



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

# Public Notice

Applicant: Henley USA, LLC

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Project No.: SWF-2013-00078

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Date: May 24, 2013

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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 Act 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: Mr. Frederick Land

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Phone Number: (817) 886-1729

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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 associated with a proposal by Henley USA, LLC, to construct a residential development known as the Phillips Creek Ranch, in the city of Frisco, Denton County, Texas.

**APPLICANT:** Henley USA, LLC  
c/o Lisa Cavell  
1110 Main Street, Suite 100  
Bellevue, Washington 98004

**APPLICATION NUMBER:** SWF-2013-00078

**DATE ISSUED:** May 24, 2013

**LOCATION:** The proposed residential development would be located southeast of the intersection of Farm-to-Market 423 and Lebanon Road, in the city of Frisco, Denton County, Texas (Sheet 1 of 8). The proposed development project would be found on the Lewisville East, Texas, United States Geological Survey (USGS) 7.5-minute topographic map (Sheet 3 of 8). The project area is centered at approximately N 33.12042° latitude; W -96.88515° longitude, Hydrologic Unit 12030103.

**OTHER AGENCY AUTHORIZATIONS:** None

**PROJECT DESCRIPTION:** The applicant proposes to discharge approximately 37,600 cubic yards of dredged and fill material into approximately 2.37 acres of waters of the United States in conjunction with the construction of the Phillips Creek Ranch Residential Subdivision (Sheet 7 of 8). The proposed Phillips Creek Ranch development would accommodate residential growth being experienced in areas surrounding the project site.

**EXISTING CONDITIONS:** The project site includes a 2.1-acre on-channel shallow-water impoundment and a 0.27-acre emergent wetland extending up a drainage feature. Two smaller ponds (0.9 ac and 0.15 ac) also exist to the south and were considered in the project area but are being avoided. Jurisdictional waters on the site total 3.52 acres. A dam separates the 2.1 ac pond from two smaller ponds (Sheet 7 of 9). All ponds are vegetated with shallow emergent vegetation such as

cattails, smartweed, and spike rush. All three ponds appear to be shallow (approximately 3 to 5 feet). The ponds are remnant stock ponds used for past cattle operations. The impoundments are on a tributary which flows to Lake Lewisville.

The site location is undeveloped (Sheet 2 of 9) and has been used for agricultural and grazing purposes. Land use in the surrounding area in the past has been primarily rural agricultural hay fields; however, residential and commercial development has occurred in this rapidly growing area. Vegetation in the upland areas of the property consists primarily of bermudagrass and other pasture grasses with a dominance of hydrophytic vegetation within the ponds. According to the USGS 7.5-minute Quadrangle Map of Lewisville East, Texas, the ground surface elevation varies from approximately 550 to 560 feet above mean sea level (MSL) (Sheet 3 of 9). Generally, drainage flows to the on-site pond and eventually to Lake Lewisville.

### Soils

The most recent Soil Survey of Denton County, Texas (1980) indicates that the subject property contains soils of the Frio-Ovan Association (Sheet 4 of 9). These clayey soils are deep, nearly level, and well-drained with a moderately slow and very slow permeability.

According to the soil survey, Vertel clay, 3 to 5 percent slopes area present within the pond area. This soil type is consistent with field observations.

### FEMA Floodplain

According to the FEMA FIRM Map, FM 48121C0560G, the pond impacted by the project is within Zone X, which includes areas outside of the 100-year floodplain (Sheet 5 of 9). Two smaller ponds are located within shaded mapped floodplain, but will not be impacted by the project.

### National Wetland Inventory (NWI) Map

The NWI map designates the pond to be impacted as POWHh - Palustrine, Open Water, Unknown Bottom, Permanently Flooded, Diked or Impounded (Sheet 6 of 9).

### Vegetation and Wildlife

Texas Parks and Wildlife mapping classifies the vegetation type at the subject site as Crops.

### A Non-Inclusive Listing of Vegetation

<u>Scientific Name</u>	<u>Common Name</u>	<u>Comment</u>	<u>Indicator Status</u>
<i>Typha</i> sp.	cattails	Concentrated in ponds	OBL
<i>Eleocharis</i> sp.	Spike Rush	Along the pond's edge	FACW
<i>Polygonum hydropiperoides</i>	Smartweed	Along the pond's edge	FACW
<i>Cynodon dactylon</i>	Bermudagrass	Scattered in upland areas	FACU+

Wildlife noted during recent field reconnaissance includes: great egret (*Ardea alba*), great blue heron (*Ardea herodias*), eastern cottontail rabbit (*Sylvilagus floridanus*), and red-tailed hawk (*Buteo jamaicensis*).

