



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

# Public Notice

Applicant: Matthew and Heather Marshall

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Project No.: SWF-2018-00180

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Date: December 21, 2018

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## Purpose

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. Eric Dephouse, Project Manager

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Phone Number: 817-886-1820

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## **PUBLIC NOTICE**

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

**SUBJECT:** This public notice is being issued to provide interested parties an opportunity to comment on a proposal to create the Butler Creek Mitigation Bank (BCMB), located west of the city of Tyler, in Smith County, Texas.

**APPLICANT:** Matthew and Heather Marshall  
1600 Brandywine Drive  
Tyler, Texas 75703

**APPLICATION NUMBER:** SWF-2018-00180

**DATE ISSUED:** December 21, 2018

**LOCATION:** The BCMB property of 222.06 acres is located in southwest Smith County, Texas between Lake Palestine and the City of Tyler. The BCMB can be found on the Chandler U.S. Geologic Survey (USGS) 7.5-minute topographic map at the northwest corner of Greenbriar Road (CR 1125) and Lake Placid Road (CR 1113). Butler Creek, the main channel on the property, is a tributary to Lake Palestine, which is located approximately 2.4 miles west of the site. Coordinates for the approximate center of the BCMB are as follows: Latitude 32.284504° North and Longitude 95.397912° West; UTM S 274178.12 m / E 3574496.71 m. The BCMB is located within the USGS Hydrologic Unit 12020001, Upper Neches Sub-Basin.

**PROJECT DESCRIPTION:** The BCMB would reestablish, restore, enhance, and place in permanent conservation 8,980 linear feet (LF) of perennial stream, 5,690 LF of intermittent stream, and 715 LF of ephemeral stream with their associated restored riparian buffers within the Upper Neches watershed HUC 12020001. BCMB would also reestablish, restore, or enhance 104.1 acres of emergent and forested wetlands and 71.7 acres of upland buffer.

The following figures depict the BCMB site. Exhibit 1: Site Location (Countywide); Exhibit 2: Site Location (Road Map); Exhibit 3: Topographic Map; Exhibit 4: 2016 Aerial Photography; Exhibit 5: Current Conditions (2016 Aerial Photography); Exhibit 6: Current Conditions (LiDAR); Exhibit 7: Mitigation Plan (2016 Aerial Photography); Exhibit 8: Mitigation Plan (LiDAR); Exhibit 9: National Wetlands Inventory (NWI) / FEMA Floodzones / National Hydrography Dataset (NHD) Map; Exhibit 10: Natural Resources Conservation Service (NRCS) Soils Map; Exhibit 11: Historical and Cultural Resources Map; and Exhibit 12: Proposed Service Areas Map.

The purpose of the BCMB is to provide potential permittees with mitigation credits needed to compensate for unavoidable impacts to waters of the U.S. within the proposed service areas in accordance with the Mitigation Banking Guidelines (CES-10-MIT, dated June 16, 2011) and the Stream Mitigation Method (SWF-2011-00078, dated October 2, 2013). The Sponsor is proposing primary, and secondary service areas for the proposed bank (see Exhibit 12 – Proposed Service

Area). All service area designations are limited to the Fort Worth District of the USACE and exclude all TPWD properties and facilities. The primary service area is the portion of the Upper Neches Sub-basin (8-digit HUC 12020001) within the South Central Plains Ecoregion (35) and the East Central Texas Plains Ecoregion (33). Counties within the primary service area include portions of: Anderson, Cherokee, Henderson, Houston, Smith, and Van Zandt. The secondary service area consists of the Upper Angelina Sub-basin (8-digit HUC 12020004) and the Middle Neches Sub-basin (8-digit HUC 12020002) within the South Central Plains Ecoregion (35). Counties within the secondary service areas include portions of: Angelina, Cherokee, Henderson, Houston, Nacogdoches, Rusk, and Smith.

