



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

# Public Notice

Applicant: Kilgore Economic Development Corporation

Project No.: SWF-2013-00081

Date: June 19, 2014

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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. Darvin Messer

Phone Number: 817-886-1744

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## PUBLIC NOTICE

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

**SUBJECT:** Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) to discharge dredged and fill material into waters of the United States (WOUS) associated with the commercial development of an approximately 45 acre tract of land in Gregg County, Texas.

**APPLICANT:** Kilgore Economic Development Corporation

**APPLICATION NUMBER:** SWF-2013-00081

**DATE ISSUED:** June 19, 2014

**LOCATION:** The proposed industrial/commercial development would be located on approximately 45 acre parcel of land containing unnamed tributaries to Wynns Bayou east of Kilgore, Gregg County, Texas (Sheet 1 of 6). The proposed project area is centered at approximately 32.404° latitude and -94.806° longitude on the Kilgore SE 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12010001.

**PROJECT DESCRIPTION:** The applicant proposes to discharge approximately 8,000 cubic yards of earthen fill into approximately 2.70 acres of WOUS, in conjunction with the leveling and grading of a tract of land proposed for commercial development. (See attached Sheets 2-5 of 6). The need for the project is to provide available property for commercial development to aid in growing the local economy.

**INTRODUCTION:** The applicant proposes to construct an industrial/commercial development site and associated infrastructure approximately 4 miles east of Kilgore, Texas in Gregg County.

**EXISTING CONDITIONS:** The project area was characterized as having two plant communities (1) forested upland community; (2) forested wetland community. Coinciding with the time of the site evaluations, the tract was clear-cut for silviculture activities which significantly altered the plant communities. Plant communities for the assessment were based upon pre-clear cut conditions as described in detail in the Jurisdictional Determination submitted to the United States Army Corps of Engineers in 2013. The applicant performed detailed studies of historical aerial photographs (i.e., deciduous forested areas and wet signatures), existing herbaceous plant species, and identification of former trees based upon tree stumps were used to classify the two plant communities. Following the analysis, the applicant determined the forested wetland and upland communities were both dominated by southern red oak (*Quercus falcata*) and willow oak (*Quercus phellos*).

The topography of the tract is generally sloping to the south and east (Sheet 2 of 6). The wetlands and unnamed ephemeral tributary within the project site flow to Wynns Bayou, which

then flows into the Sabine River, a traditionally navigable water (TNW). Three potentially jurisdictional waters (two wetlands and one ephemeral stream) are located within the project site (Sheet 4 of 6). According to the NRCS Soil Survey for Gregg and Upshur Counties, soils in the wetland areas of the project area generally correspond with Wrightsville-Raino Complex (0 to 1 percent slopes). This type of soil is described as being poorly drained and having mounds and depressional areas.

Feature 1: This feature consists of 684 linear feet of an ephemeral stream and accompanying 0.11 acre of forested wetland margin which transects the northern portion of the subject tract. The limits of this feature were identified and delineated at the ordinary high water mark (OHWM) in the field based on the presence of a defined bed and bank, waterline, and the destruction of the terrestrial vegetation. The wetland margin buffering the ephemeral drain was delineated using hydrologic indicators consisting of surface water, water-stained leaves, oxidized rhizospheres on living roots, and presence of reduced iron. Hydric soil indicators in these areas included a low chroma soil matrix of 10 YR 5/1 with redox depressions within the matrix.

Feature 2: This feature, located in the southeast corner of the tract, consists of 0.22 acre of forested wetland. This area gently grades into a jurisdictional pond with flow traveling south via a culvert under FM 349. Most of this feature was ponded with a narrow band of wetland margin exhibiting both hydric soil characteristics and hydrologic indicators.

Feature 3: This location consists of two distinct concave/depressional wetland features totaling 2.48 acres. Primary hydrologic indicators present during surveys included saturated soils, surface water, water-stained leaves, oxidized rhizospheres on living roots, and presence of reduced iron. Hydric soil indicators included a low chroma soil matrix of 10 YR 4/6 with redox depressions within the matrix. The areas outside the wetland area were composed of clear-cut vegetation, similar to the vegetation found within the concave wetland area.

