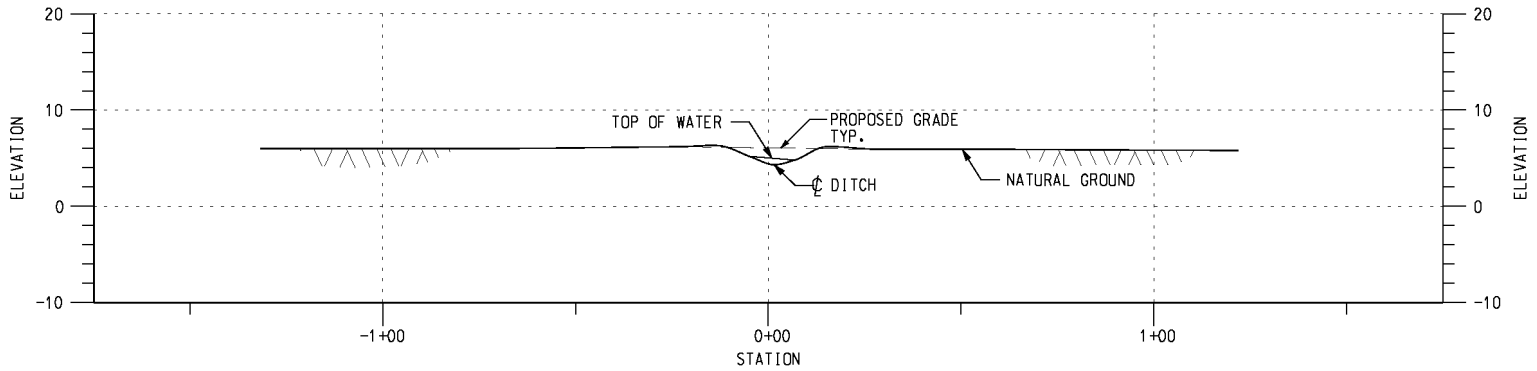
CUT	870 CU YD
FILL	1769 CU YD
LENGTH	1142'

CROSS SECTION 1 LOOKING NORTH
 REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2
 H: 1" = 50'
 V: 1" = 20'



CUT	1820 CU YD
FILL	171 CU YD
LENGTH	876'

CROSS SECTION 2 LOOKING EAST
 REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2
 H: 1" = 50'
 V: 1" = 20'



CUT	175 CU YD
FILL	1415 CU YD
LENGTH	1616'

CROSS SECTION 3 LOOKING EAST
 REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2
 H: 1" = 50'
 V: 1" = 20'

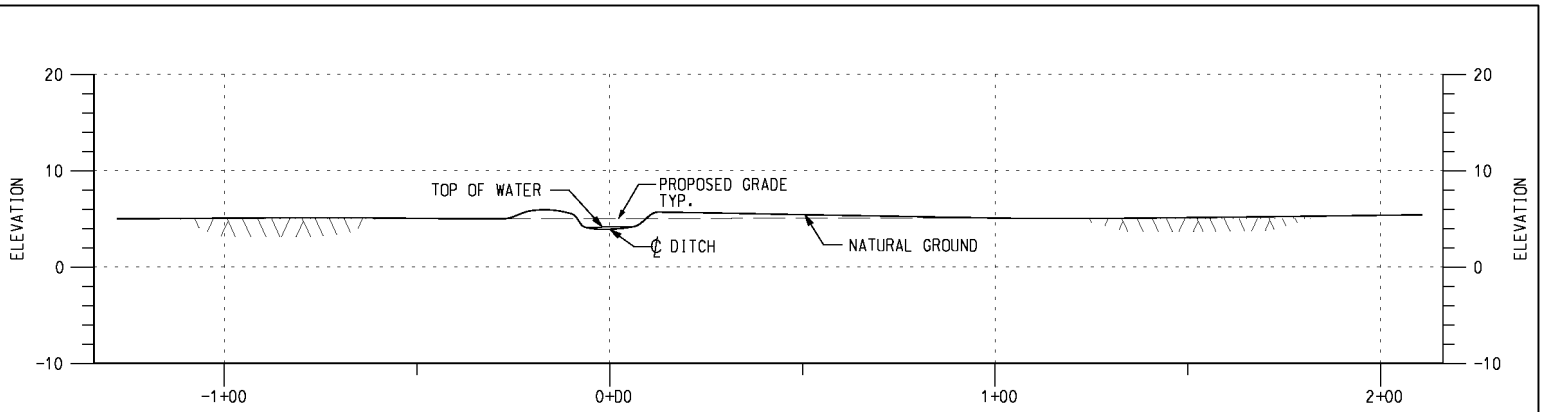
APPLICATION BY:
JMB LAND CO., LP FOR
THE BASTROP BAYOU, PRM SITE (PROPOSED GRADING)
BRAZORIA COUNTY, TEXAS

JMB LAND CO., LP

NOTES:
 1. COORDINATES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, (NAD 83).
 2. ALL ELEVATIONS SHOWN ARE NORTH AMERICAN VERTICAL DATUM (NAVD88) AND ARE BASED ON NGS MONUMENT "PLANT B 2" AT ELEVATION 4.80 FEET.
 3. ALL DISTANCES SHOWN ARE HORIZONTAL SURFACE DISTANCES. (SF= 0.999875413).
 4. ALL VOLUMES ARE CALCULATED USING SINGLE CROSS-SECTION BASELINES COLLECTED ON 02/19/2016. NO ADDITIONAL FIELD SURVEY WORK WAS COMPLETED FOR THE VALUES SHOWN HEREON.


Doyle & Wachtstetter, Inc.
 Surveying and Mapping GPS/GIS
 131 COMMERCE STREET, CLUTE, TEXAS 77531
 OFFICE: 979.265.3622 FAX NO.: 979.265.9940 FIRM NO.: 10024500

	BY	DATE	JOB NO.	PERMIT NO.
DRAWN:	JDD	02/07/18	6496-18-01	A2-JMBC002-64961801-2
CHKD.	KTD	02/07/18		
APPD.				