The BCMB parent tract is 222.06 acres and is currently used for recreation and hunting by the property owners and bank sponsor, Matthew and Heather Marshall. Historical land uses of the proposed BCMB and immediate surrounding areas consist of forestry and agriculture operations and rural homesteads. The BCMB is estimated to have 15,385 LF of stream channel (8,370 LF is currently impounded by the dam and open water), 104.1 acres of wetlands, and 99.8 acres of uplands. The BCMB would be approximately 203.9 acres total (after exclusions) and currently consists of the following habitat types: mixed bottomland forest, open water, inundated emergent wetland, seasonally inundated emergent wetland, forested wetland, shrub / scrub wetlands, upland mixed pine / hardwoods, and upland improved and unimproved pasture. Prior to 2005, Butler Creek was impounded with an earthen berm, which is located near the central portion of the property and is approximately 800 LF. The impoundment of Butler Creek created an open water area and inundated emergent wetland habitat area of approximately 43.6 acres. The area of the lake immediately behind the berm is 8 to 10 feet deep at the thalweg and becomes shallower moving east. Total restored/reestablished stream length proposed for mitigation credit would require a functional assessment and delineation, but it is estimated to be approximately 20,000 LF. Wetlands eligible for credits (outside of the riparian buffer) are approximately 38 acres and upland buffers are estimated to be 72 acres. Credit ratios for upland buffer would be determined after coordination with the IRT and USACE later in the permitting process.

The Sponsors intend to reestablish Butler Creek through Priority 1 (P1) restoration utilizing Natural Channel Design (NCD) techniques as well as restoring the contributing tributaries on site and the associated wetlands of the riverine system. The final objectives of the bank are to recreate the natural, historical ecological conditions on-site; improve the overall water quality of the watershed; and create in-channel, riparian buffer, and wetland credits for compensatory mitigation.

The primary goals of the BCMB are to protect the water quality of the downstream Neches River watershed, including Butler Creek and Lake Palestine; provide habitat and refugia to wildlife; establish a dynamically stable forest and riparian ecosystem both resistant and resilient to disturbance events; and to ensure the longevity and function of the system through long-term conservation measures. These goals would be achieved through the attainment of the following objectives:

- Place the entire 203.9-acre bank under a perpetual conservation easement;

- Reestablish the natural hydrology of 8,370 LF of impounded stream channels by removing a significant portion of a berm and restoring the dimension, pattern, and profile of the channels on the new floodplain created by entrained sediments;
- Restore and reestablish 66.2 acres of forested wetland with hydrology that has been significantly altered from the impoundment of water from the berm;
- Enhance and restore the vegetative community of 37.9 acres of historically impaired forested and emergent wetland through selective planting and forest management;
- Reestablish off-channel emergent wetland depressions surrounded by scrub / shrub fringe transitioning into forested wetland upon the new floodplain to promote increased hydrology and improved wildlife habitat; and
- Improve the function of 1,950 LF of perennial stream, 4,350 LF of intermittent stream, and 715 LF of ephemeral stream through 93.7 acres of heavy buffer planting, light buffer planting, and noxious / invasive species removal.

A mitigation banking instrument (MBI) would be developed in accordance with the Compensatory Mitigation for Losses of Aquatic Resources (CMLR), (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19594-19705). The MBI would detail the legal and physical characteristics of the bank and how the bank would be established and operated. Subjects addressed in detail in the MBI would include development of the site, service area, credit determination, short and long-term financial assurances, scope of agreement, purpose and goals of the bank, baseline conditions, performance standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship.

The USACE, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service (USFWS), Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department comprise the Interagency Review Team (IRT), and would be involved in developing the MBI and may be signatories to the final document.

Implementation of the proposed mitigation bank would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears that the proposed bank may be authorized by Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

**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 a county where Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) are known to occur. 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.