IMPACTS: WOUS located within the project area total approximately 2.81 acre of forested wetland and 684 linear feet of an ephemeral stream. As noted previously, silviculture activities have resulted in the clear-cutting of the subject tract in the last year and a half thus altering the plant communities. Wetland areas are considered to be forested wetlands as based upon their condition prior to the clear cut. The applicant's proposed plan for site development would result in direct and permanent impacts to 2.7 acres of forested wetland (Sheet 4 of 6).

AVOIDANCE AND MINIMIZATION: WOUS fully avoided would include 684 linear feet of ephemeral stream and the 0.11 acre of forested wetland margin that borders the ephemeral stream.

ALTERNATIVES: The applicant evaluated alternative sites as part of their site selection process and chose the proposed project area (1) due to the limited supply of undeveloped parcels of the size necessary to make this type of development economically feasible; (2) the close proximity to Kilgore, Texas and access to thoroughfares fronting the tract (i.e., Farm-to-Market 349 and Farm-to-Market 376) which provide access to Interstate 20 (I-20) and US Highway 259; (3) the lower amount of wetlands and aquatic features relative to other similar sized tracts in the

general area. Given this criteria, the approximate search area for property was approximately within a three square-mile radius of Kilgore, Texas.

Alternative 1: The applicant owns property approximately 2 miles to the northwest of the currently proposed property (Sheet 6 of 6). This property, though advantageously situated near I-20, contains large portions of the floodplain of Rabbit Creek and accompanying tributary streams. As a result, development of this property would require substantial fill in an active floodplain and lead to large cumulative effects to WOUS. Uplands on the property appear to have limited development potential due to the large number of pipeline right-of-ways present.

Alternative 2: The applicant considered on-site development of the tract with a reduction in the affected wetland area. The upland/wetland mosaic area on the west side of the tract was considered by the applicant to be too large to avoid completely. The wetland area in the southeast corner of the tract is located in a primary drainage area for the site, and is expected to be impacted by any construction stormwater discharges from the tract. Further, its location relative to FM 349 and down gradient ponds and residential structures requires that water control actions be completed in this location. Therefore, the applicant believes this location could not be avoided. Avoidance of the linear ephemeral stream feature on the northern portion of the property was viewed as inconsequential to development of most of the tract. It appears to receive a smaller drainage area, and has less potential to influence down gradient properties. Therefore, the applicant plans to avoid the feature, with the possible exception of future utility or road crossings to facilitate development to the north. While no crossings are currently planned, any future crossings would be proposed on an as-needed basis if future development requires a crossing.

Alternative 3: The applicant evaluated potential development of the subject tract with no activity in wetlands or WOUS. As with Alternative 2, the mosaic wetland/upland pattern coupled with the irregular boundaries of the stream feature would severely limit the area that could be developed if these features were avoided. In effect, this would increase the land costs and limit the number of potential development projects the tract could support. Thus, achieving a similar number of development sites would then require more upland development which would increase land clearing on other tracts and may have additional ancillary impacts from extension of utilities or roadways.

**MITIGATION:** The applicant's proposed compensatory mitigation plan consists of the purchase of credits from the Edmore Creek Mitigation Bank in compliance with the terms of approved mitigation banking instruments. A proposed total of 4.8 credits would be purchased from the Edmore Creek Mitigation Bank to offset the proposed permanent loss of 2.7 acres of forested wetland.

**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 occur in the project area. The proposed project would be located in Gregg County where the least tern (*Sterna antillarum*) and the piping plover (*Charadrius melodius*) are known to occur or may occur as migrants. The least tern is an 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.