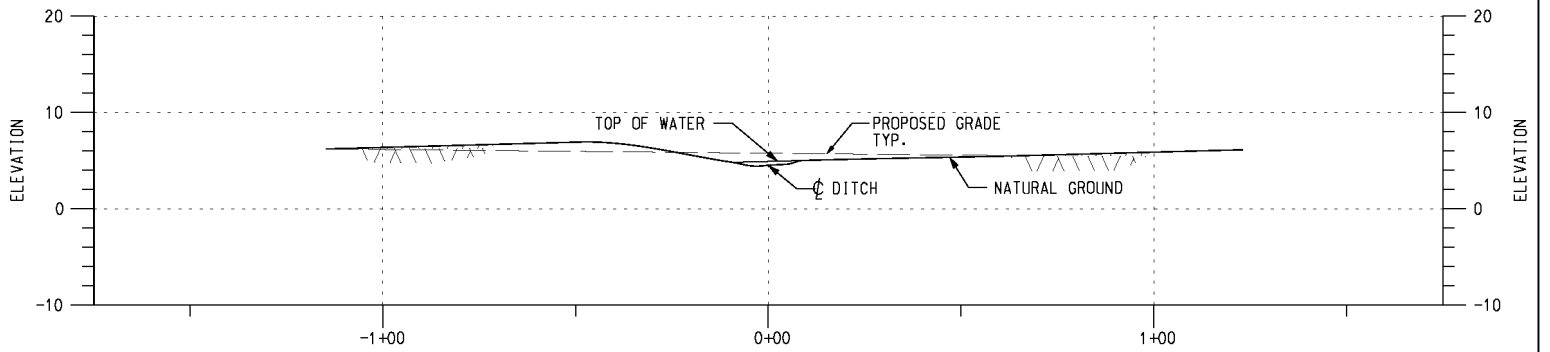


CROSS SECTION 4 LOOKING NORTH

REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2

H: 1" = 50'
V: 1" = 20'

CUT	956 CU YD
FILL	393 CU YD
LENGTH	604'

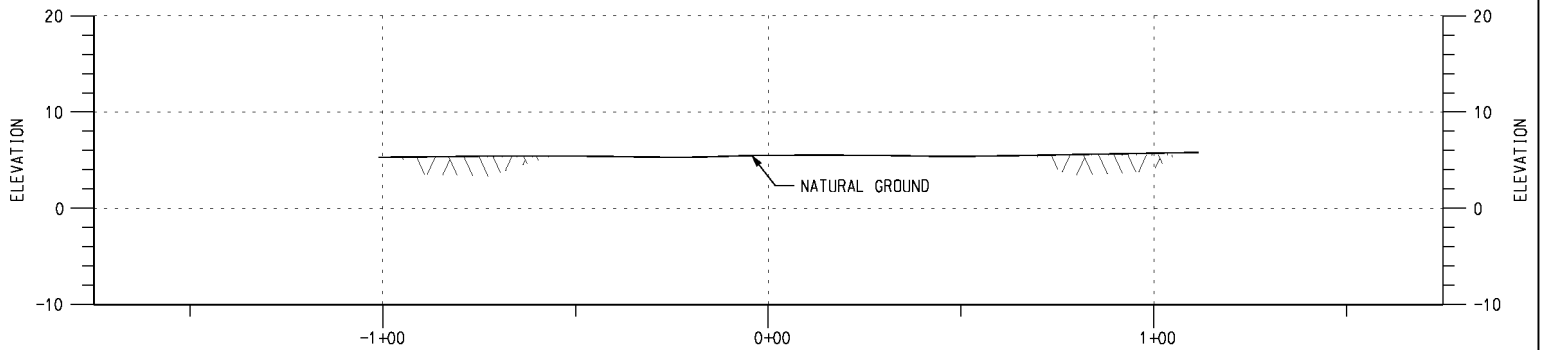


CROSS SECTION 5 LOOKING EAST

REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2

H: 1" = 50'
V: 1" = 20'

CUT	2238 CU YD
FILL	2311 CU YD
LENGTH	1272'



CROSS SECTION 6 LOOKING NORTHWEST

REFER TO SHEET 1 OF 4 DWG NO. A2-JMB002-64961801-2

H: 1" = 50'
V: 1" = 20'

CUT	N/A
FILL	N/A
LENGTH	N/A

APPLICATION BY:

**JMB LAND CO., LP FOR
THE BASTROP BAYOU, PRM SITE (PROPOSED GRADING)
BRAZORIA COUNTY, TEXAS**

JMB LAND CO., LP

- NOTES:**
- COORDINATES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, (NAD 83).
 - ALL ELEVATIONS SHOWN ARE NORTH AMERICAN VERTICAL DATUM (NAVD88) AND ARE BASED ON NGS MONUMENT "PLANT B 2" AT ELEVATION 4.80 FEET.
 - ALL DISTANCES SHOWN ARE HORIZONTAL SURFACE DISTANCES. (SF= 0.999875413).
 - ALL VOLUMES ARE CALCULATED USING SINGLE CROSS-SECTION BASELINES COLLECTED ON 02/19/2016. NO ADDITIONAL FIELD SURVEY WORK WAS COMPLETED FOR THE VALUES SHOWN HEREON.



Doyle & Wachtstetter, Inc.
Surveying and Mapping GPS/GIS
131 COMMERCE STREET, CLUTE, TEXAS 77531
OFFICE: 979.265.3622 FAX NO.: 979.265.9940 FIRM NO.: 10024500

	BY	DATE	JOB NO.	PERMIT NO.
DRAWN:	JDD	02/07/18		
CHKD.	KTD	02/07/18	6496-18-01	A2-JMBC003-64961801-2
APPD.				

PROPOSED GRADING CUT AND FILL SHEET

CROSSECTION	CUT (YD ³)	FILL (YD ³)	LENGTH (FT)
1	870	1,769	1,142
2	1,820	171	876
3	175	1,415	1,616
4	956	393	604
5	2,238	2,311	1,272
6	N/A	N/A	N/A
TOTAL	6,059	6,059	5,510

SHEET 4 OF 4

APPLICATION BY:

**JMB LAND CO., LP FOR
THE BASTROP BAYOU, PRM SITE (PROPOSED GRADING)
BRAZORIA COUNTY, TEXAS**

JMB LAND CO., LP

NOTES:

1. COORDINATES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, (NAD 83).
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131 COMMERCE STREET, CLUTE, TEXAS 77531
OFFICE: 979.265.3622 FAX NO.: 979.265.9940 FIRM NO.: 10024500

DATE: 6/11/2018 TIME: 3:46:44 PM USER: Untitled Workspace
G:\DGN\JM Burguieres Co\Evans Lake Topo\Revised Bank and PRM Area\PRM\6469-18-01-2 (Proposed Gradel.dgn

BY	DATE	JOB NO.	PERMIT NO.
DRAWN: JDD	02/07/18	6496-18-01	A2-JMBC004-64961801-2
CHKD: KTD	02/07/18		
APPO:			

Attachment D: Conservation Holder and Servitude



U.S. LAND CONSERVANCY

4520 South Sherwood Forest Blvd. Suite 104-373, Baton Rouge, LA 70816
(225) 772-5923 --- lmccauley@uslandconservancy.org

June 7, 2018

JMB Land Company
203 West Main Street
Franklin, Louisiana 70538

Re: Engagement Letter for Holding Conservation Easement for Bastrop Bayou (Freeport LNG PRM) site in Brazoria County, Texas

Dear Mr. Walters:

U.S. Land Conservancy, Inc. (USLC) appreciates the opportunity to present JMB Land Co. (JMB) and its affiliates, with this engagement letter, for holding a Conservation Easement for the subject property in Brazoria County, Texas (see Attachment).

Qualifications

USLC is a 501(c)(3) non-profit organization (as defined in Section 170(h) of the Internal Revenue Code of 1986), dedicated to the conservation and stewardship of native habitats. USLC is a member of the Land Trust Alliance (LTA) and operates in accordance with the Land Trust Standards and Practices as set forth by the LTA. USLC currently holds conservation easements on more than 14,000 acres.

Scope of Services

1) USLC will act as Holder of Conservation Easement for the Bastrop Bayou (Freeport LNG PRM) site:

USLC will monitor this property to ensure compliance with the Conservation Easement (draft copy attached). If a violation is discovered, USLC will attempt resolve the issue with Landowner or adjacent Landowner. If an acceptable resolution cannot be reached, legal action will be taken to enforce the provisions of the Conservation Easement.

- Monitoring is conducted on an annual basis,
- An on-site inspection is conducted per the provisions of the Conservation Easement,
- Visits are coordinated with landowner where possible,
- Annual reports are sent to CESWG, and

- Violations are promptly communicated to the landowner.

USLC's financial liability will be capped at the amount of the Conservation Easement fee.

Indemnification

USLC agrees to protect, defend, indemnify, and hold harmless the JMB, its officers, directors, employees, or their invitees, from and against all claims, demands, and causes of action of every kind and character without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the sole, joint or concurrent negligence of the JMB, any theory of strict liability and defect of premises (whether or not preexisting the date of this Contract), arising in connection herewith in favor of USLC, its employees, contractors (or their employees), or invitees on account of bodily injury, death, or damage to property.

JMB agrees to protect, defend, indemnify, and hold harmless USLC, its officers, directors, employees, or their invitees, from and against all claims, demands, and causes of action of every kind and character without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the sole, joint or concurrent negligence of USLC, any theory of strict liability, any professional liability, and defect of premises (whether or not pre-existing the date of this Contract), arising in connection herewith in favor of the JMB, its employees, contractors (or their employees), or invitees on account of bodily injury, death or damage to property.

With respect to any claims not elsewhere covered under the provisions of this Indemnity, each party agrees, to the extent of its negligence or fault, to indemnify and hold harmless the other against all claims, damages or losses due to personal injury, death, or property damage, to the extent that its negligence or fault causes the personal injury, death, or property damage.

Notwithstanding anything else contained herein to the contrary, neither party shall be liable to the other for any consequential or indirect damages including but not limited to loss production, loss of profits, or business interruption, howsoever caused and even if due to the negligence of either party.

Dispute Resolution

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties hereto shall be referred to in writing to a conflict resolution committee composed of authorized representatives of parties subject to this contract for review, discussion and resolution without the need for formal proceedings. If parties do not reach an agreement to resolve their differences by these informal proceedings, the dispute shall proceed to mediation (refer to AIA Document 8511-2001).

In the event the parties to this agreement are unable to reach a settlement of any dispute through a mediation process, then such dispute may, with the consent of

both parties, be settled by binding arbitration in accordance with the rules of the American Arbitration Association current as of the date of this agreement. If arbitration is pursued, the decision of the arbitrator shall be final and conclusive.

Compensation

USLC's cost to conduct the tasks listed in the "Scope of Services" will be as follows:

USLC will act as Holder of Conservation Easement for the Bastrop Bayou (Freeport LNG PRM) site - \$_____

Authorization

USLC indicates acceptance of all above stated agreement terms by signature below. JMB can also indicate acceptance of the above agreement by signing below and returning a copy to USLC.

USLC appreciates the opportunity to present this engagement letter and looks forward to working with the JMB. If you have any questions, please feel free to contact me at (225) 772-5923 or lmccauley@uslandconservancy.org.

