



Public Notice

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

Applicant: Pinkus-McCord Joint Venture

Permit Application No.: SWF-2006-00473

Date: November 24, 2008

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

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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 the construction of the Pinkus-McCord tract in the City of Plano, Collin County, Texas.

APPLICANT: Pinkus-McCord Joint Venture:

Mr. Ralph Pinkus
11706 Pine Forest Drive
Dallas, Texas 75230

Mr. Carl McCord
2565 Southwell
Dallas, Texas 75229

APPLICATION NUMBER: SWF-2006-00473

DATE ISSUED: November 24, 2008

LOCATION: The proposed retail and commercial development would be located west of U.S. Highway 75, between Parker Road and Spring Creek Parkway in the City of Plano, Collin County, Texas (Sheet 1 of 8). The proposed project would be located approximately at UTM coordinates 714400.0 East and 3658800.0 North (Zone 14) on the Plano 7.5-minute USGS quadrangle map (Sheet 2 of 8) in the USGS Hydrologic Unit 12030106.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification.

PROJECT DESCRIPTION: The proposed plan includes three development sites, a Restaurant Pad site, an Office/Retail and Hotel/Restaurant site, and a Town Home Residential site (Sheet 5 of 8) within the 30.8-acre property. Each of these development sites includes features such as parking, driveways, utilities, landscaping, sidewalks, fire lanes, and loading facilities.

Bowman Branch is the only surface water feature present on the project site that meets the definition of a water of the United States. Bowman Branch is approximately 3,486 linear feet long and encompasses 0.656 acre below the ordinary highwater mark (OHWM) within the project site. The OHWM was identified and delineated in the field based upon the destruction of terrestrial vegetation and the natural shelving associated with the fluctuation of water. Banks were downcut 3 to 6 feet to a rock bottom throughout the property. Sediment plumes are present in areas of decreasing water

velocity which occurs as the channel widens at various points throughout the site.

The project site was characterized as having two distinct plant communities, a riparian community associated with the stream channel and a grassland community. Dominant vegetation in the riparian community included American elm (*Ulmus americana*), hackberry (*Celtis laevigata*), green ash (*Fraxinus pennsylvanica*), black willow (*Salix nigra*), cottonwood (*Populus deltoides*), cedar elm (*Ulmus crassifolia*), Osage orange (*Maclura pomifera*), red mulberry (*Morus rubra*), Chinese privet (*Ligustrum sinense*), wax leaf ligustrum (*Ligustrum japonicum*), honeysuckle (*Lonicera* sp.), catalpa (*Catalpa speciosa*), Chinese tallow tree (*Sapium sebiferum*), gum bully (*Bumelia lanuginosa* var. *albicans*), roughleaf dogwood (*Cornus drummondii*), Bradford pear (*Pyrus calleryana*), coralberry (*Symphoricarpos orbiculatus*), greenbrier (*Smilax bona-nox*), poison ivy (*Toxicodendron radicans*), goldenrod (*Solidago* sp.), annual ragweed (*Ambrosia trifida*), Canada wildrye (*Elymus canadensis*), and veronia (*Veronia* sp.). The remainder of the property was characterized as a grassland community dominated by Johnsongrass (*Sorghum halepense*), Texas wintergrass (*Stipa leucotricha*), meadow dropseed (*Sporobolus compositus* var. *drummondii*), eyebane (*Euphorbia nutans*), Bermudagrass (*Cynodon dactylon*), dallisgrass (*Paspalum dilatatum*), and silver bluestem (*Bothriochloa saccharoides*).

Site development planning has been conducted since the early 1990's. This planning has been primarily focused on cost-effective alternatives with grading and designing marketable pad sites that are above the 100-year floodplain. Additionally, the planning and designing has had to address the 100-year floodplain, floodway, and valley storage requirements. The following alternatives were considered by the applicant on each of the three development concepts to minimize unavoidable impacts to waters of the United States.

- Restaurant Pad Site (Between U.S. Highway 75 and Premier Drive) – The only minimization alternative considered for this pad site was to relocate this channel to the northern property boundary in an open channel. This design to minimize unavoidable impacts would require the channel be placed into a 30-foot wide channel with vertical retaining walls on each side. This design was evaluated and determined that there would be insufficient space for parking on the site due to the open channel. Additionally, this minimization concept would provide little to no ecological benefits due to the retaining walls. Therefore, this concept was dismissed for a fully developed plan that provides no minimization of impacts to waters of the United States.
- Office/Retail and Hotel/Restaurant Site (West of Premier Drive) – The applicant developed a design that would constrict the 100-year floodplain within an open channel along the northern project boundary. This open channel was designed to be 80 feet wide at the top of bank and vegetated with native wooded riparian corridor. Based on this design the applicant prepared concept building layouts to determine the marketability and costs associated with the plan. This concept plan was marketed to retail centers and developers to identify the demand for this proposed design, which minimized impacts to waters of the United States. The results of this market analysis indicated that the costs were less for the infrastructure; however, this design would result in an inefficient use of space (considering the parking requirements, internal traffic flow, fire lanes, and restricted developable area). Therefore,

the applicant rejected this concept for a fully developed plan that provides no minimization of impacts to waters of the United States.

- Town Home Residential Site (East of Thunderbird Lane) – The western half of the project site (approximately 15.3 acres) has been planned consistent with adjacent land use. Multifamily residential development planning would provide the site development with more design flexibility than that of single family residential, when considering street layout and traffic flow for a large number of small structures. However, this portion of the project site is nearly all within the 100-year floodplain of Bowman Branch. Minimization of adverse impacts to waters of the United States would be achieved through this section of the project by designing an open channel that would convey the 100-year storm event, while increasing the area of developable property. This open channel was designed and would be constructed to accommodate recreation aspects available within a wooded riparian corridor.

This project would unavoidably impact all waters of the United States located on this tract (Table 1). On the Restaurant Pad site (between U.S. Highway 75 and Premier Drive) of the project site, approximately 450 linear feet (0.103 acre below OHWM) of channel would be placed in four 9 by 8 foot box culverts. Additionally, approximately 1,277 linear feet (0.251 acre below the plane of the OHWM) of intermittent tributary and 306 linear feet (0.063 acre below the plane of the OHWM) of ephemeral tributary would be placed in three 10 by 9 foot box culverts for the construction of the Office/Retail and Hotel/Restaurant site. Approximately 1,453 linear feet (0.239 acre below the plane of the OHWM) of Bowman Branch would be realigned into an open channel along the northern property boundary for the Town Home Residential project site. There will be approximately 794 cubic yards of compacted soil placed below the plane of the OHWM.

Table 1.
Jurisdictional Waters Impacted on the Premier Park Mixed Use Development

Project Site	Water Feature	Hydrology	Area Impacted (acres)	Length Impacted (linear feet)
Town Home Residential	Segment 1	Intermittent	0.150	929
	Segment 2	Intermittent	0.089	524
Office/Retail and Hotel/Restaurant	Segment 2	Intermittent	0.251	1,277
	Segment 3	Ephemeral	0.063	306
Restaurant Pad Site	Segment 4	Intermittent	0.103	450
Total			0.656	3,486

The proposed mitigation would involve the creation of on-site mitigation areas (Sheet 7 of 8) to compensate for approximately 1,453 linear feet of impacts and the purchase of credits from an approved mitigation bank to compensate for the remaining 2,033 linear feet of impacts. To minimize alteration of the ecological floodplain, on-site mitigation areas would exhibit the same existing conditions (history, vegetation, soils, and hydrology) as the impacted areas. The mitigation would work to restore the ecological floodplain of this stream reach, which would maintain the pre-construction stream velocities and allow vegetation establishment in the floodplain and on stream

banks (Sheet 8 of 8). A sinuous pilot channel would be excavated in the bottom of this floodplain to ensure that the low flows continue to downstream reaches. These measures would assist in stabilizing the stream reach. Two planting regimes would be undertaken in this realigned reach, one mesic for the floodplain and another xeric for the channel slopes. These plantings would include both native grasses and trees. The overall hydrology and hydraulic design has been completed and reviewed by the City of Plano Floodplain Administrator. Through coordination with the City of Plano, the presented design (culvert sizes, open channel dimensions, and valley storage size and configuration) has been approved to meet their standards.

The Permittee is also proposing to purchase credits from either the Trinity River Mitigation Bank (TRMB) or South Forks Trinity River Mitigation Bank (SFTRMB) prior to the commencement of any discharge within waters of the United States. The number of credits to mitigate the unavoidable impacts to waters of the United States depends upon the approved mitigation bank stream multipliers. The Permittee would either purchase 11.8 credits from the SFTRMB or 14.7 credits from the TRMB prior to a discharge into waters of the United States.

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 would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The complete application may be reviewed in the USACE's office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

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 Collin County, Texas where the whooping crane (*Grus americana*) is known to occur or may occur as a migrant. The whooping crane is an endangered 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.

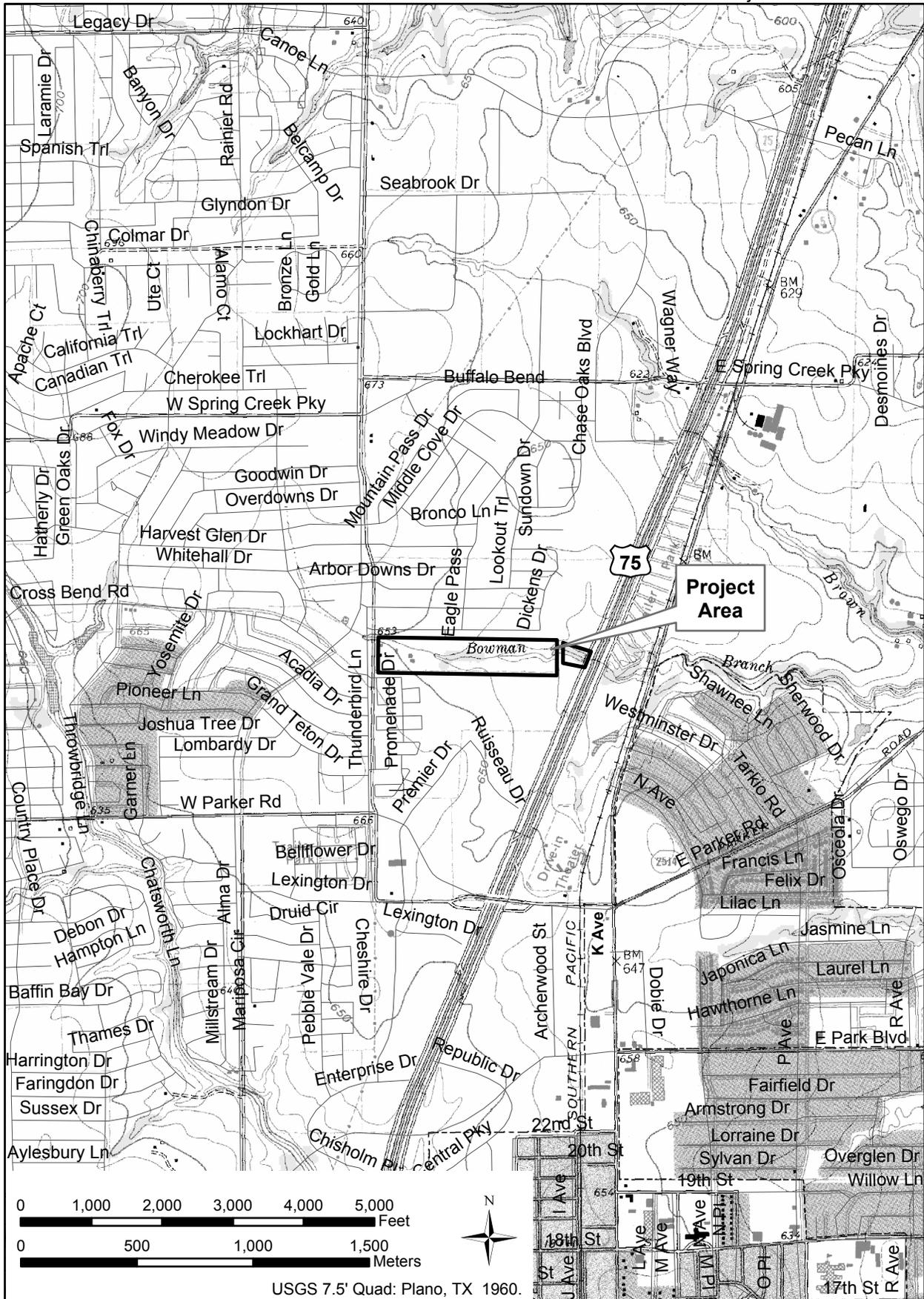
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to

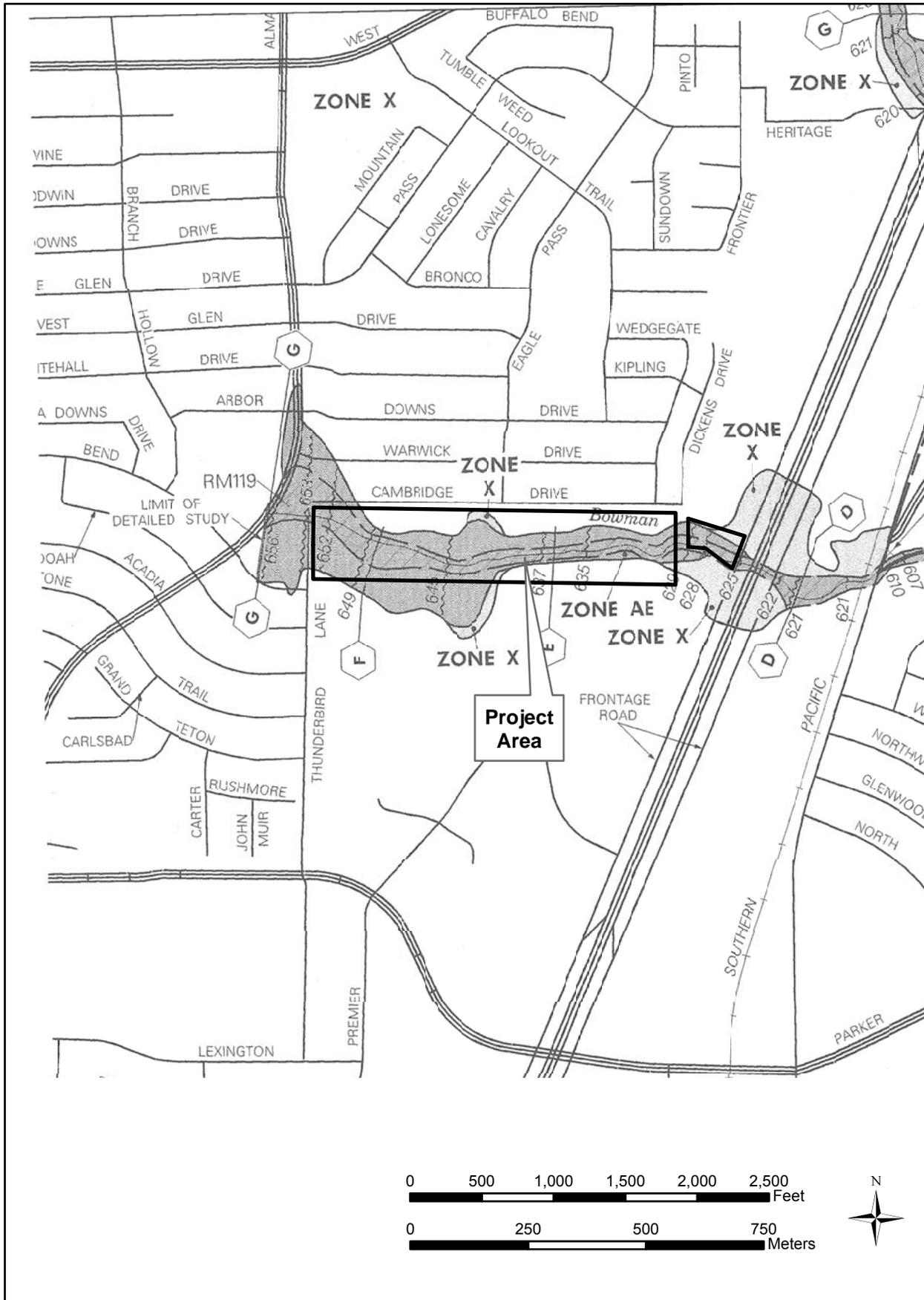
the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

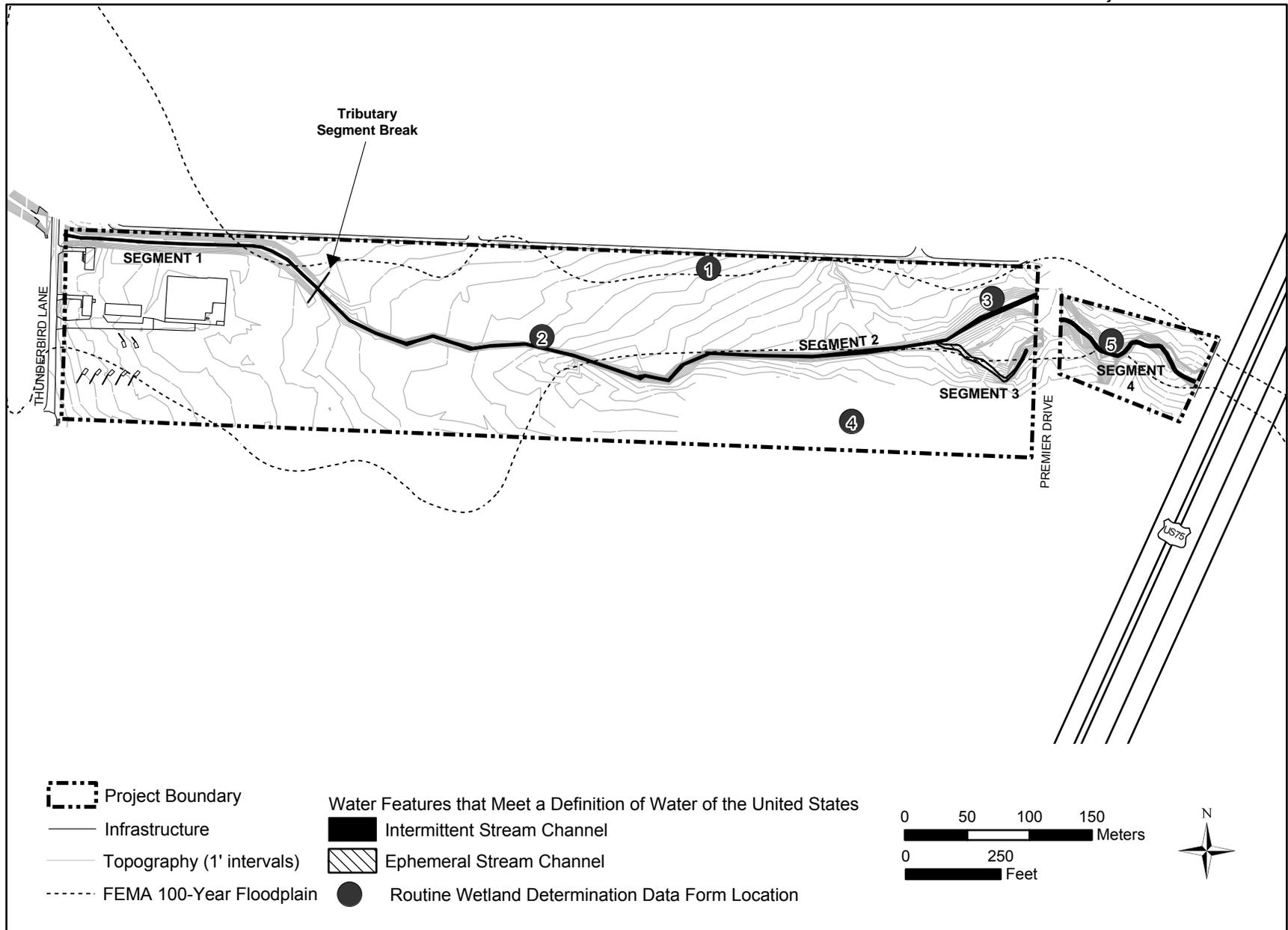
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If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

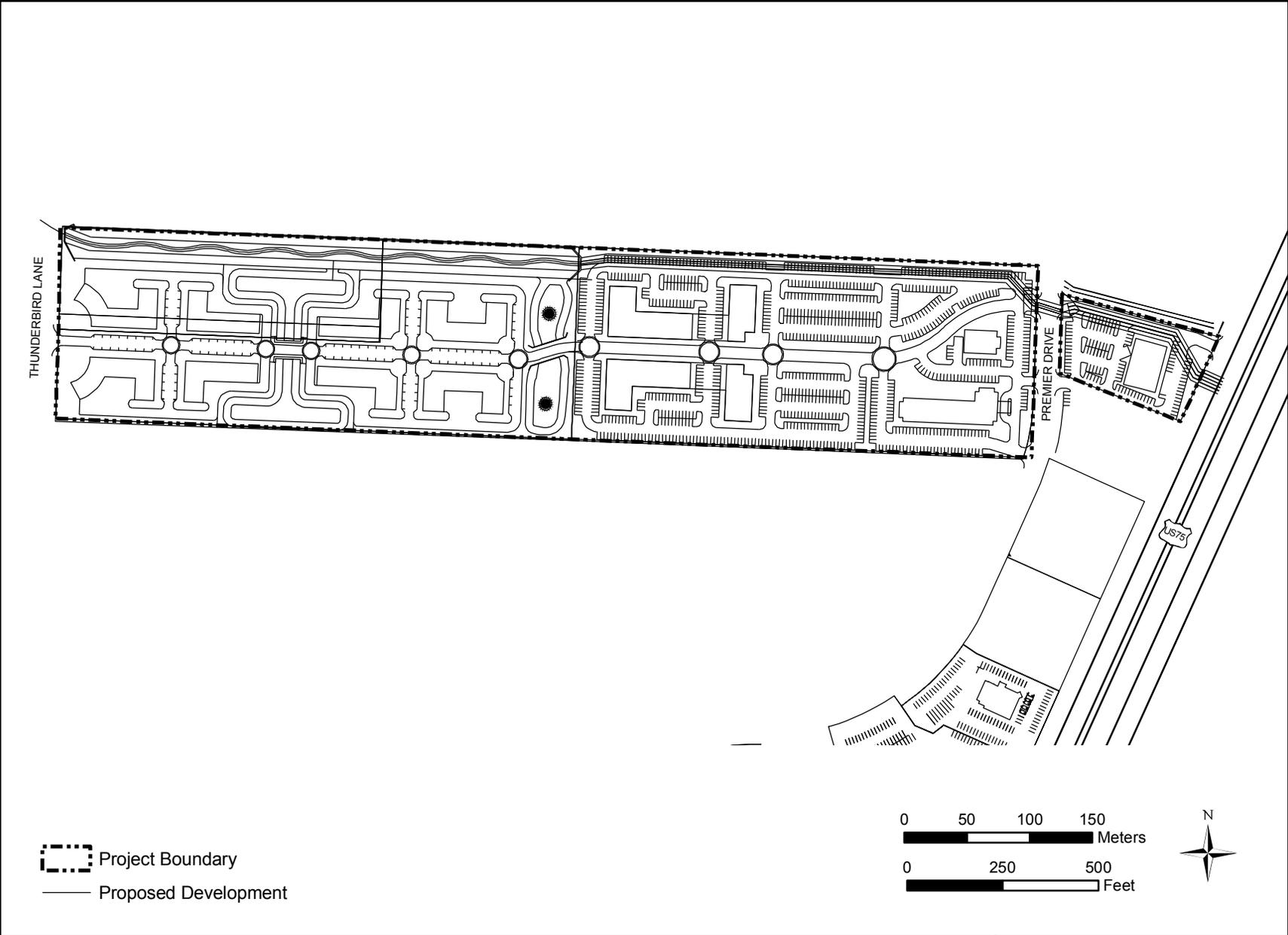
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before December 24, 2008, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no 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

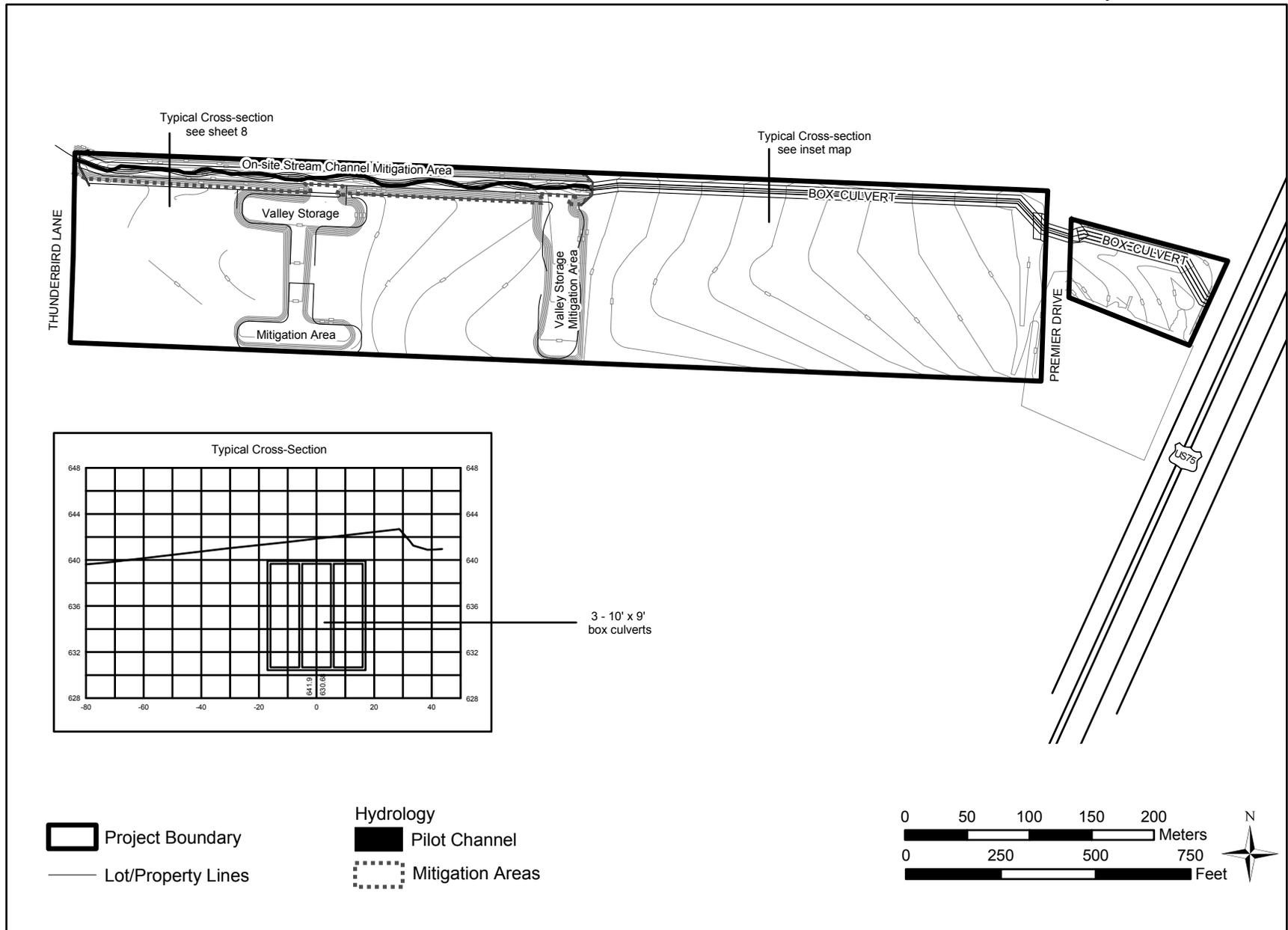


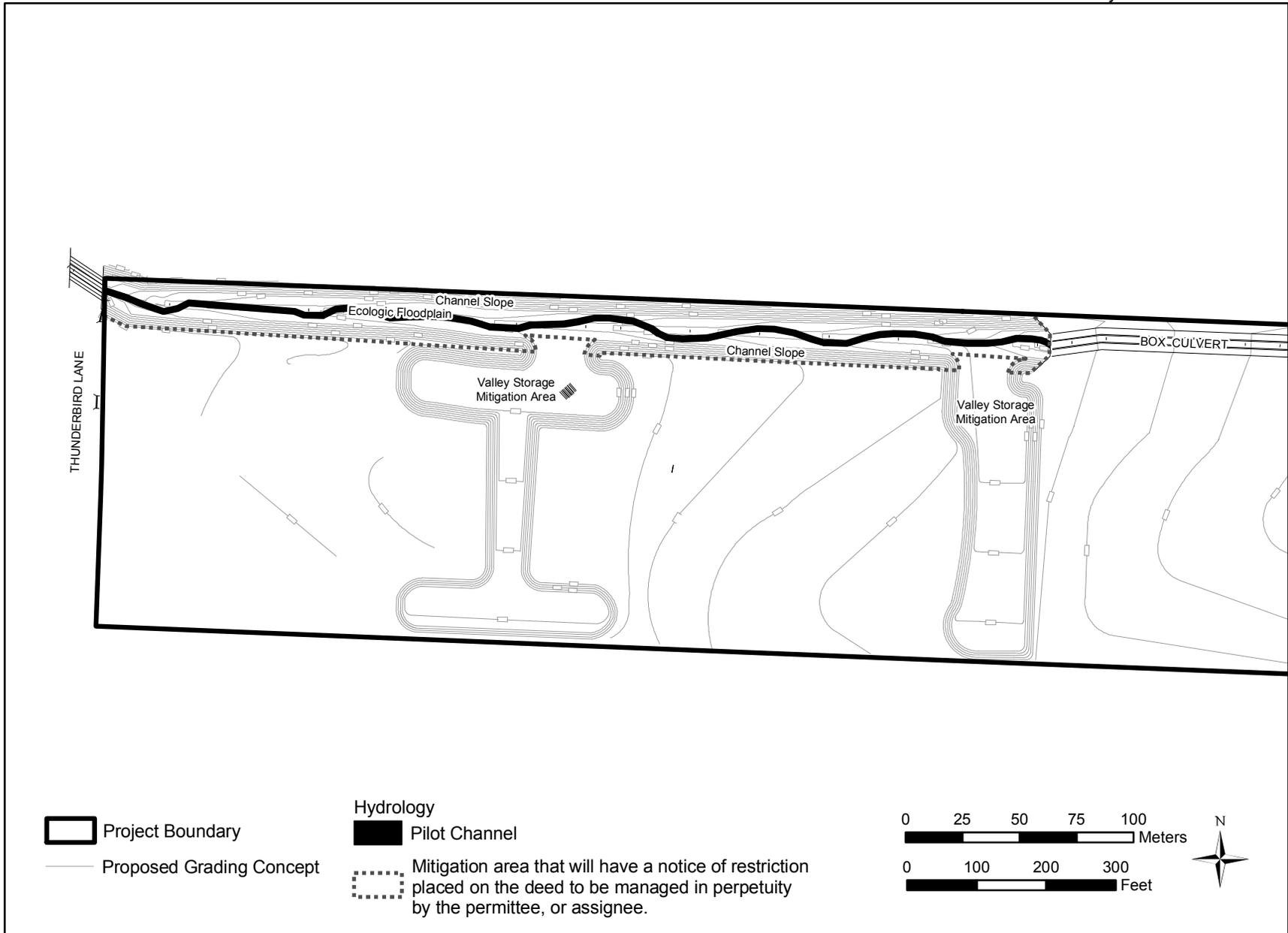






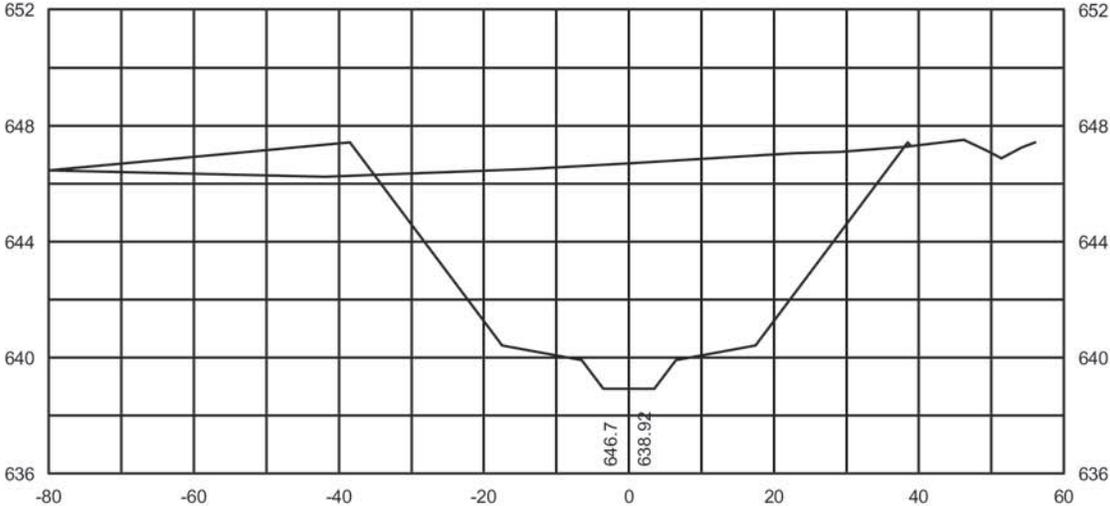
Sheet 5 of 8 – Proposed Site Development Concept.





Sheet 7 of 8 – Proposed On-Site Mitigation Area.

A. Typical Cross-Section



B. Typical Planting Layout