#### ALTERNATIVES TO THE PROPOSED PROJECT:

The project is not water dependant and would be constructed in a special aquatic site (emergent wetlands). Construction of the southbound lanes of Lone Star Ranch Parkway is required by the city of Frisco. The eastern section of the impoundment within the construction area would need to be filled to accommodate the construction of the roadway. The southern access to the property would also need to have Lone Star Ranch Parkway constructed for access requirements. Other on-site, off-site, and no-build alternatives have been evaluated by the applicant and the applicant believes the proposed project represents the Least Environmentally Damaging Practicable Alternative. The two smaller southernmost ponds will be left intact.

#### MITIGATION:

##### **Avoidance**

Several site plan options were considered to reduce impacts to jurisdictional waters. The proposed option limits impacts to jurisdictional waters to filling as small an area as is feasible. Jurisdictional waters on the site total 3.52 acres. The applicant chose a site plan that limited impacts to only one 2.1 acre pond. The two smaller ponds would be left intact. All removed sediments would be stored in upland areas and TCEQ required Best Management Practices would be followed to reduce the likelihood of additional redistribution of soils.

##### **Minimization**

The applicant evaluated alternatives to minimize impacts to jurisdictional waters. The applicant has minimized impacts to jurisdictional waters to the extent practicable.

##### **Compensatory Mitigation**

The applicant proposes the purchase of 4.2 mitigation bank credits as compensatory mitigation for impacts to jurisdictional waters. The Trinity River Mitigation Bank provides mitigation credits for projects located in a nine county area, including Tarrant County, which is located within the Trinity River watershed.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-332, 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 I project criteria. Tier I projects are those that result in a direct impact of three acres or less of waters of the State or 1,500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices (BMPs) and other provisions designed to safeguard water quality. The USACE has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

**ENDANGERED AND THREATENED SPECIES:** The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may such species occur in the project area. The proposed project would be located in Denton County where the whooping crane (*Grus americana*), least tern (*Sterna antillarum*), and piping plover (*Charadrius melodus*) are known to occur or may occur as migrants. The whooping crane and least tern are endangered species and the piping plover is a threatened species. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

**NATIONAL REGISTER OF HISTORIC PLACES:** The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

**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 fact 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 June 24, 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