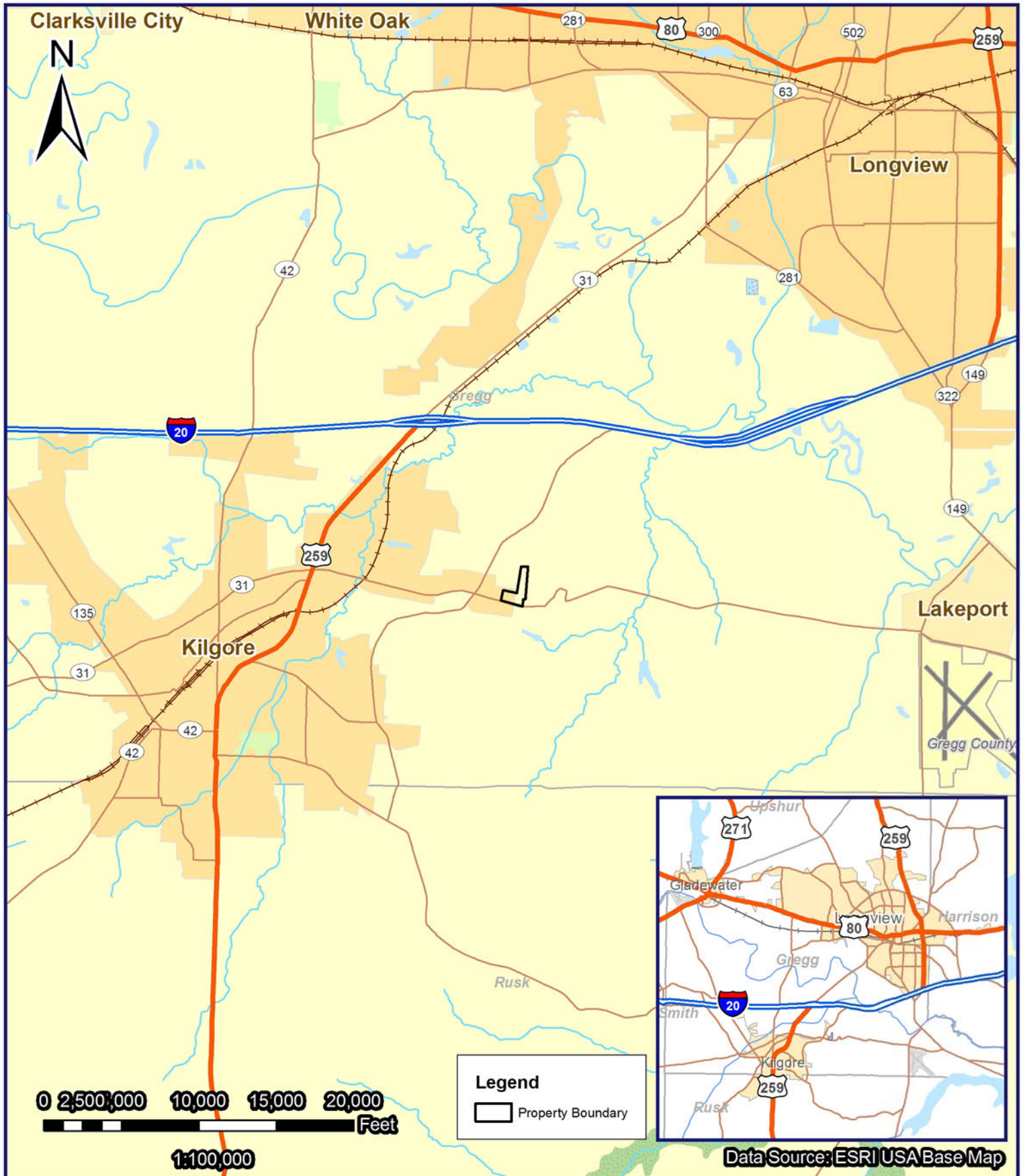
**SOLICITATION OF COMMENTS:** The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should 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 July 21, 2014, 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 Division, CESWF-DE-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Division 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