Sincerely,



Leonard McCauley
President

ACCEPTED BY: _____

Signature

Title

Date

E. The preservation of the Property is a condition of the Permit and is required to mitigate for unavoidable adverse impacts to waters of the United States. Grantor and Grantee agree that third-party rights of enforcement shall be held by the USACE, Galveston District, and any successor agencies, and that such rights are in addition to, and do not limit, the rights of enforcement under the Permit. Notwithstanding any provision to the contrary herein, Grantee is not responsible for monitoring, performing or enforcing any obligations under the PRMP; rather, the role of Grantee is to enforce the specific obligations imposed hereunder on Grantee and the specific restrictions imposed on the Property under this Agreement.

F. The following Exhibits are attached to this Conservation Easement and incorporated by reference:

- Exhibit A** Legal Description of the Property
- Exhibit B** U.S. Army Corps of Engineers Permit
- Exhibit C** Permittee Responsible Mitigation Plan
- Exhibit D** Baseline Documentation Report

Agreement:

NOW THEREFORE, for good and valuable consideration paid by Grantee, the receipt and legal sufficiency of which are hereby acknowledged by Grantor, and in consideration of the covenants, mutual agreements and conditions herein contained, Grantor has TRANSFERRED, BARGAINED, GRANTED, SOLD, CONVEYED, ASSIGNED, SET OVER and DELIVERED, and by these presents does TRANSFER, BARGAIN, GRANT, SELL, CONVEY, ASSIGN, SET OVER and DELIVER, to Grantee a conservation easement on, over, under, across, along and through the Property on the terms set forth herein, together with all other rights reasonably necessary or desirable to accomplish the objectives of the PRMP and the rights granted under this Agreement (the "Conservation Easement"), subject to the following terms, reservations, covenants, limitations and exceptions:

1. **Duration of Easement.** The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, and Grantor's successors, assigns, lessees, agents, and licensees.

2. **Property Description.** In addition to the metes and bounds legal description of the Property set forth in **Exhibit "A"** and incorporated herein by reference for all purposes are metes and bounds surveys of the Property by a Texas Registered Professional Land Surveyor. In connection with the application for the Permit, Grantor has previously provided to the USACE a copy of a wetland survey map which delineates all waters of the United States, including wetlands, within the Property. In addition to the wetland survey, Grantor has also provided photographs of the Property.

3. **Present Condition of the Property.** Neither Grantor, its agents, assigns, successors, or personal representatives, nor any purchasers, lessees, or other users of the Property may use, disturb, or allow through intent or negligence, the use or disturbance of the Property in any manner that is inconsistent with the Purposes of the Conservation Easement, unless specifically provided for in the PRMP. The wetlands and other aquatic resources of the Property, and its current use and state of improvement, are more specifically described in the Baseline Documentation Report, prepared by Grantee and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof, **Exhibit D**. Both Grantor and Grantee have copies of this report. It will be used by the parties to ensure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

4. **Prohibited Activities.** Any activity on, or use of, the Property inconsistent with the Purposes of the Conservation Easement or as stated within the PRMP is prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the Conservation Value of the Property. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as indicated hereunder, unless specifically provided for in the PRMP:

(a) **Vegetation:** Grantor may remove diseased, invasive or non-native trees, shrubs, or plants; cut and mow firebreaks and existing road rights-of-way; and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Agreement. Grantor may remove potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Agreement. Except as necessary for activities expressly permitted, there shall be no farming, tilling, or destruction and removal of native vegetation on the Property. There shall be no planting of invasive or potentially invasive non-native plant species anywhere on the Property. Grantor will provide a list of potentially invasive species upon request. Control of any noxious vegetation species will utilize the approved treatment and application of treatment as outlined according to the U.S. Department of Agriculture and the Texas Extension Services.

(b) **Predator and Nuisance Species Control:** Grantor shall have the right to control, destroy, or trap predatory, exotic, invasive, and problem animals that pose a material threat to people, livestock, other animals, or habitat conditions in accordance with applicable state and federal laws and requirements. Grantor will, in good faith, manage invasive species as expressly allowed in the PRMP.

(c) **Uses:** No residential or industrial activity shall be conducted upon the Property. There shall be no storing or dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property that may negatively impact or be detrimental to the Property or to the surface or subsurface waters of the Property. Livestock animals and grazing operations shall be allowed on the Property except as prohibited or restricted by the PRMP. Any right of passage on, through or across the Property for any activity or use set forth in this paragraph is also prohibited.

(d) **Subdivision:** The Property may not be further divided, subdivided, or partitioned.

(e) **Topography:** There shall be no change in the topography of the Property except as expressly provided in the PRMP. There shall be no surface mining, filling, excavating, grading, dredging, mining or drilling upon the Property, and there shall be no removing of topsoil, peat, sand, gravel, rock, minerals or other materials from the Property except to restore natural topography or drainage patterns.

(f) **Soil or Water Degradation:** There shall be no use of, or the conducting of any activity on, the Property that causes or is likely to cause soil degradation, erosion, depletion or pollution of, or siltation on, any surface or subsurface waters of the Property. There shall be no change to the surface or subsurface hydrology of the Property in any manner. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding, or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Property by any means, removal

of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited, unless specifically provided for in the PRMP.

(g) Construction: There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock, or any other permanent structure or facility. As provided in the PRMP, man-made structures on the Property in connection with the repair, maintenance, or replacement (but not expansion) of any structures and other improvements located on the Property as of the Effective Date of this Agreement are allowed. Grantor shall have the right to maintain, renovate, and repair existing buildings, structures, fences, pens, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, and in the event of their destruction, to reconstruct any such existing improvement with another of similar size, function, capacity, location, and material.

(h) Roads: There shall be no construction of roads, trails, or walkways on the Property, nor any enlargement or widening of any existing roads, trails, or walkways or any other rights of way on the Property. Grantor reserves the right to improve or modify roads in order to maintain access to the Property. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g., sand, gravel, and crushed stone) as necessary to correct or prevent erosion. In the event that it becomes necessary, Grantor reserves the right to construct a new road to provide access to the Property.