SWF-2013-078

**LOCATION MAP**



4401 Bay Valley Dr.  
 Garland, TX 75043  
 (972) 496-4701  
 (972) 414-0451 (fax)

**PHILLIPS CREEK RANCH  
 INDIVIDUAL PERMIT  
 FRISCO, TEXAS**

Job No. 01-01022

JANUARY 2013

Sheet 1 of 8

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SWF-2013-078

### AERIAL PHOTOGRAPHY 2011



4401 Bay Valley Dr.  
Garland, TX 75043  
(972) 496-4701  
(972) 414-0451 (fax)

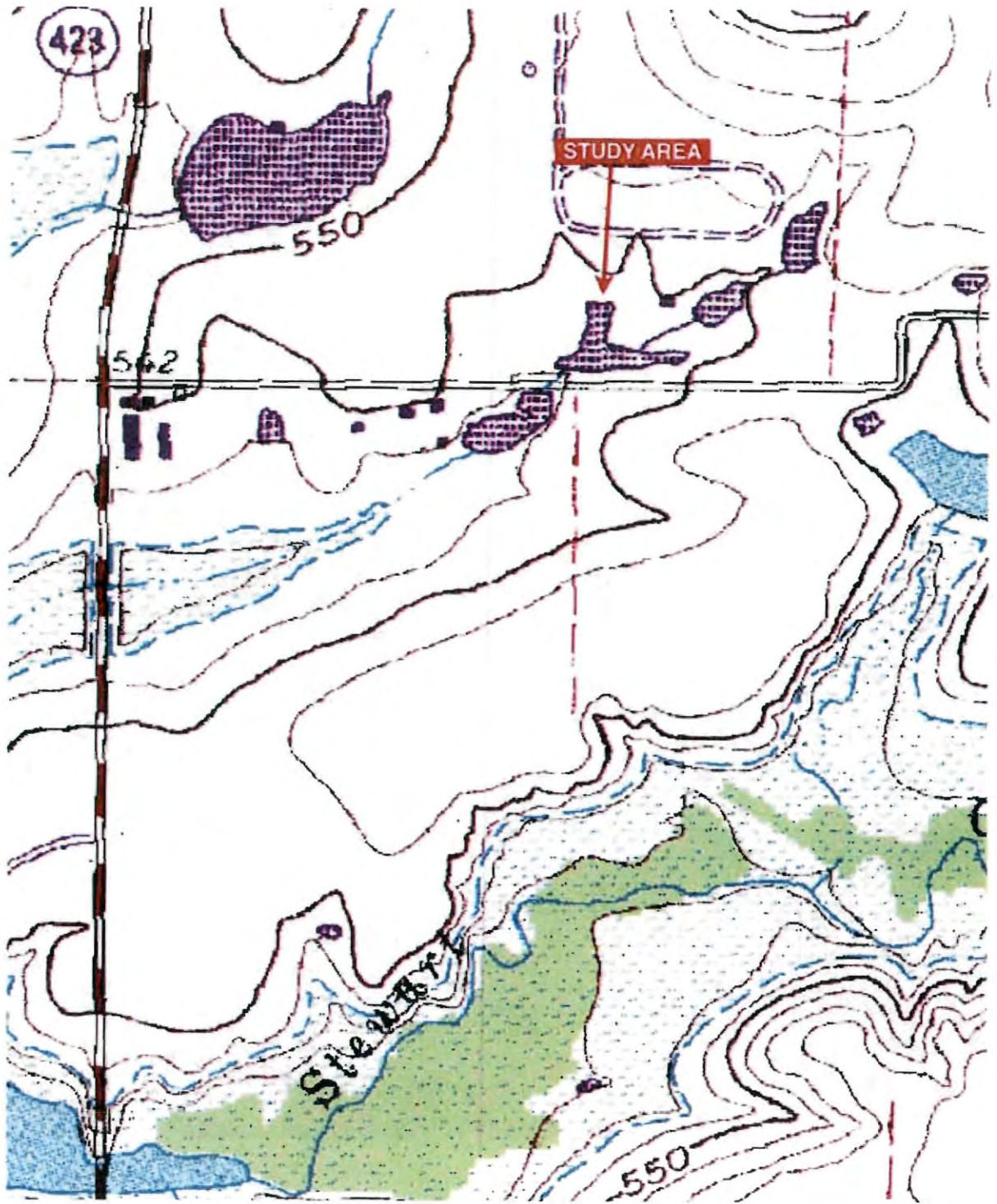
**PHILLIPS CREEK RANCH  
INDIVIDUAL PERMIT  
FRISCO, TEXAS**

Job No. 01-01022

JANUARY 2013

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**USGS 7.5-MINUTE QUADRANGLE MAP LEWISVILLE EAST**



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 Garland, TX 75043  
 (972) 496-4701  
 (972) 414-0451 (fax)