**TITANIUM  
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#### CLIENT

Kilgore Economic  
Development  
Corporation

#### PROJECT DESCRIPTION

Intersection of FM 349 and  
FM 2276 Kilgore, Texas  
Gregg County, Texas

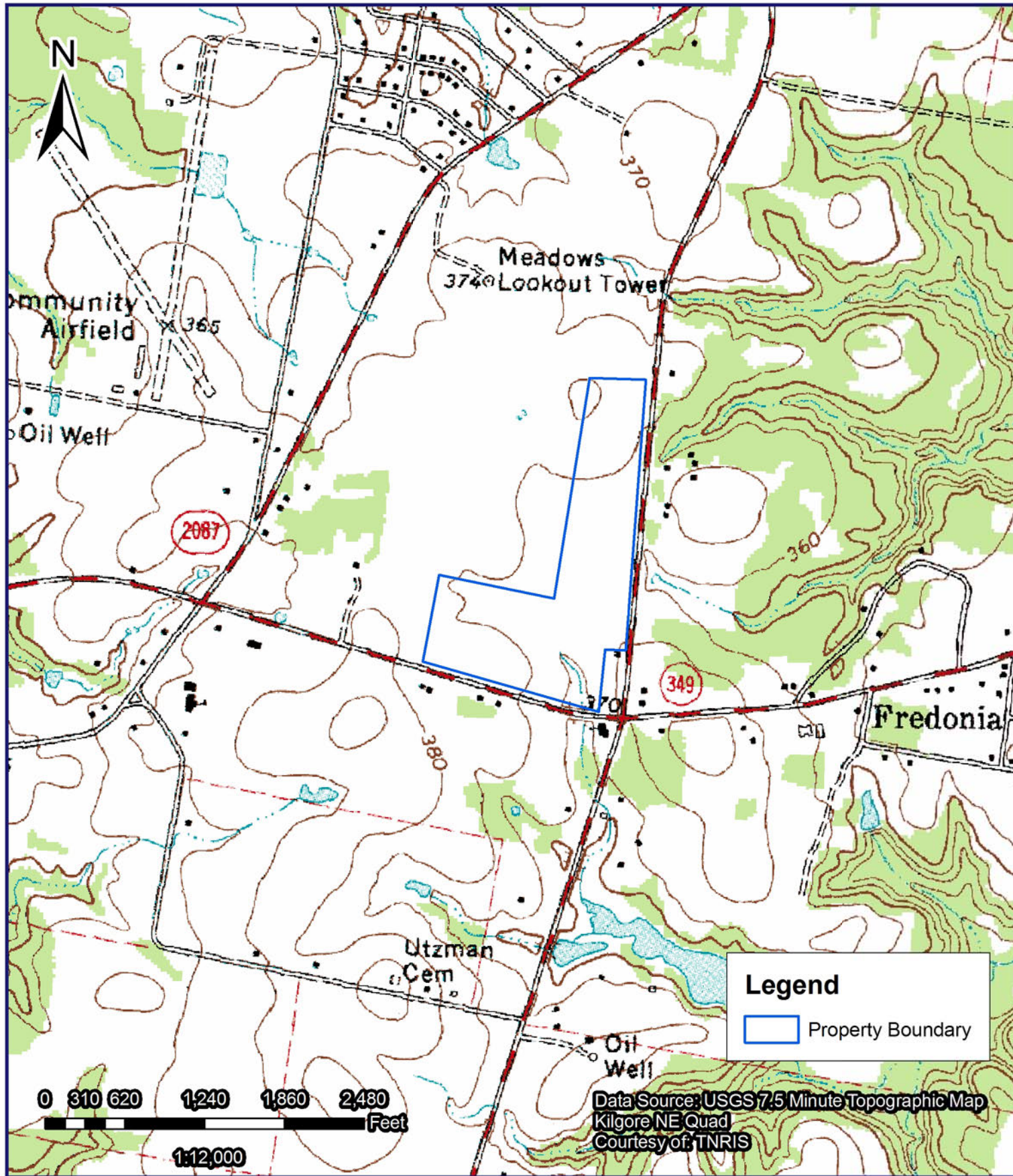
#### Sheet 1 of 6


**General Location Map**  
**SWF-2013-00081**

Created by: P. Ireland  
Date: 05.24.2014

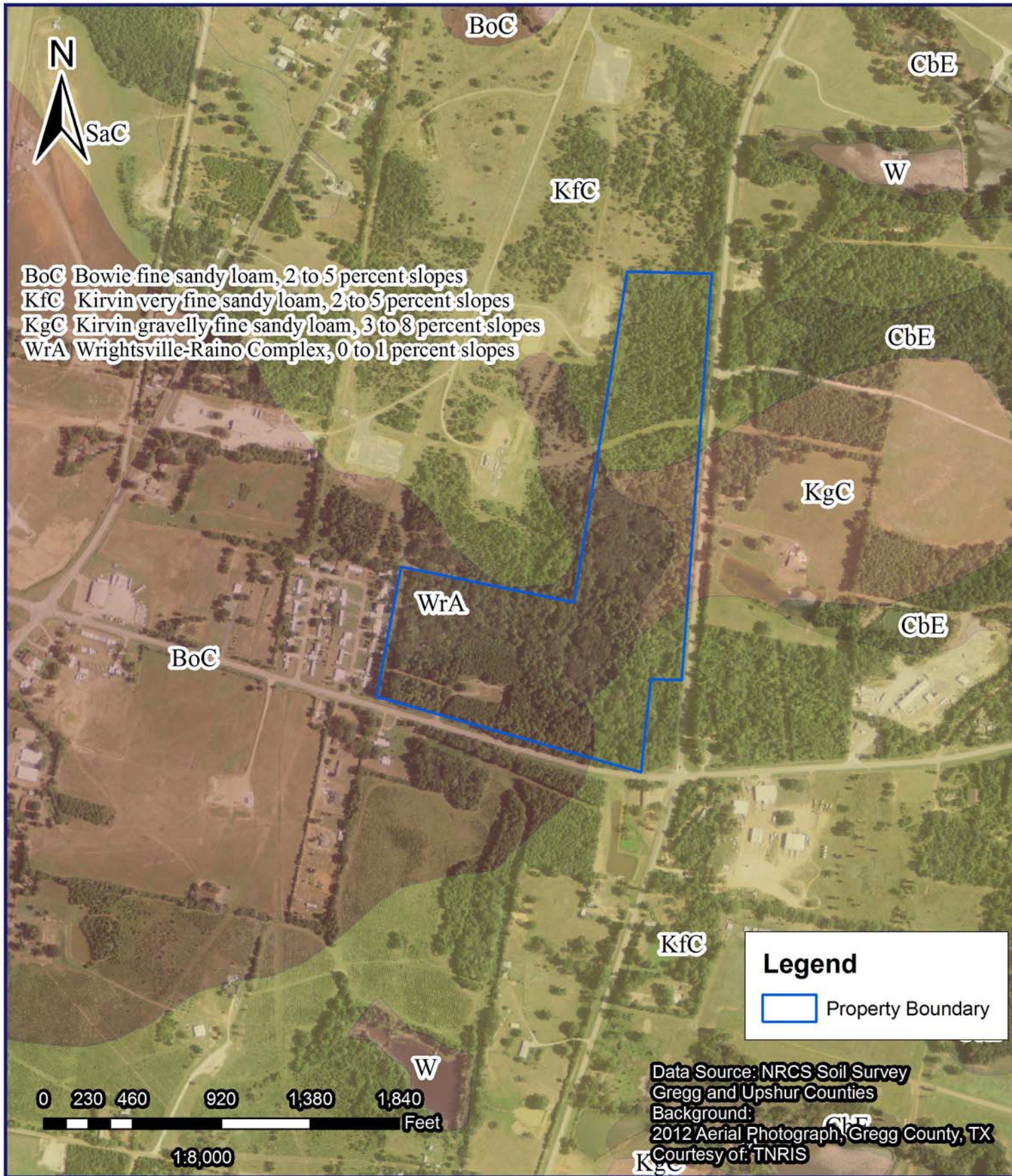
Revised by:  
Date:






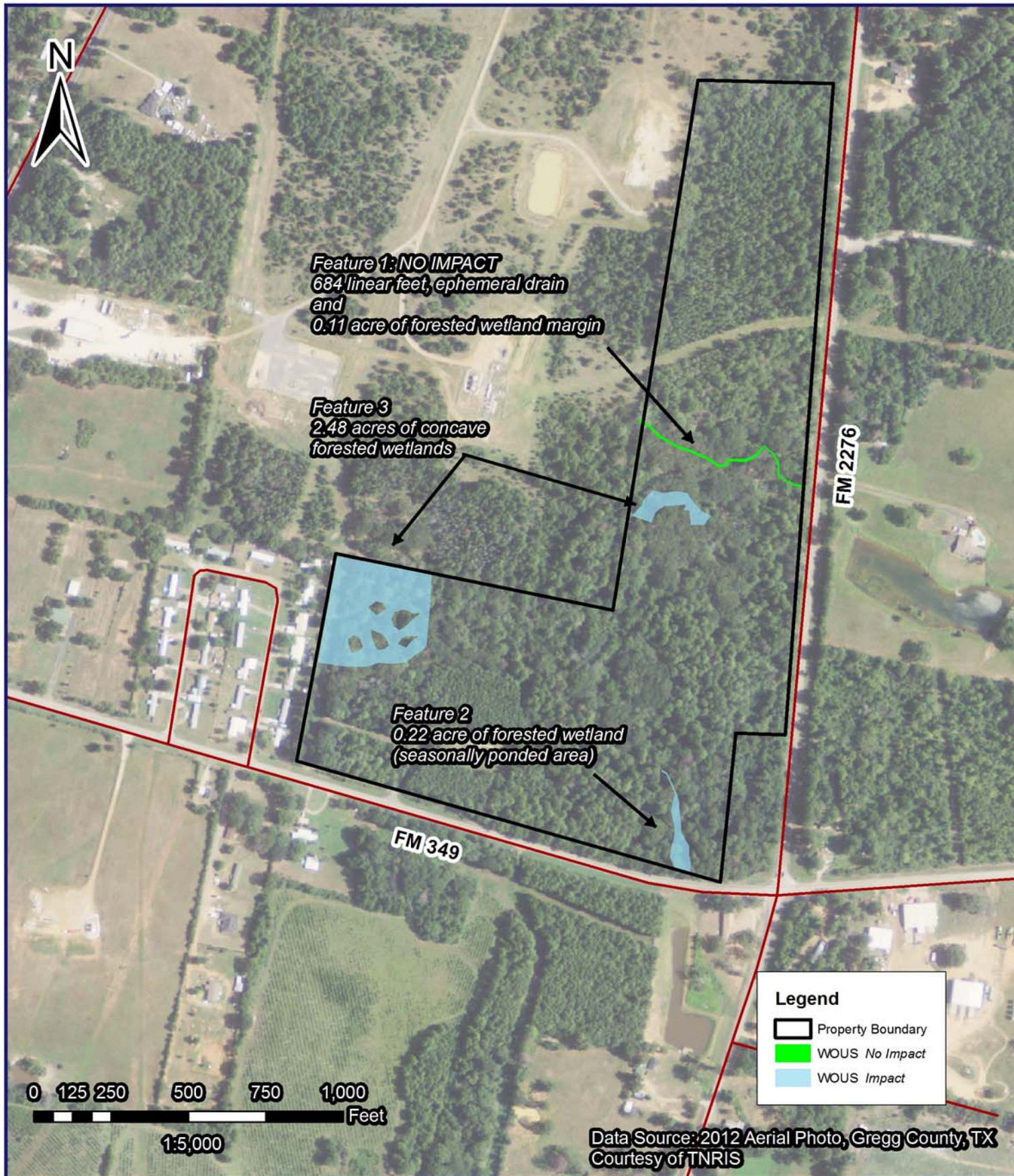
 <p><b>TITANIUM ENVIRONMENTAL SERVICES, LLC</b> PO Box 4029 • Longview, Texas 75606 Phone (903) 234-8443 • Fax (903) 234-1641 www.titaniumenvironmental.com</p>	<b>CLIENT</b>	<b>PROJECT DESCRIPTION</b>	<b>Sheet 2 of 6</b>
	Kilgore Economic Development Corporation	Intersection of FM 349 and FM 2276 Kilgore, Texas Gregg County, Texas	<b>Topographic Map SWF-2013-00081</b>  <small>Created by: P. Ireland Date: 05.24.2014</small> <small>Revised by: Date:</small>





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	Kilgore Economic Development Corporation	Intersection of FM 349 and FM 2276 Kilgore, Texas Gregg County, Texas	Soils Map SWF-2013-00081  <small>Created by: P. Ireland Date: 05.24.2014</small> <small>Revised by: Date:</small>





