Exhibit 31

Background Information

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Galveston
FILE NUMBER: D19144

PROJECT LOCATION INFORMATION:
State: Texas
County: Jefferson
Center coordinates of site (latitude/longitude): Site 1 30° 05' 51"N, 94° 05' 09"W
Approximate size of area (parcel) reviewed, including uplands: 79 acres.
Name of nearest waterway: Neches River
Name of watershed: Lower Neches

JURISDICTIONAL DETERMINATION
Completed: Desktop determination ☒ Date: 01/09/07
Site visit(s) ☒ Date(s): 11/17/06

Jurisdictional Determination (JD):

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☒ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: _____.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 71.2-acres.

☒ *There are "isolated, non-navigable, intra-state* waters or wetlands" within the reviewed area.
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:
A. **Waters defined under 33 CFR part 329 as "navigable waters of the United States":**
☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. **Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**
☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
☒ (2) The presence of interstate waters including interstate wetlands[1].
☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
☒ (4) Impoundments of waters otherwise defined as waters of the US.
☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
☒ (6) The presence of territorial seas.
☒ (7) The presence of wetlands adjacent[2] to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* **Forested wetland immediately adjacent to the Neches River, a navigable water of the United States.**

FILE NUMBER: D19144

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark indicated by:
☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: GTI Environmental

Basis For Not Asserting Jurisdiction:

☒ The reviewed area consists entirely of uplands.
☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain):

DATA REVIEWED FOR JURSIDICTIONAL DETERMINATION (mark all that apply):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated _December 6, 2006 _ prepared by (company): GTI Environmental, Inc.
- ☐ This office does not concur with the delineation report, dated _____, prepared by (company):

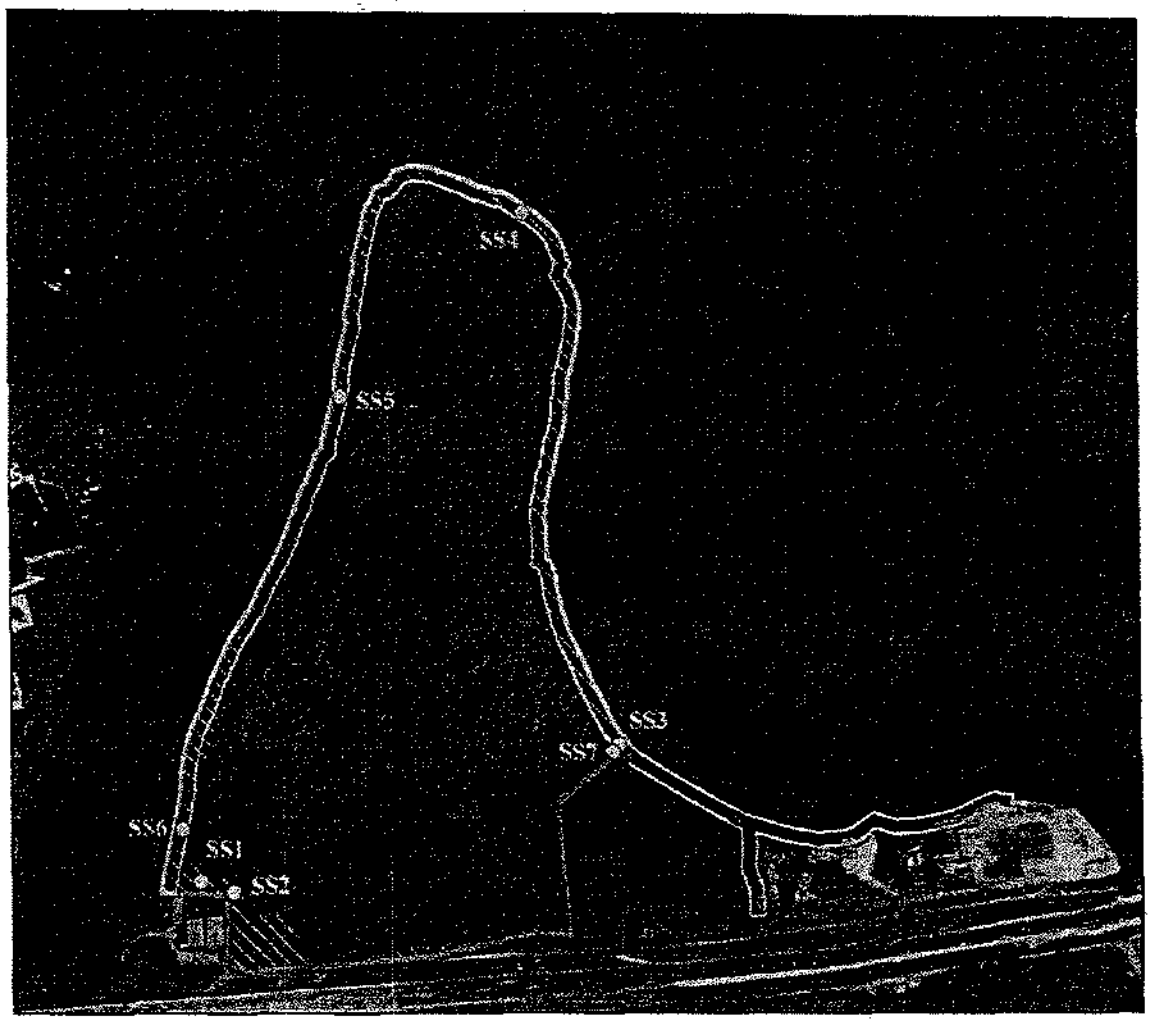
☒ Data sheets prepared by the Corps.
☒ Corps' navigable waters' studies:
☒ U.S. Geological Survey Hydrologic Atlas:
☒ U.S. Geological Survey 7.5 Minute Topographic maps: Beaumont East, Texas
☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
☒ U.S. Geological Survey 15 Minute Historic quadrangles:
☒ USDA Natural Resources Conservation Service Soil Survey:
☒ National wetlands inventory maps:
☒ State/Local wetland inventory maps:
☒ FEMA/FIRM maps (Map Name & Date): 4854750005E, Jan 6/1983
☒ 100-year Floodplain Elevation is: (NGVD)
☒ Aerial Photographs (Name & Date): TNRIS 2004
☒ Other photographs (Date): Site photos in file
☒ Advanced Identification Wetland maps:
☒ Site visit/determination conducted on: 11/17/06
☒ Applicable/supporting case law:
☒ Other information (please specify):

[1]Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

[2]The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

Parkwood Land Company

+/- 79 Acre Tract



0 500 1,000 2,000 3,000 Feet

Exhibit 18
Soil Stations

Legend

- Soil Stations
- Man-made Relief Cuts
- Levee (Upland) - 8.50 ac.
- Project Boundary
- Property Boundary - 79.73 ac.
- Wetland - 71.22 ac.

Source: Shipe and Johnston, Inc. (9/2006) Limited Survey Data and Available Digital Record Information
Horizontal Control Lambert Projection
State Plane NAD 27 Central Zone

COLOR INFRARED AERIAL (2004)
Source: TNRIS
1m DOQQ, Beaumont East
NW Quad
UTM Zone 15
NAD 83 GRS 80
Date: 09-23-06
Revised: 12-05-2006

GTI Environmental, Inc.
Environmental Consultants

DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 07/28/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and D. Cox State: TX

Community ID: Forested Upland Transect: _____ Plot ID: Soil Station #1

Do normal circumstances exist on this site? Yes: X No: _____

Is the site significantly disturbed (atypical situation)? Yes: _____ No: X

Is the area a potential problem area? Yes: _____ No: X

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Sapium sebiferum	T	FACU+			
Liquidamber styraciflua	T	FAC			
Ilex vomitoria	S	FAC-			
Rubus trivialis	H	FAC			
Toxicodendron radicans	H	FAC			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 60%

Is the hydrophytic vegetation criterion met? Yes: X No: _____

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs: X

Other: X USGS Topo

No Data Available: _____

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated: _____

Saturated in Upper 12 in.: _____

Water Marks: _____

Drift Lines: _____

Sediment Deposits: _____

Drainage Patterns in Wetlands: _____

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.: _____

Water-Stained Leaves: _____

Local Soil Survey Data: _____

FAC-Neutral Test: _____

Other (Explain in Remarks): _____

Is the hydrology criterion met? Yes: _____ No: X

Remarks:

Applicant: Parkwood Land Co. Plot ID: Soil Station #1

SOILS

Map Unit Name (Series and Phase): Neches Coarse Sand

Map Type Confirmed? Yes: _____ No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Typic Udorthents Drainage Class: Well Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
0-8	C1	10YR 5/8		50%	Clay Spoil
	C1	2.5Y 6/1		50%	Clay Spoil
8-14	C2	2.5Y 6/1	10R 4/6	50% common/distinct	Clay Spoil
	C2	10YR 5/8	10R 4/6	50% common/distinct	Clay Spoil
14-18	C3	10YR 5/8			Clay Spoil

Hydric Soils Indicators:

_____ Histosol
_____ Histic Epipedon
_____ Sulfidic Odor
_____ Aquic Moisture Regime
_____ Reducing Conditions
_____ Gleyed or Low-Chroma Colors
_____ Concretions
_____ High Organic Content in Surface Layer in Sandy Soils
_____ Organic Streaking in Sandy Soils
_____ Listed on Local Hydric Soils List
_____ Listed on National Hydric Soils List
_____ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: _____ No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: X No: _____

Wetland Hydrology Present? Yes: _____ No: X

Hydric Soils Present? Yes: _____ No: X

Is This Sampling Point Within a Wetland? Yes: _____ No: X

Remarks: This point was determined not to be within a wetland due to the lack of wetland hydrology and hydric soils.

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DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 07/28/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and D. Cox State: TX

Community ID: Forested Upland Transect: Plot ID: Soil Station #2

Do normal circumstances exist on this site? Yes: X No:

Is the site significantly disturbed (atypical situation)? Yes: No: X

Is the area a potential problem area? Yes: No: X

Applicant: Parkwood Land Co. Plot ID: Soil Station #2

SOILS

Map Unit Name (Series and Phase) Neches Coarse Sand

Map Type Confirmed? Yes: No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Typic Udorthents Drainage Class: Well Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
*1					

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Sapium sebiferum	T	FACU+			
Celtis occidentalis	T	FAC			
Ligustrum sinense	S	UPL*			
Rubus trivialis	H	FAC			
Ambrosia trifida	H	FAC			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 60%

Is the hydrophytic vegetation criterion met? Yes: X No:

Remarks:

Hydric Soils Indicators:

- ___ Histosol
- ___ Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- ___ Reducing Conditions
- ___ Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content In Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: No: X

Remarks: *1 Ground is inpenetrable due to concrete, brick, and glass spoil material.

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs X

Other X USGS Topo

No Data Available

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated

Saturated in Upper 12 in.

Water Marks

Drift Lines

Sediment Deposits

Drainage Patterns in Wetlands

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.

Water-Stained Leaves

Local Soil Survey Data

FAC-Neutral Test

Other (Explain in Remarks)

Is the hydrology criterion met? Yes: No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: X No:

Wetland Hydrology Present? Yes: No: X

Hydric Soils Present? Yes: No: X

Is This Sampling Point Within a Wetland? Yes: No: X

Remarks: *This point was determined not to be within a wetland due to the lack of wetland hydrology and hydric soils.*

DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 09/05/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): D. Cox and W. Abbott State: TX

Community ID: Forested Upland Transect: Plot ID: Soil Station #3

Do normal circumstances exist on this site? Yes: X No:

Is the site significantly disturbed (atypical situation)? Yes: No: X

Is the area a potential problem area? Yes: No: X

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Pinus taeda	T	FAC-			
Liquidambar styraciflua	T	FAC			
Sapium sebiferum	S	FACU+			
Ilex vomitoria	S/H	FAC-			
Ilex opaca	S	FACU			
Smilax bona-nox	V	FAC			
Vitis rotundifolia	V	FAC-			
Berchemia scandens	V	FAC+			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 37%

Is the hydrophytic vegetation criterion met? Yes: No: X

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs X

Other X USGS Topo

No Data Available

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated

Saturated in Upper 12 in.

Water Marks

Drift Lines

Sediment Deposits

Drainage Patterns in Wetlands

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.

Water-Stained Leaves

Local Soil Survey Data

FAC-Neutral Test

Other (Explain in Remarks)

Is the hydrology criterion met? Yes: No: X

Remarks:

Applicant: Parkwood Land Co. Plot ID: Soil Station #3

SOILS

Map Unit Name (Series and Phase) Fausse Clay

Map Type Confirmed? Yes: No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Vertic Endoaequepts Drainage Class: Very Poorly Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
1-6		10YR 3/2			Sandy Loam
6-11		10YR 3/3			Sandy Loam
11-16		10YR 4/2			Clay Spoil
		10YR 6/2			Clay Spoil
		2.5Y 6/3			Clay Spoil

Hydric Soils Indicators:

- Histosol
- Histic Epipedon
- Sulfidic Odor
- Aquic Moisture Regime
- Reducing Conditions
- Gleyed or Low-Chroma Colors
- Concretions
- High Organic Content in Surface Layer in Sandy Soils
- Organic Streaking in Sandy Soils
- Listed on Local Hydric Soils List
- Listed on National Hydric Soils List
- Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: No: X

Wetland Hydrology Present? Yes: No: X

Hydric Soils Present? Yes: No: X

Is This Sampling Point Within a Wetland? Yes: No: X

Remarks: This point was determined not to be within a wetland due to the lack of all three wetland parameters.

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DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 09/08/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and W. Abbott State: TX

Community ID: Forested Upland Transect: _____ Plot ID: Soil Station #4

Do normal circumstances exist on this site? Yes: X No: _____

Is the site significantly disturbed (atypical situation)? Yes: _____ No: X

Is the area a potential problem area? Yes: _____ No: X

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Ilex opaca	T/H	FACU			
Liquidambar styraciflua	T	FAC			
Quercus nigra	T/S	FAC+			
Sapium sebiferum	T/S	FACU+			
Ilex vomitoria	S/H	FAC-			
Carpinus caroliniana	S/H	FAC			
Cyrilla racemiflora	H	FACW+			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 57%

Is the hydrophytic vegetation criterion met? Yes: X No: _____

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs: X

Other: X USGS Topo

No Data Available: _____

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated: _____

Saturated in Upper 12 in.: _____

Water Marks: _____

Drift Lines: _____

Sediment Deposits: _____

Drainage Patterns in Wetlands: _____

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.: _____

Water-Stained Leaves: _____

Local Soil Survey Data: _____

FAC-Neutral Test: _____

Other (Explain in Remarks): _____

Is the hydrology criterion met? Yes: _____ No: X

Remarks:

Applicant: Parkwood Land Co. Plot ID: Soil Station #4

SOILS

Map Unit Name (Series and Phase): Fausse Clay

Map Type Confirmed? Yes: _____ No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Vertic Endoaquepts Drainage Class: Very Poorly Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
0-42	A	10YR 5/3	10YR 5/6	common/distinct	Loamy Fine Sand
	A	10YR 5/4	7.5YR 5/8	common/distinct	Fine Sandy Clay

Hydric Soils Indicators:

_____ Histosol
_____ Histic Epipedon
_____ Sulfidic Odor
_____ Aquic Moisture Regime
_____ Reducing Conditions
_____ Gleyed or Low-Chroma Colors
_____ Concretions
_____ High Organic Content in Surface Layer in Sandy Soils
_____ Organic Streaking in Sandy Soils
_____ Listed on Local Hydric Soils List
_____ Listed on National Hydric Soils List
_____ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: _____ No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: X No: _____

Wetland Hydrology Present? Yes: _____ No: X

Hydric Soils Present? Yes: _____ No: X

Is This Sampling Point Within a Wetland? Yes: _____ No: X

Remarks: This point was determined not to be within a wetland due to the lack of wetland hydrology and hydric soils.

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DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 09/06/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and W. Abbott State: TX

Community ID: Forested Upland Transect: _____ Plot ID: Soil Station #5

Do normal circumstances exist on this site? Yes: X No: _____

Is the site significantly disturbed (atypical situation)? Yes: _____ No: X

Is the area a potential problem area? Yes: _____ No: X

Applicant: Parkwood Land Co. Plot ID: Soil Station #5

SOILS

Map Unit Name (Series and Phase): Fausse Clay

Map Type Confirmed? Yes: _____ No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Vertic Endoaquepts Drainage Class: Very Poorly Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
0-42	A	10YR 5/3	10YR 5/6	common/distinct	Loamy Fine Sand
	A	10YR 5/4	7.5YR 5/6	common/distinct	Fine Sandy Clay

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Pinus taeda	T	FAC-			
Quercus nigra	T/S	FAC+			
Liquidambar styraciflua	T	FAC			
Ilex vomitoria	S/H	FAC-			
Carpinus caroliniana	S	FAC			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 60%

Is the hydrophytic vegetation criterion met? Yes: X No: _____

Remarks:

Hydric Soils Indicators:

_____ Histosol
_____ Histic Epipedon
_____ Sulfidic Odor
_____ Aquic Moisture Regime
_____ Reducing Conditions
_____ Gleyed or Low-Chroma Colors
_____ Concretions
_____ High Organic Content in Surface Layer in Sandy Soils
_____ Organic Streaking in Sandy Soils
_____ Listed on Local Hydric Soils List
_____ Listed on National Hydric Soils List
_____ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: _____ No: X

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs: X
Other: X USGS Topo
No Data Available: _____

Field Observations:

Depth of Surface Water: None in.
Depth to Free Water in Pit: >16 in.
Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated: _____
Saturated in Upper 12 in.: _____
Water Marks: _____
Drift Lines: _____
Sediment Deposits: _____
Drainage Patterns in Wetlands: _____

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.: _____
Water-Stained Leaves: _____
Local Soil Survey Data: _____
FAC-Neutral Test: _____
Other (Explain in Remarks): _____

Is the hydrology criterion met? Yes: _____ No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: X No: _____

Wetland Hydrology Present? Yes: _____ No: X

Hydric Soils Present? Yes: _____ No: X

Is This Sampling Point Within a Wetland? Yes: _____ No: X

Remarks: This point was determined not to be within a wetland due to the lack of wetland hydrology and hydric soils.

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DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: 79 Acres at the Neches River Date: 09/08/05

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and W. Abbott State: TX

Community ID: Forested Upland Transect: _____ Plot ID: Soil Station #6

Do normal circumstances exist on this site? Yes: X No: _____

Is the site significantly disturbed (atypical situation)? Yes: _____ No: X

Is the area a potential problem area? Yes: _____ No: X

Applicant: Parkwood Land Co. Plot ID: Soil Station #6

SOILS

Map Unit Name (Series and Phase): Fausse Clay

Map Type Confirmed? Yes: _____ No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Vertic Endoaquepts Drainage Class: Very Poorly Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
0-42	A	10YR 5/3	10YR 5/6	common/distinct	Loamy Fine Sand
	A	10YR 5/4	7.5YR 5/6	common/distinct	Fine Sandy Clay

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Ilex opaca	T/H	FACU			
Liquidambar styraciflua	T	FAC			
Quercus nigra	T/S	FAC+			
Ilex vomitoria	S/H	FAC-			
Carpinus caroliniana	S/H	FAC			
Cyrilla racemiflora	H	FACW+			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 86%

Is the hydrophytic vegetation criterion met? Yes: X No: _____

Remarks:

Hydric Soils Indicators:

_____ Histosol
_____ Histic Epipedon
_____ Sulfidic Odor
_____ Aquic Moisture Regime
_____ Reducing Conditions
_____ Gleyed or Low-Chroma Colors
_____ Concretions
_____ High Organic Content in Surface Layer in Sandy Soils
_____ Organic Streaking in Sandy Soils
_____ Listed on Local Hydric Soils List
_____ Listed on National Hydric Soils List
_____ Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: _____ No: X

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs: X

Other: X USGS Topo

No Data Available: _____

Field Observations:

Depth of Surface Water: None in.

Depth to Free Water in Pit: >16 in.

Depth to Saturated Soil: >16 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated: _____

Saturated in Upper 12 in.: _____

Water Marks: _____

Drift Lines: _____

Sediment Deposits: _____

Drainage Patterns in Wetlands: _____

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.: _____

Water-Stained Leaves: _____

Local Soil Survey Data: _____

FAC-Neutral Test: _____

Other (Explain in Remarks): _____

Is the hydrology criterion met? Yes: _____ No: X

Remarks:

SUMMARY

Hydrophytic Vegetation Present? Yes: X No: _____

Wetland Hydrology Present? Yes: _____ No: X

Hydric Soils Present? Yes: _____ No: X

Is This Sampling Point Within a Wetland? Yes: _____ No: X

Remarks: *This point was determined not to be within a wetland due to the lack of wetland hydrology and hydric soils.*

D-19144

Complainant's Ex. 31

DEC 0 6 2006

DATA FORM
ROUTINE WETLAND DETERMINATION
1987 USACE Wetland Delineation Manual

Project Site: ± 79 Acres at the Neches River Date: 07/28/06

Applicant/Owner: Parkwood Land Co. County: Orange

Investigator(s): J. White and W. Abbott State: TX

Community ID: PEM Wetland Transect: Plot ID: Soil Station # 7

Do normal circumstances exist on this site? Yes: X No:

Is the site significantly disturbed (atypical situation)? Yes: No: X

Is the area a potential problem area? Yes: No: X

VEGETATION

Dominant Plant Species	Stratum	Indicator	Dominant Plant Species	Stratum	Indicator
Nyssa sylvatica	T	OBL			
Acer rubrum	T	FAC			
Polygonum hydropiperoides	S	OBL			

Percent of vegetation that is OBL, FACW, FACW+, FACW-, FAC+, & FAC: 100%

Is the hydrophytic vegetation criterion met? Yes: X No:

Remarks:

HYDROLOGY

Recorded Data (Describe in Remarks):

Aerial Photographs X 1996

Other X USGS Topo

No Data Available

Field Observations:

Depth of Surface Water: 18+ in.

Depth to Free Water in Pit: 0 in.

Depth to Saturated Soil: 0 in.

Wetland Hydrology Indicators:

Primary Indicators:

Inundated X

Saturated in Upper 12 in. X

Water Marks

Drift Lines

Sediment Deposits

Drainage Patterns in Wetlands

Secondary Indicators (2 or more required):

Oxidized Root Channels in Upper 12 in.