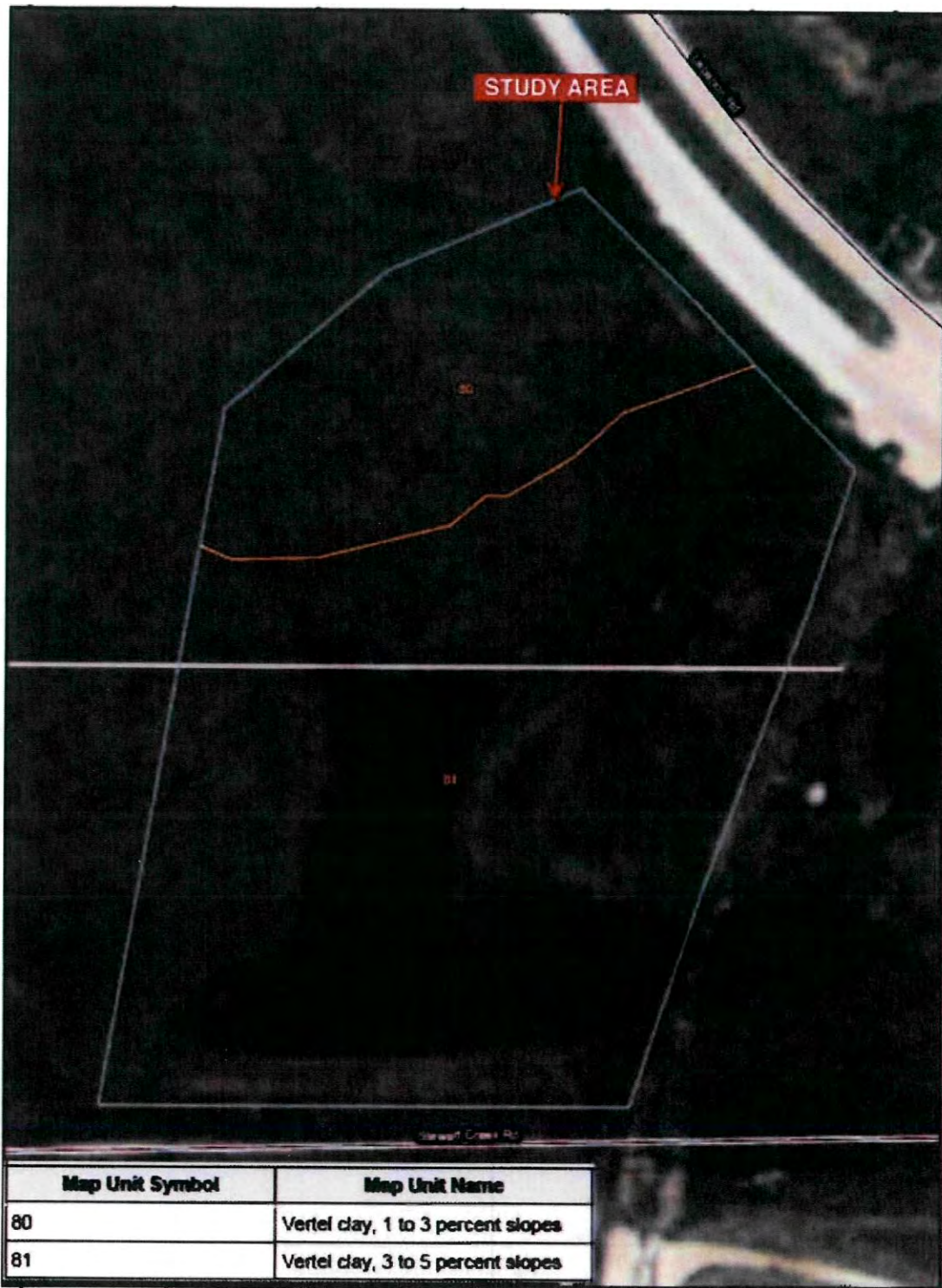
**PHILLIPS CREEK RANCH  
 INDIVIDUAL PERMIT  
 FRISCO, TEXAS**

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JANUARY 2013

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## DENTON COUNTY SOIL SURVEY



4401 Bay Valley Dr.  
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**NATIONAL FLOOD INSURANCE PROGRAM**

**FIRM**  
**FLOOD INSURANCE RATE MAP**  
**DENTON COUNTY,**  
**TEXAS**  
**AND INCORPORATED AREAS**

PANEL 05800

PANEL 660 OF 760  
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

COMMUNITY	COMMUNITY NUMBER	PANEL	SUFFIX
DENTON COUNTY	480774	660	0
FRISCO CITY OF	480134	660	0
THE COLONY CITY OF	481581	660	0

Notes to User: The Map Number shown below this panel is the map number for the Community Number shown on this panel. Use the Community Number and the Map Number shown on this panel to obtain information on insurance applications for the subject community.