(i) Waters: Unless specifically provided for in the PRMP, there shall be no polluting, altering, manipulating, depleting or extracting of surface or subsurface water (including, but not limited to, ponds, creeks or other water courses) or any other water bodies on the Property. Furthermore, unless specifically stated in the PRMP, there shall be no conducting or (to the extent in Grantor's control) allowing any entity or person to conduct activities on the Property that would be detrimental to water purity or that would alter the natural water level or flow in or over the Property (including, but not limited to, damming, dredging or construction in any free flowing water body, or any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes or other water bodies). It is understood that with respect to the prohibited activities set forth in this Section 4(i), Grantor may not and will not engage in any such prohibited activities on the Property.

(j) Vehicles: Use of vehicles shall be limited to access to the site for monitoring, maintenance, fire protection/emergency action, or other approved activities, as specified in the PRMP. Off road vehicular access is expressly prohibited.

(k) Easements: There shall be no voluntary granting or conveying of any easements on, over, under, across, along or through the Property, including, but not limited to, access easements and utility easements, other than easements conveyed in lieu of condemnation which do not diminish the Conservation Purposes; provided, however, that pursuant to this Agreement and in order to access the Property to take such actions which are consistent with this Agreement and the Permit, Grantee and the USACE have the right of pedestrian and vehicular ingress and egress to and from the Property.

(l) Signage: Construction or placement of any signs, billboards, or other advertising displays on the Property is not permitted, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate

permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Agreement.

(m) Development Rights: No development rights that have been encumbered or extinguished by this Agreement or the Conservation Easement granted herein shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

(n) Hunting: Grantor and Grantor's lessees and guests may conduct hunting, fishing or trapping activities in accordance with appropriate federal, state and local laws and restrictions that conform to terms of this Agreement and the Permit and Mitigation Plan. Grantor may expressly construct hunting blinds, the size, design, location, and number of which shall be governed by the terms of the PRMP.

(o) Dumping: There shall be no dumping or storing of any material, such as trash, wastes, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any "hazardous substances" (as hereinafter defined). For the purposes of this paragraph, the phrase "hazardous substances" shall be defined as in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and/or a substance whose manufacture, processing, distribution in commerce, use, possession, or disposal is banned, prohibited, or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(p) Other Prohibitions: Any other use of, or activity on, the Property which is inconsistent with the Purposes of the Conservation Easement granted herein, the preservation of the Property in its natural condition, or the protection of its Conservation Value, is prohibited.

5. **Rights Reserved to Grantor.** Grantor expressly reserves for itself, its successors and assigns, the right of access to and the right of continued use of the Property for all purposes not inconsistent with this Agreement and the Conservation Easement granted herein, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress with respect to the Property, the right to fence the Property and to prohibit public access thereto, and the right to the right to sell, transfer, gift or otherwise convey the entire Property, provided such sale, transfer, or gift conveyance is subject to the terms of, and shall specifically reference, the Conservation Easement. Except as may be expressly provided otherwise in this Agreement, neither this Agreement nor the Conservation Easement granted herein in any way limits, restricts or in any way affects any property of Grantor other than the Property, including without limitation, any property adjacent to, surrounding or near the Property. The rights conveyed by this Agreement and the Conservation Easement granted herein do not constitute a conveyance of a fee interest in the Property, nor of any of the mineral rights therein and thereunder. The rights retained by Grantor as set forth in this Section 5 are referred to hereinafter as the "Reserved Rights."

6. **Rights of Grantee.** Grantee or its authorized representatives, successors, and assigns, and the USACE, shall have the right to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if Grantor or any of its successors and assigns is complying with the terms, conditions, restrictions, and Purposes of this Agreement. The easement rights granted herein do not include any public access rights, which shall be prohibited. Nothing construed herein shall constitute an agreement by USACE to indemnify, defend or hold harmless either party, or any of the above-listed parties, from and against any liability, loss, cost or damage.

7. **Liens and Taxes.** Grantor shall keep the Property free of any and all liens, including, without limitation, liens arising out of any work performed for, materials furnished to, or obligations

incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, and shall upon written request by Grantee furnish Grantee with satisfactory evidence of payment. Other than as specified herein, this Agreement is not intended to impose any legal or other responsibility on Grantee, or in any way affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) Taxes: Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same within thirty (30) days after Grantor's receipt of written notice from Grantee, which shall include evidence reasonably acceptable to Grantor of any taxes paid by Grantee.

(b) Upkeep, Maintenance and Compliance: Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property. Grantor shall continue to be responsible for compliance with all applicable laws and restrictions.

8. Liability, Indemnification and Insurance. GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTEE FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES, DAMAGES, LIABILITY AND RELATED EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS) (COLLECTIVELY, "DAMAGES") ARISING OUT OF OR RELATED TO (i) PERSONAL INJURY OR DEATH THAT OCCURS ON THE PROPERTY, (ii) PROPERTY DAMAGE THAT OCCURS ON THE PROPERTY, OR (iii) A DEFAULT BY GRANTOR IN ITS OBLIGATIONS HEREUNDER OR THE ENFORCEMENT BY GRANTEE OF THE PROVISIONS OF THIS AGREEMENT (COLLECTIVELY, THE "INDEMNIFIED MATTERS"), EXCEPT TO THE EXTENT THE NEGLIGENT ACTS OR OMISSIONS OF GRANTEE ARE THE SOLE CAUSE OF THE DAMAGES AS DETERMINED BY A COURT. NOTWITHSTANDING THE FOREGOING, ANY ACTS, OMISSIONS OR DECISIONS OF GRANTEE, WHETHER DEEMED NEGLIGENT OR NOT, THAT ARE UNDERTAKEN IN GOOD FAITH IN THE ENFORCEMENT OR ATTEMPTED ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT SHALL NOT BE EXCLUDED FROM THE INDEMNIFIED MATTERS.

GRANTOR WARRANTS TO GRANTEE THAT GRANTOR HAS NO ACTUAL KNOWLEDGE OF THE STORAGE, TRANSPORTATION, USE, PRESENCE, RELEASE OR THREATENED RELEASE OF HAZARDOUS OR TOXIC SUBSTANCES, MATERIALS, OR WASTES IN, ON OR UNDER THE PROPERTY AND GRANTOR HEREBY PROMISES TO HOLD HARMLESS, DEFEND AND INDEMNIFY GRANTEE AGAINST ALL LITIGATION, CLAIMS, DEMANDS, PENALTIES, LIABILITIES, AND DAMAGES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO FINES, COURT COSTS AND REASONABLE ATTORNEYS' FEES, ARISING FROM OR CONNECTED WITH THE STORAGE, TRANSPORTATION, USE, PRESENCE, OR RELEASE BY GRANTOR OF HAZARDOUS OR TOXIC WASTE MATERIALS IN, ON OR UNDER THE PROPERTY OR VIOLATION OF FEDERAL, STATE, OR LOCAL ENVIRONMENTAL LAWS. WITHOUT LIMITING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS GIVING RISE TO ANY RIGHT OR ABILITY IN GRANTEE, NOR SHALL GRANTEE HAVE ANY RIGHT OR ABILITY, TO EXERCISE PHYSICAL OR MANAGERIAL CONTROL OVER THE DAY-TO-DAY OPERATIONS OF THE PROPERTY, OR OTHERWISE TO BECOME AN OPERATOR WITH RESPECT TO THE PROPERTY WITHIN THE MEANING OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED.

In addition, Grantor warrants that Grantee is and will continue to be named as an additional insured on Grantor's liability insurance policy covering the Property. Such policy shall be issued by an insurance company qualified to do business in the State of Texas, and rated A or better (having a financial size category of X or better) by Best's Insurance Rating Service (or similar rating service), with policy limits of not less than \$2,000,000 per occurrence/\$5,000,000 aggregate, or such greater amount as may become customary for similar operations and properties in Brazoria County, Texas, unless Grantor and Grantee mutually agree in good faith that some other levels of coverage are sufficient. Grantor shall provide to Grantee a certificate evidencing such insurance upon the Effective Date hereof, and each time such policy renews. Upon Grantee's written request, Grantor shall provide Grantee with a copy of the insurance policy.

9. **Enforcement.**

(a) **Notice of Breach:** In the event of a breach of this Agreement by Grantor, Grantee, any third party or any third party working for or under the direction of Grantor or Grantee, Grantor, Grantee and the USACE shall be notified within thirty (30) days by the party or parties to this Agreement with awareness and/or notice of said breach. If the USACE becomes aware of a breach of this Agreement, the USACE will notify Grantee and Grantor of the breach certified correspondence.

(b) **Correction of Breach:** Grantor shall have sixty (60) days after receipt of such notice to undertake actions that are reasonably calculated to correct the conditions constituting the breach. If the conditions constituting the breach are corrected in a timely and reasonable manner, no further action shall be warranted or authorized. If the conditions constituting the breach are such that more than sixty (60) days are required to cure the breach, Grantor shall not be in default hereunder if Grantor undertakes the cure of such breach during the sixty (60) day period following notice of the breach and diligently pursues the cure of the breach to completion. Failure by Grantor within sixty (60) days after receipt of such notice (i) to begin good faith efforts to cure where completion of such action cannot be reasonably accomplished within sixty (60) days, (ii) to initiate such other corrective action of such violation as appropriate in the circumstances and as may be reasonably requested by Grantee, or (iii) to diligently pursue a cure once commenced, shall entitle Grantee to: (I) bring an action at law or in equity in a court of competent jurisdiction to enforce this Agreement; (II) require actions to be taken in order to effect the restoration of the Property to a condition substantially similar to that which existed immediately prior to such violation; (III) seek to enjoin any violation by temporary or permanent injunction; and (IV) recover reasonable damages arising from such violation, and recover all reasonable costs and expenses of enforcing the terms of this Agreement against Grantor, including but not limited to reasonable attorney's fees. Notwithstanding the foregoing, Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive relief or other appropriate relief if the breach of any provision of this Agreement is materially impairing or would irreversibly or otherwise materially impair the benefits to be derived from the Conservation Easement. Grantor and the Grantee acknowledge that under such circumstances, damage to the Conservation Values would be irreparable and remedies at law will be inadequate. The rights and remedies of Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with the Conservation Easement. The costs of a breach of this Agreement and the costs of any correction or restoration, including the Grantee's expenses, court costs and reasonable attorneys' fees, shall be paid by Grantor. The USACE shall have a contingent right to enforce the terms and conditions of this Agreement if Grantee fails to enforce the terms and conditions of this Agreement.

(c) **Forbearance:** Any forbearance or failure on the part of Grantee or the USACE to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of

either Grantee's or the USACE's rights hereunder. Forbearance or failure to enforce any covenant or provision hereof shall not discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof or affect the right of Grantee and the USACE to enforce the same in the event of a subsequent breach or default.

(d) No Action Against Grantor: Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property, or for any violation of any covenant or provision of this Agreement, resulting from any action taken in good faith by Grantor under emergency conditions which are not caused by Grantor, to prevent, abate, or mitigate significant injury to life or significant and permanent damage or harm to the Property resulting from any of such causes.

Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers, acts by governmental agencies or officials, fire, flood, storm, earth movement, or major tree, plant, animal, or insect disease, wildfire, or from any prudent action taken by Grantor intended to mitigate injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other illegal act or violation of this Agreement. Grantor and Grantee agree that in the event of damage to the Property from acts beyond Grantor's control, if Grantor and Grantee agree that it is desirable that the Property be restored, Grantor may attempt to restore the Property in accordance with the PRMP.

10. **Approval by Grantee; Notice.**

(a) Acting in Good Faith: Grantor and Grantee shall cooperate and shall act reasonably and in good faith to arrive at agreement on any matter in connection with any determinations that are necessary to be made by them (either separately or jointly) under this Section 10.

(b) Grantee's Approval or Withholding of Approval: When Grantee's approval is required and has been requested by Grantor, or when Grantee has asserted a violation of this Agreement as to which a cure has been effected and Grantor requests a withdrawal of such assertion, Grantee shall grant or withhold its approval in writing, or issue such withdrawal, as the case may be, within ninety (90) days of receipt of Grantor's written request therefor. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given. Failure of Grantee to respond in writing within such 90-day period shall be deemed to constitute written approval (or the issuance of a withdrawal, as aforesaid) by Grantee of any request submitted, provided that no such approval is for a matter contrary to the express terms of this Agreement.

(c) Specific Approvals: Whenever Grantee's approval is required herein as a condition for a use or activity, or for the location of proposed improvements, Grantor shall request such approval in writing and shall include therewith information identifying the proposed site with reasonable specificity, evidencing conformity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. Grantee's approval shall not be granted if the proposed activity or use would diminish or impair the Conservation Value of the Property or would be inconsistent with the Purposes, and must take into account the following criteria:

1. the extent to which use of the site for the proposed activity would impair water quality.

(d) **Reimbursement.** Grantor agrees to reimburse Grantee for any expenditure Grantee may reasonably incur in connection with Grantee's performance under this Agreement except for regular annual monitoring, such reimbursement to include, but not be limited to, staff costs and reasonable review by appropriate professionals, within fifteen (15) days following Grantor's receipt of reimbursement a written notice from Grantee, together with appropriate supporting documentation and invoices.

11. **Duration.** The burdens of this Agreement and the Conservation Easement shall run with the Property and shall be enforceable against Grantor and all future interests in and to the Property in perpetuity. Grantor agrees that, without allowing a transfer or conveyance which is otherwise prohibited by this Agreement, the future transfer or conveyance of any interest in or to the Property shall at all times be subject and subordinate to the terms, conditions, restrictions and purposes of the Conservation Easement and a reference to this Agreement shall be included in each instrument of transfer or conveyance of any interest in or to the Property from and after the Effective Date; provided, however, that nothing in this Agreement shall be construed to in any way limit Grantor's ability to freely sell, convey, assign, or otherwise transfer the Property as a whole to any other person or entity, subject to this Conservation Easement.

12. **General Provisions.**

(a) **Notices.** Any notice, request for approval, or other communication required under this Agreement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor: JMB Land Company, LP
Russell Walters, Vice President
203 West Main St.
Franklin, LA 70538
(337) 522-7207
russell@jmbcompanies.com

To Grantee: U.S. Land Conservancy, Inc.
Leonard McCauley, President
PO Box 40345
Baton Rouge, LA 70835
(225) 772-5923

To the USACE:

(b) Severability. In the event any provision of this Agreement is determined by the appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

(c) Agreement Binding. The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee and their respective executors, administrators, heirs, legal representatives, successors and assigns. Notwithstanding the foregoing, Grantee not may assign (i) this Agreement, or (ii) any rights or interests in this Agreement, without the prior written approval of Grantor and the USACE.

(d) Warranty. Grantor warrants, covenants, and represents that it owns the Property in fee simple, including the authority to bind the mineral estate through ownership of mineral rights, executive rights or an alternative agreement with severed mineral owners which grantee shall be assigned the right to enforce, and that Grantor either owns all interests in the Property which may be impaired by the granting of the Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to the Conservation Easement. Grantor further warrants that Grantee shall enjoy all of the benefits derived from and arising out of the Conservation Easement, and that Grantor will warrant and defend title to the Property against all persons claiming by, through or under Grantor, but not otherwise. In the event that a title defect, or a cloud or encumbrance on title not otherwise described in the title policy or the mineral report (the "Unrecorded Encumbrance") prohibits or restricts Grantee from fulfilling its obligations hereunder, or defeats the Conservation Value, then (i) Grantee shall notify Grantor in writing of such defect, cloud or encumbrance on title, (ii) Grantor will use reasonable efforts to cure such title defect, cloud or encumbrance on title at its sole expense, (iii) Grantee shall have no liability for its non-performance of obligations which was caused by such defect, cloud or encumbrance on title, and (iv) Grantor shall hold harmless and indemnify Grantee from any claims, causes, damages, liabilities and expenses, including attorneys' fees, incurred by Grantee and arising out of such title defect, cloud or encumbrance on title.

(e) Subsequent Transfers. Without allowing a transfer otherwise prohibited under this Agreement, Grantor agrees to incorporate the terms of this Agreement in any deed or other legal instrument that transfers any interest in all or any portion of the Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. Grantor and Grantee agree that the terms of this Agreement shall survive any merger of the fee and easement interests in the Property or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the USACE. Without in any way waiving or limiting the prohibition against subdivision set forth herein, any time all or part of the Property is conveyed by Grantor to any third party, (i) such conveyance shall be made expressly subject to the terms of this Agreement, (ii) Grantor shall reimburse Grantee for any costs Grantee may incur in connection with Grantee's review of such transfer to confirm its conformity with the provisions of this Agreement (the "Cost Reimbursement") The Cost Reimbursement must be paid within fifteen (15) days following Grantor's receipt of a Cost Reimbursement notice from Grantee, together with applicable receipts and invoices. Grantee shall have the right to record a document, executed solely by Grantee, in the Real Property Records of Brazoria County, Texas, to put such third parties on notice of the requirements of this Section 12(e).

(f) Assignment or Transfer. The parties recognize and agree that the benefits of the Conservation Easement are in gross and assignable by Grantee; provided, however, that Grantee hereby covenants and agrees, that, in the event it transfers or assigns this Agreement, the organization receiving the interest will be a qualified holder under applicable state and federal law. Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the Purposes described in this Agreement.

(g) Obligations of Ownership. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Nothing herein shall relieve Grantor of the obligation to comply with any federal, state, or local laws, regulations and permits that may apply to the Property in connection with the exercise by Grantor of the Reserved Rights.

(h) Extinguishment. In the event that changed conditions render impossible the continued use of the Property for the Purposes as contemplated by this Agreement, the Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding in any court of competent jurisdiction.

(i) Eminent Domain.

(i) Whenever all or any part of the Property is taken in the exercise of eminent domain so as to substantially abrogate the restrictions imposed by this Agreement, Grantor and Grantee may join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

(ii) The Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of the Property is sold, exchanged, or involuntarily converted following an extinguishment of all or any portion of the Conservation Easement, or following the exercise of eminent domain, Grantee shall be entitled to the fair market value of the Conservation Easement. The parties stipulate that the fair market value of the Conservation Easement shall be determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the Effective Date attributable to improvements) by the ratio of the value of the Conservation Easement as of the Effective Date to the value of the Property (without deduction for the value of the Conservation Easement) at the time of this grant. The values as of the Effective Date and as referenced in this Section 10 (i) (ii) shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended (whether eligible or ineligible for such a deduction). Grantee shall use its share of any proceeds in a manner consistent with the purposes of the Conservation Easement.

(j) Not Grant to USACE. Nothing herein shall constitute a grant of real property or proceeds to the USACE.

(k) Failure of Grantee. If at any time Grantee is unable or fails to enforce this Agreement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of any of such events, Grantee fails to make an assignment of its interest in accordance with this Agreement, then Grantee's interest shall become vested in another qualified grantee in accordance with and as provided by an appropriate and final, non-appealable proceeding in a court of competent jurisdiction.

(l) Amendment. This Agreement may be amended, but only in a writing signed by the parties hereto; provided, however, that such amendment does not affect the qualification of the Conservation Easement or the status of Grantee under any applicable laws, is consistent with the purposes of this

Agreement and the Purposes of the Conservation Easement granted herein, and does not conflict with the Permit or its related PRMP. Notice of such amendment shall be provided to the USACE.

TO HAVE AND TO HOLD the Conservation Easement for the purposes herein described, subject, however, to the matters herein set forth and to all matters of record with respect to the Property, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and assigns, to warrant and defend the Conservation Easement and the rights granted herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

[SIGNATURE PAGE FOLLOWS]

EXECUTED and DELIVERED to be effective as of the Effective Date.

GRANTOR:

GRANTEE:

[ACKNOWLEDGMENTS FOLLOW]

STATE OF TEXAS §

§

COUNTY OF _____ §

§

This instrument was acknowledged before me on _____, 20__ by _____, on behalf of _____.

Name:
Notary Public, State of Texas
My commission expires:_____

STATE OF TEXAS §

§

COUNTY OF _____ §

§

This instrument was acknowledged before me on _____, 20__ by _____, on behalf of _____.

Name:
Notary Public, State of Texas
My commission expires:_____

After recording return to:

Exhibit A
to
Conservation Easement Agreement

Metes and Bounds Legal Description of the Property

[TO BE PROVIDED]

Exhibit B
to
Conservation Easement Agreement

U.S. Army Corps of Engineers Permit

[TO BE ATTACHED]

Exhibit C
to
Conservation Easement Agreement

Permittee Responsible Mitigation Plan

[TO BE PROVIDED]

Exhibit D
to
Conservation Easement Agreement

Baseline Documentation Report

[TO BE PROVIDED]

Attachment E: Water Budget

Attachment F: Evaluation Letter



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

20 December 2016

REPLY TO
ATTENTION OF:

Regulatory Division

SUBJECT: SWG-2015-0305; Bastrop Bayou Mitigation Bank, Brazoria County, Texas

Mr. Aaron Landry
JMB Land Co., LP
2205 W. Pinhook, Suite 200
Lafayette, Louisiana 70508

Dear Mr. Landry:

This concerns the proposed Bastrop Bayou Mitigation Bank (BBMB), located south of Bastrop Bayou, southeast of the Farm to Market Road 523 and County Road 595 (Fairway Drive) Intersection, approximately 5.5 miles southeast of Angleton, Brazoria County, Texas. It can be depicted on the United States Geological Survey (USGS) OYSTER CREEK,, Texas; at Latitude: 29.103° North; Longitude: -95.350° West.

Pursuant to 33 CFR 332.8 and Compensatory Mitigation for Wetland Losses of Aquatic Resources (73 Fed. Reg. 19594, 10 April 2008), we are providing this written initial evaluation letter for the BBMB. Based on our review of the Prospectus and comments received in response to the public notice, we have determined that the proposed bank has potential for providing appropriate compensatory mitigation for activities authorized by Department of the Army permits.

We are enclosing copies of the comment letters received. The comments represent concerns which could lead to a formal objection from one or more of the IRT members. We need your information to address the issues raised. The specific comments must be addressed and/or revised prior to submitting the DMBI for IRT coordination.

We understand that addressing these issues could require additional time and effort to evaluate. Therefore, if you cannot respond within 30 days, we will withdraw your application without prejudice, which will allow you the right to submit the information at a later date after these issues have been thoroughly addressed. The withdrawal would not penalize you in any way, but would help us in properly managing our workload.

We will be happy to meet with you to discuss these issues in further detail, and we look forward to working with you and the IRT on this proposal. If you have any questions, please reference file number SWG-2015-00305 and contact me, at the letterhead address, by telephone at 409-766-3946, or email at sam.watson@usace.army.mil.

Sincerely,

Sam J. Watson
Chair, Galveston District IRT

Copies Furnished w/Enclosures: Galveston District IRT