Water-Stained Leaves

Local Soil Survey Data

FAC-Neutral Test

Other (Explain in Remarks)

Is the hydrology criterion met? Yes: X No: X

Remarks:

Applicant: Parkwood Land Co. Plot ID: Soil Station # 7

SOILS

Map Unit Name (Series and Phase) Fausse Clay

Map Type Confirmed? Yes: No: X

If No, Soil Type Encountered

Taxonomy (Subgroup): Vertic Endoaquepts Drainage Class: Very Poorly Drained

Profile Description:

Depth (inches)	Horizon	Matrix Color	Mottle Color	Mottle Abundance/Contrast	Texture, Concretion, Structure, Etc.
*1					

Hydric Soils Indicators:

- Histosol
- Histic Epipedon
- Sulfidic Odor
- Aquic Moisture Regime
- Reducing Conditions
- Gleyed or Low-Chroma Colors
- Concretions
- High Organic Content in Surface Layer in Sandy Soils
- Organic Streaking in Sandy Soils
- Listed on Local Hydric Soils List
- Listed on National Hydric Soils List
- Other (Explain in Remarks)

Is the hydric soils criterion met? Yes: No: X

Remarks: Unable to retrieve a soil sample at SS #9. Water too deep for shovel use and would not stick to soil probe.

SUMMARY

Hydrophytic Vegetation Present? Yes: X No:

Wetland Hydrology Present? Yes: X No: X

Hydric Soils Present? Yes: No: X

Is This Sampling Point Within a Wetland? Yes: No: X

Remarks: SS # 7 is determined to lie within a wetland. Although the soil could not be sampled due to the water level and saturation of the soil, the hydrology evidence suggests that the area around SS#7 remains inundated for extended periods.

Complainant's Ex. 31
D-19144

DEC 06 2006

10

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

REPLY TO
ATTENTION OF:

January 19, 2006 7 pl

Compliance Section

SUBJECT: **D-19144**; Jurisdictional Determination Verification, 79-Acre Tract, Parkwood Land Company, Rose City, Orange County, Texas

Mr. Henry R. Stevenson, Jr.
Parkwood Land Company
2085 Galway
Vidor, Texas 77662-2954

Dear Mr. Stevenson:

This concerns your October 11, 2006 verification request on a 79-acre tract. The subject tract is located north of Interstate 10 and east of the Neches River, near Rose City, Orange County, Texas. Based on the revised report dated December 6, 2006, I concur that the site has approximately 71.2-acres of forested wetlands immediately adjacent to the Neches River, a navigable water of the United States and subject to Section 404 of the Clean Water Act. Therefore, any discharge of dredged or fill material into this area will require a Department of Army (DOA) permit prior to the initiation of any work. In your request you inquired about the relief cuts and their relationship with the requirements of DOA permit 21497. Based on the site visit and review of permit documents, these relief cuts are non-jurisdictional.

The Supreme Court handed down a decision on June 19, 2006, which addresses the scope of Clean Water Act (CWA) jurisdiction over certain waters of the United States, including wetlands. In the near future, the EPA and Corps intend to issue joint guidance clarifying CWA jurisdiction in light of the decision. Your jurisdictional determination may be affected by this guidance. Therefore, we are issuing you a preliminary jurisdictional determination, which is valid for 5 years from the date of this letter. You may request a re-determination based on that new guidance when it is issued.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

11

JOHNSON/jw/6353
CESWG-PE-RC

This letter contains a preliminary jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a combined Notification of Administrative Appeal Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Southwestern Division Office at the following address:

James E. Gilmore, Appeal Review Officer
Southwestern Division, CESWD-CMO-E
1100 Commerce Street, Room 8E9
Dallas, Texas 75242-0216
Telephone: 469-487-7061; FAX: 469-487-7190

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by March 21, 2007.

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

This preliminary jurisdictional determination is valid for 5 years from the date of this letter, unless new information warrants a revision prior to the expiration date. Please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations. If you have any questions concerning this matter, please reference file number **D-19144** and contact Mr. Dwayne Johnson at the letterhead address or by telephone at 409-766-6353.

Sincerely,

John Davidson
North Unit Leader
Compliance Section

DAVIDSON
CESWG-PE-RC

Enclosures

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

April 17, 2007

REPLY TO
ATTENTION OF:

Evaluation Section

19144 kds

SUBJECT: Permit Number SWG-2007-84-RN (D-~~19279~~), Nationwide Permit Verification

James G. White
GTI Environmental Incorporated
11999 Katy Freeway, Suite 130
Houston, Texas 77079-1606

[redacted]

Dear Mr. White:

This office received a request to repair an existing levee on a property located northeast of the intersection of the Neches River and Interstate 10. Based on our review of the project, we have determined that you may proceed with the repair of the existing levee as proposed in your December 11, 2006, letter sent on behalf of Parkwood Land Company provided the activity complies with the enclosed three-sheet project plans and Nationwide Permit (NWP) General/Regional Conditions. Our review of a 1947 survey showed the property was originally used for dredge-material disposal and is surrounded by a containment levee. According to your project description, this levee is eroding and requires repairs. Since the levee was built prior to the inception of Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 plus the fact jurisdictional activities that have occurred prior to July 19, 1977, are authorized (grandfathered) by the NWP, the levee is considered to be previously-authorized and can be repaired pursuant to NWP 3.

NWP 3 authorizes the repair of a previously-authorized currently-serviceable structure or fill provided the structure or fill is not put to a different use than that for which it was originally constructed. Minor deviations due to changes in construction techniques, materials or the like are authorized.

Please be aware the NWPs were reissued March 19, 2007; however, they are not valid without water quality certification from the Texas Commission on Environmental Quality or Coastal Consistency pursuant to the Texas Coastal Management Plan. As such, the permittee must obtain an individual Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination from the Texas Commission on Environmental Quality (address: Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087).

The following special condition has been added to your authorization:

> The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under United States Army Corps of Engineers (USACE) regulations at 33 CFR Part 331. Enclosed you will find a combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Southwestern Division Office at the following address:

> James E. Gilmore, Appeal Review Officer
> Southwestern Division, CESWD-CMO-E
> 1100 Commerce Street, Room 8E9
> Dallas, Texas 75242-0216
> (Telephone: 469-487-7061; FAX: 469-487-7190)

In order for an RFA to be accepted by USACE, USACE must determine that it is complete, meets the criteria for appeal under 33 CFR Part 331.5, and has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by June 18, 2007. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

The Supreme Court handed down a decision on June 19, 2006, which addressed the scope of CWA jurisdiction over certain waters of the United States including wetlands. In the near future, the EPA and USACE intend to issue joint guidance clarifying CWA jurisdiction in light of the decision. Your permit may be affected by this guidance. However, we are issuing you this permit with its existing terms and conditions and the amount of required compensatory mitigation can be reevaluated based on that new guidance when it is issued.

FEB 2 0 2009

Please let us know when you complete your project by returning the enclosed preaddressed postcard. If you have any questions concerning this matter, please contact Mr. David Hoth at the letterhead address or by telephone at 409-766-3022.

Sincerely,

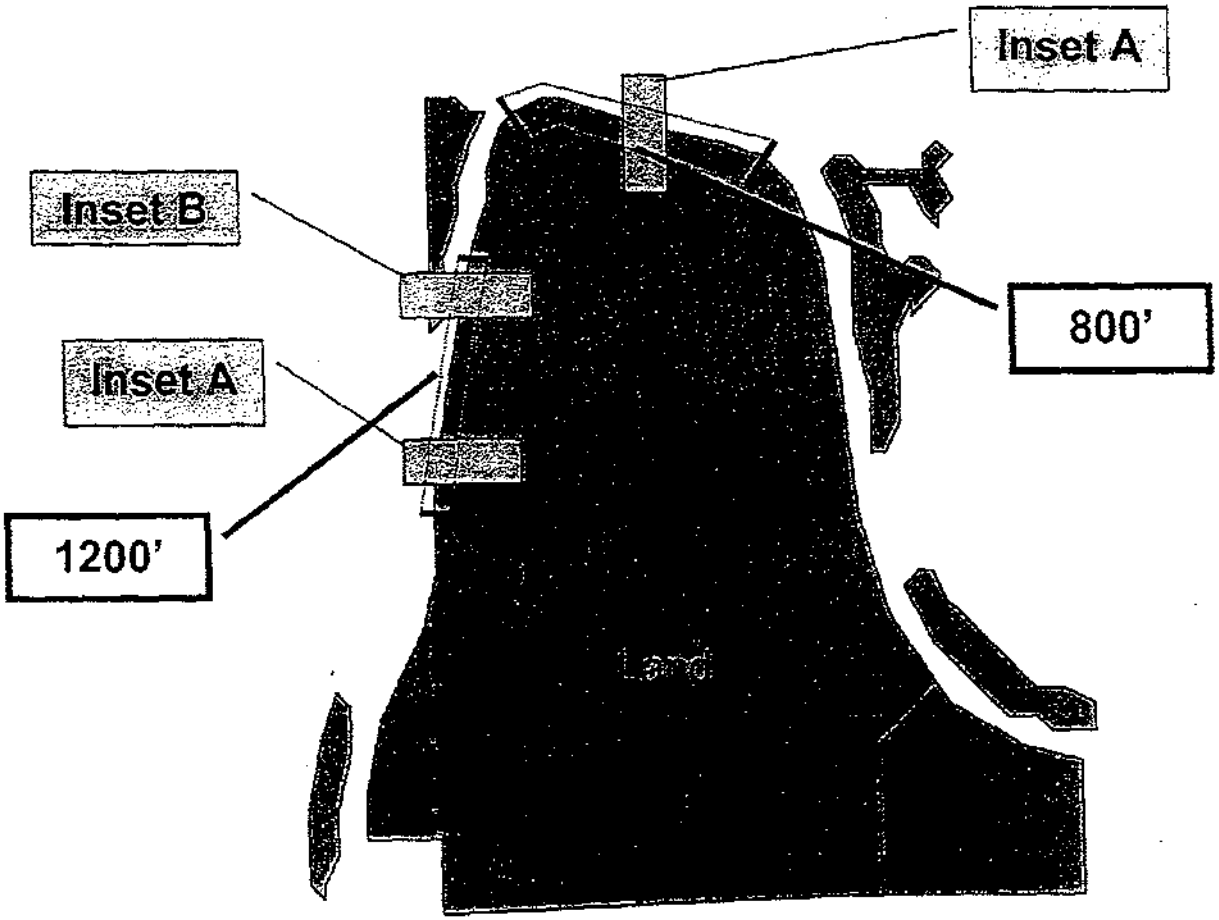
Bruce H. Bennett
Leader, North Evaluation Unit

Enclosures

Copy Furnished:

Sonny Stevenson
Parkwood Land Company
2085 Galway Drive
Vidor, Texas 77662-2954

Sketch of Planned Maintenance on Existing Levee

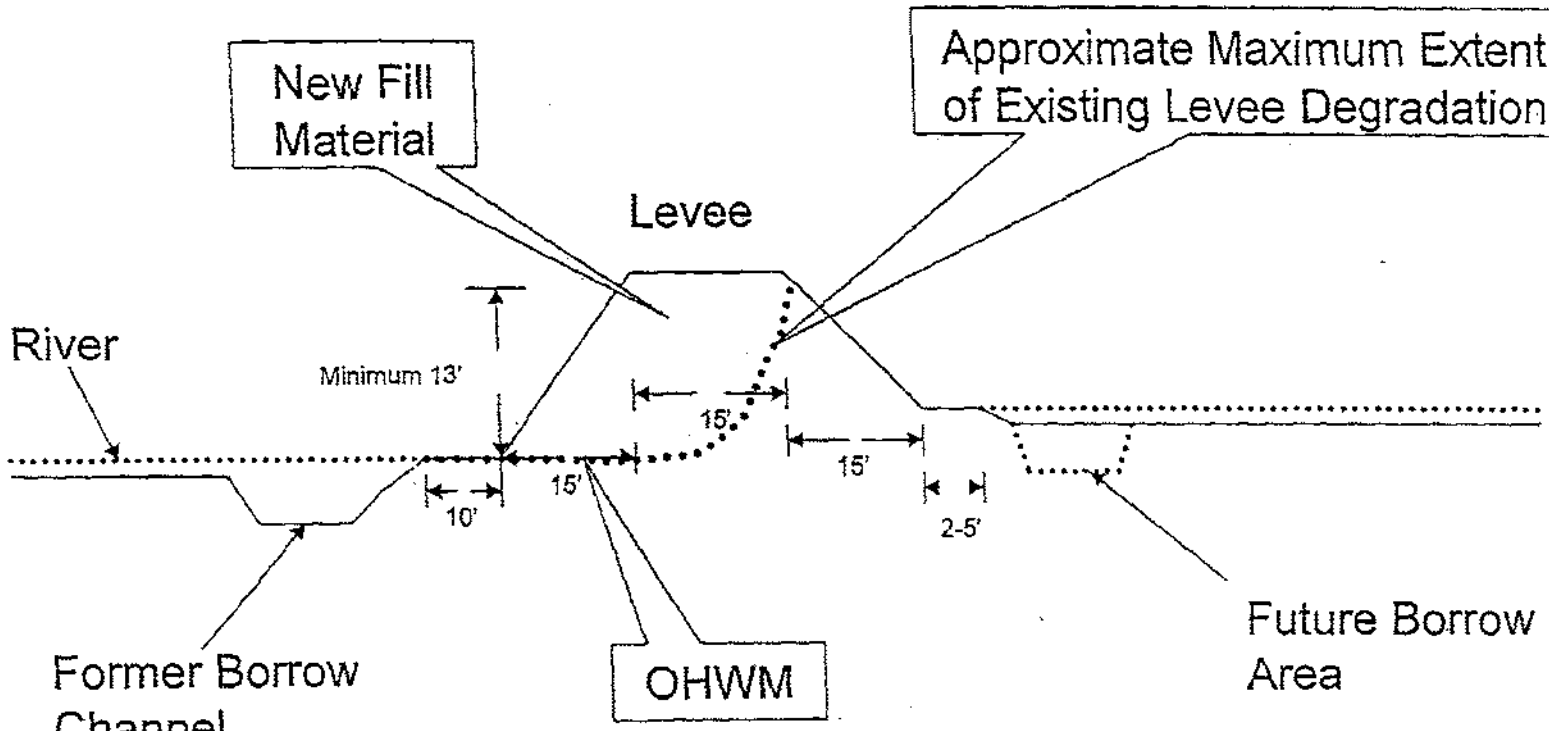


SWG-2007-84-RN
Mr. Sonny Stevenson
Orange County, Texas
Sheet 1 of 3

Date: 02/23

DEDMITTED PLAN

Cross Sectional View of Inset A

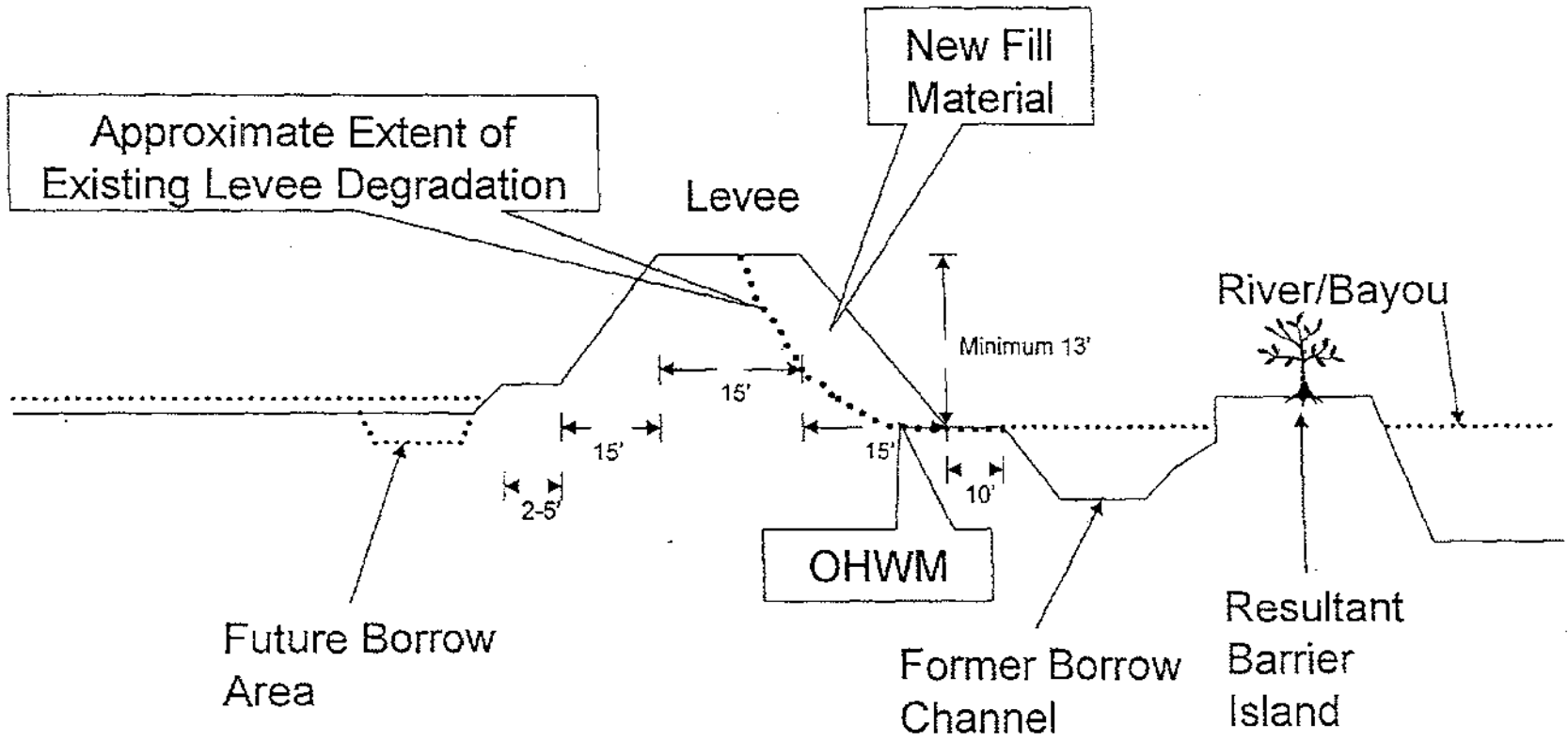


SWG-2007-84-RN
Mr. Sonny Stevenson
Orange County, Texas
Sheet 2 of 3

GTI Environmental, Inc.
Environmental Consultants

Date: 02/23

Cross Sectional View of Inset B

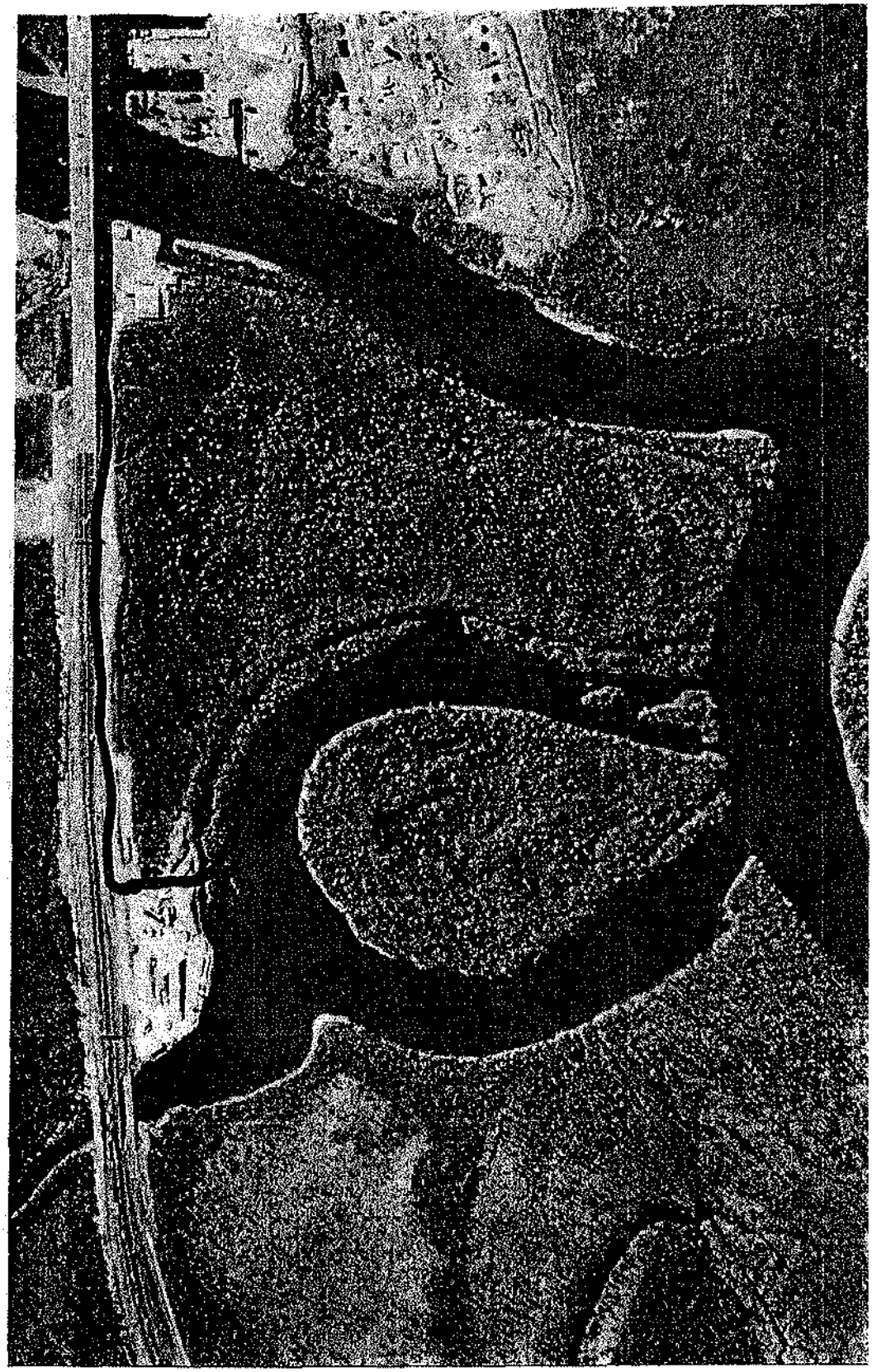


SWG-2007-84-RN
Mr. Sonny Stevenson
Orange County, Texas
Sheet 3 of 3

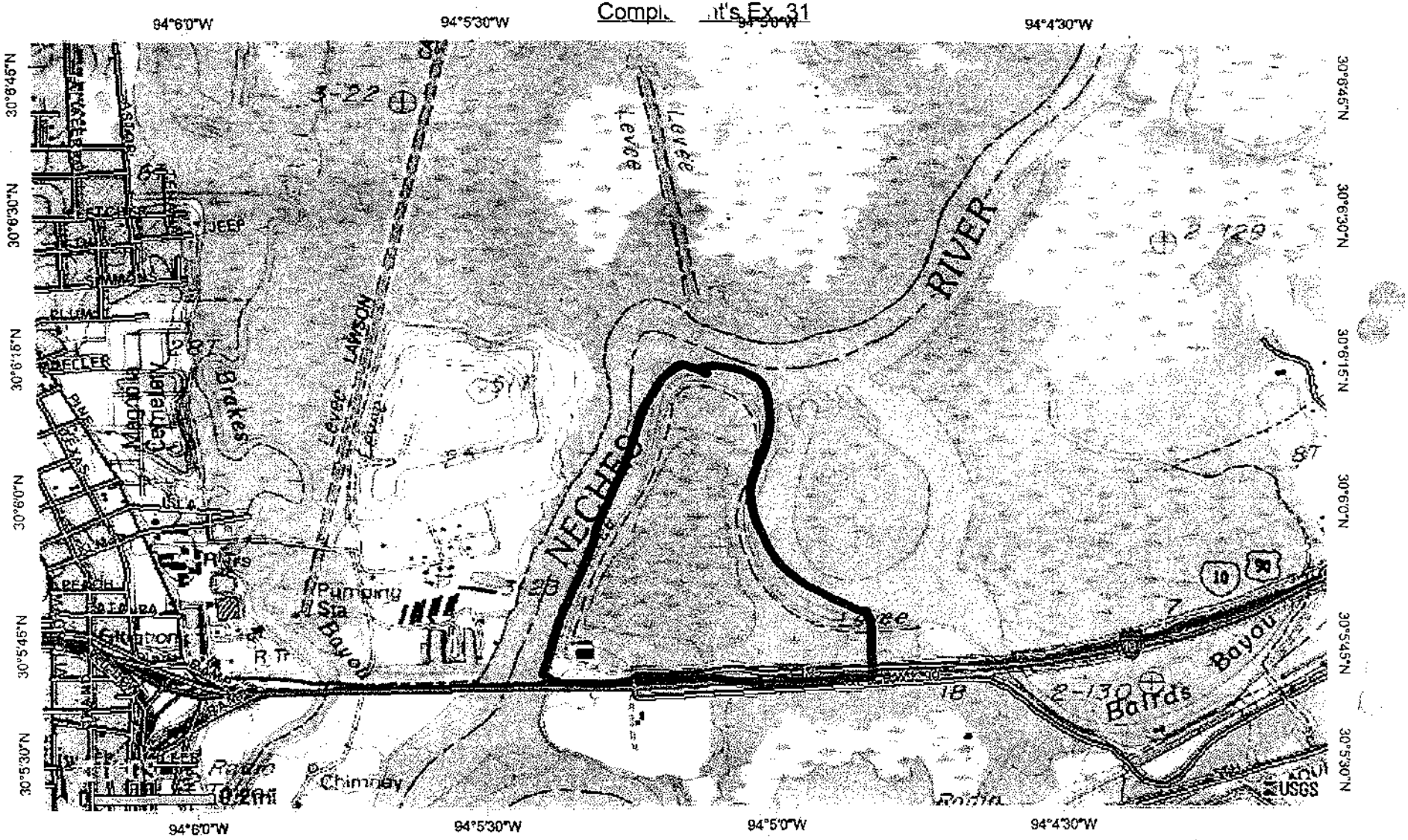
Date: 02/23

GTI Environmental, Inc.
Environmental Consultants

23



Sept 2007 - Ohio



USGS
science for a changing world

30°6'48"N
94°6'16"W Map Extent 94°4'2"W
30°5'28"N

The National Map
http://nationalmap.gov/

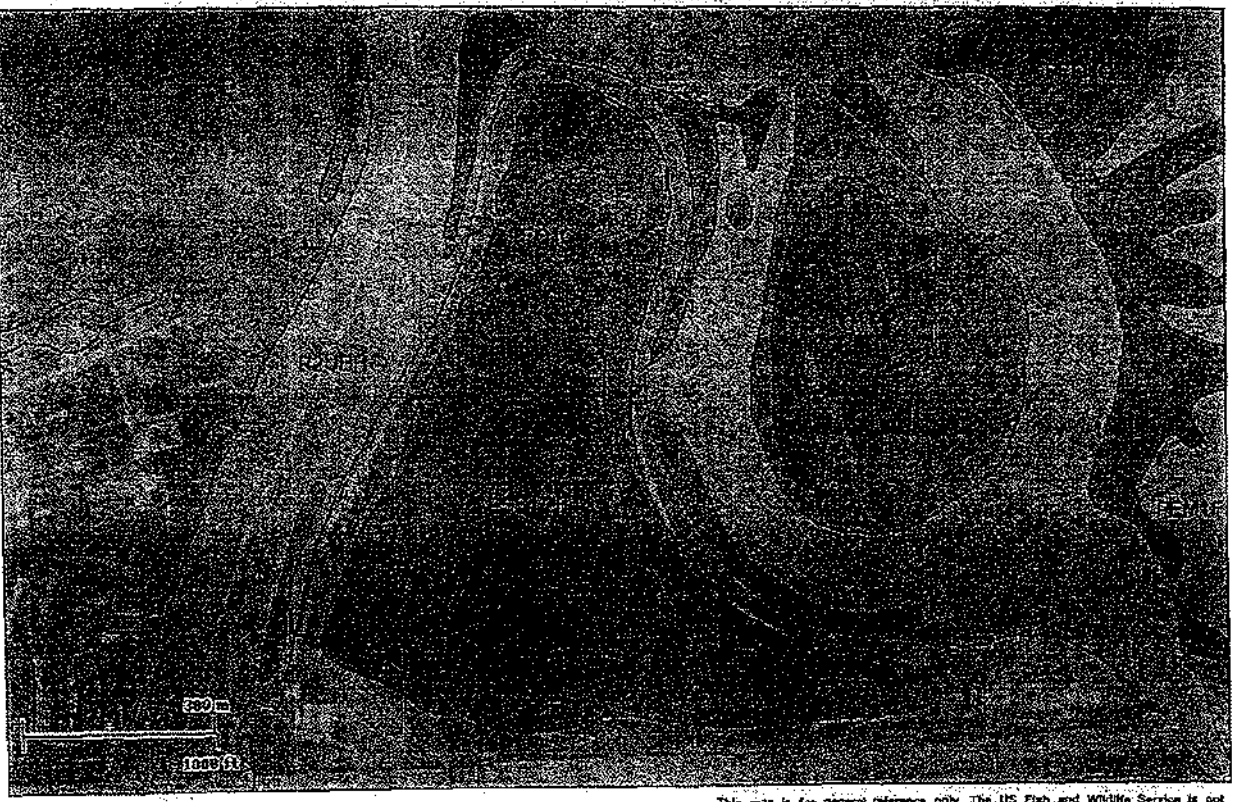
Geographic Coordinate System (WGS84)

U.S. Fish and Wildlife Service

National Wetlands Inventory

SWG-2007-01461

Jul 27, 2010



Wetlands

- Freshwater Emergent
- Freshwater Forested/Shrub
- Estuarine and Marine Deepwater
- Estuarine and Marine
- Freshwater Pond
- Lake
- Riverine
- Other

Status

- Digital
- Scan
- Non-Digital
- No Data

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

User Remarks:

Complainant's Ex. 31

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 27 July 2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2007-01461, Sonny Stevenson

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Texas County/Parish: Orange City: Rose City
Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 30.098565° N, Long. -94.085889° W;
Universal Transverse Mercator: UTM: 15, 3330204 N., 395369 E.,NAD: WGS84
Name of nearest water body: Neches River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Name of watershed or Hydrologic Unit Code (HUC): Lower Neches Watershed -- 12020003
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 27 July 2010
☒ Field Determination. Date(s): 22 July 2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There ☒ is ☐ no "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☒ Waters subject to the ebb and flow of the tide.
☒ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There ☒ is ☐ no "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. Waters of the U.S.
   a. Indicate presence of waters of U.S. in review area (check all that apply): [1]
      ☒ TNWs, including territorial seas
      ☒ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☒ Impoundments of jurisdictional waters
      ☒ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. Identify (estimate) size of waters of the U.S. in the review area:
      Non-wetland waters: linear feet: width (ft) and/or acres
      Wetlands: 72 acres

   c. Limits (boundaries) of jurisdiction based on: Not established at this time
      Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": **Subject wetlands are located within the 100-year flood plain of the Neches River. The 100-year floodplain is an area that experiences a 1% annual anticipated frequency of flooding, which contributes to water exchange. The subject wetlands neighbor the Neches River, a TNW. Federal regulations define "adjacent" as bordering, neighboring, and/or contiguous. The wetland was identified using the Atlantic and Gulf Coast Regional Supplement to the 1987 Corps Wetland Delination Manual and is located adjacent (neighboring: within the anticipated high flow) of the nearby TNW (Neches River).**

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**
Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are Pick List aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: Pick List

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: Pick List
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime:
Other information on duration and volume:
Surface flow is: Pick List. Characteristics:
Subsurface flow: Pick List. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☒ High Tide Line indicated by: ☒ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects ☐ survey to available datum;
☐ fine shell or debris deposits (foreshore) ☐ physical markings;
☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges
☐ other (list):

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**
- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: Pick List. Explain:

Surface flow is: Pick List
Characteristics:

Subsurface flow: Pick List. Explain findings:
- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are Pick List river miles from TNW.
Project waters are Pick List aerial (straight) miles from TNW.
Flow is from: Pick List.
Estimate approximate location of wetland as within the Pick List floodplain.

(ii) **Chemical Characteristics:**
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**
- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**
All wetland(s) being considered in the cumulative analysis: Pick List
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☒ TNWs: linear feet width (ft), Or, acres.
   - ☒ Wetlands adjacent to TNWs: 72 acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☒ Tributary waters: linear feet width (ft)
- ☒ Other non-wetland waters: acres
  Identify type(s) of waters:

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☒ Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: linear feet width (ft).
   - ☒ Other non-wetland waters: acres
     Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   - ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   Provide acreage estimates for jurisdictional wetlands in the review area: acres

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☒ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☒ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☒ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- ☒ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☒ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☒ which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ Interstate isolated waters. Explain:
- ☒ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☒ Tributary waters: linear feet width (ft)
- ☒ Other non-wetland waters: acres
  - Identify type(s) of waters:
- ☒ Wetlands: acres

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- ☒ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☒ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ☒ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☒ Lakes/ponds: acres.
- ☒ Other non-wetland waters: acres. List type of aquatic resource:
- ☒ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ☒ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☒ Lakes/ponds: acres.
- ☒ Other non-wetland waters: acres. List type of aquatic resource:
- ☒ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. **Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report
- ☒ Data sheets prepared by the Corps: **Point 1, dated 22 July 2010**
- ☒ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas: **Lower Neches Watershed -- 12020003**
  - ☐ USGS NHD data
  - ☒ USGS 8 and 12 digit HUC maps
- ☒ Galveston District's Approved List of Navigable Waters
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000 Beaumont East, Texas Quadrangle**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Web Soil Survey**
- ☒ National wetlands inventory map(s). Cite name: **Beaumont East, Texas Quadrangle**
- ☒ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: **4805100125B**
- ☒ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **2006 - 2010 Google Earth aerials, 1995 Infrared**
  - or ☒ Other (Name & Date): **Site visit photos, dated 3 September 2009 and 22 July 2010**
- ☒ Previous determination(s). File no. and date of response letter: **D-19144, letter dated 19 January 2007**
- ☒ Applicable/supporting case law:
- ☒ Applicable/supporting scientific literature:
- ☒ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Subject wetlands are located within the 100-year flood plain of the Neches River. The 100-year floodplain is an area that experiences a 1% annual anticipated frequency of flooding, which contributes to water exchange. The subject wetlands neighbor the Neches River, a TNW. Federal regulations define "adjacent" as bordering, neighboring, and/or contiguous. The wetland was identified using the Atlantic and Gulf Coast Regional Supplement to the 1987 Corps Wetland Delination Manual and is located adjacent (neighboring: within the anticipated high flow) of the nearby TNW (Neches River).

Complainant's Ex. 31

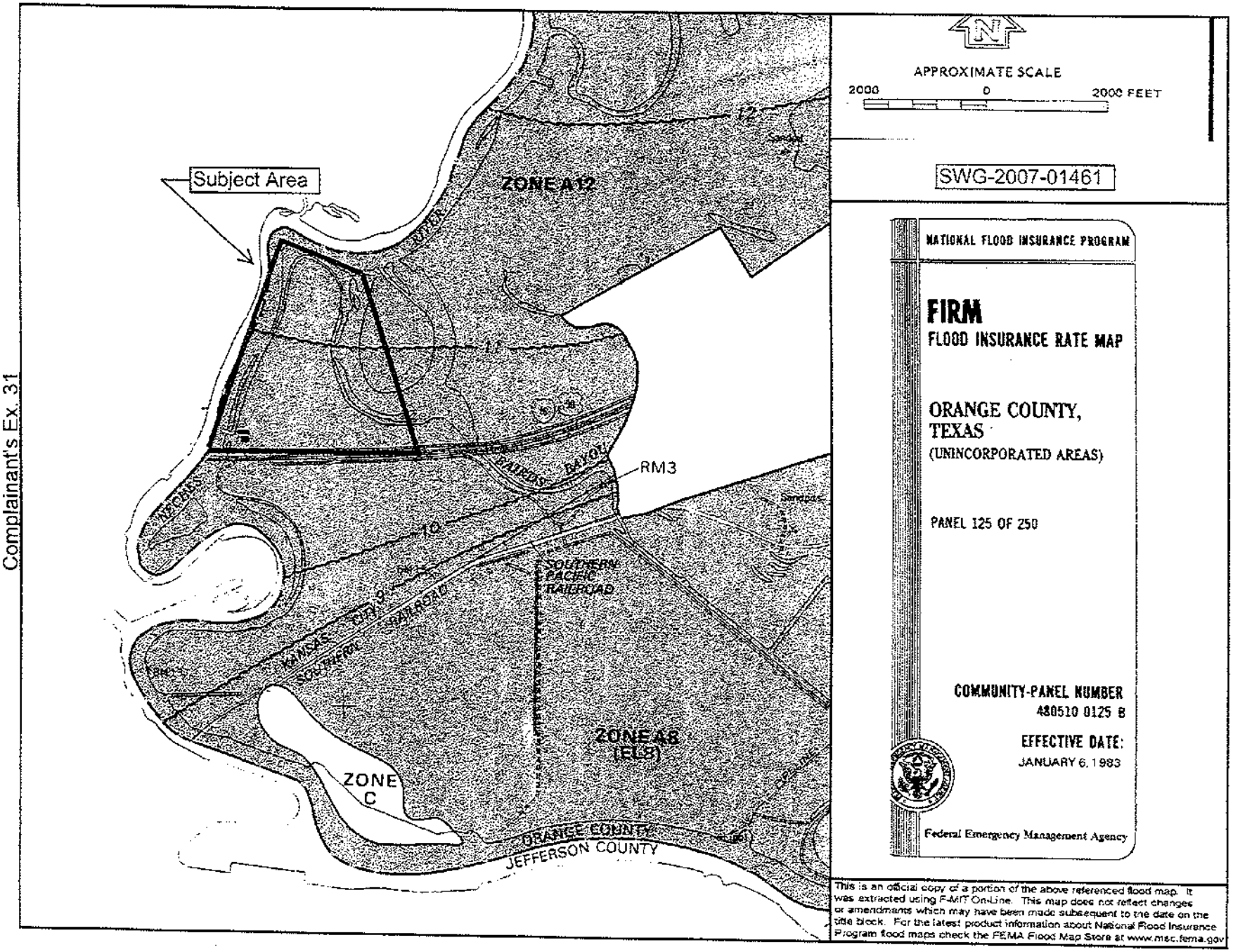

Exhibit 32

Complainant's Ex. 32

ADMINSTRATIVE APPEAL DECISION

PARKWOOD LAND COMPANY; FILE NUMBER SWG-2007-1014

US ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

17 December 2007

Review Officer: James E. Gilmore, U.S. Army Corps of Engineers, Southwestern Division

Appellant & Representatives: Henry R. Stevenson, Jr., Robert T. Edgar, Parkwood Land Company and James G. White, GTI Environmental, Inc

District Representatives: Dwayne Johnson and Kenny Jaynes

Appeal Meeting/Site Visit: 9 October 2007

Authority: Section 404 of the Clean Water Act (33 U.S.C. § 1344)

Background Information: On 11 October 2006, Mr. Henry R. Stevenson, Jr., of Parkwood Land Company, (PLC) submitted a packet to the US Army Corps of Engineers' Galveston District (District) requesting verification of a wetland delineation completed by GTI Environmental, Inc (GTI) on behalf of PLC (Appellant). In its report, GTI stated that "[T]he investigation was conducted for the purpose of determining the existence and approximate extent, if any, of waters of the United States (jurisdictional waters), including wetlands, within the ± 79-acre tract, which would be subject to regulation under Section 404 of the Clean Water Act." The project site is located north of Interstate 10 and east of the Neches River, near Rose City, Orange County, Texas (the site).

After completing its initial review of the GTI determination, the District found that the wetland delineation map, included with GTI determination documents needed to be revised. GTI submitted the revised delineation map to the District on 6 December 2006. Attachments 2 and 8 of the GTI delineation report identified 71.22 acres of wetlands exist on the PLC property. By letter dated 19 January 2007, the District issued a preliminary jurisdictional determination (JD) concurring with GTI's findings that the site contained approximately 72 acres of wetlands that are subject to the Corps jurisdiction under Section 404 of the Clean Water Act.

PLC submitted an appeals packet to the District on 18 March 2007. PLC was appealing the preliminary JD it had received on 19 January 2007. PLC was informed that a preliminary JD is not an appealable action.

Mr. Stevenson met with District staff on 15 May 2007 to discuss permit and determination issues. During the meeting, Mr. Stevenson stated that PLC wanted to appeal its jurisdictional determination and requested that the District issue an approved JD. On 17 May 2007, the District received an e-mail from Mr. Stevenson requesting that the District issue an approved JD on the 79-acre tract owned by the PLC. The District issued PLC an approved JD on 5 July 2007. PLC submitted a Request for Appeal on 23 July 2007.

Appeal Decision Evaluation, Findings and Instructions to the Galveston District Engineer (DE):

Reason 1: We appeal the Corps of Engineers' determination of approved jurisdiction as to the referenced property and contend that this property is either isolated/non-jurisdictional or not subject to the Corps of Engineers jurisdiction (grandfathered) due to its origin prior to the Act's creating jurisdiction, or both.

Reason 2: We believe that this property is not subject to the Corps of Engineers' jurisdiction since the levee and the contained property were constructed prior to the inception of Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 plus the fact jurisdictional activities that have occurred prior to July 19, 1977, are authorized (grandfathered) by the Nationwide Permit (NWP).

Finding: These reasons for appeal do not have merit.

Action: No Action Required.

Discussion: On 11 December 2006, the Appellant submitted a request to the District seeking authorization to repair an existing levee located on the project site. The levee was constructed during the early 1930s to create a disposal area for a road construction project. By letter dated 17 April 2007, the District authorized the repairs to the existing levee under Nationwide Permit (NWP) 3[1]. In its authorization letter, the District stated "Since the levee was built prior to the inception of Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 plus the fact jurisdictional activities that have occurred prior to July 19, 1977, are authorized (grandfathered) by the NWP, the levee is considered to be previously-authorized and can be repaired pursuant to NWP 3."

The appellant has interpreted the term "grandfathered" to mean "...that this property is not subject to the Corps of Engineer' jurisdiction since the levee and the contained property were constructed prior to the inception of Section 404 of the CWA and Section 10 of the Rivers and Harbors Act of 1899 plus the fact jurisdictional activities that have occurred prior to July 19, 1977, are authorized (grandfathered) by the NWP.

[1] NWP 3 authorizes the repair of a previously authorized currently serviceable structure or fill provided the structure or fill is not put to a different use than that for which it was originally constructed. Minor deviations due to changes in construction techniques, materials or the like are authorized.

Consequently, the levee and the contained property should be considered previously-authorized."

In the Corps of Engineers Regulatory Program Regulations, 33 CFR Part 330, § 330.3 Activities occurring before certain dates, the Corps regulation addresses activities that were completed before the CWA was passed. § 330.3 states:

> "The following activities were permitted by nationwide permits issued on July 19, 1977, and unless modified do not require further permitting: (a) Discharges of dredged or fill material into waters of the United States outside the limits of navigable waters of the United States that occurred before the phase-in dates which began July 25, 1975, and extended section 404 jurisdiction to all waters of the United States. (These phase-in dates are: After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands; after September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area; and after July 1, 1977, discharges into all waters of the United States.) (b) Structures or work completed before December 18, 1968, or in waterbodies over which the district engineer had not asserted jurisdiction at the time the activity occurred provided, in both instances, there is no interference with navigation"

What the Corps regulation provides is that any discharges of dredged or fill material into areas identified as waters of the United States prior to the phase-in dates is considered an authorized activity, it does not authorize an individual to discharge dredge or fill material into jurisdictional waters of the United States after the phase-in dates without a Corps permit. This is why the District issued a Nationwide Permit 3 to Parkwood to perform maintenance on its existing serviceable levee. The applicant misapplies the "grandfather" provision in his attempt to extend it to this set of facts and circumstances. Therefore, this reason for appeal does not have merit.