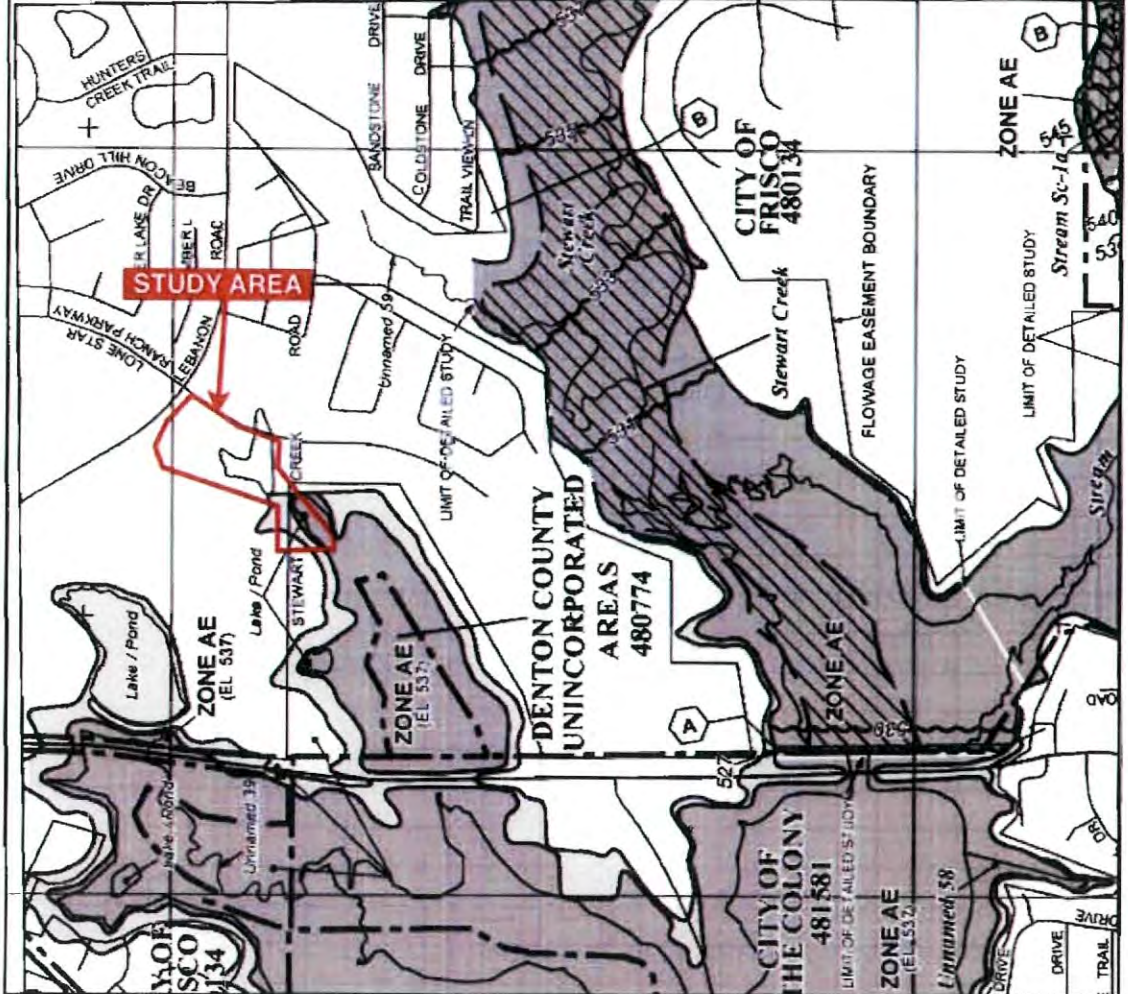
**MAP NUMBER**  
48121C0560G  
**MAP REVISED**  
APRIL 18, 2011

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

MAP SCALE 1" = 1000'

0 1000 2000 FEET  
 0 1000 2000 METER

This is an official copy of a portion of the above referenced flood map. It was extracted using FIRM ONLINE. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.mst.fema.gov



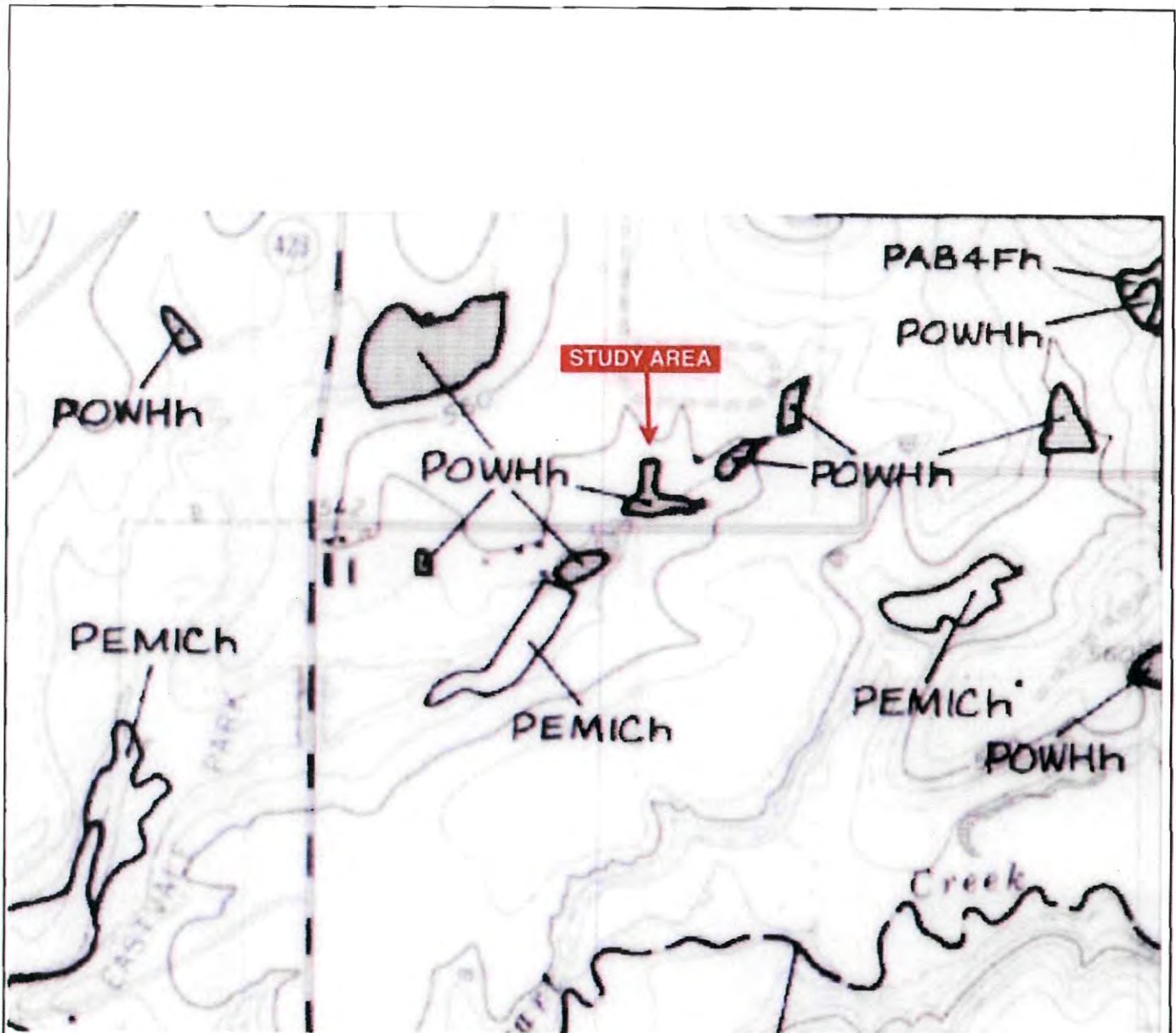
**FEMA FIRM MAP FM 48121C0560 G**



4401 Bay Valley Dr.  
 Garland, TX 75043  
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 (972) 414-0451 (fax)


**PHILLIPS CREEK RANCH**  
**INDIVIDUAL PERMIT**  
**FRISCO, TEXAS**

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 JANUARY 2013  
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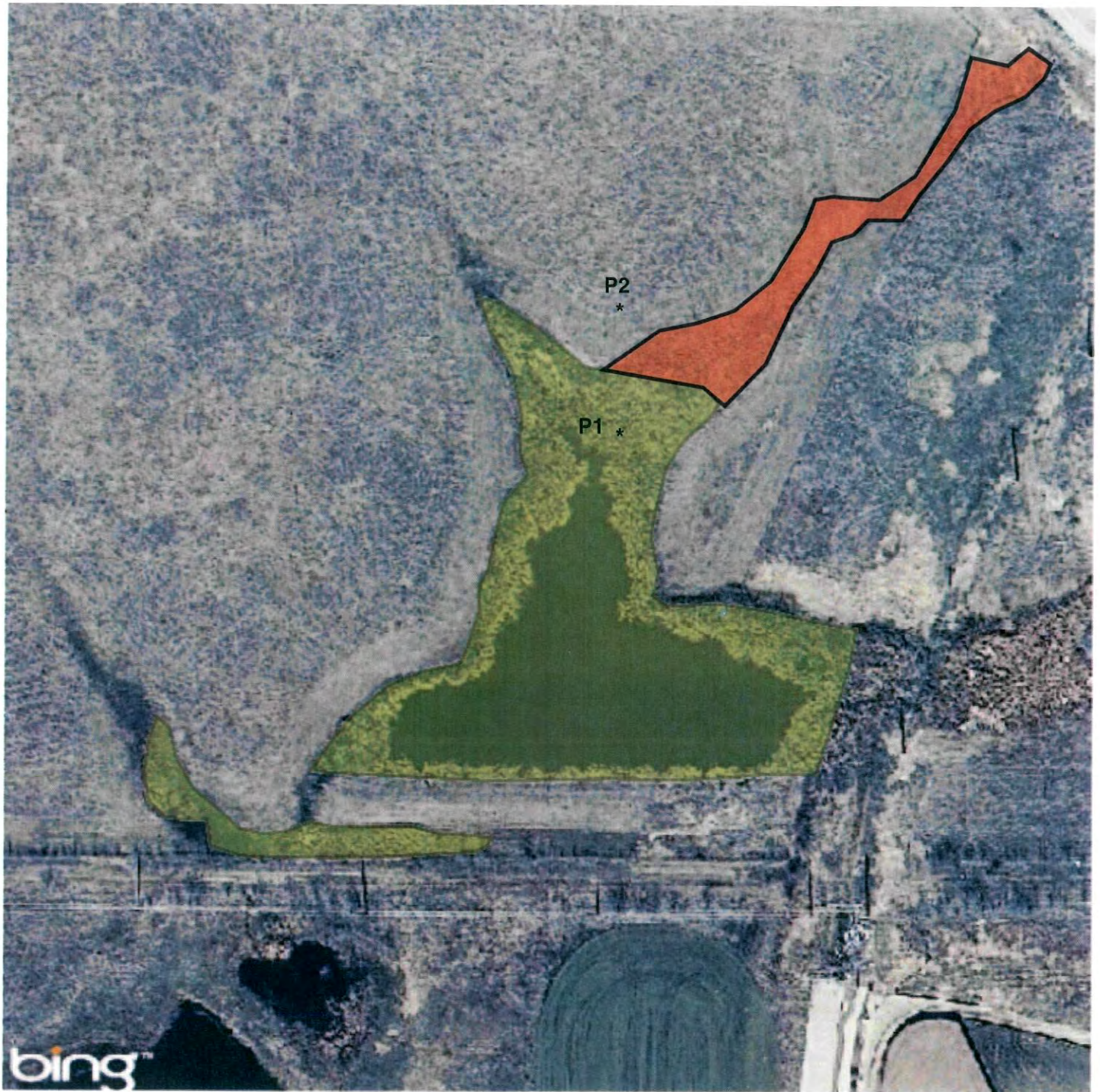


POWHh - Palustrine, Open Water, Unknown Bottom, Permanently Flooded, Diked or Impounded

### NATIONAL WETLANDS INVENTORY MAP

	4401 Bay Valley Dr. Garland, TX 75043 (972) 496-4701 (972) 414-0451 (fax)	<b>PHILLIPS CREEK RANCH          INDIVIDUAL PERMIT          FRISCO, TEXAS</b>	Job No. 01-01022
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SWF- 2013 - 078



- On-channel wetland (2.1 ac.)
- Prairie wetland (0.27 ac.)

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### JURISDICTIONAL DETERMINATION



**PHILLIPS CREEK RANCH  
INDIVIDUAL PERMIT  
FRISCO, TEXAS**

Job No. 01-01022
JANUARY 2013
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**PRELIMINARY PLAT (PPL 13-00000)**  
**PHILLIPS CREEK RANCH**  
**PARCEL 23**

160 RESIDENTIAL LOTS AND 3 H.O.A. LOTS  
 (4.3 ACRES TOTAL ACRESAGE OF H.O.A. LOTS)  
 PLANNED DEVELOPMENT FOR PARCEL 23 (PART 1)  
 60.77 ACRES OUT OF DISTRICT NO. 777  
 DAVID L. LAWRENCE SURVEY, ABSTRACT NO. 777  
 CITY OF FRISCO, DENTON COUNTY, TEXAS

**OWNER**  
 HENLEY USA LLC  
 11101 14th Street, Suite 100  
 Beltsville, Washington 20804  
 (430) 846-4027

**SURVEYOR/ENGINEER**  
 J.B. PATRICKS, INC.  
 15301 Devereaux Drive, Suite 300 B  
 Houston, Texas 77051  
 (713) 248-7576

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Revised: 08/07/2013

SWF-2013-078