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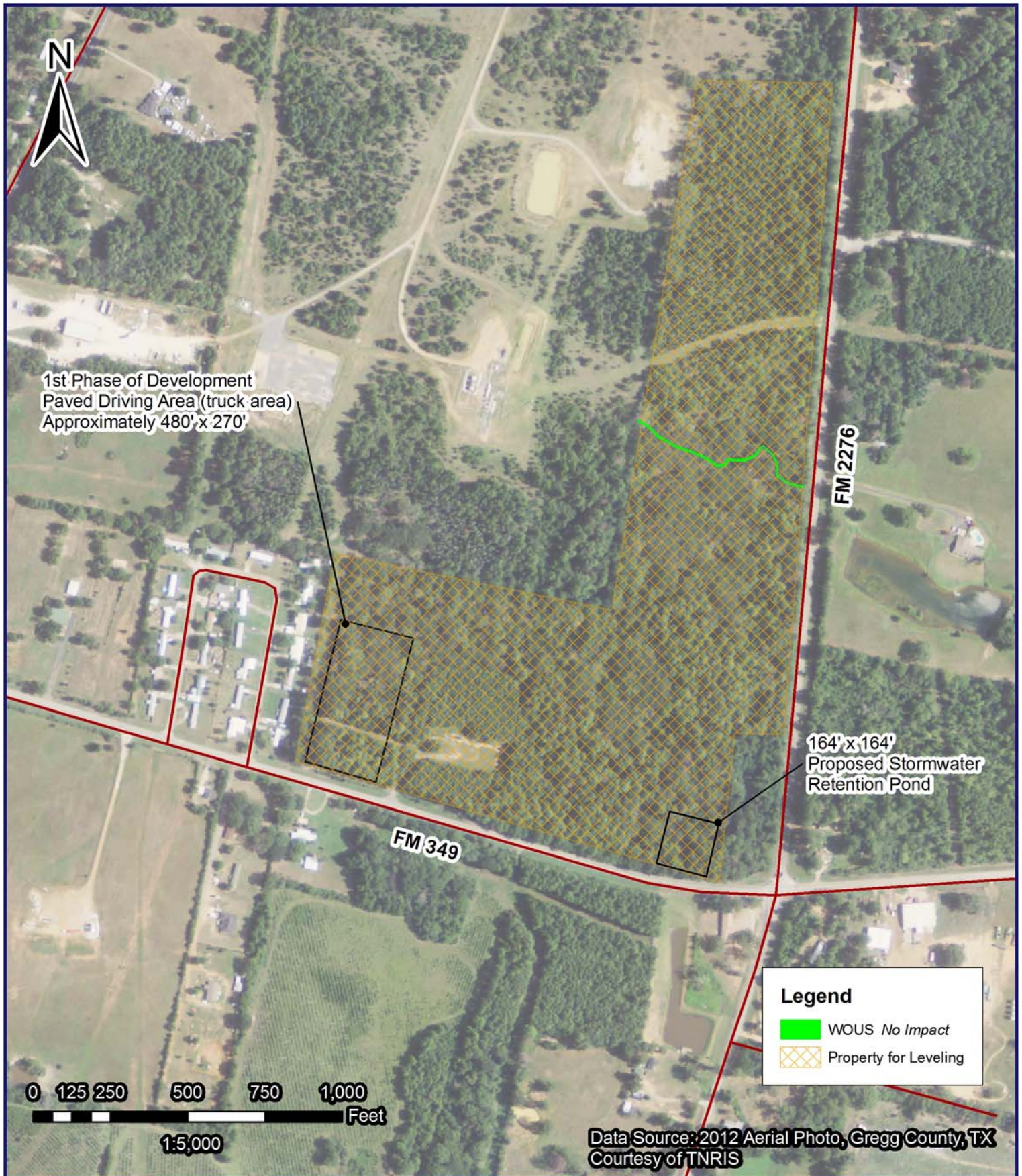
#### Sheet 4 of 6

Waters of the  
United States  
SWF-2013-00081

Created by: P. Ireland  
Date: 05.19.2014

Revised by:  
Date:





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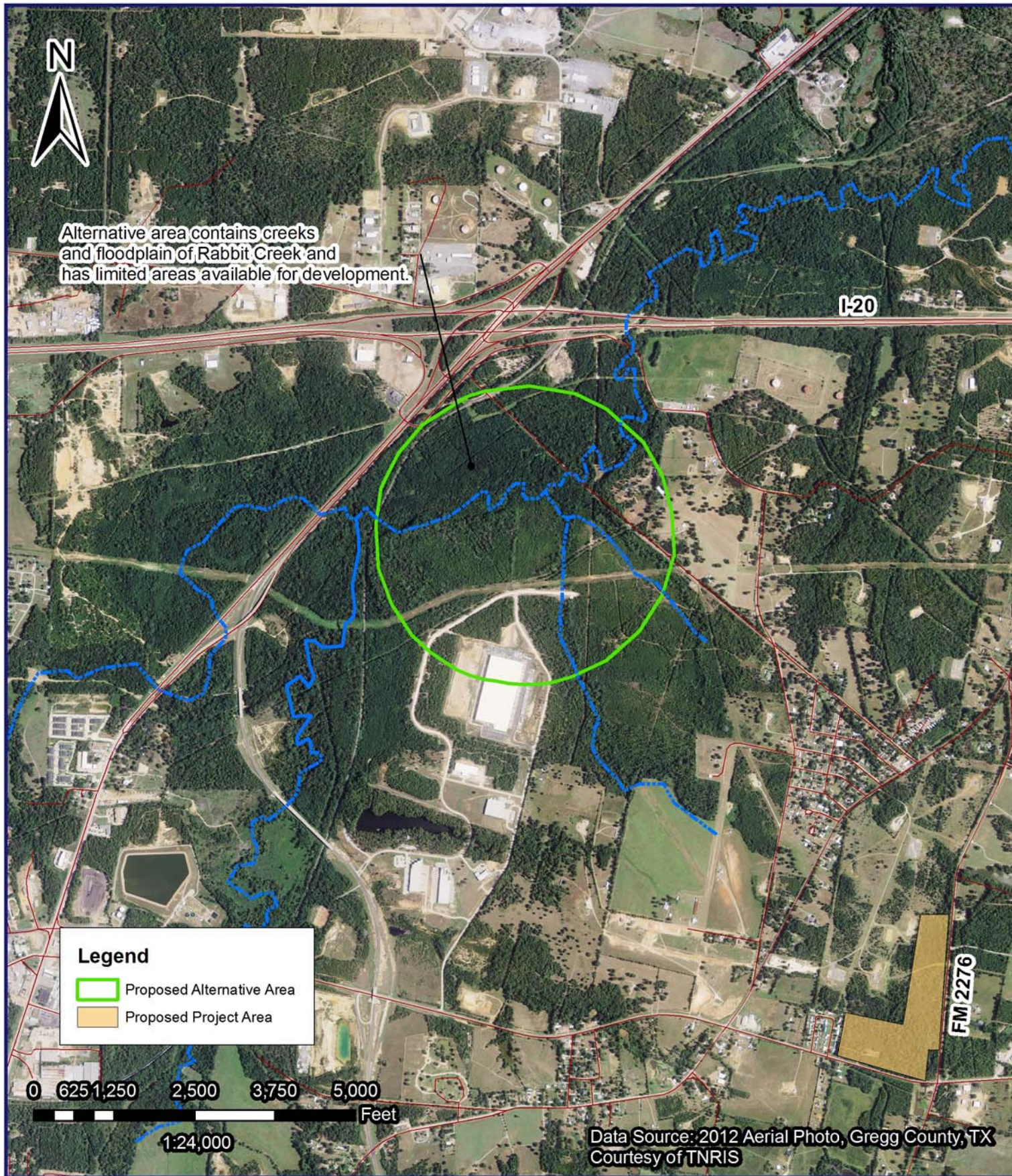
#### Sheet 5 of 6

Site Plan Overview  
SWF-2013-00081

Created by: P. Ireland  
Date: 05.19.2014

Revised by:  
Date:





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Intersection of FM 349 and  
FM 2276 Kilgore, Texas

#### Sheet 6 of 6

Alternatives  
Considered  
SWF-2013-00081

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Date: 05.19.2014

Revised by:  
Date: