



**US Army Corps
of Engineers**
Fort Worth District

Public Notice

Applicant: Texas Westmoreland Coal Company

Permit Application No. : SWF-2012-00080

Date: February 6, 2013

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Darvin Messer

Phone Number: (817) 886-1744

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States (WOUS) associated with the renewal of the Jewett E/F Mine in Freestone and Leon Counties, Texas by Texas Westmoreland Coal Company.

APPLICANT: Texas Westmoreland Coal Company (TWCC)
c/o Mr. Denny Kingsley
President and General Manager
P.O. Box 915
Jewett, Texas 75846-0915

APPLICATION NUMBER: SWF-2012-00080

DATE ISSUED: February 6, 2013

LOCATION: The proposed project area is 1,276 acres—of which approximately 849 acres remain to be mined within the Jewett E/F Mine, Permit No. 47A, all within Freestone County. The project area is fully within the existing Jewett E/F Mine (approximately 9,341 acres) in Freestone and Leon counties, Texas, with the mine center being approximately at Latitude 31° 29' 20" N and Longitude 96° 7' 10" W. The Jewett E/F Mine began extracting lignite (coal) in 2002. The project area is approximately seven miles north of the town of Jewett, Texas; is contained within the Buffalo, Dew, Donie, and Lanely 7.5-minute USGS quadrangle maps; and is in the following USGS Hydrologic Units: 120302010501 (Alligator Creek) and 120302010502 (Linn Creek-Buffalo Creek). The 47A Permit area is generally contained within the following area: north of State Highway 164, east of FM 80, and west of Interstate Highway 45 (Figures 1–9).

OTHER AGENCY AUTHORIZATIONS: (1) Texas Pollutant Discharge Elimination System (TPDES) Wastewater Discharge Permit [WQ0002653000], TCEQ; (2) Water Rights Permit [5318A, WRPERM 12292], TCEQ; (3) Solid Waste Registration [38502], (TCEQ); (4) Surface Mining Permit [47A], Railroad Commission of Texas (RCT); (5) Operation permit—Air Quality [9407], (TCEQ); and (6) Solid Waste Registration [34679], TCEQ.

PROJECT DESCRIPTION: The applicant proposes to discharge approximately, 7,000 cubic yards of fill material into approximately 4.20 acres of WOUS in conjunction with the continued operation and reclamation of the existing Jewett E/F Mine, Permit No. 47A, in Freestone and Leon counties. Total impacts to WOUS would include 1.02 acres of forested wetlands, 0.07 acre

of scrub-shrub wetlands, 0.47 acre of non-forested wetlands, 1.55 acres of impoundments (stock tanks/ponds), and 11,693 linear feet (lf) of streams, including 4,085 lf (0.53 acre) of intermittent and 7,608 lf (0.56 acre) of ephemeral streams. The proposed mining operation area would consist of 849 acres remaining to be mined, only in Freestone County (Figure 1). Surface mining operations would continue with conventional open pits excavated by large draglines and supported by standard earth moving equipment such as front-end loaders, hydraulic excavators, hydraulic backhoes, haulers, motor graders, dozers, end dumps, and scrapers. Infrastructure in support of the operation would include (1) construction of ponds and diversions to control surface water drainage, (2) placement of groundwater well fields to dewater overburden and relieve underburden pressures, (3) relocation of pipelines, (4) construction of service roads, and (5) closure and/or relocation of a number of county roads to facilitate mine operations and protect public safety. Project timing is for mining to continue as permits are approved by regulatory agencies. Various construction projects and mining operations would involve adverse impacts to waters of the U.S., including wetlands, associated with filling or dredging activities.

The proposed project area includes portions of the mine that are currently authorized under Nationwide Permit 21 (NWP 21) [Project No. SWF-2008-00409] (Figure 9). It is anticipated that SWF-2008-00409 would be reauthorized in accordance with 77 Federal Register 10184-10290, dated February 21, 2012. The applicant anticipates the rate of mining in the previously authorized NWP 21 area to vary. In addition, impacts authorized by SWF-2008-00409 that have not occurred prior to the date of issuance of any Individual Permit would be evaluated for authorization under SWF-2012-00080 and would be required to meet the conditions of the Individual Permit.

Continued mining of the Jewett E/F Mine would provide reliable access to a continued source of low cost lignite fuel for NRG's nearby Limestone Electric Generating Station. In addition, this fuel resource is necessary to provide continuation of reliable and cost effective electric generation for customers and provide base load electric generation capacity for the Electric Reliability Council of Texas (ERCOT) electric grid.

Appropriate and practicable steps would be taken to avoid, minimize, or mitigate the adverse impacts of the proposed project on the aquatic ecosystem. Current planning for the mine shows avoidance and minimization of adverse impacts to WOUS would be a significant part of the design of the Surface Mining Control and Reclamation Act (SMCRA) permit and Individual Permit—the primary focus being protection of wetlands and other waters of the U.S. associated with Alligator Creek and Buffalo Creek. For example, the applicant has designed a mine plan in which approximately 232.80 acres of wetlands and 4,315 linear feet (0.41 acre) of streams are projected to be avoided. Areas to be avoided include the majority of high quality aquatic resources present on-site. Despite incorporating measures to avoid and minimize impacts to waters of the U.S., the project would result in the loss of approximately 4.20 acres of waters of the U.S. Specifically, 1.56 acres of wetlands, 1.09 acres (11,693 linear feet) of streams, and 1.55 acres of impoundments (stock tanks/ponds) would be permanently impacted.

After consideration of all available alternatives to minimize adverse effects, the applicant proposes to mitigate for unavoidable losses of WOUS by construction of various WOUS within

the reclaimed mine site, as is standard practice for surface mining activities. Baseline ecological conditional assessments of proposed aquatic resource impacts sites, existing reclaimed/restored aquatic resources, and regional aquatic resource reference sites were performed utilizing the Texas Rapid Assessment Method (TXRAM). Additionally, future conditions of aquatic resource restoration sites were predicted using TXRAM. Proposed mitigation work would utilize principles of natural channel design and fluvial geomorphology to reclaim/restore stream and wetland hydrology and buffers with the requirement that all created/restored waters meet the definition of WOUS. Detailed stream design information would be submitted for USACE and resource agency review prior to construction of mitigation streams. The information would include but not be limited to plan, profile, and dimension measurements based on appropriate regional hydrographic and geomorphological data and successful as-built streams/systems on and/or near the mine site. Proposed mitigation work would be similar in nature to past mitigation at the Jewett Mine. The applicant has proposed annual monitoring of mitigation sites with TXRAM conditional assessments performed at 5-year intervals to ensure success criteria are met. Additionally, long-term site protection in the form of a conservation easement (pending securing a third-party instrument holder) is proposed for the mitigation areas within the 100% company owned mine permit area. Any compensatory mitigation areas not protected long-term would be subject to further evaluation using the TXRAM Aquatic Resources Compensation Calculator (ARCC) to determine an amount of additional mitigation required due to the increased risk resulting from lack of long-term protection. Financial assurance funds are proposed in addition to required RCT bonding monies to further ensure mitigation success. The financial assurance amount has not yet been determined. In the event that these proposed on-site permittee responsible mitigation measures are not successful, the applicant has proposed the purchase of mitigation bank credits appropriate for the resource type and service area as a contingency plan to ensure full replacement of aquatic resources.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in

determining whether to issue, issue with modifications or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

STATE WATER QUALITY CERTIFICATION: This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier II project criteria. Tier II projects are large projects that affect more than three (3) acres of waters of the United States and/or 1,500 linear feet or more of streams. They also include projects that impact rare and ecologically significant wetlands and would not qualify for a Tier I review or for which the applicant elects not to incorporate Tier I Best Management Practices (BMPs) including the applicant choosing to use alternative BMPs. Accordingly, a request for 401 certification is necessary, and there will be additional TCEQ review.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's (USFWS) latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project is located in Freestone County, where the following species are federally listed as endangered: interior least tern (*Sterna antillarum athalassos*), whooping crane (*Grus americana*), Navasota ladies' tresses (*Spiranthes parksii*), and large-fruited sand verbena (*Abronia macrocarpa*). USACE's initial review indicates that the proposed mine would have no effect on any of the federally-listed endangered species. No sightings of state or federal listed threatened or endangered species or species of special concern have occurred or were recorded within the limits of the proposed Jewett E/F Mine during environmental baseline studies and field reconnaissance.

NATIONAL REGISTER OF HISTORIC PLACES (NRHP): The applicant proposes to address historic properties and cultural resources in accordance with the requirements of Section 106 of the National Historic Preservation Act and through direct consultation with applicable agency officials and other stakeholders. An integral part of the permit application process involves comprehensive cultural resource surveys for, at a minimum, the five-year project area term to determine the presence or evidence of significant historic or archaeological sites within the project area that could be affected by the proposed mining activities. Several historic properties and cultural resource sites have been identified in the region. However, no cultural resource sites listed on the National Register of Historic Places (NRHP), eligible for listing on the NRHP, or with an unknown NRHP status will be impacted by mine-related activities unless the proper approvals are received from the Texas Historical Commission, Railroad Commission of Texas, and if necessary, the Environmental Protection Agency.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of

participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

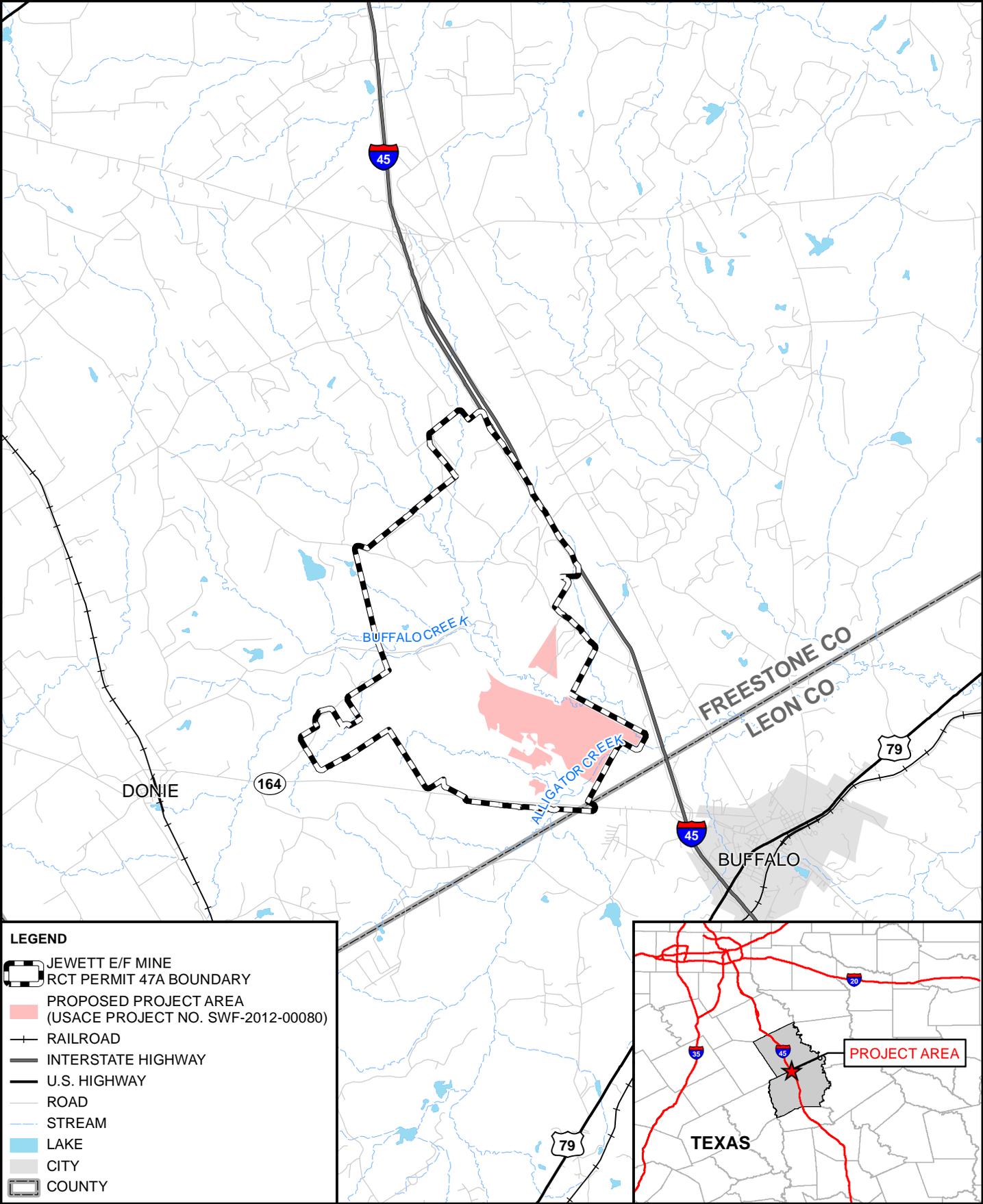
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period, any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before March 8, 2013, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to: Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1731. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

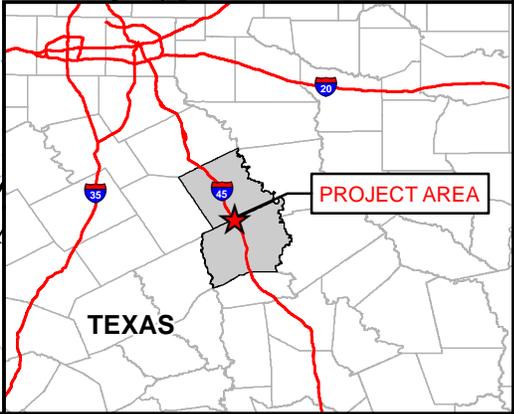
DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

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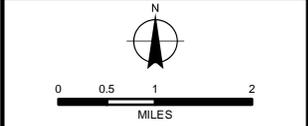


LEGEND

-  JEWETT E/F MINE RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080)
-  RAILROAD
-  INTERSTATE HIGHWAY
-  U.S. HIGHWAY
-  ROAD
-  STREAM
-  LAKE
-  CITY
-  COUNTY



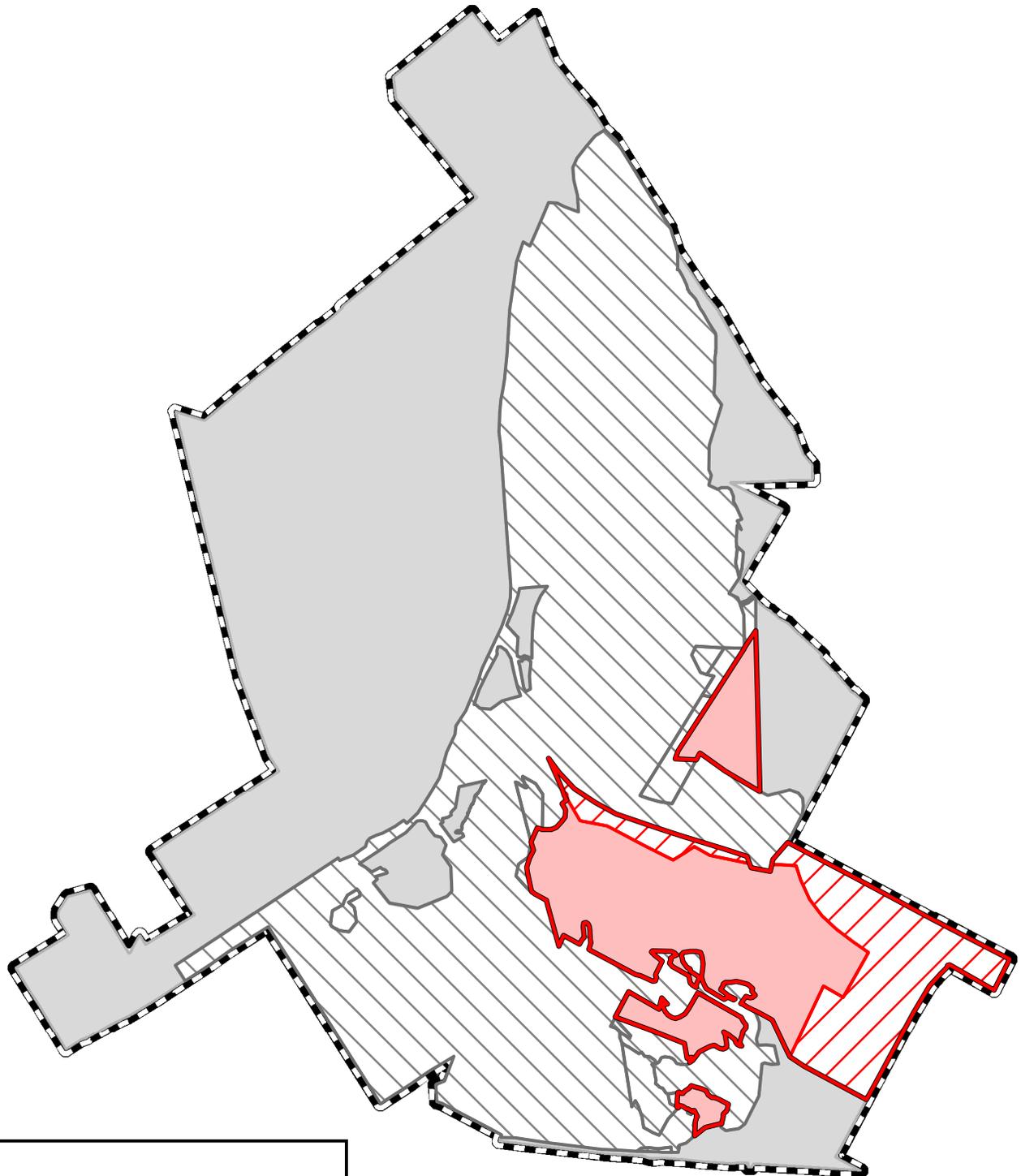
**INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
USACE PROJECT NO. SWF-2012-00080
GENERAL LOCATION MAP**



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FIGURE 1

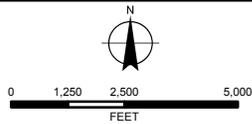
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LEGEND

-  JEWETT E/F MINE
-  RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA
(USACE PROJECT NO. SWF-2012-00080)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA
-  PREVIOUSLY AUTHORIZED/IMPACTED AREA
-  UNDISTURBED AREA

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 PREVIOUS/CURRENT USACE AUTHORIZATIONS

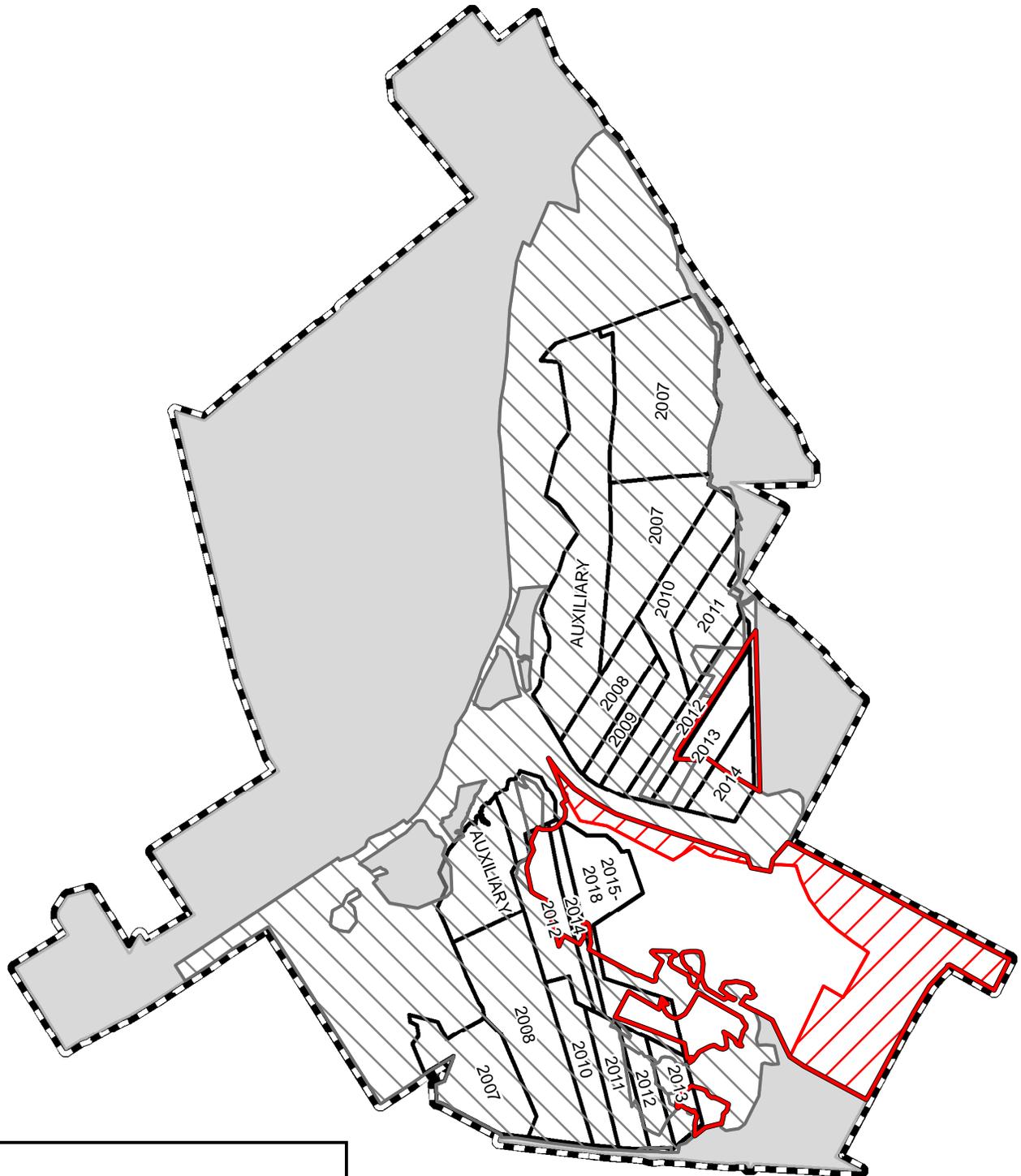


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FIGURE 2

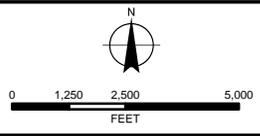
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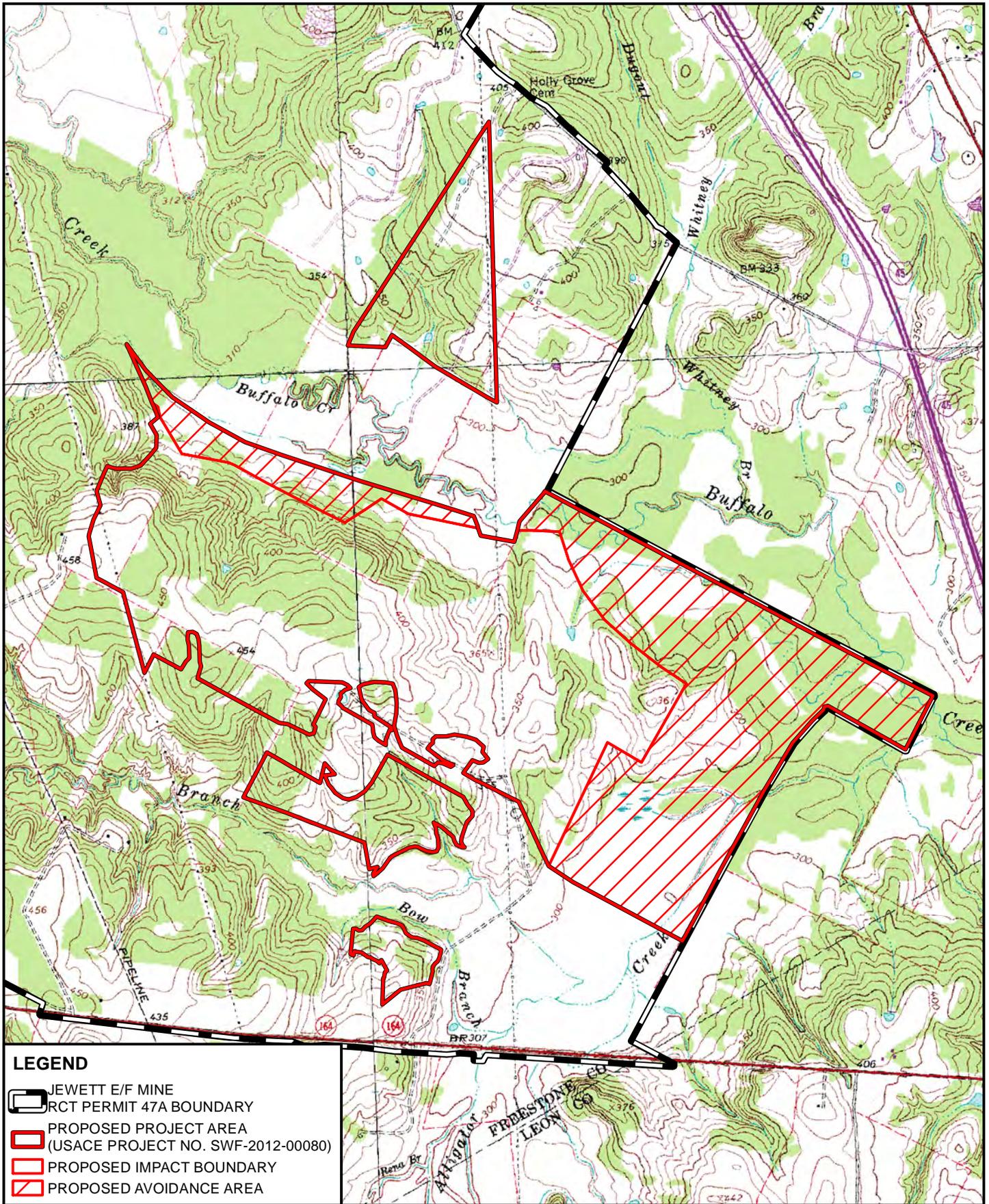
-  JEWETT E/F MINE
RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA
(USACE PROJECT NO. SWF-2012-00080)
-  PROPOSED IMPACT AREA
-  PROPOSED AVOIDANCE AREA
-  PREVIOUSLY AUTHORIZED/IMPACTED AREA
-  UNDISTURBED AREA

**INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
USACE PROJECT NO. SWF-2012-00080
PROJECTED SEQUENCE OF MINING**



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	JAN 2013	ATTACHMENT G FIGURE 3

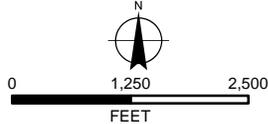
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LEGEND

-  JEWETT E/F MINE
-  RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA
(USACE PROJECT NO. SWF-2012-00080)
-  PROPOSED IMPACT BOUNDARY
-  PROPOSED AVOIDANCE AREA

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 TOPOGRAPHIC FEATURES

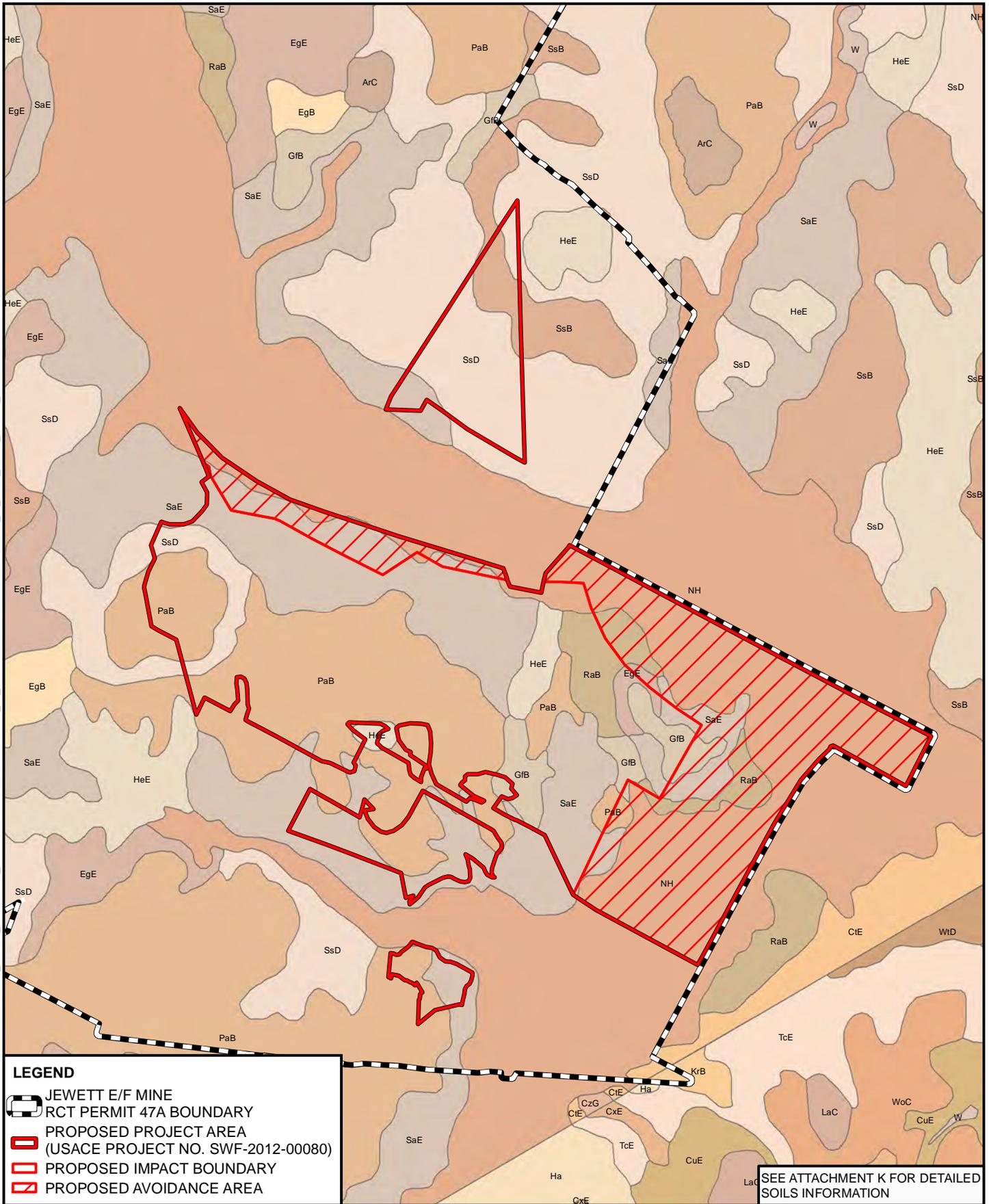


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ATTACHMENT G
FIGURE 4

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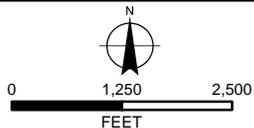


LEGEND

-  JEWETT E/F MINE RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080)
-  PROPOSED IMPACT BOUNDARY
-  PROPOSED AVOIDANCE AREA

SEE ATTACHMENT K FOR DETAILED SOILS INFORMATION

**INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
USACE PROJECT NO. SWF-2012-00080
SOIL FEATURES**

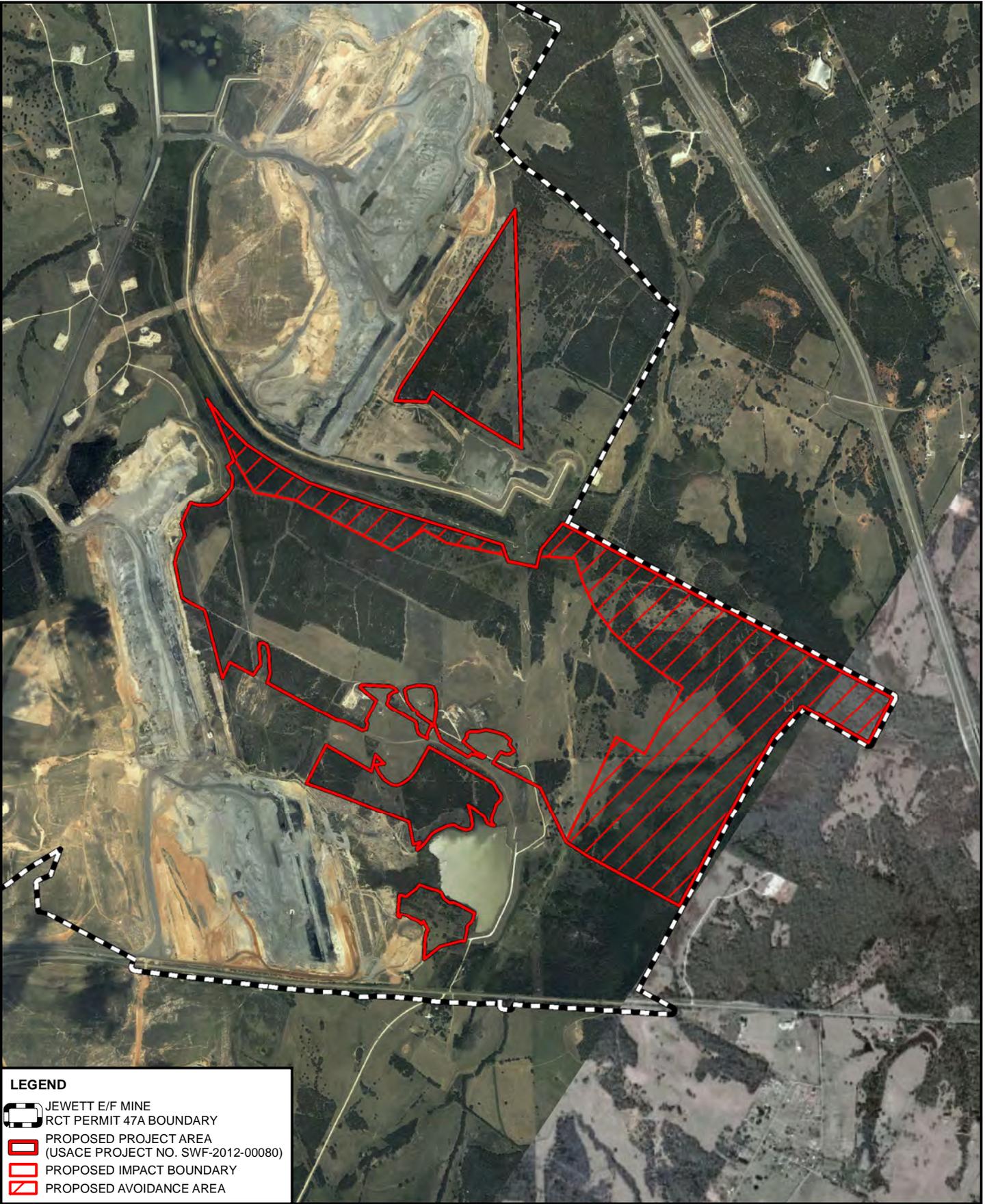


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ATTACHMENT G
FIGURE 5

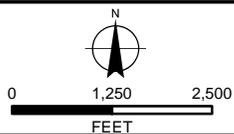
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LEGEND

-  JEWETT E/F MINE
RCT PERMIT 47A BOUNDARY
-  PROPOSED PROJECT AREA
(USACE PROJECT NO. SWF-2012-00080)
-  PROPOSED IMPACT BOUNDARY
-  PROPOSED AVOIDANCE AREA

**INDIVIDUAL PERMIT
JEWETT E/F AREA MINE**
USACE PROJECT NO. SWF-2012-00080
AERIAL PHOTOGRAPH

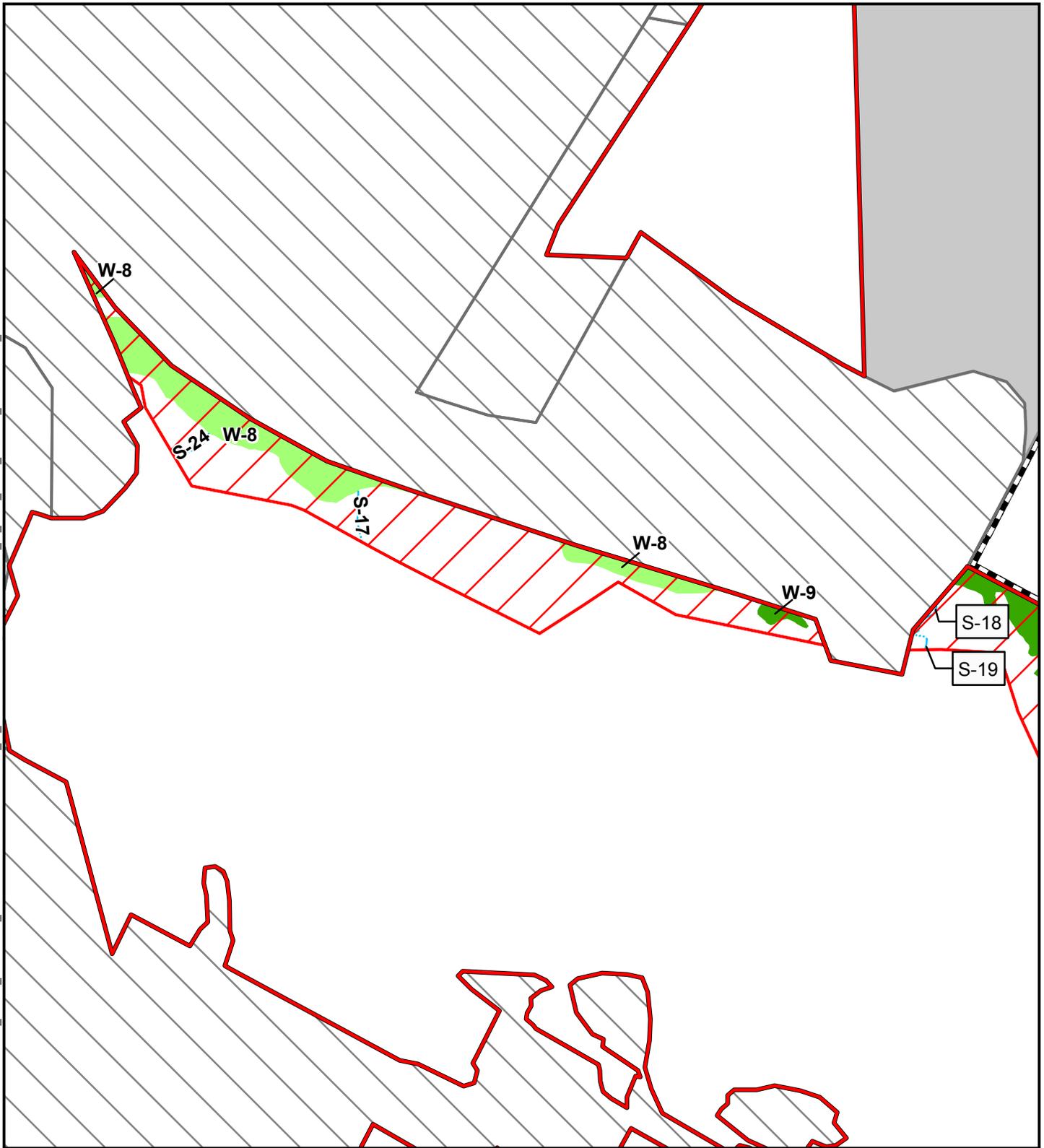


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ATTACHMENT G
FIGURE 6

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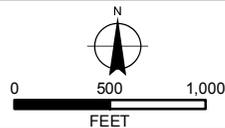


LEGEND

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| <p>WATERS OF THE U.S.</p> <ul style="list-style-type: none"> UNKNOWN STREAM TYPE FORESTED WETLAND MOSAIC WETLAND EMERGENT WETLAND | <p>NOT WATERS OF THE U.S.</p> <ul style="list-style-type: none"> JEWETT E/F MINE RCT PERMIT 47A BOUNDARY PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080) | <ul style="list-style-type: none"> PROPOSED IMPACT BOUNDARY PROPOSED AVOIDANCE AREA PREVIOUSLY AUTHORIZED/IMPACTED AREA | <ul style="list-style-type: none"> UNDISTURBED AREA UPLAND POND |
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ALL WATERS OF THE U.S. WITHIN AVOIDANCE AREAS DELINEATED BY ED JANAK IN 2000.

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 PROPOSED AVOIDANCE AREAS:
 JURISDICTIONAL WATERS OF THE U.S.

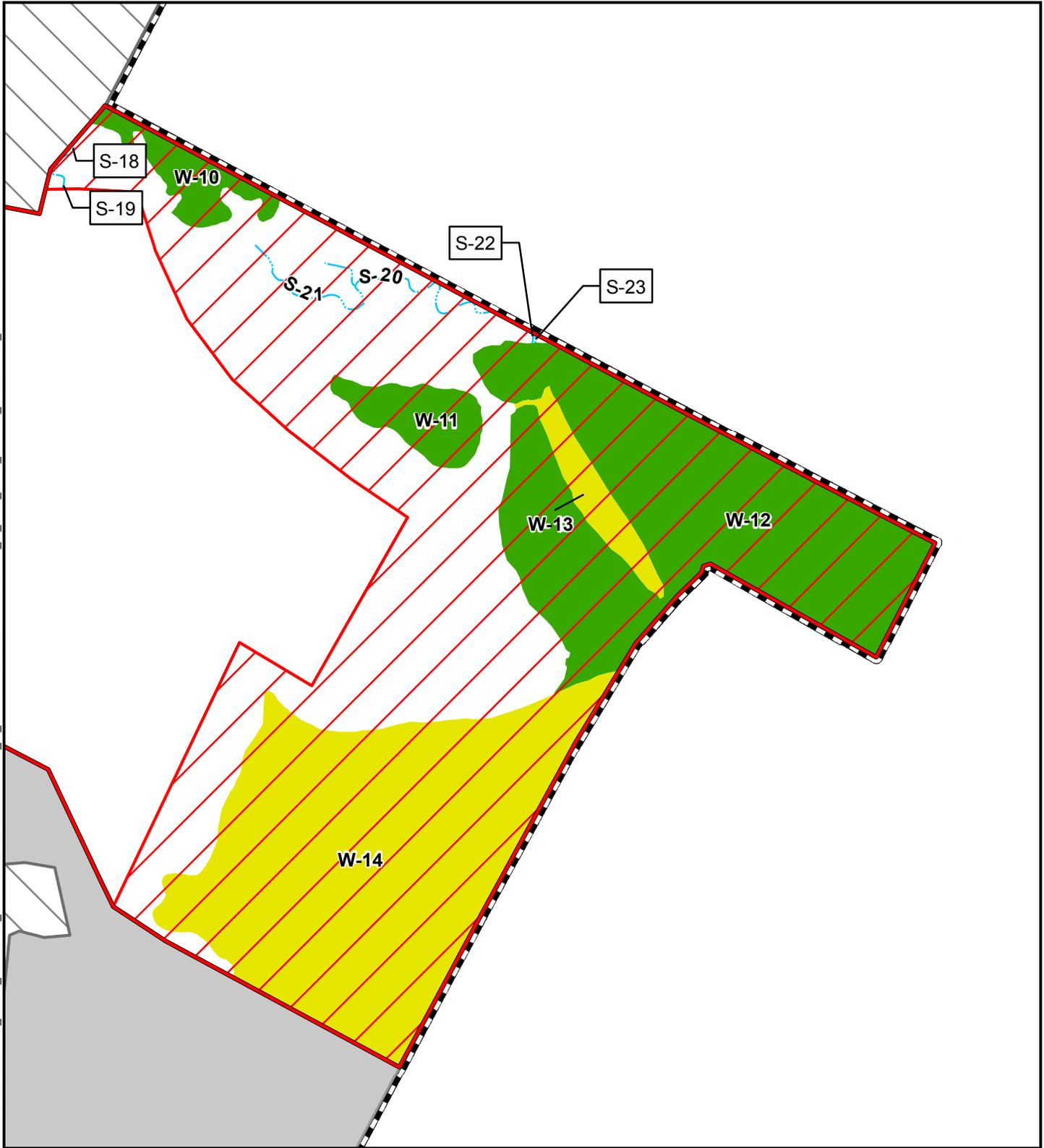


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ATTACHMENT G
 FIGURE 7-1

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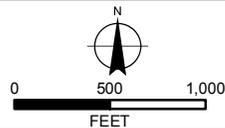


LEGEND

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| <p>WATERS OF THE U.S.</p> <ul style="list-style-type: none"> UNKNOWN STREAM TYPE FORESTED WETLAND MOSAIC WETLAND EMERGENT WETLAND | <p>NOT WATERS OF THE U.S.</p> <ul style="list-style-type: none"> JEWETT E/F MINE RCT PERMIT 47A BOUNDARY PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080) | <ul style="list-style-type: none"> PROPOSED IMPACT BOUNDARY PROPOSED AVOIDANCE AREA PREVIOUSLY AUTHORIZED/IMPACTED AREA | <ul style="list-style-type: none"> UNDISTURBED AREA UPLAND POND |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|

ALL WATERS OF THE U.S. WITHIN AVOIDANCE AREAS DELINEATED BY ED JANAK IN 2000.

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 PROPOSED AVOIDANCE AREAS:
 JURISDICTIONAL WATERS OF THE U.S.

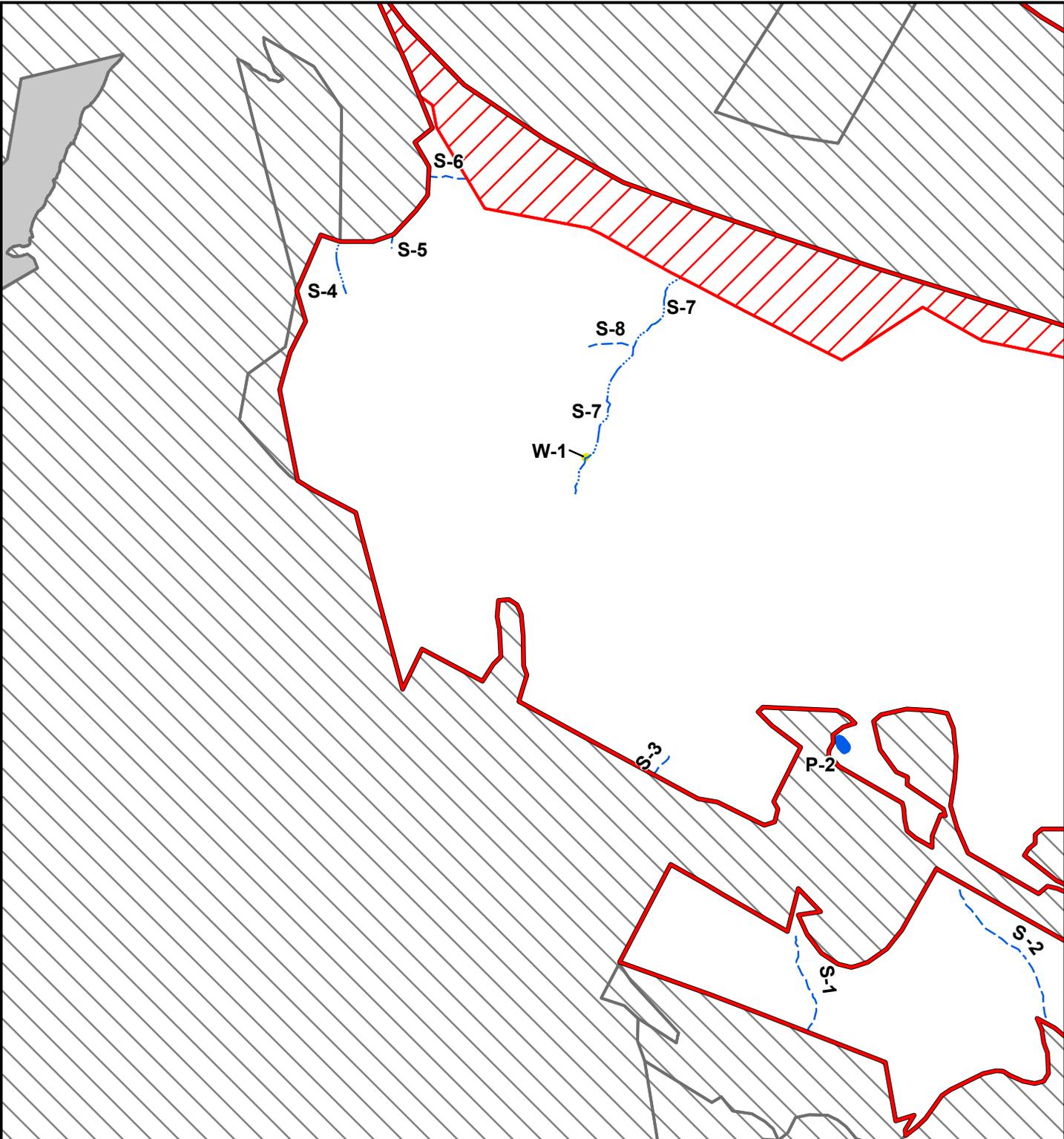


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 FIGURE 7-2

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LEGEND

WATERS OF THE U.S.

- EPHEMERAL STREAM
- .-.- INTERMITTENT STREAM
- FORESTED WETLAND
- EMERGENT WETLAND
- SCRUB-SHRUB WETLAND
- POND

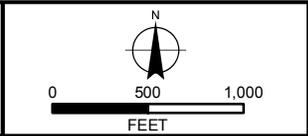
NOT WATERS OF THE U.S.

- JEWETT E/F MINE
- RCT PERMIT 47A BOUNDARY
- PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080)

- PROPOSED IMPACT BOUNDARY
- PROPOSED AVOIDANCE AREA
- PREVIOUSLY AUTHORIZED/IMPACTED AREA
- UNDISTURBED AREA
- UPLAND POND

WATERS OF THE U.S. WITHIN THE PROPOSED IMPACT BOUNDARY DELINEATED BY HDR ENGINEERING, INC. IN 2012.

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 PROPOSED IMPACT AREAS:
 JURISDICTIONAL WATERS OF THE U.S.

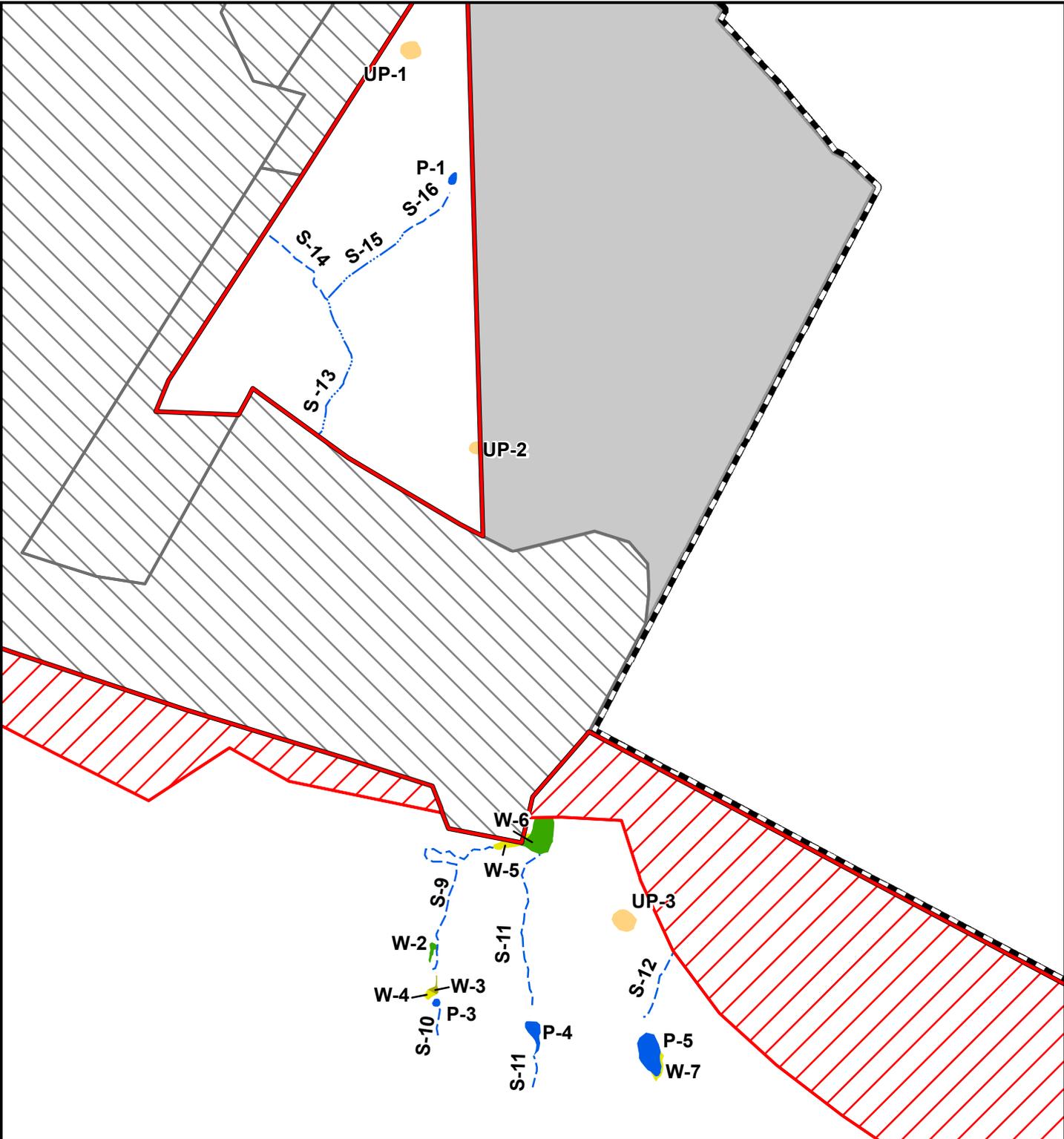


HDR HDR Engineering, Inc.
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 Dallas, TX 75248-1232
 972-960-4400

JAN 2013

ATTACHMENT G
 FIGURE 8-1

PATH: O:\DEPT037_DALLASENGINEERING\ENVSCIENCES\188869_TWCC_WETLAND_WORKMAP\DOCS\ARCMAP\47_IP_2012\ATTACHMENT\G\JEWETT47_IP_FIG8_ATTG_WOTUS_IMPACTS_8X11.MXD



LEGEND

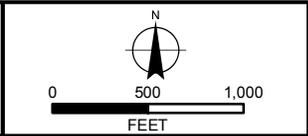
- WATERS OF THE U.S.**
- EPHEMERAL STREAM
 - - - INTERMITTENT STREAM
 - FORESTED WETLAND
 - EMERGENT WETLAND
 - SCRUB-SHRUB WETLAND
 - POND

- NOT WATERS OF THE U.S.**
- JEWETT E/F MINE
 - RCT PERMIT 47A BOUNDARY
 - PROPOSED PROJECT AREA (USACE PROJECT NO. SWF-2012-00080)

- PROPOSED IMPACT BOUNDARY
- PROPOSED AVOIDANCE AREA
- PREVIOUSLY AUTHORIZED/IMPACTED AREA
- UNDISTURBED AREA
- UPLAND POND

WATERS OF THE U.S. WITHIN THE PROPOSED IMPACT BOUNDARY DELINEATED BY HDR ENGINEERING, INC. IN 2012.

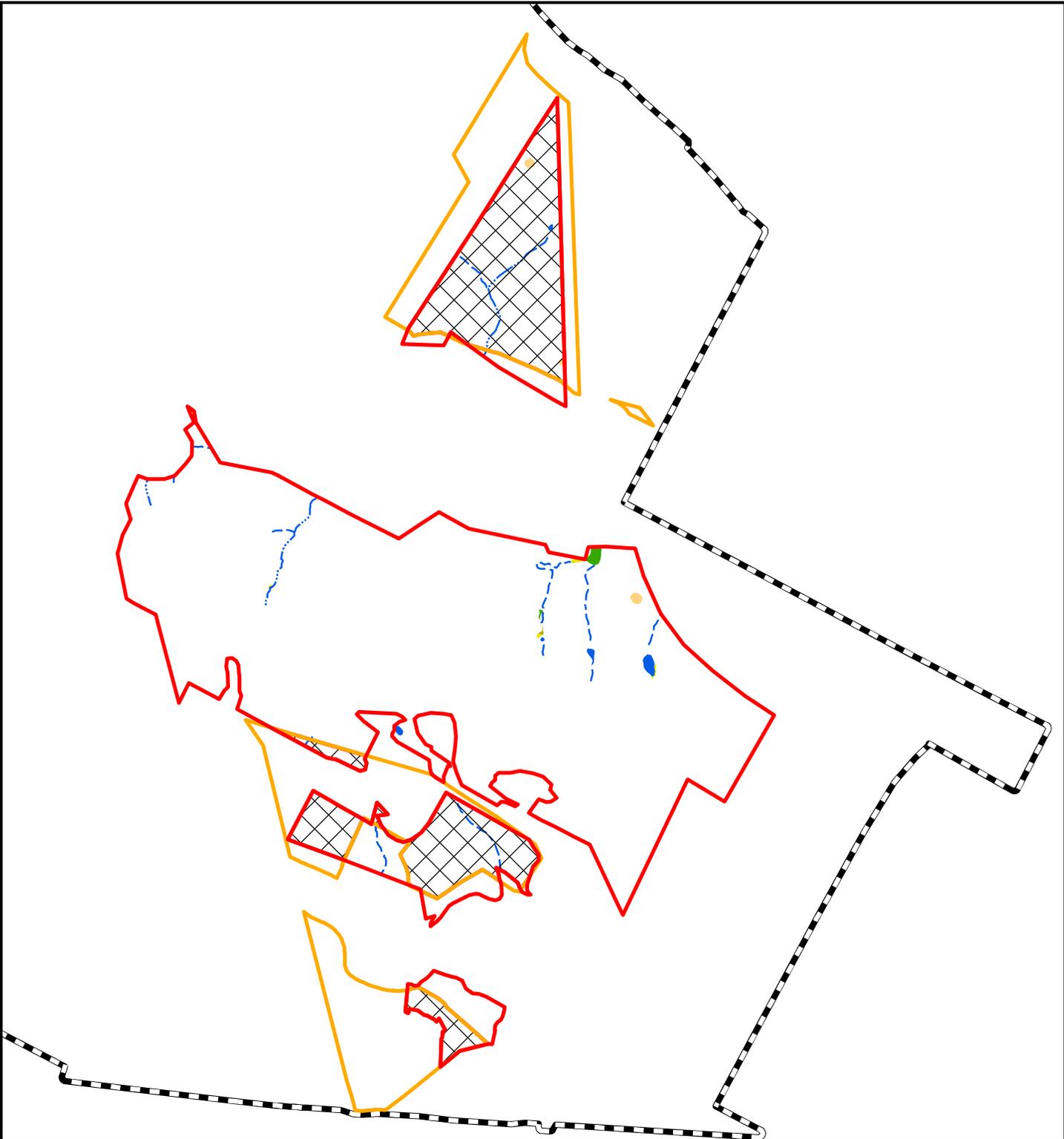
INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 PROPOSED IMPACT AREAS:
 JURISDICTIONAL WATERS OF THE U.S.



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ATTACHMENT G
 FIGURE 8-2



LEGEND

WATERS OF THE U.S.

- EPHEMERAL STREAM
- INTERMITTENT STREAM
- FORESTED WETLAND

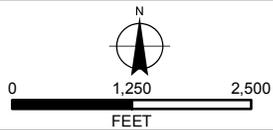
- EMERGENT WETLAND
- SCRUB-SHRUB WETLAND
- POND

NOT WATERS OF THE U.S.

- JEWETT E/F MINE RCT PERMIT 47A BOUNDARY
- PROPOSED IMPACT BOUNDARY
- NATIONWIDE PERMIT 21 (USACE NO. SWF-2008-00409)

- COMMON TO PROPOSED IMPACT BOUNDARY AND NWP 21
- UPLAND POND

INDIVIDUAL PERMIT
JEWETT E/F AREA MINE
 USACE PROJECT NO. SWF-2012-00080
 NWP 21 REAUTHORIZATION AREA



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FIGURE 9