The second part of the appellant's appeal is PLC's belief that the estimated 71 acres of cypress/swamp tupelo marsh, identified by the appellant's consultant, is not an adjacent wetland but that it is an isolated wetland that is not subject to the Corps jurisdiction.

The appellant stated two reasons why the site is "isolated" and not "adjacent". The appellant's first reason is that the site is separated from the Neches River by a 13-foot high levee, which Mr. Stevenson stated does not allow for any hydrologic exchange between the marsh and the Neches River.

To support its claim that the site is isolated, the appellant referenced the District's policy regarding adjacent/isolated criteria.[2] The appellant stated during the appeal meeting that the District's policy supports his assertion that the site is isolated under the "proximity"

[2] MEMORANDUM FOR ALL SWG-PE-R Personnel, SUBJECT: Adjacent/Isolated Criteria, Galveston District Policy Number 01-001, 13 February 2001.

The appellant's second reason, in support of his second basis for appeal, is based on the recent Supreme Court decision known as "Rapanos". The appellant stated "[P]ursuant to the Rapanos decision, the Corps of Engineers regulatory authority should extend only to relatively permanent, standing or continuously flowing bodies of water connected to traditional navigable waters, and to wetlands with a continuous surface connection to such relatively permanent waters[5]." Based on the above statement the appellant has identified the Neches River as a "relatively permanent" water. In actuality, the Neches River is a "traditional navigable water."[6]

On 5 June 2007, the Corps and EPA issued a memorandum Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States*. This memorandum provides guidance to Corps districts and EPA regions on how to implement the Supreme Court's decision in the above cases. The guidance specifically states that the EPA and Corps "will assert jurisdiction over traditional navigable waters, which includes all the waters described in 33 C.F.R. § 328.3(a)(1), and 40 C.F.R. § 230.3(a)(1)." In addition, the memorandum also states:

> "The agencies will also continue to assert jurisdiction over wetlands "adjacent" to traditional navigable waters as defined in the agencies' regulations. Under EPA and Corps regulations and as used in this guidance, "adjacent" means "bordering, contiguous, or neighboring." **Finding a continuous surface connection is not required to establish adjacency under this definition.** The Rapanos decision does not affect the scope of jurisdiction over wetlands that are adjacent to traditional navigable waters because at least five justices agreed that such wetlands are "waters of the United States." (Emphasis added)

Applying the guidance to the facts and circumstances involved in this appeal, the wetlands located on the appellant's property are subject to the Corps jurisdiction under § 404 of the Clean Water Act.

Conclusion: For the reasons stated above, I conclude that this request for appeal does not have merit.

Kendall P. Cox
Colonel, US Army
Commanding

[5] Relatively Permanent waters are non-navigable tributaries of TNWs that typically flow year-round.
[6] §328.3(a)(1) "All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide." The Neches River is subject to the ebb and flow of the tide at the project site.

section of the policy document. Mr. Stevenson stated the policy states that a water or wetland should be "touching" another water of the US to be "adjacent". What the policy actually states is "[I]f a wetland/water is contiguous (touching) another water of the U.S., such as a surface tributary system, **or if it is separated from other waters of the U.S. by a man-made dike or barrier, natural river berm, or beach dune, it is "adjacent."** (Emphasis added). The Corps regulation in § 328(a) (7) (c) defines the term "adjacent". The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands. Based on this definition, the District's policy adheres to Corps regulations and supports the District's determination that the wetlands located on the PLC site are "adjacent" and not isolated[3].

In addition, Mr. Stevenson also feels that the site has a "perched" water table, which he feels acts as an additional barrier between the wetlands located on the PLC property and the Neches River. Again he cited the District's policy regarding the identification of an adjacent wetland versus an isolated wetland. Mr. Stevenson cited the portion of the policy document that states "[F]or example, it is possible, but not common; to have a water situated close to navigable water, and be isolated if it is "perched" and has no hydrologic connection."

A perched water table is defined in the Jefferson County, Texas Soil Survey as "the highest part of the soil or underlying rock material that is wholly saturated with water. In some places an upper, or perched, water table may be separated from a lower one by a dry zone." Another accepted definition of a perched water table in geomorphic terms is "A perched water table (or perched aquifer) is an aquifer that occurs above the regional water table, in the vadose zone (non-saturated zone). This occurs when there is an impermeable layer of rock (an aquiclude) or sediment relatively impermeable layer (an aquaitard) above the main aquifer but below the surface."

The wetlands located on the PLC site are not located in a geomorphic landscape position that would typically support a "perched water table". Based on the many human disturbances to the substrate on this site (e.g. disposal of dredged material, levee work, etc.) there is still sufficient hydrology to support a forested wetland, and as such, indicative that the hydrology on this site is not associated with a perched water table.

It should also be noted that in the wetland delineation report completed by the appellant's environmental consultant, which was provided to the District, it stated that "[T]wo man-made relief areas have been cut into the levee system to allow storm water to sheet flow into the moat channel.[4]" This indicates that there is a hydrological connection between the wetlands located on the site and the Neches River.

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[3] (Federal Register November 22, 1991) – Isolated waters mean those non-tidal waters of the United States that are: (1) Not part of a surface tributary system to interstate or navigable waters of the United States; and (2) Not adjacent to such tributary waterbodies.

[4] "The levee appears to have been constructed by digging a "moat" channel around the tract and depositing the spoil just inside the property from the new channel."

Exhibit 33

Complainant's Ex. 33

CESWG-PE-RC 3 September 2009

MEMORANDUM FOR FILE

SUBJECT: File Number SWG-2007-01461

On 3 September 2009 at 1042 hours, a site visit was conducted on Mr. Stevenson's approximately 80-acre property north of Interstate 10, near Rose City, Orange County, Texas. The purpose of the site visit was to investigate allegations against Mr. Stevenson regarding a discharge of fill material (including trees) into the Neches River from the building/repair of a levee, tree cutting, and burying a dump truck. Present were Mr. Stevenson, his son (Mr. John Stevenson), and Mr. Pinsky, Mr. Davidson, and Ms. Shivers of the Corps. Mr. Stevenson obtained authorization (SWG-2007-00084) for maintenance/repair of the levee around the property. Per permitted plans, all fill was to be placed on the river-side of the levee; no fill was authorized in or on the wetland-side of the levee.

The entire levee surrounding the property was traversed, beginning with the southwest corner near the highway. The first area of concern encountered was along the levee, located approximately at 30.09855°N, -94.0881°W. It appeared that fill material had been discharged within wetlands in order to create a truck turnaround. At this, Mr. Stevenson stated that he "tried to stay around the [wetland boundary] flags as best we could." The area of the turnaround can be seen in the attached Picture 1. Due to repeated erosion, an area of repeated fill was observed further north along the levee, Picture 7. It appeared at this time that an excess amount of fill was not discharged into the river. Mr. Davidson stated that the levee appeared to be somewhat unstable in that what he saw was dirt for the majority of building material for the levee. Mr. Stevenson stated that he was going to place concrete down, and that he "thinks it'll stick." Mr. Stevenson stated that Hurricane Ike had also washed out some areas of the levee. A second area of concern was noted at the northwest corner of the levee where it appeared a makeshift "ramp" leading into the wetland area had been constructed, located approximately 30.103324°N, -94.085814°W. Pictures 2, 3, and 4 show this area of fill into the wetlands.

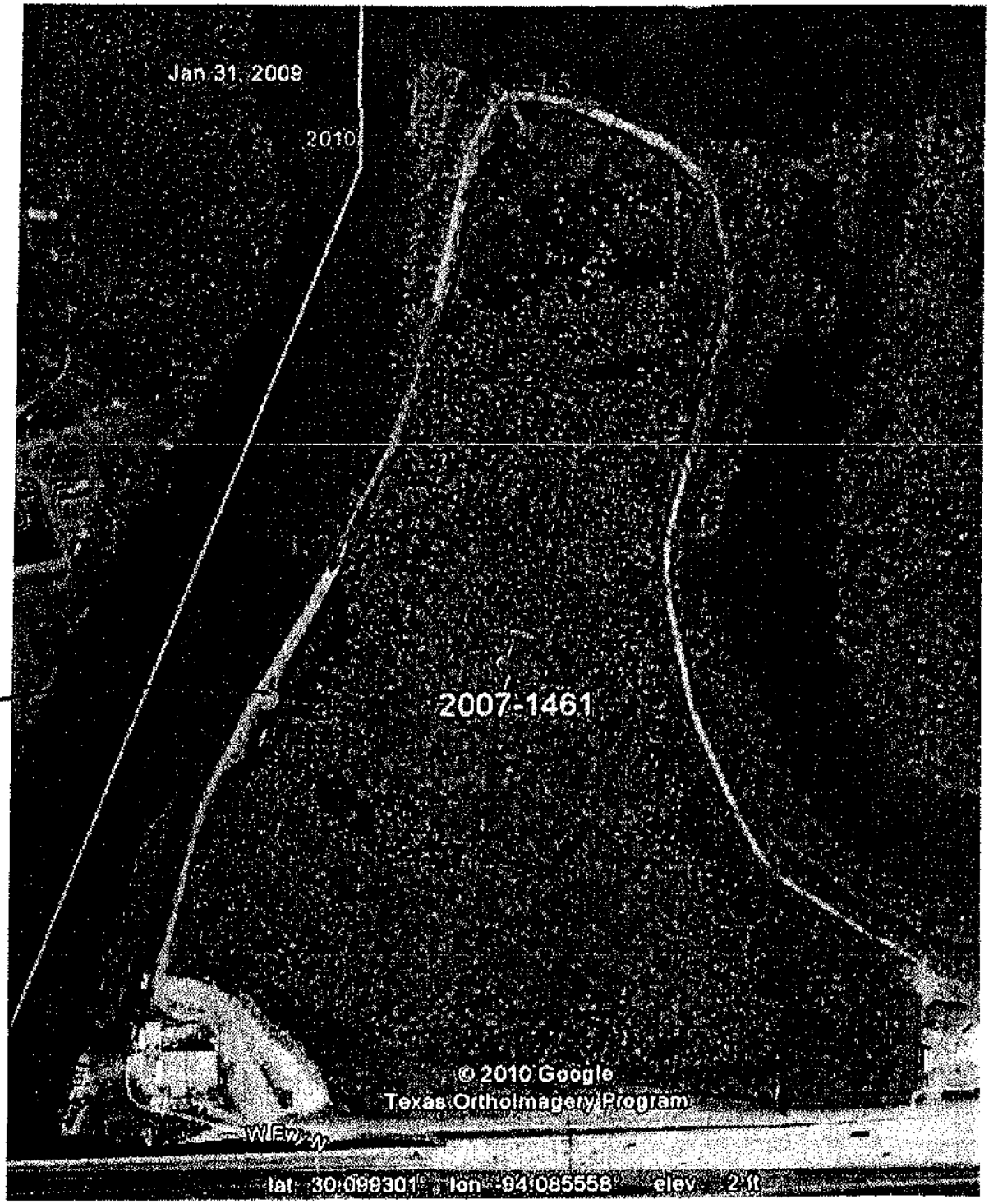
At this time, Mr. Davidson summarized the allegations concerning this property: a buried dump truck, trees being placed in the river, filling in the river, and cutting trees. A buried dump truck was not noted during this site visit. No trees or excess fill (apart from what was authorized) was observed to be dumped in the river. Concerning cutting trees, at one point during the site visit, Mr. Stevenson stated multiple times that no tree cutting had taken place; only to contradict himself later by saying "we been cutting some timber." It was observed that trees had recently been cut within the wetland area, but it was not clear at this time the manner in which it was done.

As a result of this site visit, two areas with alleged violations are apparent: the truck turn-around and northwest corner of the levee. Both of these areas appear to have a discharge of fill material without a Department of the Army permit. Another outstanding concern was the stability of the levee.

Kristin Shivers
Regulatory Specialist

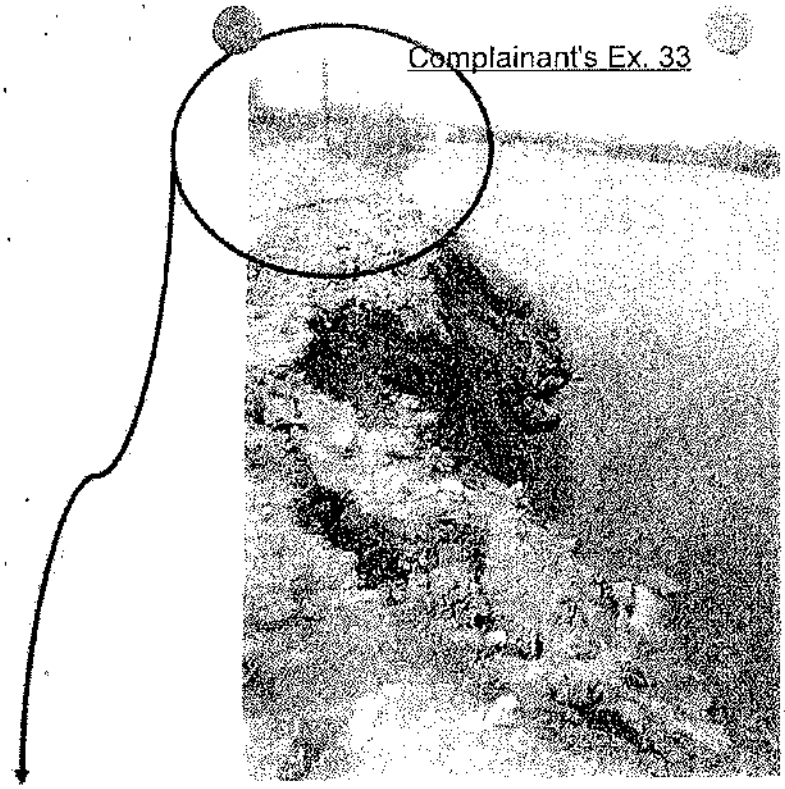
Complainant's Ex. 33

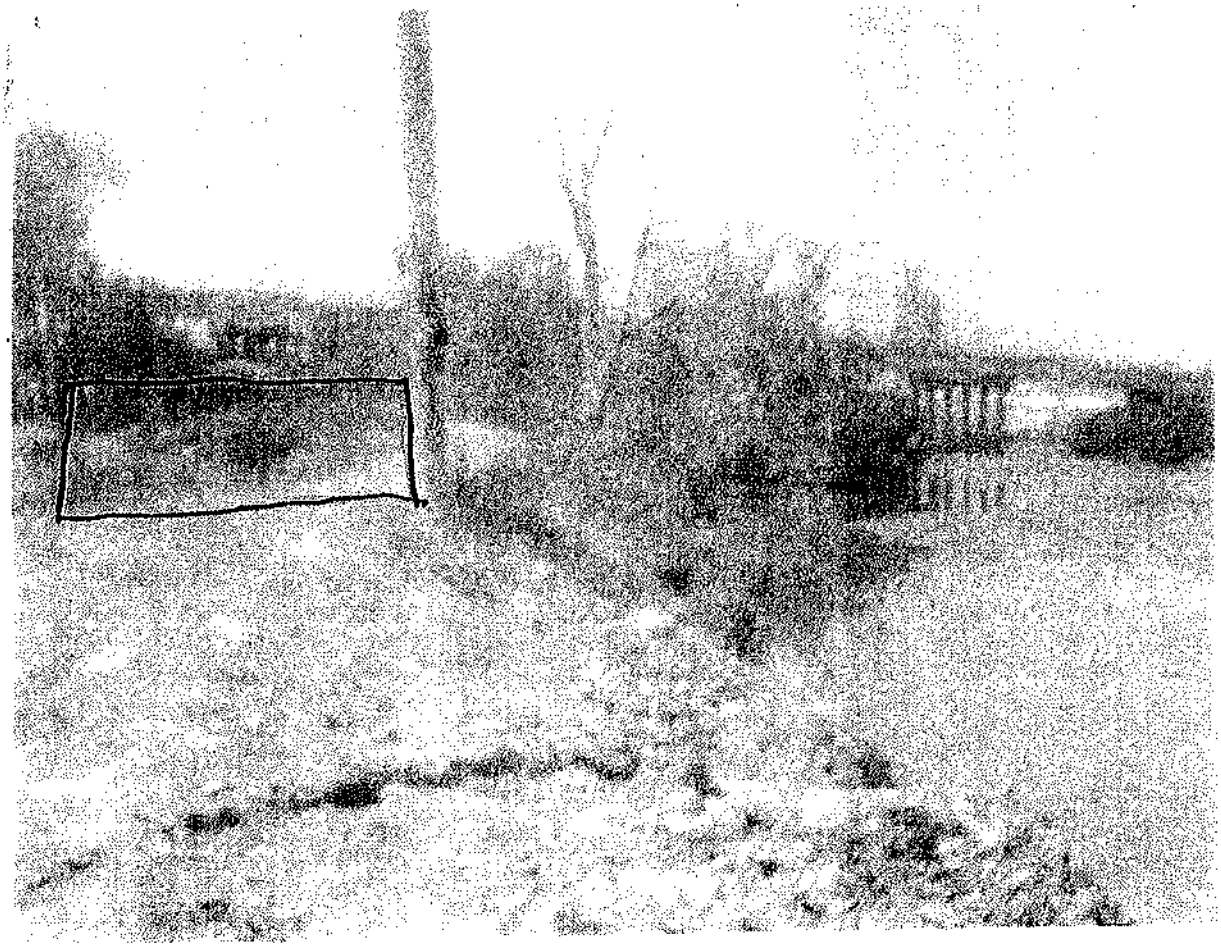
3 September 2009 Site Visit Photograph Direction Log

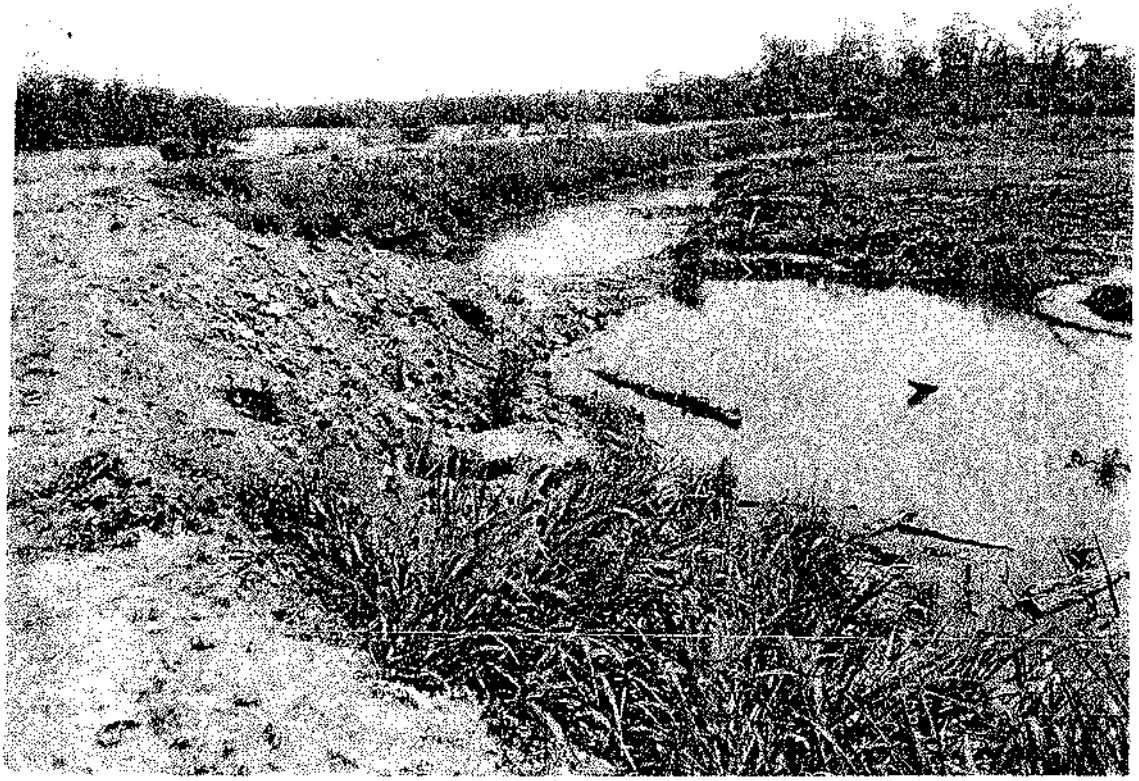


Turn-around

Complainant's Ex. 33







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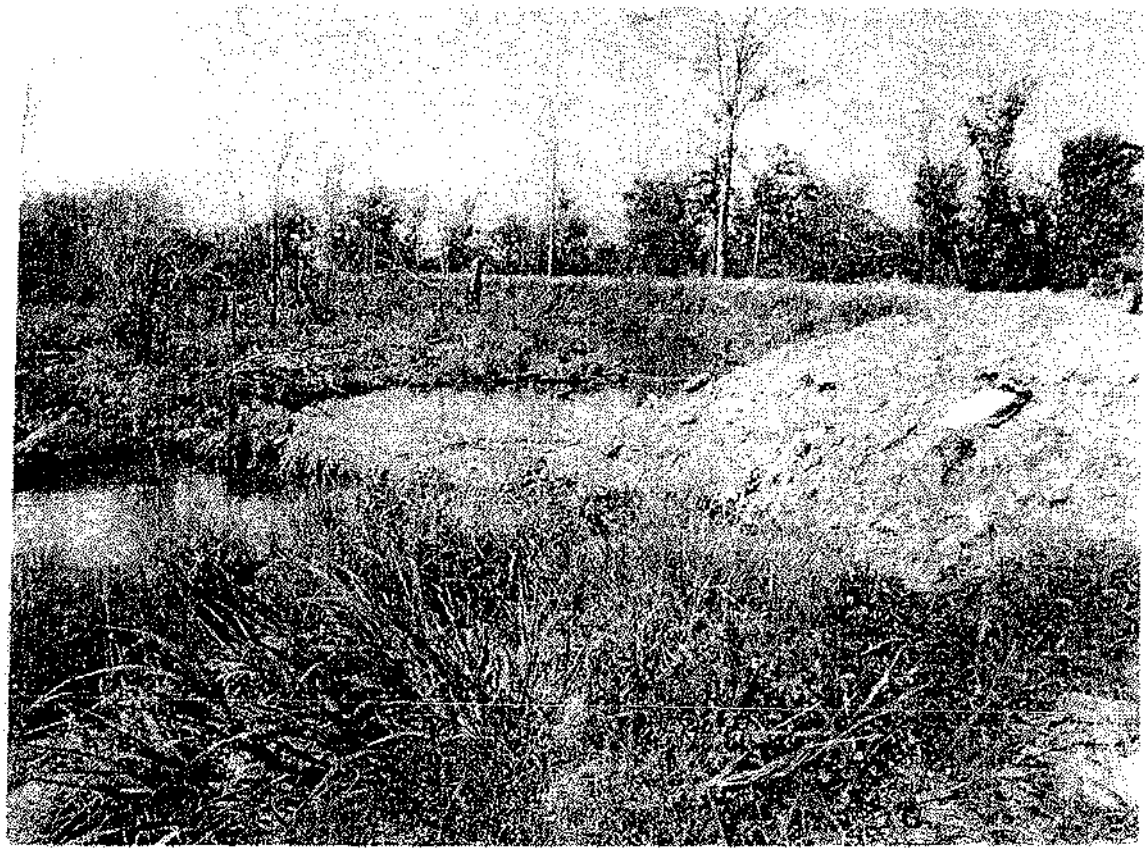
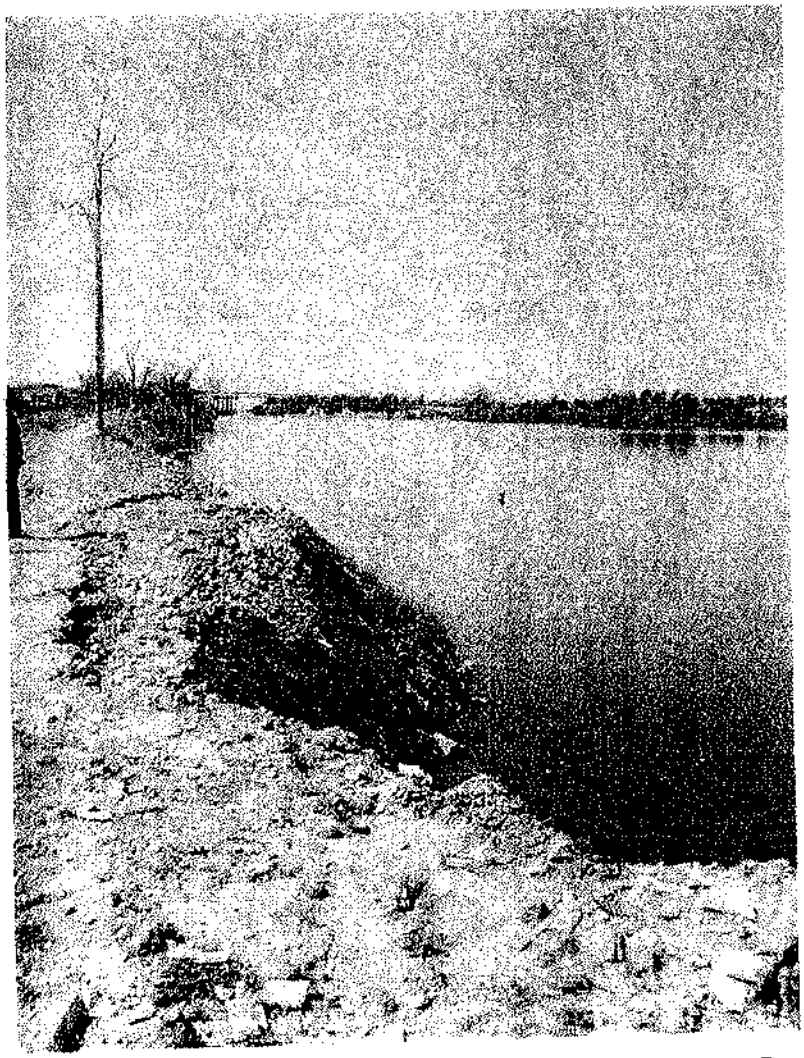
3



4

5

6



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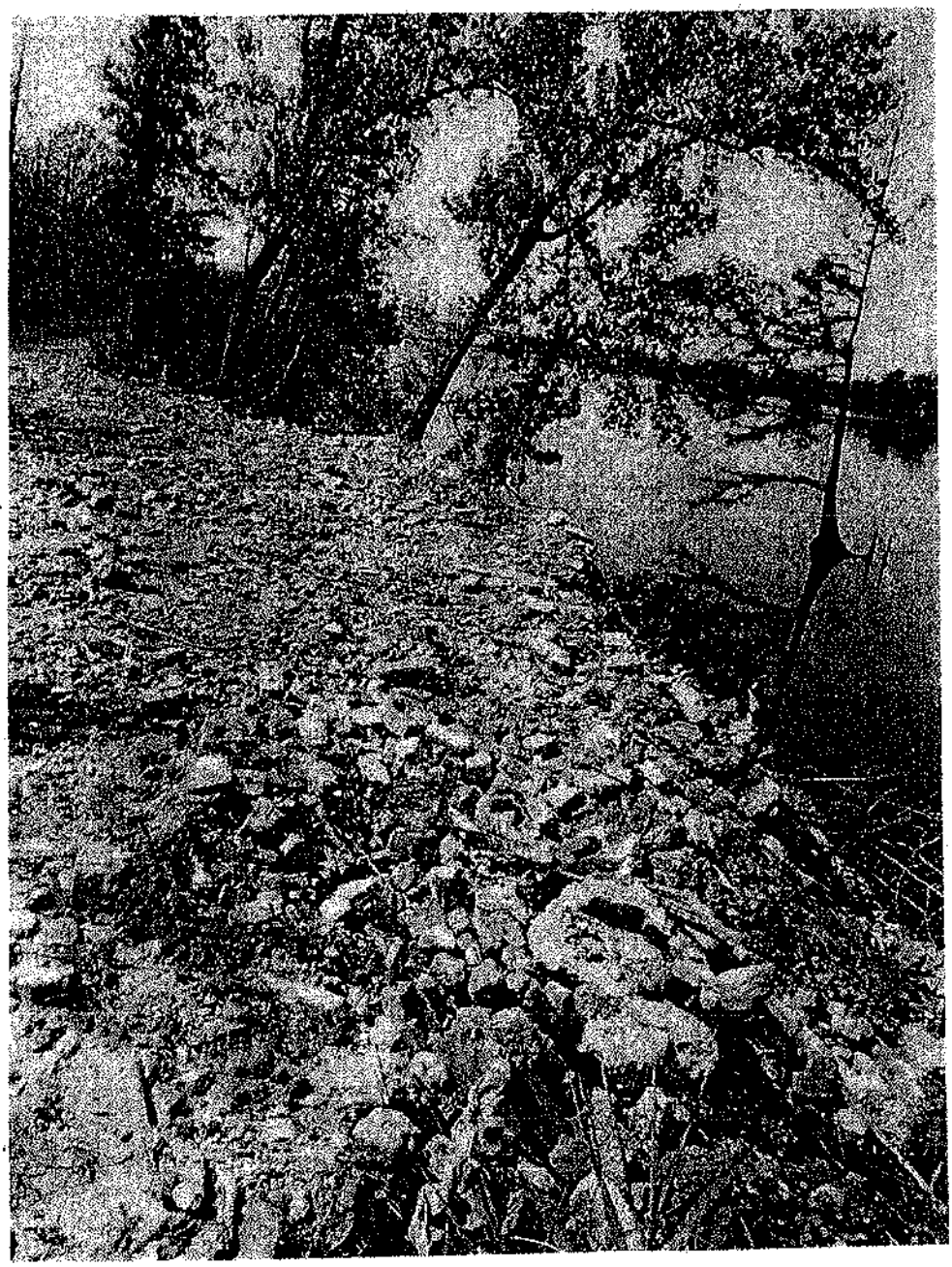


8

Exhibit 34

Complainant's Ex. 34

CESWG-PE-RC 10 September 2009

MEMORANDUM FOR FILE

SUBJECT: File Number SWG-2007-01461

On 10 September 2009 at 1034 hours, a meeting was held at the Corps offices with Mr. Sonny Stevenson, Mr. John Davidson, and Ms. Kristin Shivers. The 3 September 2009 site visit was discussed. Mr. Davidson stated that the fill in the northwest corner of the levee was a problem, as well as the truck turnaround. Mr. Stevenson stated he needed a turnaround to get access into the "proposed borrow pit area". Mr. Davidson asked what borrow pit he was referring to. He replied the borrow pit was for the levee. Mr. Davidson clarified that borrow pit doesn't authorize fill into wetlands, and that the preferred method of resolution would be to remove the material back up to the levee area. Mr. Stevenson stated he tried to "go by the flags", but that he would remove the material. Mr. Davidson stated that would be the easiest solution, considering Mr. Stevenson has an application being evaluated.

Mr. Stevenson then asked if he could construct a turnaround. Ms. Shivers suggested he apply for one. Mr. Davidson clarified that Mr. Stevenson should remove the material, then apply to reconstruct it with set dimensions. Mr. Stevenson stated "that's going to be hard."
Mr. Davidson mentioned that it is unlikely Mr. Stevenson would want to be a repeat violator.
Mr. Stevenson replied "You're mistaken. I've never had a violation on me personally." He went on to state that previous violations were given to ACR, LP; of which he stated he owned 25% of the company. Mr. Davidson again asked if he would be willing to remove the material. Mr. Stevenson stated that he would, but that "[he] wishes [he] could keep it though."
Mr. Davidson suggested he apply for the fill to be authorized. Mr. Stevenson again stated he never received a violation in his name. He further emphasized that ACR, LP, a corporation, owns the land – not him. "[These] projects are all corporations, but I was part owner [of them]."

Kristin Shivers
Regulatory Specialist

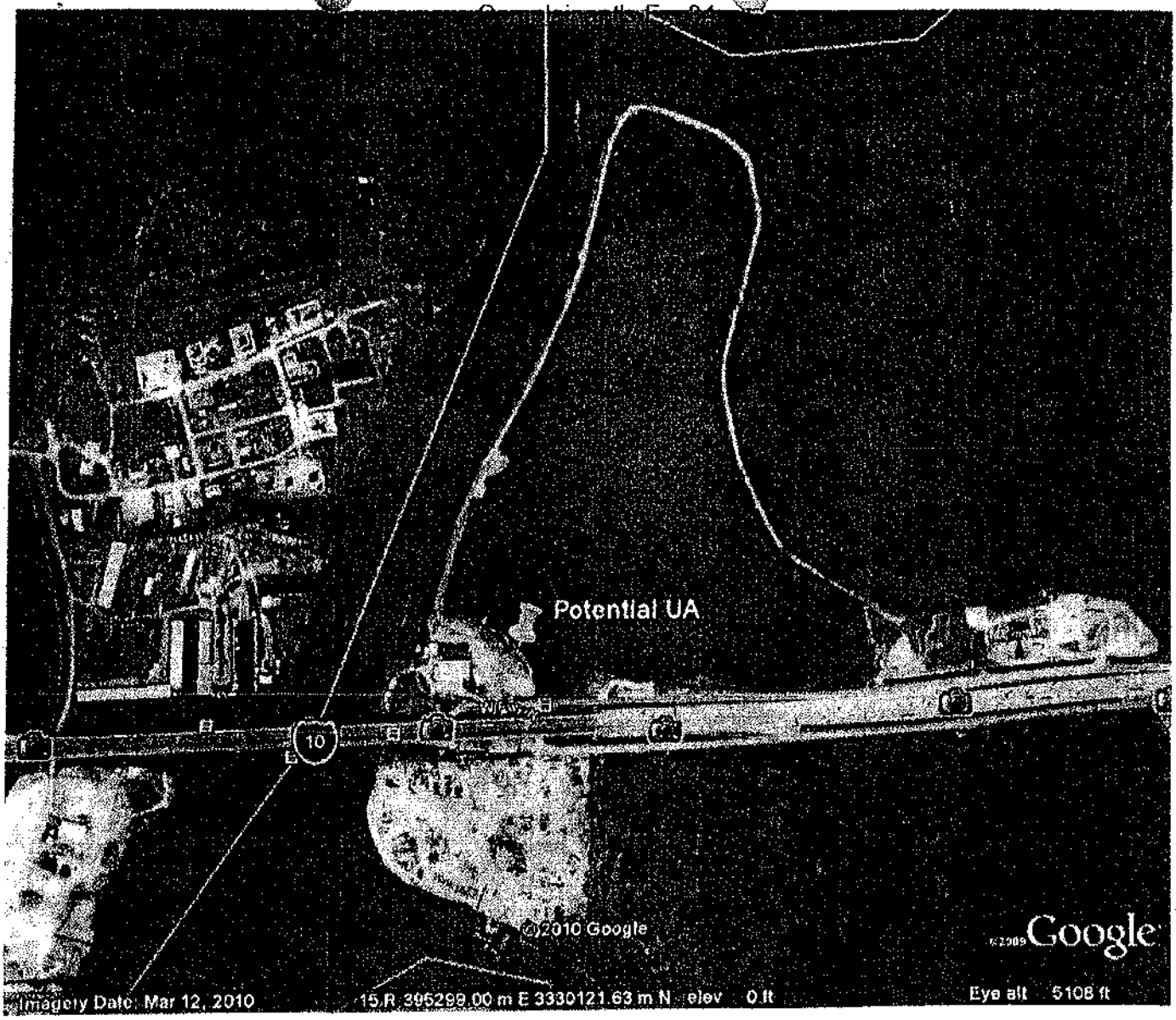

Potential UA
10
©2010 Google
©2009 Google
Imagery Date: Mar 12, 2010
15 R 395299.00 m E 3330121.63 m N elev 0 ft
Eye alt 5108 ft

Exhibit 35

CESWG-PE-RC 14 July 2010

MEMORANDUM FOR FILE

SUBJECT: File Number SWG-2007-01461

On 6 July 2010 at 1345 hours, a unauthorized activity was anonymously reported, alleging that Mr. Stevenson was filling wetlands with trash to purportedly "repair" the levee, and that the levee was supposedly taller than an adjacent 22-foot tall building.

On 14 July 2010 at 0900 hours, a call was placed to Mr. Stevenson in order to arrange a site visit to follow up on previous concerns, as well as the new report. The site visit was scheduled for 22 July 2010. At this time, Mr. Stevenson also mentioned a "stop work order" had been issued to him by Orange County.

Kristin Shivers
Regulatory Specialist

CESWG-PE-RC 27 July 2010

MEMORANDUM FOR THE FILE

SUBJECT: **SWG-2007-01461;** Henry "Sonny" Stevenson, unauthorized discharge of fill material into wetlands adjacent to the Neches River, near Rose City, Orange County, Texas

1. On 9 August 2007, 22 July 2009, and 6 July 2010, reports were received concerning a discharge of fill material into wetlands. The subject wetlands are adjacent to the Neches River, a TNW, and are therefore jurisdictional. The site is located on the Neches River, near Interstate 10, near Rose City, Orange County, Texas. A previous site visit was conducted on 3 September 2009.

2. Documents Reviewed:

1) *Photographs:*	*1995 Infrared Aerial, 2006-2010 Google Earth Aerials*
2) *Site Photos*	*Corps-conducted site visit photographs*
3) *USGS Topographic Maps:*	*Beaumont East, Texas quad*
4) *National Wetland Inventory Map (NWI):*	*Beaumont East, Texas quad*
5) *FEMA Flood Insurance Rate Map (FIRM):*	*FIRM4805100125B*
6) *NRCS National Cooperative Soil Survey*	*Web Soil Survey*

3. On 22 July 2010, a site visit was conducted to investigate allegations of unauthorized discharges of fill material. Present during the site visit were Mr. Henry "Sonny" Stevenson, and Mr. John Davidson and Ms. Kristin Shivers of the Corps.

The western half of the site was observed from the levee, starting in the southwest corner nearest the highway. It was noted that a large amount of fill had been piled in the southwest corner, beyond where the wetland boundary line (taken from a previous delineation, D-19144) was estimated to be at the time. Mr. Davidson was able to use GPS equipment to collect data and create a line at the edge of the fill. This line can be seen on the attached Page 1. It should be noted that the line comes abruptly in towards the property driveway because at that point, Mr. Davidson determined it to be unsafe to continue walking along the edge of the fill due to the steepness of the slope, the existence of trees, and the standing water in the area. The pile of material can be seen in the photos on Page 2. When asked about the material, Mr. Stevenson stated "All of this was here before. I got pictures. I just built it up. All of this was here." Using a combination of the line data collected by Mr. Davidson, aerial photography, and boundary lines from D-19144, the approximate area of fill was estimated to be 0.78 acre.

The next area of fill noted was approximately 600 feet further north along the levee. This area of fill had been noted in the previous site visit on 3 September 2009. Mr. Stevenson identified the area as a truck turnaround. This truck turnaround had been discussed in prior meetings with Mr. Stevenson as an area of concern, and it had been suggested to him that he apply for a Department of the Army permit to construct it. As of the date of this memo, no permit application has been received. Comparison photos of the area from the 2009 site visit can be seen on Page 4. Photographs on Pages 5 through 8 show the condition and make-up of the fill material. The fill material contained various debris: pipes, bricks, road demolition material, ply

wood, and various other materials. As with the southwest corner, Mr. Davidson was able to walk the edge of the pile of fill with GPS equipment to create a line, seen as the red line on the photo on Page 3. It should be noted that the top portion of the red line cuts off abruptly. It was thought that the GPS equipment lost satellite signal, and then later resumed. Using a combination of the line data collected by Mr. Davidson, aerial photography, and boundary lines from D-19144, the approximate area of fill was estimated to be 0.48 acre. Altogether, the southwest corner and the turnaround are estimated to be 1.26 acres in unauthorized fill.

Approximately 1,900 feet further north along the levee, the area of fill in the northwest corner was still present. This area, along with three other areas of concern along the northern end of the levee, can be seen on Page 9. Although vegetation had grown over in the area since the previous site visit, fill was still present at this location. A data point was also taken right next to the fill. The data collected at this location met the three wetland criteria (hydrology, hydrophytic vegetation, and hydric soil), as per the the Atlantic and Gulf Coast Regional Supplement to the 1987 Corps Wetland Delination Manual. Please see attached data sheet. At this time, Mr. Stevenson, after asking why a data point was being taken at this location, he stated "you don't have to test there! That's fill. I put it there!" Pages 10 through 13 show comparison photos of the area from the 2009 site visit. Pages 14 and 15 show the other three areas of concern regarding a discharge of fill material. Altogether, these other areas of concern are estimated to be approximately 0.10 acre, calculated from aerial photography.

While returning along the west side of the levee, Ms. Shivers asked Mr. Stevenson when was the last time material had been placed along the top of the levee. Mr. Stevenson stated that material had been placed as recently as a month ago. When asked which of Mr. Stevenson's corporations obtained the permit to repair the levee, he stated that it was the Parkwood Land Company. Also adding, "I bought out Parkwood. I'm the CEO."

Pages 17 through 22 of the attached photographs show a series of aerial photographs of the area prior to the levee being built to after. The top photograph shows the area as it was, and in the bottom photograph, the 2006 wetland boundary line has been added for comparison.

4. The subject wetlands are adjacent to the Neches River, a TNW, and are therefore jurisdictional. Any discharge of dredged or fill material would require a Department of the Army permit. Because an unauthorized discharge of fill material into this water has been substantiated, **a violation of Section of 404 of the Clean Water Act has been confirmed.**

Kristin Shivers
Regulatory Specialist

WETLAND DETERMINATION DATA FORM – Atlantic and Gulf Coastal Plain Region

Project/Site: SWG-2007-01461 City/County: Rose City, Orange Sampling Date: 7/22/10

Applicant/Owner: Sonny Stevenson State: Texas Sampling Point: 1

Investigator(s): J. Davidson, K. Shivers Section, Township, Range: N/A

Landform (hillslope, terrace, etc.): levee slope Local relief (concave, convex, none): _____ Slope (%): _____

Subregion (LRR or MLRA): LRRT Lat: 30.1033 Long: -94.0858 Datum: NAD83

Soil Map Unit Name: Fausse Clay NWI classification: PFO

Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☒ No ☐ (If no, explain in Remarks.)

Are Vegetation Yes, Soil Yes, or Hydrology Yes significantly disturbed? Are "Normal Circumstances" present? Yes ☐ No ☒

Are Vegetation No, Soil No, or Hydrology No naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ☒	No ☐	**Is the Sampled Area within a Wetland?** Yes ☒ No ☐
Hydric Soil Present?	Yes ☒	No ☐	
Wetland Hydrology Present?	Yes ☒	No ☐	

Remarks:
Sample point taken at the toe of a levee, near an area of fill, and in water.

Data point meets all three wetland criteria: hydrology, hydrophytic vegetation, and hydric soil.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- ☒ Surface Water (A1)
- ☐ High Water Table (A2)
- ☒ Saturation (A3)
- ☐ Water Marks (B1)
- ☐ Sediment Deposits (B2)
- ☐ Drift Deposits (B3)
- ☐ Algal Mat or Crust (B4)
- ☐ Iron Deposits (B5)
- ☐ Inundation Visible on Aerial Imagery (B7)
- ☐ Water-Stained Leaves (B9)
- ☐ Aquatic Fauna (B13)
- ☐ Marl Deposits (B15) (LRR U)
- ☐ Hydrogen Sulfide Odor (C1)
- ☐ Oxidized Rhizospheres on Living Roots (C3)
- ☐ Presence of Reduced Iron (C4)
- ☐ Recent Iron Reduction in Tilled Soils (C6)
- ☐ Thin Muck Surface (C7)
- ☐ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ☐ Surface Soil Cracks (B6)
- ☐ Sparsely Vegetated Concave Surface (B8)
- ☐ Drainage Patterns (B10)
- ☐ Moss Trim Lines (B16)
- ☐ Dry-Season Water Table (C2)
- ☐ Crayfish Burrows (C8)
- ☐ Saturation Visible on Aerial Imagery (C9)
- ☐ Geomorphic Position (D2)
- ☐ Shallow Aquitard (D3)
- ☐ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present? Yes ☒ No ☐ Depth (inches): 3

Water Table Present? Yes ☐ No ☐ Depth (inches): _____

Saturation Present? (includes capillary fringe) Yes ☒ No ☐ Depth (inches): 3

Wetland Hydrology Present? Yes ☒ No ☐

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

(Primary) Saturation and surface water indicators have been met.

VEGETATION – Use scientific names of plants. Sampling Point: 1

Tree Stratum (Plot size:)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	= Total Cover		
Sapling Stratum (Plot size:)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	= Total Cover		
Shrub Stratum (Plot size:)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	= Total Cover		
Herb Stratum (Plot size:)			
1. Salvinia minima	80%	Yes	OBL*
2. Eclipta prostrata	15%	No	FACW
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	95 = Total Cover		
Woody Vine Stratum (Plot size:)			
1.			
2.			
3.			
4.			
5.			
	= Total Cover		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)

Total Number of Dominant Species Across All Strata: 1 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100 (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species	x 1 =
FACW species	x 2 =
FAC species	x 3 =
FACU species	x 4 =
UPL species	x 5 =
Column Totals: (A)	(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- [x] Dominance Test is >50%
- [ ] Prevalence Index is ≤3.0[1]
- [ ] Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and less than 3 in. (7.6 cm) DBH.

Shrub – Woody plants, excluding woody vines, approximately 3 to 20 ft (1 to 6 m) in height.

Herb – All herbaceous (non-woody) plants, including herbaceous vines, regardless of size. Includes woody plants, except woody vines, less than approximately 3 ft (1 m) in height.

Woody vine – All woody vines, regardless of height.

Hydrophytic Vegetation Present? Yes [x] No [ ]

Remarks: (If observed, list morphological adaptations below).

*Salvinia minima does not have an indicator for Region 6. Adjacent region (Region 2) indicator status was used. Hydrophytic vegetation criteria has been met.

SOIL

Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ☐ Histosol (A1)
- ☐ Histic Epipedon (A2)
- ☐ Black Histic (A3)
- ☐ Hydrogen Sulfide (A4)
- ☐ Stratified Layers (A5)
- ☐ Organic Bodies (A6) **(LRR P, T, U)**
- ☐ 5 cm Mucky Mineral (A7) **(LRR P, T, U)**
- ☐ Muck Presence (A8) **(LRR U)**
- ☐ 1 cm Muck (A9) **(LRR P, T)**
- ☐ Depleted Below Dark Surface (A11)
- ☐ Thick Dark Surface (A12)
- ☐ Coast Prairie Redox (A16) **(MLRA 150A)**
- ☐ Sandy Mucky Mineral (S1) **(LRR O, S)**
- ☐ Sandy Gleyed Matrix (S4)
- ☐ Sandy Redox (S5)
- ☐ Stripped Matrix (S6)
- ☐ Dark Surface (S7) **(LRR P, S, T, U)**
- ☐ Polyvalue Below Surface (S8) **(LRR S, T, U)**
- ☐ Thin Dark Surface (S9) **(LRR S, T, U)**
- ☐ Loamy Mucky Mineral (F1) **(LRR O)**
- ☐ Loamy Gleyed Matrix (F2)
- ☐ Depleted Matrix (F3)
- ☐ Redox Dark Surface (F6)
- ☐ Depleted Dark Surface (F7)
- ☐ Redox Depressions (F8)
- ☐ Marl (F10) **(LRR U)**
- ☐ Depleted Ochric (F11) **(MLRA 151)**
- ☐ Iron-Manganese Masses (F12) **(LRR O, P, T)**
- ☐ Umbric Surface (F13) **(LRR P, T, U)**
- ☐ Delta Ochric (F17) **(MLRA 151)**
- ☐ Reduced Vertic (F18) **(MLRA 150A, 150B)**
- ☐ Piedmont Floodplain Soils (F19) **(MLRA 149A)**
- ☐ Anomalous Bright Loamy Soils (F20) **(MLRA 149A, 153C, 153D)**

Indicators for Problematic Hydric Soils[3]:

- ☐ 1 cm Muck (A9) **(LRR O)**
- ☐ 2 cm Muck (A10) **(LRR S)**
- ☐ Reduced Vertic (F18) **(outside MLRA 150A,B)**
- ☐ Piedmont Floodplain Soils (F19) **(LRR P, S, T)**
- ☐ Anomalous Bright Loamy Soils (F20) **(MLRA 153B)**
- ☐ Red Parent Material (TF2)
- ☐ Very Shallow Dark Surface (TF12) **(LRR T, U)**
- ☒ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes ☒ No ☐

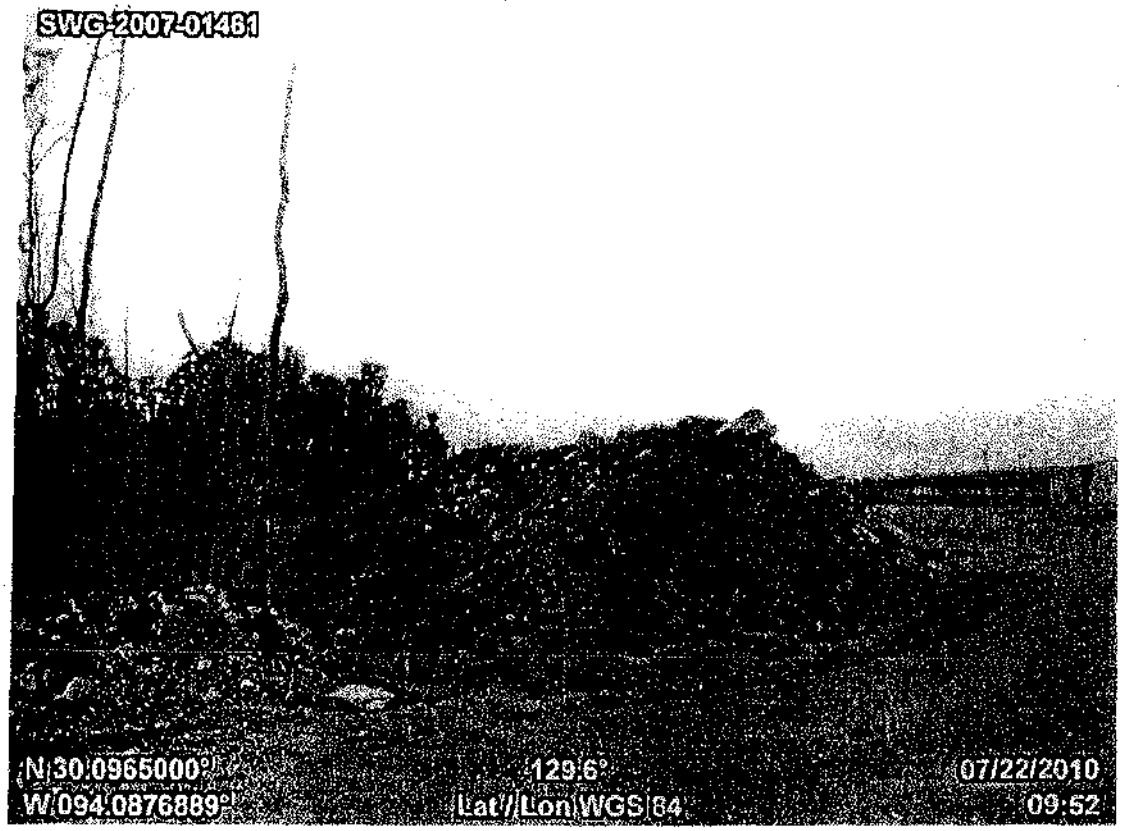
Remarks:

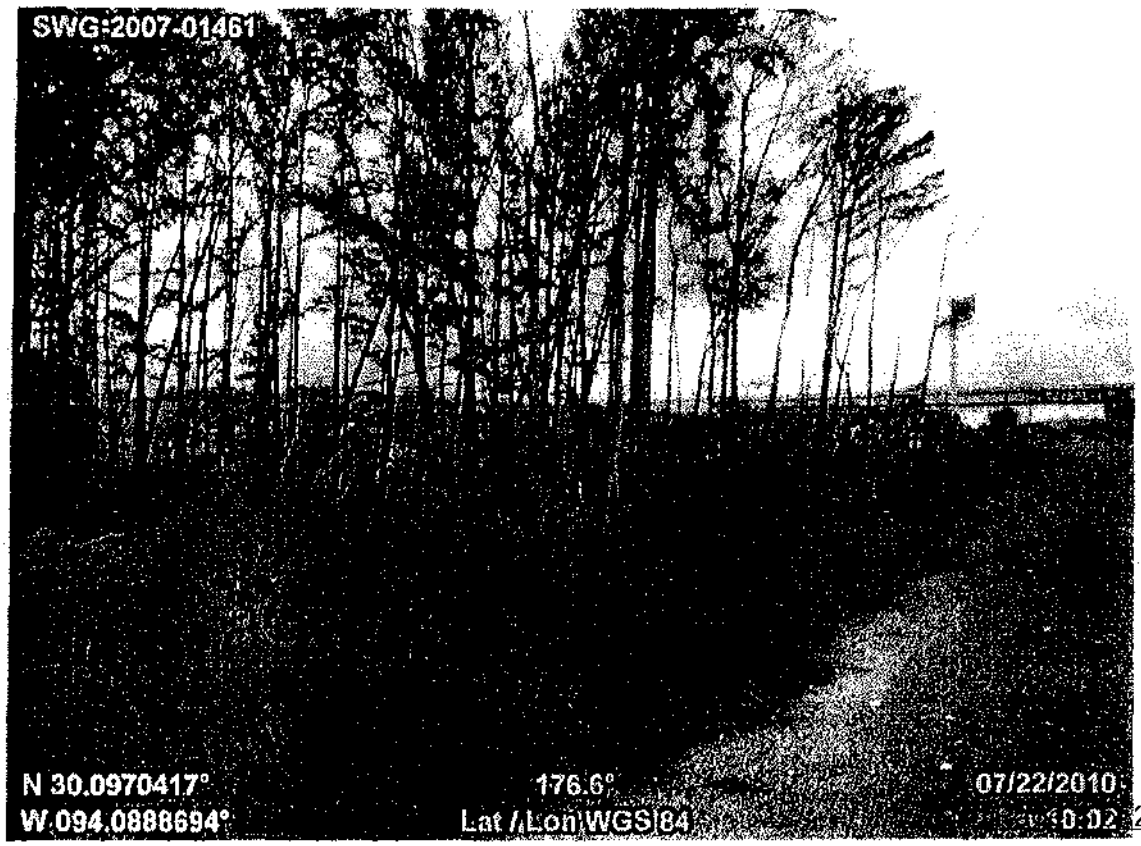
Per the 1987 Corps of Engineers Wetland Delineation Manual Step 20(c)(2), hydric soils can assumed to be present when: (a) all dominant plant species have an indicator status of OBL and/or (b) all dominant plant species have an indicator status of OBL and/or FACW, where at least one dominant species is OBL. The Atlantic and Gulf Coastal Plains Regional Supplement to the 1987 manual does not preclude the use of this method.

Southwest Corner

Yellow Line: 2006 Delineation boundary (D-19279)
Green Line: Best fit line for 2006 boundary
Red Line: 22 July 2010 fill line. Line curves in because remainder of area was unsafe to traverse.
Blue Polygon: Estimated area of fill (0.78 acres)

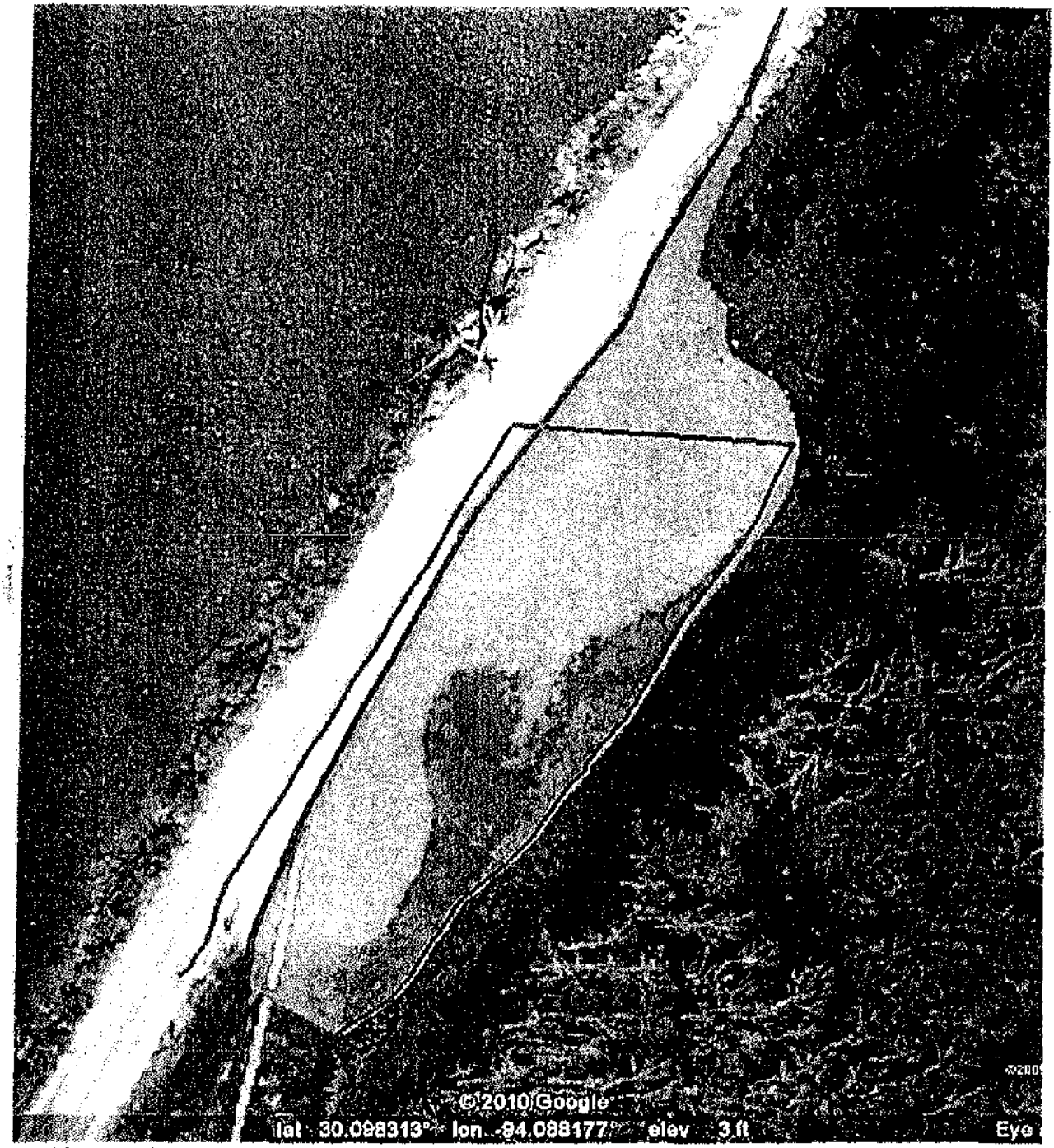
Complainant's Ex. 35





27

Turnaround



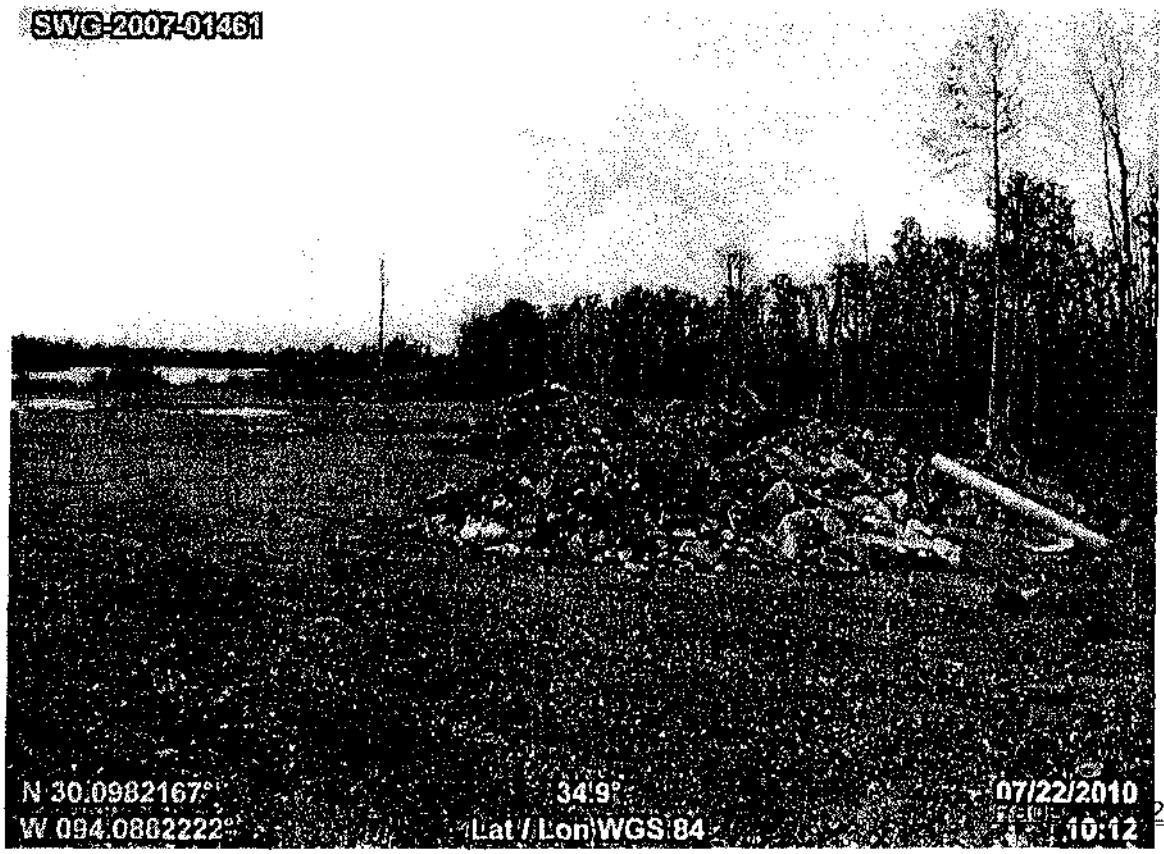
Yellow Line: 2006 Delineation boundary (D-19279)
Green Line: Best fit line for 2006 boundary
Red Line: 22 July 2010 fill line. Line squares off at the north due to lost GPS satellite signal, then resumes.
Blue Polygon: Estimated area of fill (0.48 acres)

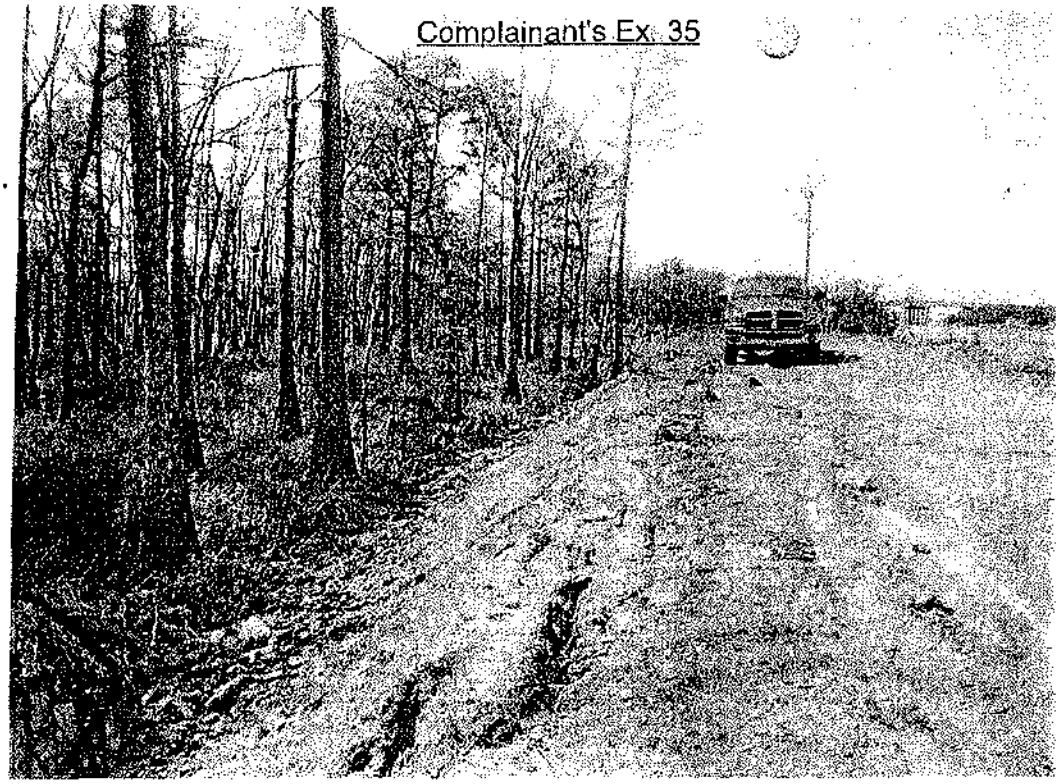
Complainant's Ex. 35

3 SEPT
2009

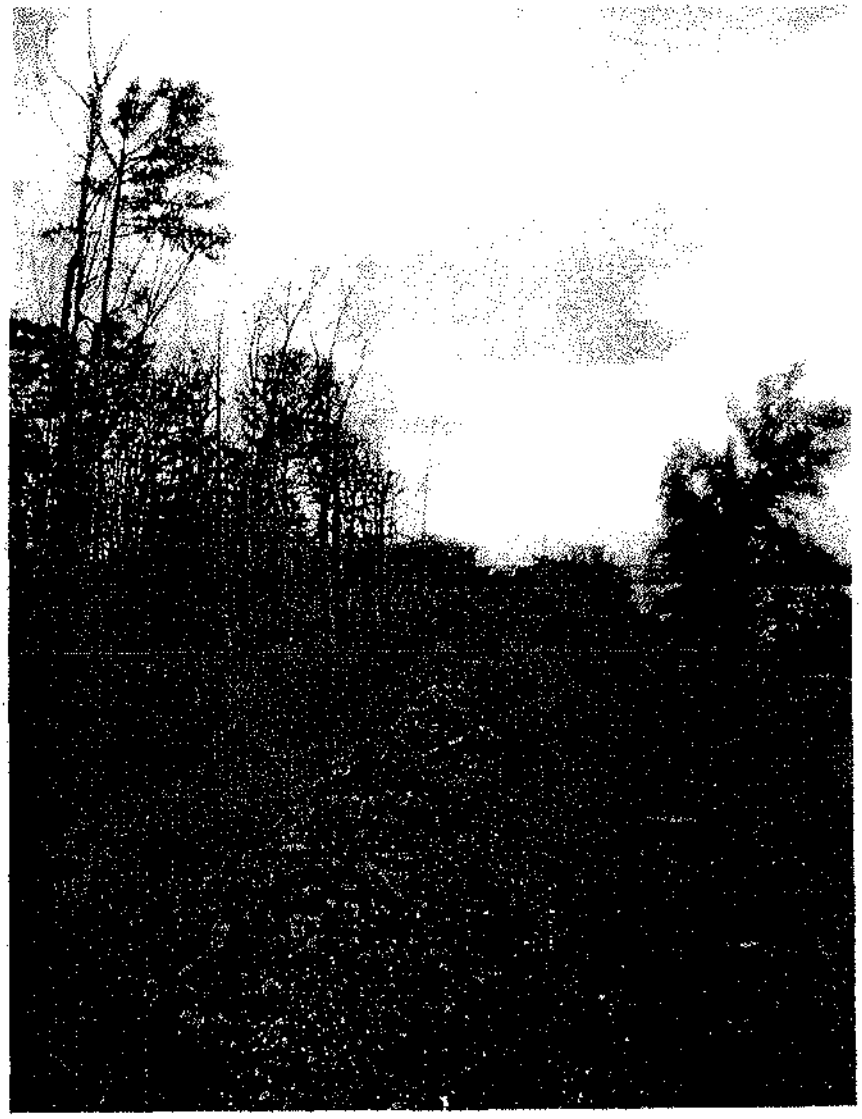
22 JUL
2010

Complainant's Ex. 35





3 SEPT 2009



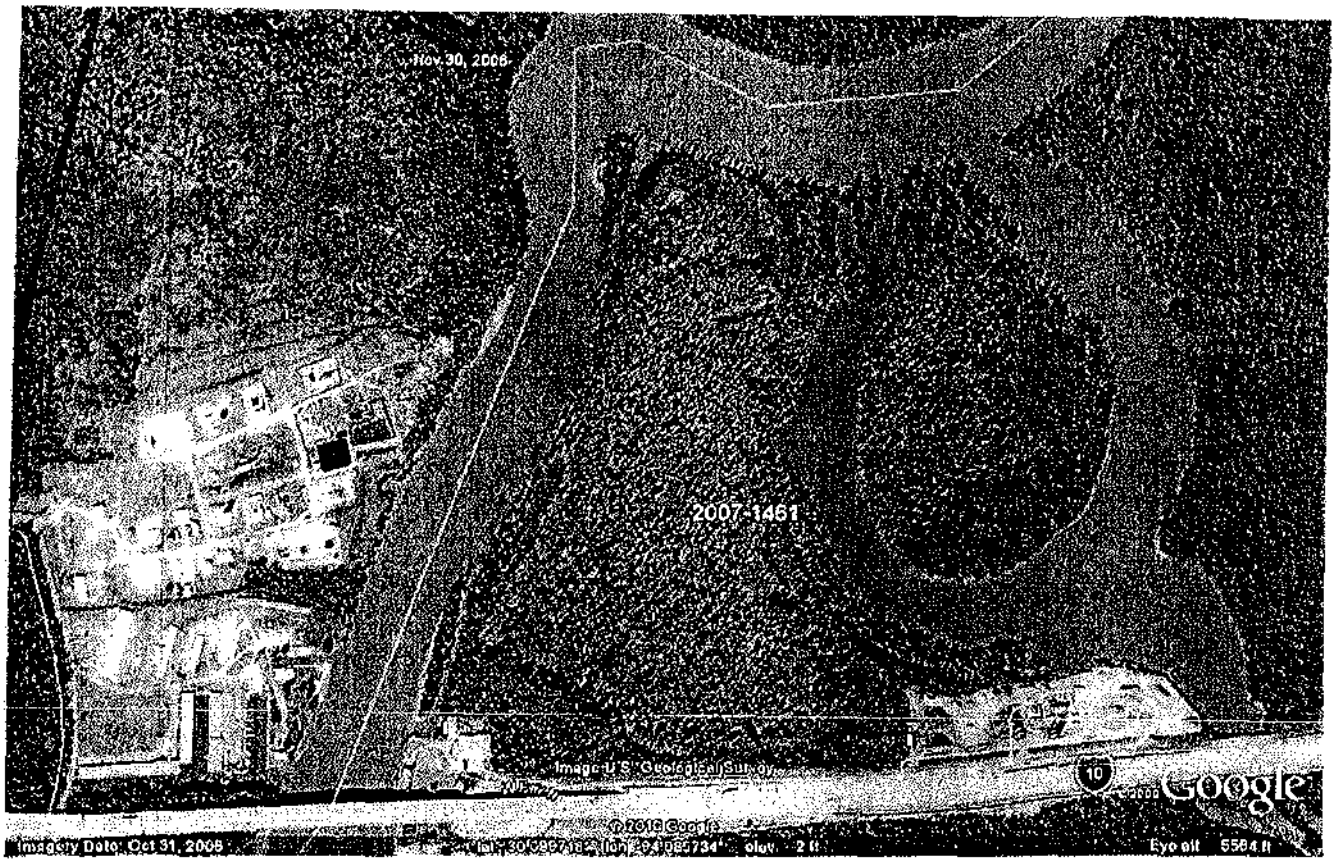
22 JULY 2010

Circa 2005

Complainant's Ex. 35

Circa 2007

Complainant's Ex. 35



2006


Sep 29, 2007
1980
2010
2007-1461
Image © 2010 DigitalGlobe
Image NOAA
© 2010 Google
Imagery Date: Sep 29, 2007
elev 2 ft
Eye alt 5386 ft
Google

2007


Sep 29, 2007
2007-1461
Image © 2010 DigitalGlobe
Image NOAA
© 2010 Google
Imagery Date: Sep 29, 2007
elev 2 ft
Eye alt 5386 ft
Google

20

Complainant's Ex. 35
Suspected Areas of Fill

Yellow Line: 2006 Delineation boundary (D-19279)
Green Line: Best fit line for 2006 boundary
Red Line: Unintentionally recorded data
Blue Polygons: Estimated areas of fill

Area 1: 0.02 acre
Area 2: 0.01 acre
Area 3: 0.03 acre
Area 4: 0.02 acre

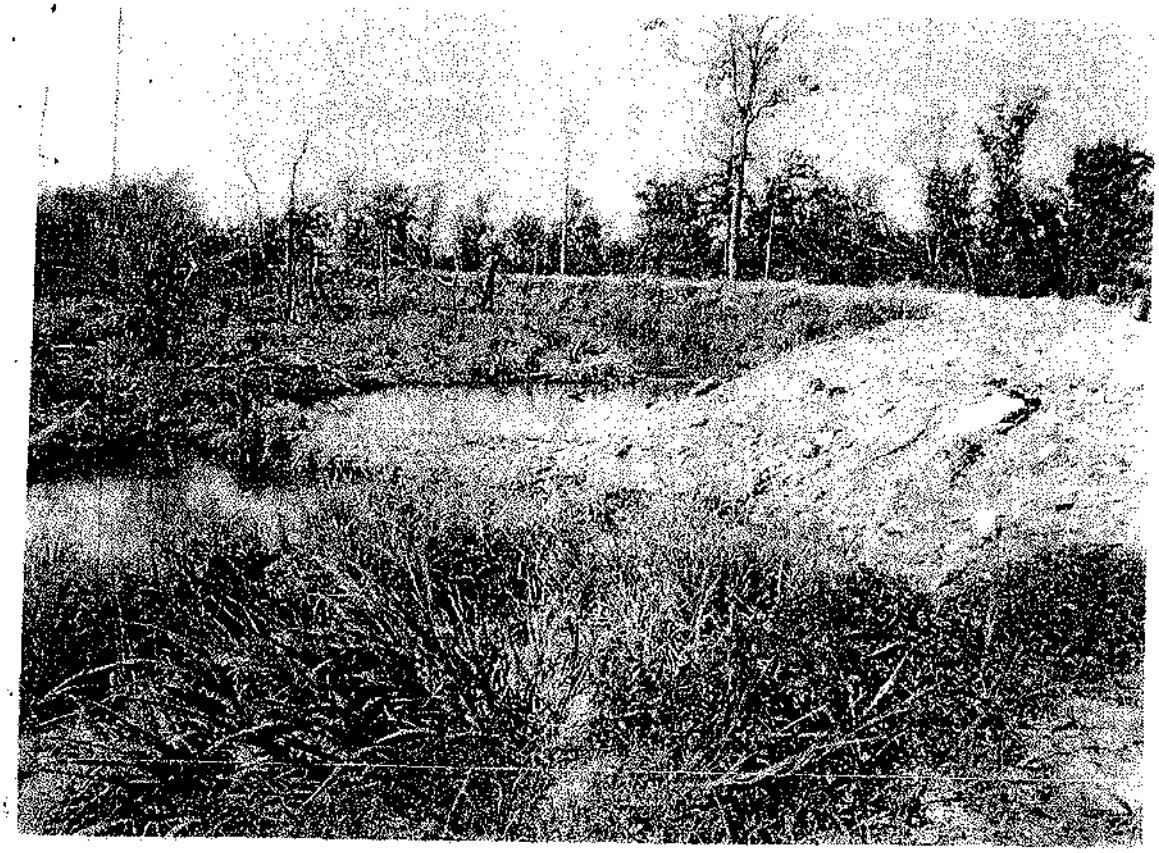
3 SEPT 2009

22 JULY 2010

3 SEPT 2009

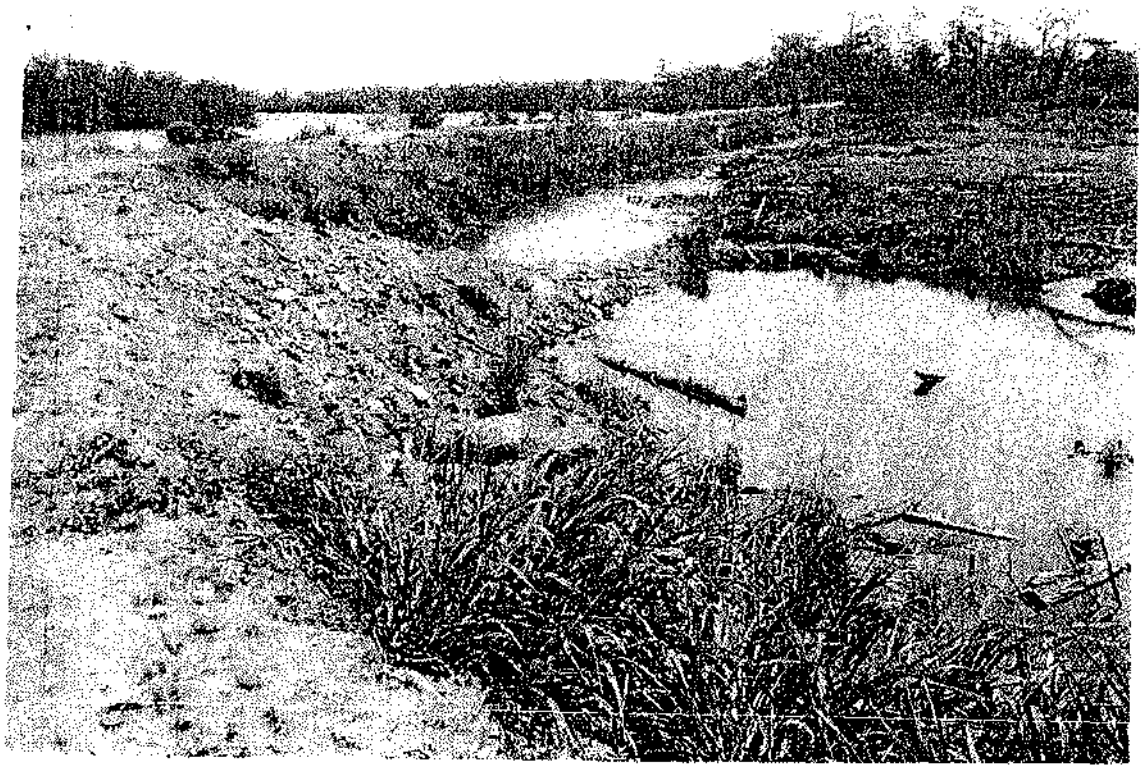
22 JULY 2010

11



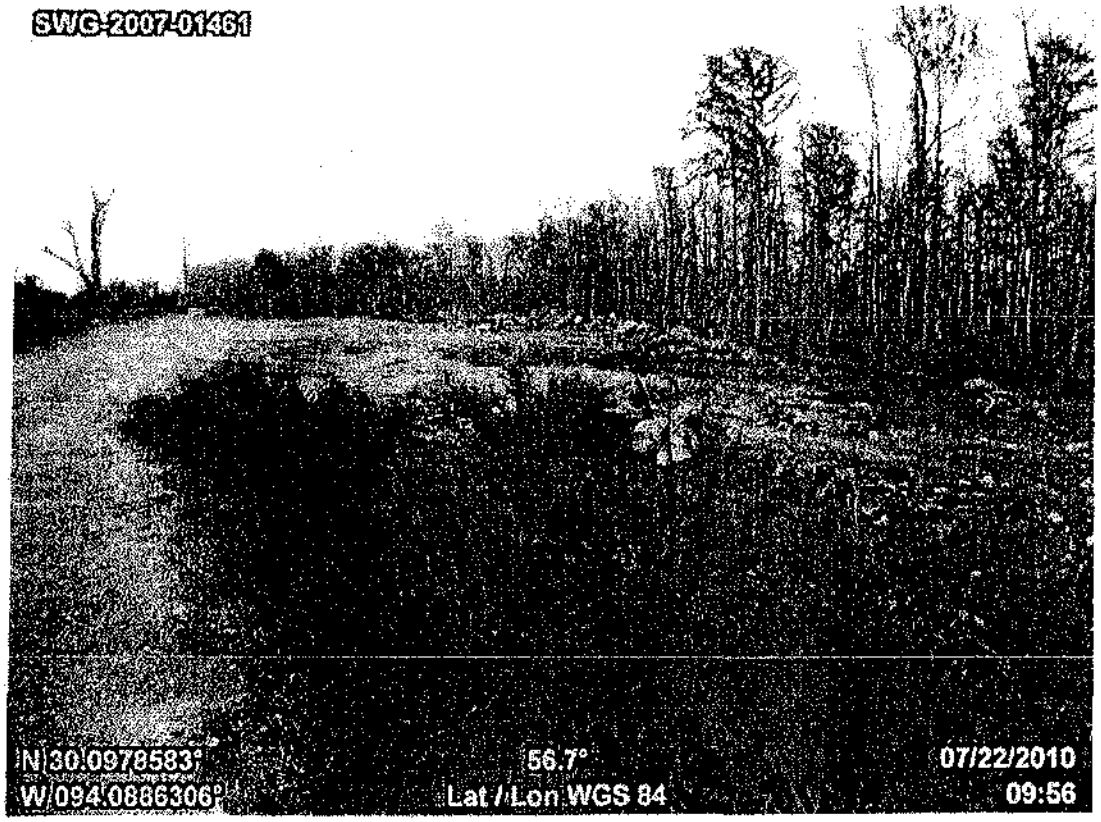
3 SEPT 2009

22 JULY 2010



3 SEPT 2009

22 JULY 2010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56.7°
Lat / Lon WGS 84
07/22/2010
09:56


SWG-2007-01461
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W 094.0880500°
37.6°
Lat / Lon WGS 84
07/22/2010
10:13


SWG-2007-01461
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49.1°
Lat/Lon WGS 84
07/22/2010
10:14


SWG-2007-01461
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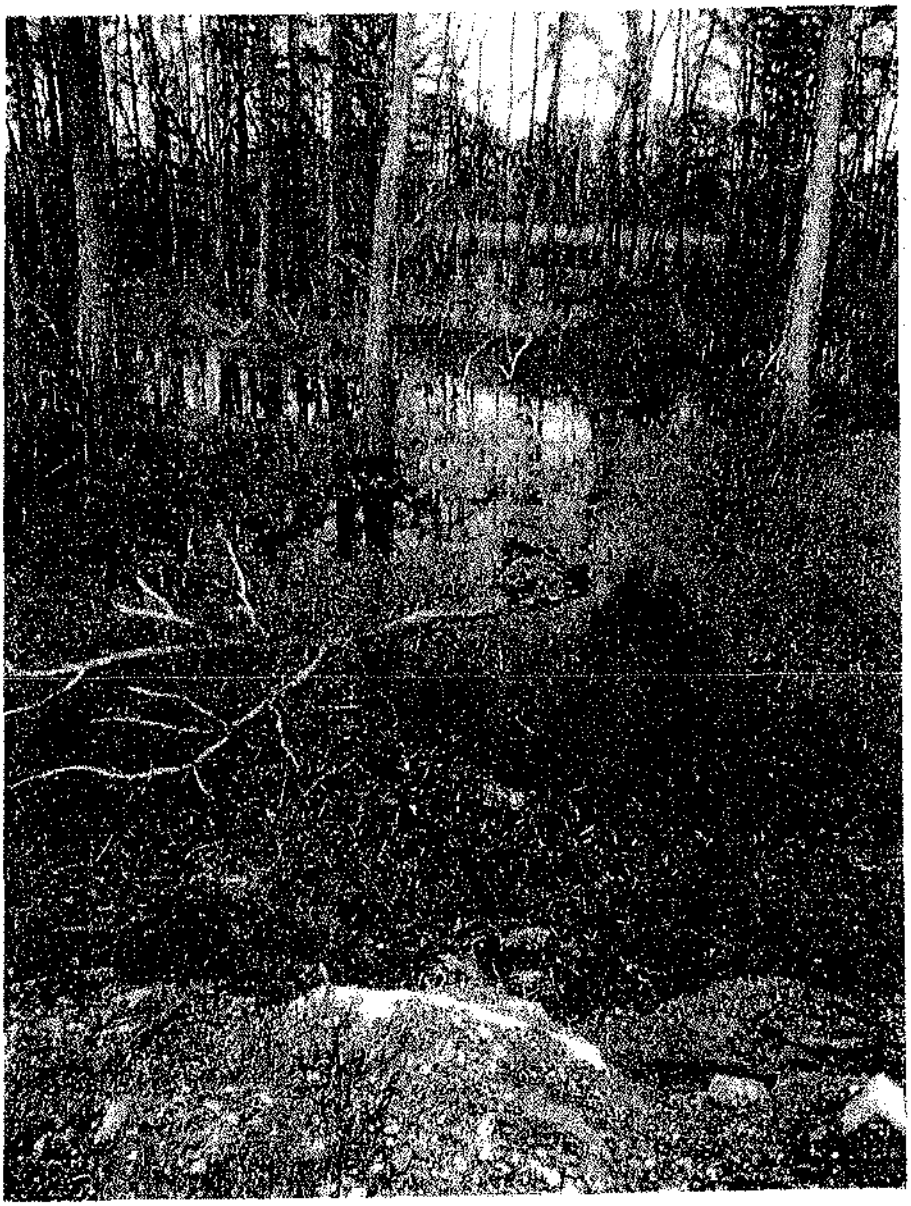
201.5°
Lat/Lon WGS 84
07/22/2010
10:13

Complainant's Ex. 35




SWG-2007-01461
N 30.1032000°
W 094.0848444°
196.8°
Lat / Lon WGS 84
07/22/2010
10:39


SWG-2007-01461
N 30.1032306°
W 094.0848889°
156.3°
Lat / Lon WGS 84
07/22/2010
10:39

14


SWG-2007-01461
N 30.1033444°
W 094.0851639°
146.9°
Lat / Lon WGS 84
07/22/2010
10:38


SWG-2007-01461
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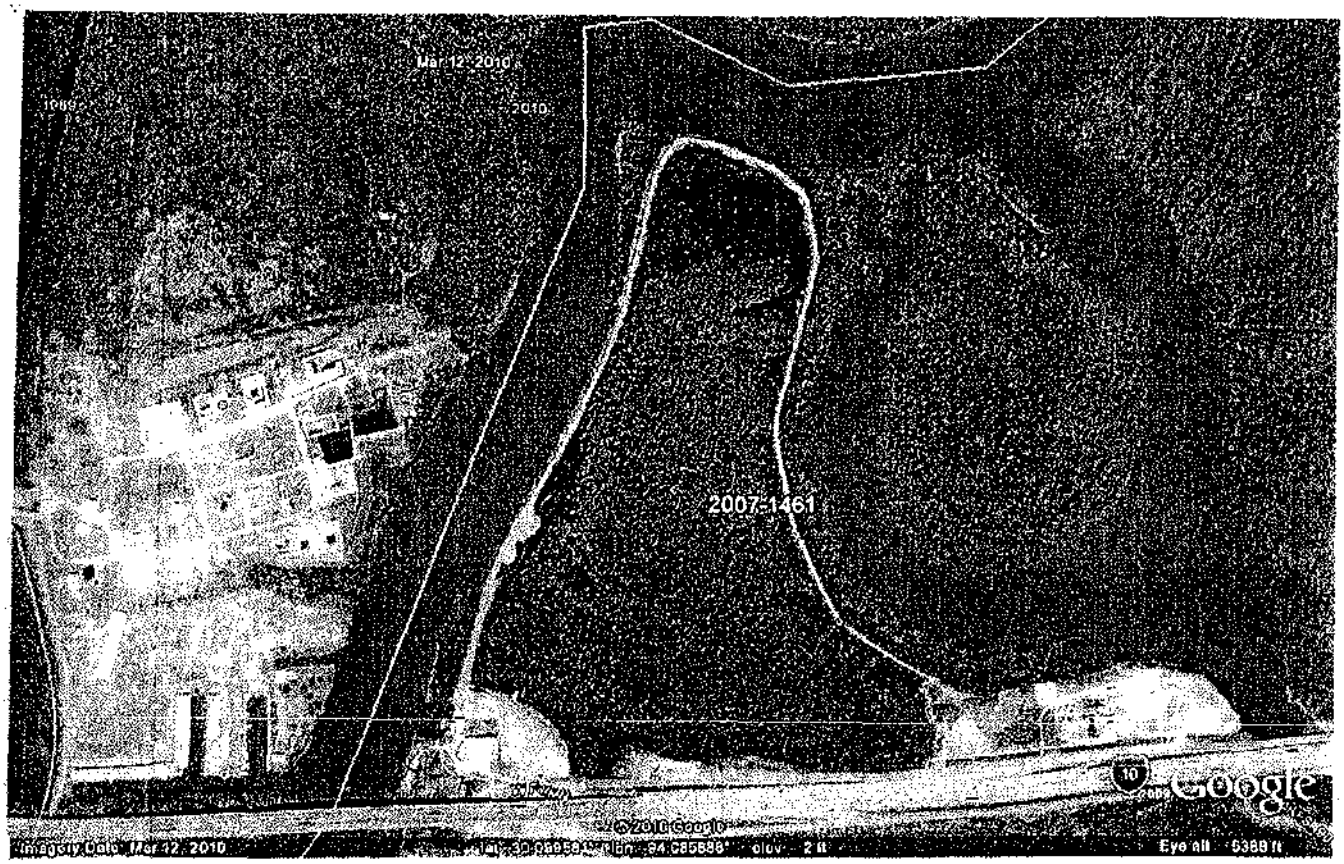
164.9°
Lat / Lon WGS 84
07/22/2010
10:39

Complainant's Ex. 35



2010

Exhibit 36

CERTIFIED RETURN RECEIPT MAIL REQUESTED
7005 1820 0006 5877 0000

Complainant's Ex. 36

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

August 3, 2010

Compliance Section

SUBJECT: SWG-2007-01461; **Cease and Desist Order,** Unauthorized Discharge of Fill Material, Wetlands Adjacent to the Neches River, Orange County, Texas

Henry R. Stevenson, Jr.
Parkwood Land Company
2085 Galway Drive
Vidor, Texas 77662-2951

Dear Mr. Stevenson:

This concerns our investigation into the unauthorized discharge of fill material into wetlands adjacent to the Neches River. The site is located northeast of the Interstate Highway 10 and Neches River intersection, near Rose City, Orange County, Texas.

The Corps of Engineers has the authority to regulate certain work under provisions of Section 404 of the Clean Water Act (Section 404). Section 404 regulates the discharge of fill material into waters of the United States, including navigable waters. Based on our September 3, 2009 and July 22, 2010 site visits, we determined that fill material was discharged into approximately 1.25 acres of wetlands adjacent to the Neches River subject to Section 404. The work was performed without a Department of the Army permit and is in violation of Section 404 of the Clean Water Act. Therefore, I issue this **cease and desist order** to halt any further unauthorized activity in waters of the United States.

If further unauthorized work is performed after the receipt of this order, we must seek immediate legal action to halt such activities. You are requested to submit a letter of comments explaining why the work was performed without a valid DA permit. Further, please include the names, addresses, and telephone numbers of any/all environmental consultants and construction contractors performing work on the project. You may include any other information relating to this activity that you wish to furnish us.

If we do not receive a written response from you within 30 days after the receipt of this letter, we will proceed with appropriate action for resolution of the legal issues based on the information in our files. These options could include an order to restore the site, a referral to the Environmental Protection Agency for assessment of an administrative penalty, or a referral of the

SHIVERS/cp/3991
CESWG-PE-RC

case to the Department of Justice. If you have any questions, please reference case number **SWG-2007-01461** and contact Ms. Kristin Shivers at the letterhead address or by calling 409-766-3991.

DAVIDSON
PE-RC

Sincerely,

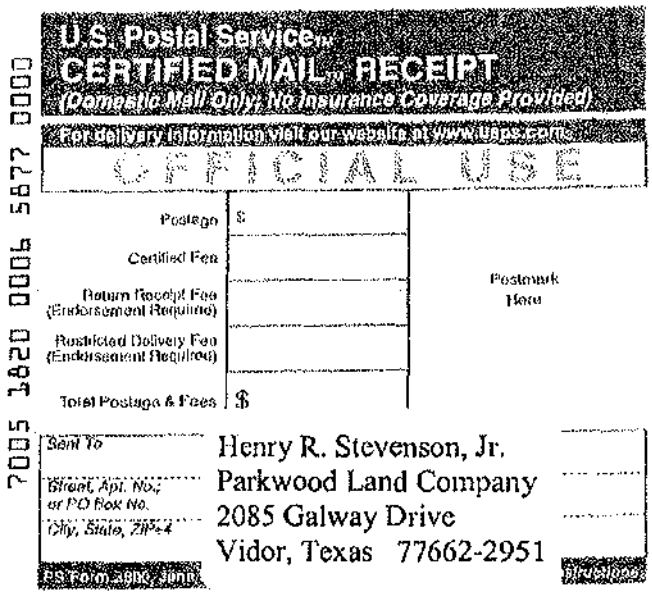
Kenny Jaynes
Chief, Compliance Section

JAYNES
PE-RC

Copy furnish:

Mr. Jim Herrington
USEPA, Region VI (6WQ-EM)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mr. Jeff Pinsky
CESWG-PE-RE



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
Henry R. Stevenson, Jr.
Parkwood Land Company
2085 Galway Drive
Vidor, Texas 77662-2951
PS Form 3800, June
See Reverse
7005 1820 0006 5877 0000

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Henry R. Stevenson, Jr.
Parkwood Land Company
2085 Galway Drive
Vidor, Texas 77662-2951

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0006 5877 0000

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Exhibit 37

Complainant's Ex. 37

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

August 23, 2010

Compliance Section

SUBJECT: SWG-2007-01461; Unauthorized Discharge of Fill Material, Wetlands Adjacent to the Neches River, Orange County, Texas

Henry R. Stevenson, Jr.
Parkwood Land Company
2085 Galway Drive
Vidor, Texas 77662-2951

Dear Mr. Stevenson:

This concerns our investigation into the unauthorized discharge of fill material into wetlands adjacent to the Neches River. The site is located northeast of the Interstate Highway 10 and Neches River intersection, near Rose City, Orange County, Texas.

On August 13, 2010, you requested copies of maps outlining areas of unauthorized discharge that we identified during our July 22, 2010 site visit. Enclosed are copies of those maps.

If you have any questions, please reference case number **SWG-2007-01461** and contact me at the letterhead address or by calling 409-766-3991.

Sincerely,

kds 8/23/10

Kristin Shivers
Regulatory Specialist

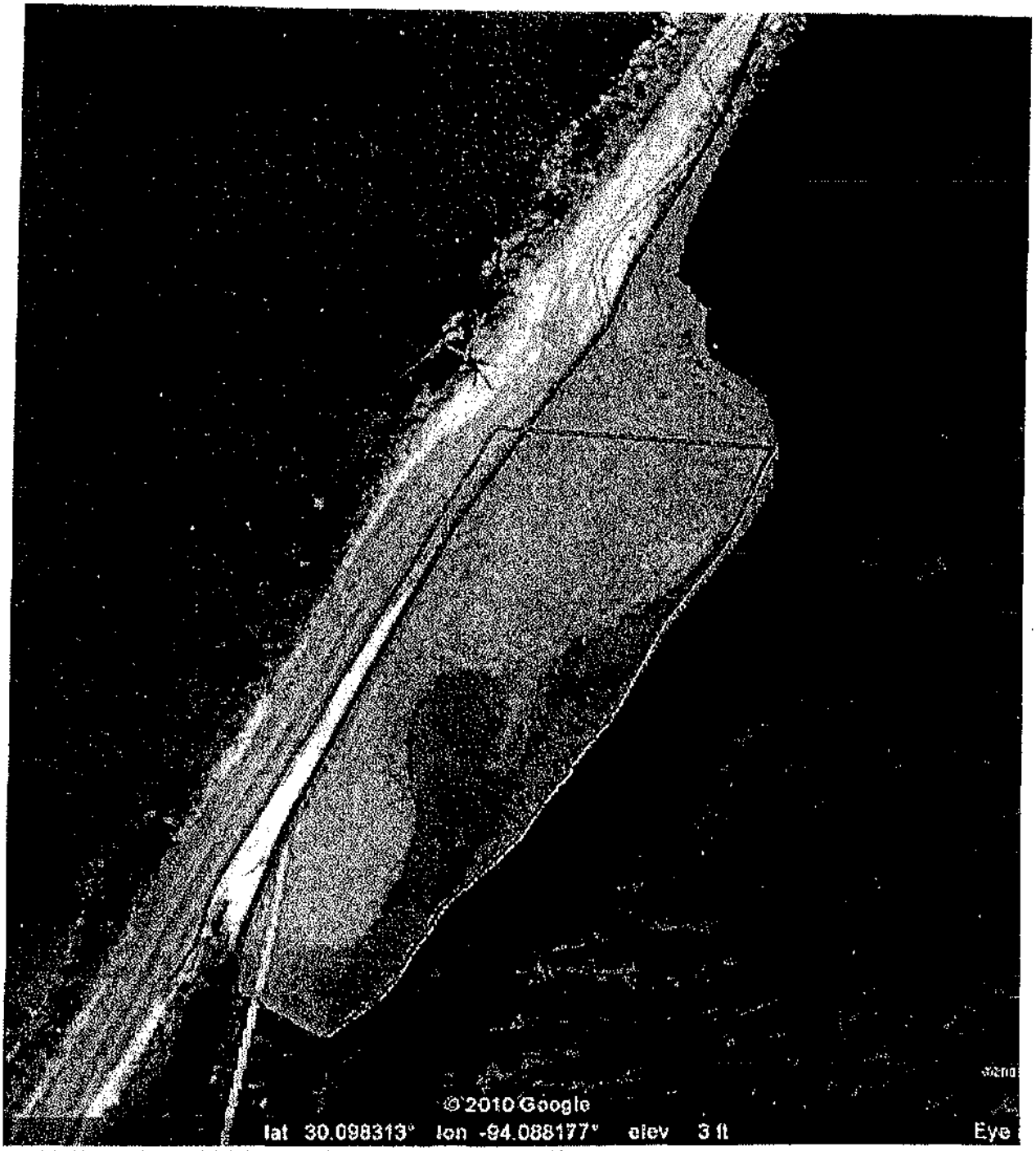
SHIVERS/cp~~3881~~ 3991
CESWG-PE-RC

Enclosures

Southwest Corner

Yellow Line: 2006 Delineation boundary (D-19279)
Green Line: Best fit line for 2006 boundary
Red Line: 22 July 2010 fill line. Line curves in because remainder of area was unsafe to traverse.
Blue Polygon: Estimated area of fill (0.78 acres)

Turnaround



Yellow Line: 2006 Delineation boundary (D-19279)
Green Line: Best fit line for 2006 boundary
Red Line: 22 July 2010 fill line. Line squares off at the north due to lost GPS satellite signal, then resumes.
Blue Polygon: Estimated area of fill (0.48 acres)

Date: September 1, 2010

SEP 07 2010

To: Mr. Kenny Jaynes
Dept. of the Army
Galveston District
Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: Parkwood Land Company

Dear Mr. Jaynes:

I received your letter of August 3, 2010, alleging unauthorized discharge of fill material into wetlands adjacent to the Neches River (SWG 2007-0146). Parkwood Land Company states any work done at this site, including fill construction are authorized by a letter and plans dated April 17, 2007, authorized by David Hoth and signed by Bruce H. Bennett, Leader, North Evaluation Unit. The letter was sent to James G. White, GTI Environmental, Inc. and was forwarded to Parkwood Land Company. It is evident that the Corps. and Parkwood Land Company have a discrepancy about the interpretation of this letter and the plans that were attached. Parkwood is honoring the 'cease and desist order'. GTI is no longer in business. At this time, I have no environmental consultants working for Parkwood. I have, over the last four years, spoken with Jimmy White at times. Parkwood Land Company would be open to a meeting concerning this issue as soon as possible.

Please give me a call at your earliest convenience so we can set up an appointment. I can be reached at 1-409-781-3422. Thanks for your assistance on this matter.

Regards,

Henry R Stevenson Jr.

Henry R. Stevenson, Jr., Owner
Parkwood Land Company
2085 Galway
Vidor, Texas 77662
E-mail:

P.S. PLEASE SEND ME AN E-MAIL CONFIRMING THAT YOU RECEIVED THIS LETTER. luckystevenson@aol.com

ROUTING SLIP

○ Check if Urgent

- Commander - DE
- Deputy Commander - DD
- Deputy Dist Engr, Proj Mgmt - DP
  - Emergency Management Office - EM
- Programs & Project Mgmt Div - PM
  - Programs Mgmt Br - PM-G
  - Project Mgmt Br - PM-J
- Engineering & Construction Div - EC
  - Engineering Branch - EC-E
    - Gen Engineering Sec - EC-EG
    - Geotech & Structures Sec - EC-ES
    - Hydrology & Hydraulics Sec - EC-EH
    - Proj Eng Engineering Sec - EC-EP
  - Construction Branch - EC-C
  - INS Resident Office - RO-I
  - Bay Area Office - AO-B
    - LaPorte Proj Ofc - AO-BL
    - Sims Bayou Proj Ofc - AO-BS
  - Northern Area Office - AO-N
    - Freeport/Bay City Area Ofc - AO-NF
    - Port Arthur Proj Ofc - AO-NP
  - Southern Area Office - AO-S
    - Brownsville Proj Ofc - AO-SB
- Planning, Environmental & Regulatory Div - PE
  - Planning & Environmental Branch - PE-P
    - Planning Section - PE-PL
    - Environmental Section - PE-PR
  - Regulatory Branch - PE-R
    - Admin Unit - PE-RA
    - Policy Analysis Section - PE-RB
    - Evaluation Section - PE-RE
    - Compliance Section - PE-RC
    - Corpus Christi Regl Field Ofc - PE-RCC
- Operations Division - OD
  - Navigation Branch - OD-N
  - Project Operations Branch - OD-O
    - Brazos River Floodgates Proj Ofc - OD-OB
    - Colorado River Locks Proj Ofc - OD-OC
    - Houston Project Office - OD-OH
    - Addicks & Barker Reservoir - OD-OHA
    - Wallisville Lake - OD-OHW

- Real Estate Division - RE
  - Acquisition, Management & Disposal Br - RE-A
  - Appraisal, Planning & Control Branch - RE-E
- Contracting Division - CT
- Equal Empl Opportunity Ofc - EO
- Safety Office - SO
- Internal Review Office - IR
- Security & Law Enforcement Ofc - SL
- Public Affairs Office - PA
- Office of Counsel - OC
- Information Management Office - IM
- Logistics Management Office - LO
- Resource Management Office - RM
- Civilian Personnel Advisory Ctr - CESWD-HR
- Small Business Ofc - SB
- AFGE Local #33

To: PAM

From: Kevin

Date: 13 Sep 10
DDMMMYYYY

Suspense: 22 Sep 10
DDMMMYYYY

FA-10-0225

SWG FORM 40-R-E APR 03

Proponent: IN

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST *Please read instructions on back before completing form.*					REPORT CONTROL SYMBOL DD-DA&M(A)1365
1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)* a. INITIAL ☐ b. APPEAL ☐	3. DATE COMPLETED *(YYYYMMDD)*	4. ACTION OFFICE		

	FEE CODE	(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
5. CLERICAL HOURS *(E-9/GS-8 and below)*						
a. SEARCH	1					
b. REVIEW/EXCISING	2		X	$20.00	=	
c. OTHER ADMINISTRATIVE COSTS	3					
6. PROFESSIONAL HOURS *(O-1 thru O-6/GS-9/GS-15/CONTRACTOR*		(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
a. SEARCH	1					
b. REVIEW/EXCISING	2		X	$44.00	=	
c. OTHER/COORDINATION/DENIAL	3					
7. EXECUTIVE HOURS *(O-7 - ES [and above])*		(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
a. SEARCH	1					
b. REVIEW/EXCISING	2		X	$75.00	=	
c. OTHER/COORDINATION/DENIAL	3					
8. COMPUTER SEARCH		(1) TOTAL TIME		(2) RATE		(3) COST
a. MACHINE TIME *(Mainframe, Desktop, Laptop)*	4					
b. PROGRAMMER/OPERATOR TIME *(Human)*			X		=	
(1) Clerical Hours	1			$20.00/hr		
(2) Professional Hours	1			$44.00/hr		
9. OFFICE MACHINE COPY REPRODUCTION		(1) NUMBER		(2) RATE		(3) COST
a. PAGES REPRODUCED FOR FILE COPY	3		X	.15	=	
b. PAGES RELEASED	5			.15		
10. PRE-PRINTED PUBLICATIONS		(1) TOTAL PAGES		(2) RATE		(3) COST
a. PAGES PRINTED	5		X	.02	=	
11. COMPUTER PRODUCT OUTPUT ACTUAL COST CHARGES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. TAPE/DISC/CD	6		X		=	
b. PAPER PRINTOUT	3					
12. OTHER ADMINISTRATIVE FEES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. ALL POSTAGE/ADMINISTRATIVE *(See Instructions)*	3		X		=	
13. AUDIOVISUAL MATERIALS		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. MATERIALS REPRODUCED	4		X		=	
14. SPECIAL SERVICES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. ALL SPECIAL SERVICES *(See Instructions)*	6		X		=	
15. MICROFICHE REPRODUCED	5		X	.25	=	

FEE CODES

1 Chargeable to "commercial" requesters. Chargeable to "other" requesters after deducting 2 hours.
2 Chargeable to "commercial" requesters only.
3 Not chargeable to any fee category.
4 Chargeable to "commercial". Chargeable to "other" after deduction of the equivalent of 2 hours. (Example: deduct $88.00 professional rate.)

16. FOR FOI OFFICE USE ONLY

a. TOTAL COLLECTABLE FEES	
b. TOTAL PROCESSING FEES	
c. TOTAL CHARGED	
d. FEES WAIVED/REDUCED *(X one)*	☐ Yes ☐

ORANGE COUNTY HEALTH AND CODE COMPLIANCE DEPARTMENT

September 9, 2010

Mr. Kevin Kelly
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553

RE: Freedom of Information Act (FOIA)

Mr. Kelly,

Orange County would like to exercise its right to request a copy of a Cease and Desist Order.

This is a case the Corps has against Mr. Sony Stevenson.

The location of the site is in Orange County and located on the North side of I-H 10 at the foot of the Neches River Bridge.

Would you please mail a copy of this Order to the address located at the bottom of this page at your earliest convenience.

If you have any questions about the request please feel free to call me.

Sincerely,

Lisa L. Roberts

Lisa L. Roberts, CFM
Floodplain Administrator for
Orange County

10984-D BOX 3 FM 1442, Orange, Texas, 77630 Phone 409-745-1410 Fax 409-745-1523

CESWG-PE-RC 28 September 2010

MEMORANDUM FOR FILE

SUBJECT: File Number SWG-2007-01461

On 17 September 2010 at 0905 hours, a phone call was received from Mr. Stevenson requesting to fill out an application to fill ten acres of wetlands within the levee. Mr. Stevenson was informed that the matter would be discussed with Mr. Kenny Jaynes and Mr. John Davidson to determine the best course of action.

On 28 September 2010 at 1010 hours, Ms. Shivers returned Mr. Stevenson's phone call and requested that he mail a copy of the delineation map outlining exactly where he wished to place fill. At this time, Mr. Stevenson stated the he wished to hold off with this inquiry as he needed to resolve issues concerning the property with Orange County.

Kristin Shivers
Regulatory Specialist

Exhibit 38

CESWG-PE-RC 26 October 2010

MEMORANDUM FOR FILE

SUBJECT: File Number SWG-2007-01461

Below is a brief history of this site and file:

13 OCT 2006: Request for Jurisdictional Determination (JD) received for 79-acre tract (SWG-2006-01949 or D19144).
11 DEC 2006: Application to repair existing levee on tract received.
19 JAN 2007: JD letter sent stating 71.2 acres of jurisdictional wetlands were present.
17 APR 2007: Nationwide Permit 3 (Maintenance) authorization granted for repairs on existing levee.
23 JUL 2007: Request for appeal of JD received.
9 AUG 2007: Unauthorized Activity (UA) report received alleging tree clearing and dumping into the Neches River.
17 DEC 2007: Administrative Appeal Decision issued determining the request for appeal had no merit.
22 JUL 2009: UA report received alleging 1,200 loads of concrete dumped into the Neches River.
3 SEPT 2009: Site visit conducted confirming violations.
6 JUL 2010: UA report received alleging fill into wetlands to repair levee.
22 JUL 2010: Site visit conducted confirming additional violations.
3 AUG 2010: Cease and Desist order issued.

We have determined that unauthorized discharges have occurred on Mr. Stevenson's property resulting in at least two violations of Section 404 of the Clean Water Act (Section 404). One violation resulted in the unauthorized discharge of fill material into approximately 0.78 acre of jurisdictional wetlands. Another violation resulted in the unauthorized discharge of fill material into approximately 0.48 acre of jurisdictional wetlands.

Per the 19 January 1989 Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act (1989 Enforcement MOA), the EPA will act as the lead enforcement agency when an unpermitted activity involves repeat and/or flagrant violators (Section III.D.1.). This investigation is being referred to the EPA for enforcement. Per the Clean Water Act Section 404 Settlement Penalty Policy, "the case development team should evaluate the overall culpability of the defendant...The criterion for assessing the violator's experience with or knowledge of the Section 404 program is whether the violator knew or should have known of the need to obtain a Section 404 permit..."

Mr. Stevenson has been aware of the Section 404 permitting process. Based on a review of Corps database, since 1991, Mr. Stevenson has obtained 4 Department of the Army permits from the Corps of Engineers, been party to 4 confirmed violations of Section 404 from unauthorized discharges (excluding the current violations) which resulted in 2 After-The-Fact permits, has had 3 withdrawn permit applications, and has requested 12 jurisdictional determinations. Please see the attached list for further details of these actions.

As a result of this investigation and per the 1989 Enforcement MOA, this case is being referred to the EPA for enforcement action involving a repeat and/or flagrant violator.

Kristin Shivers
Regulatory Specialist

Exhibit 39