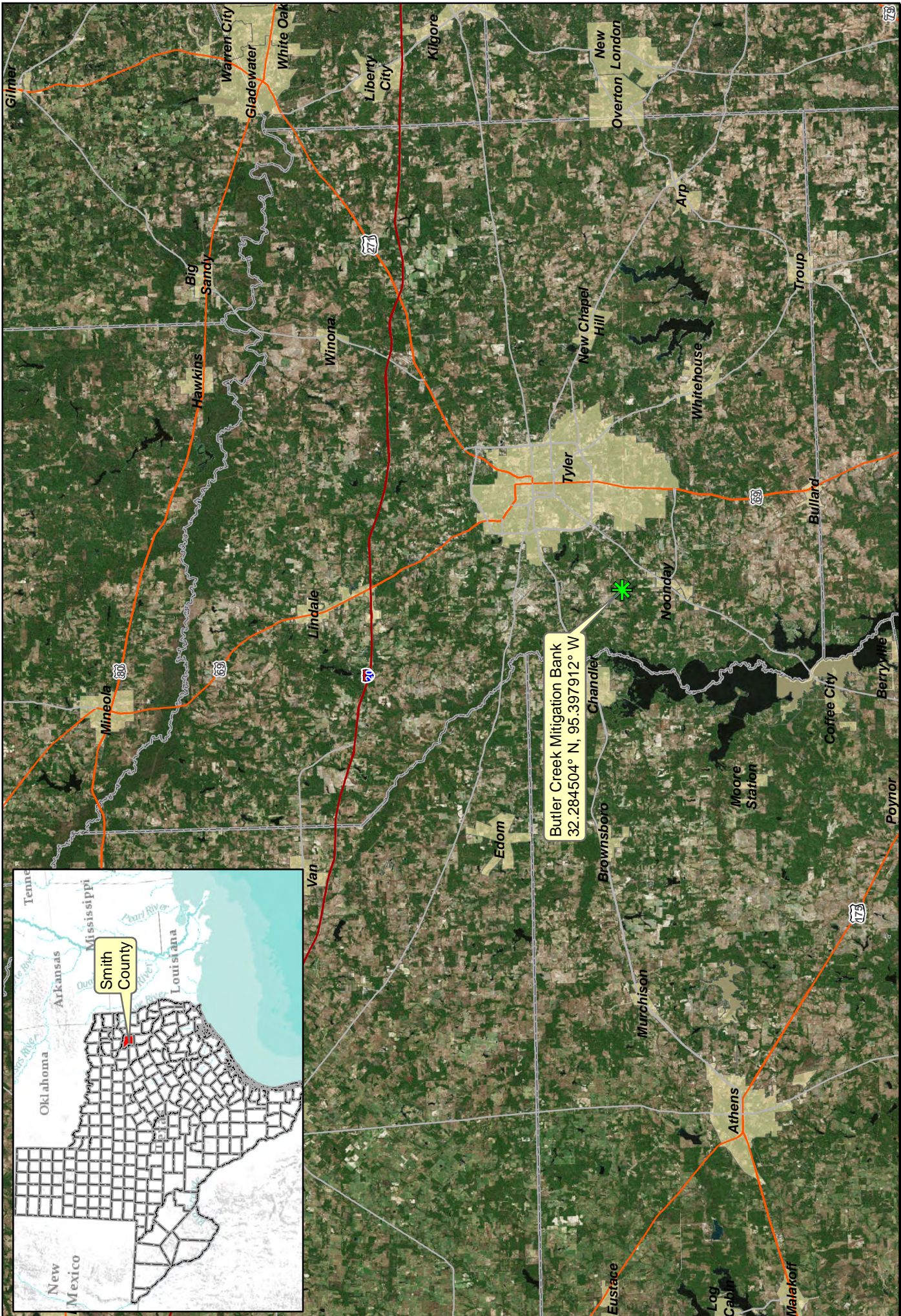
**FLOODPLAIN MANAGEMENT:** The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review 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 January 20, 2019, 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 Mr. Eric Dephouse; 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 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) 886-1820. 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



Butler Creek Mitigation Bank  
 32.284504° N, 95.397912° W



Prepared by: A. Russell, Date: 09/08/2018  
 Last Saved: 01/15/2018, Project: 115-0075-001  
 SOURCES: Imagery: ESRI Road and City; TxDOT Location: RS&H









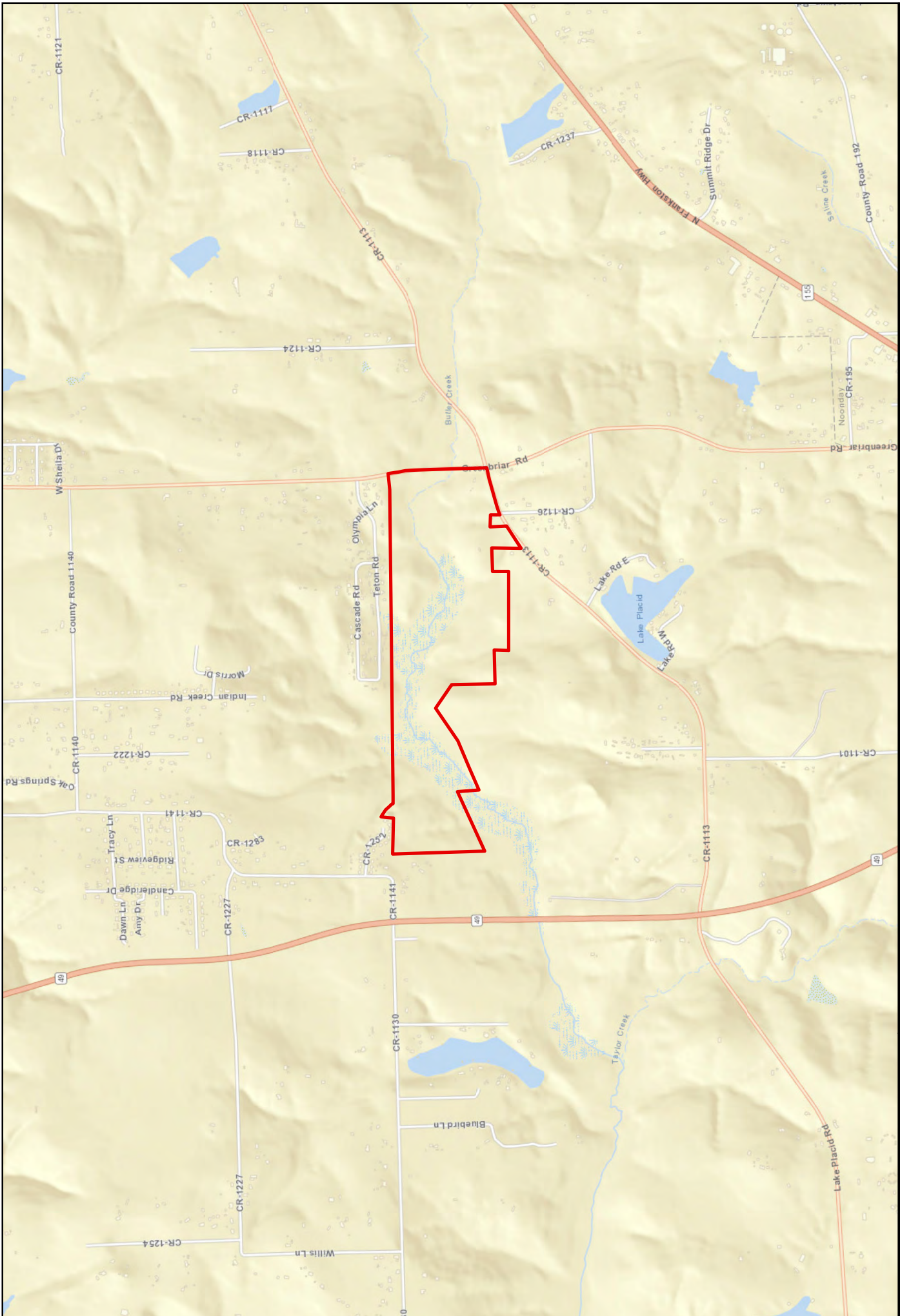
-  Site Location
-  City Boundary
-  County Boundary
-  Interstate
-  Primary Highway
-  Secondary Highway

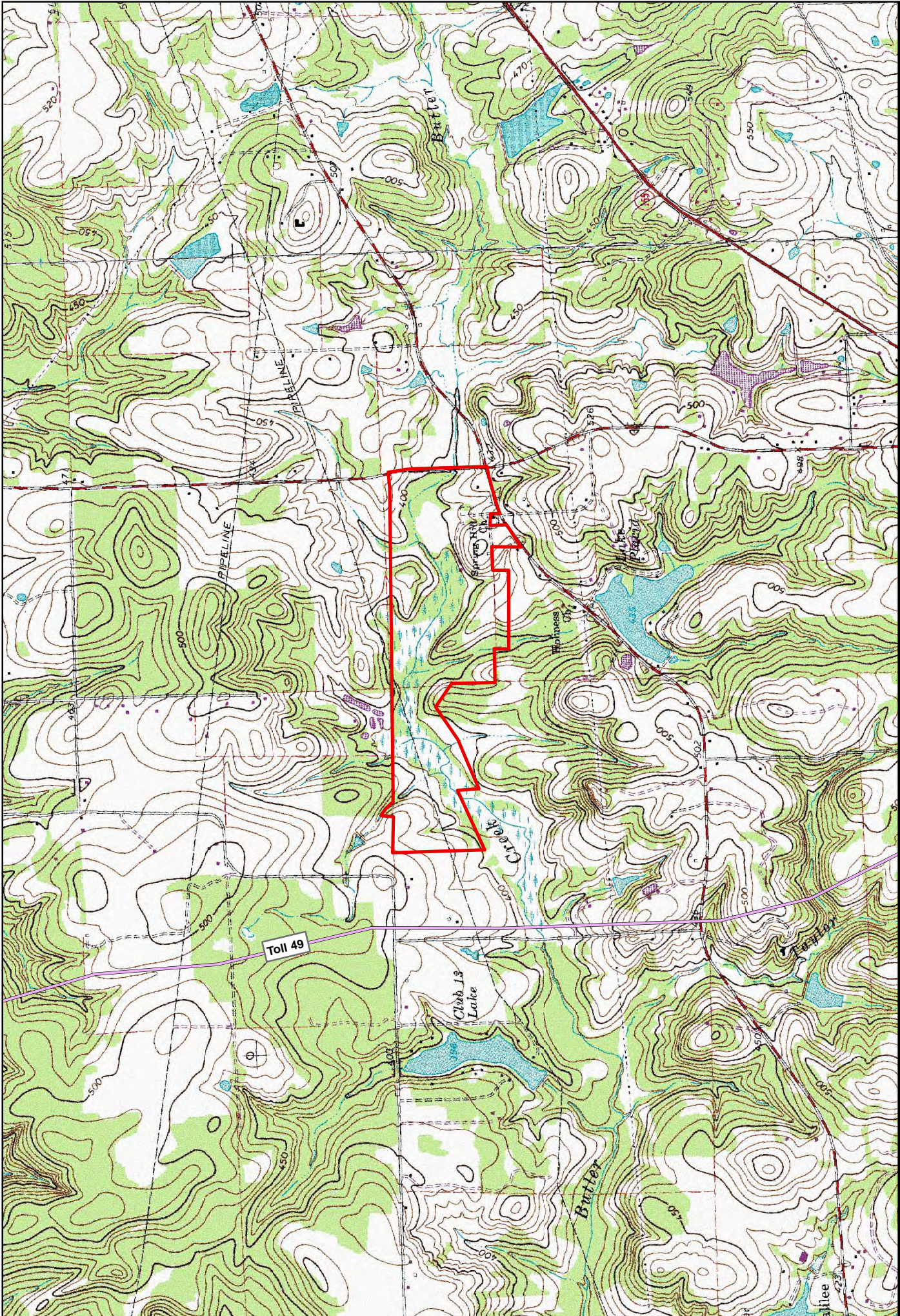
Exhibit 1  
 Site Location Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall



222 Acre Butler Creek Mitigation Bank Property Boundary



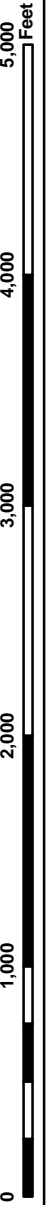
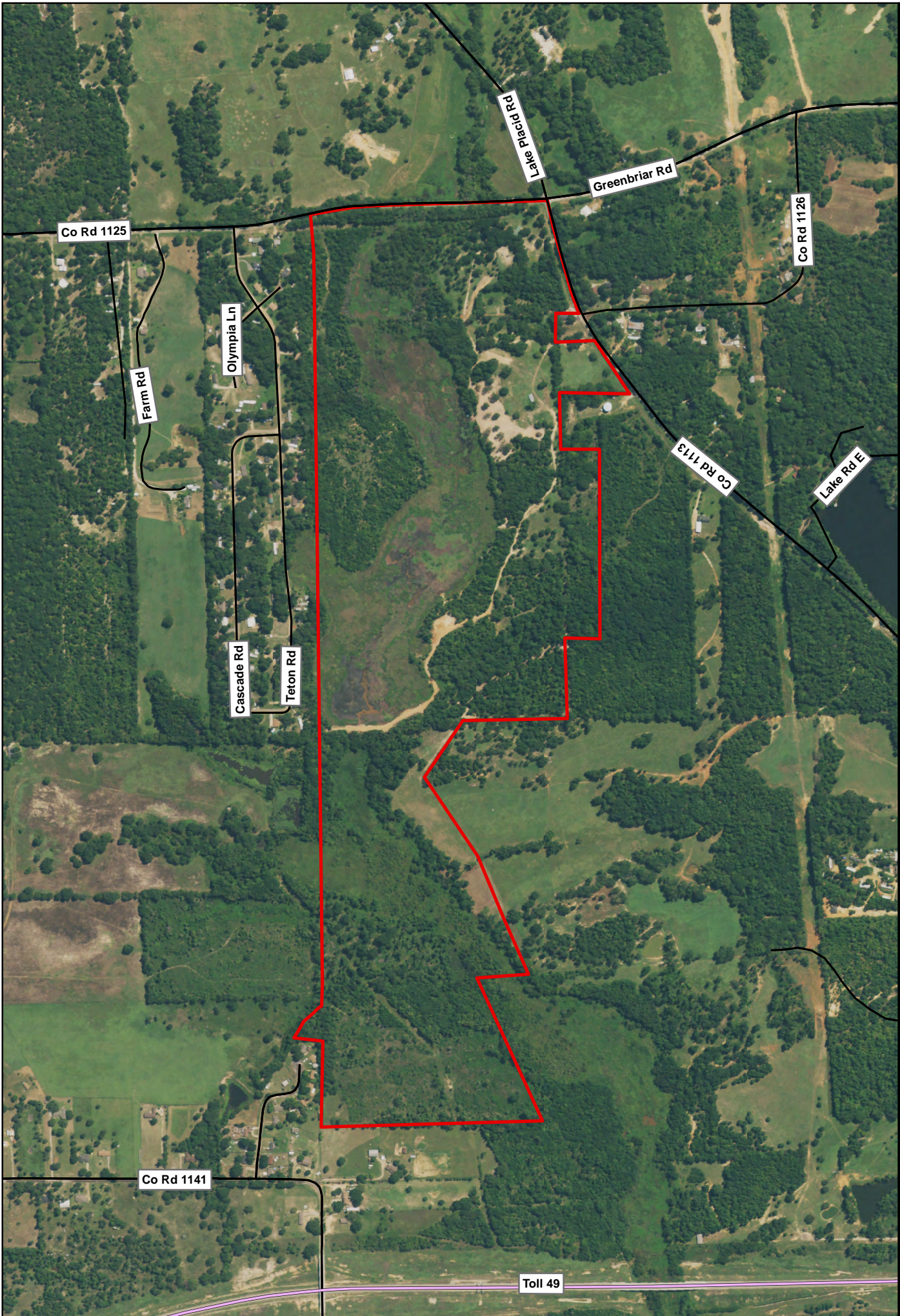
Exhibit 2  
 Road Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall



 222 Acre Butler Creek Mitigation Bank Property Boundary

Exhibit 3  
 Topographic Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall

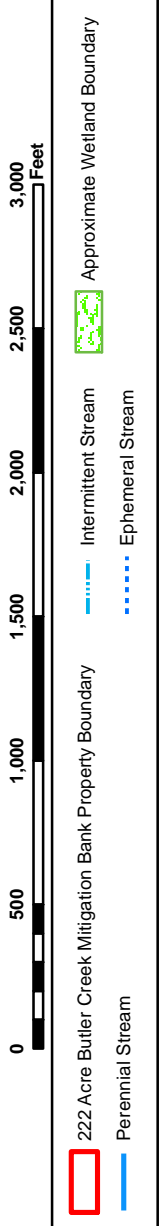
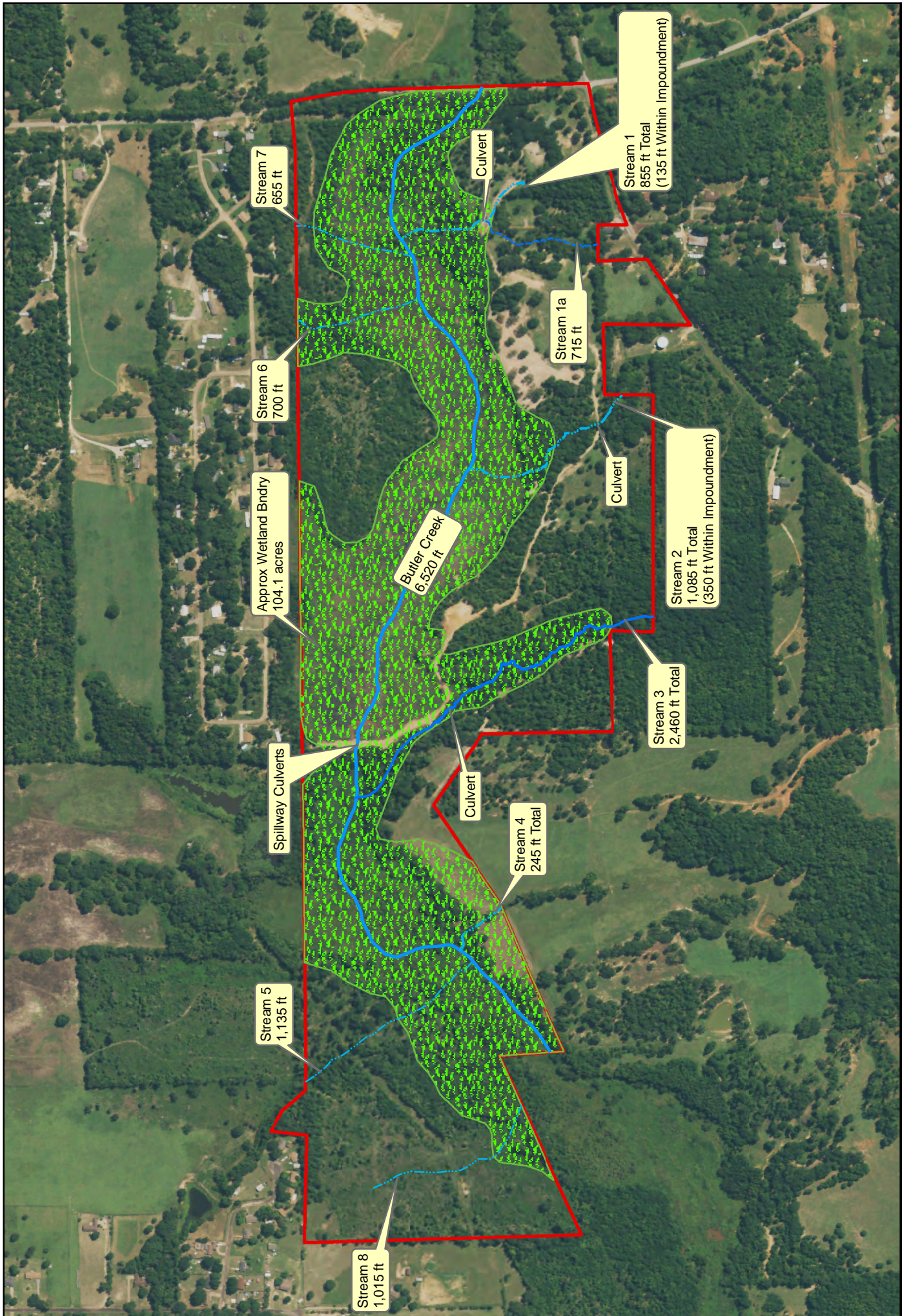


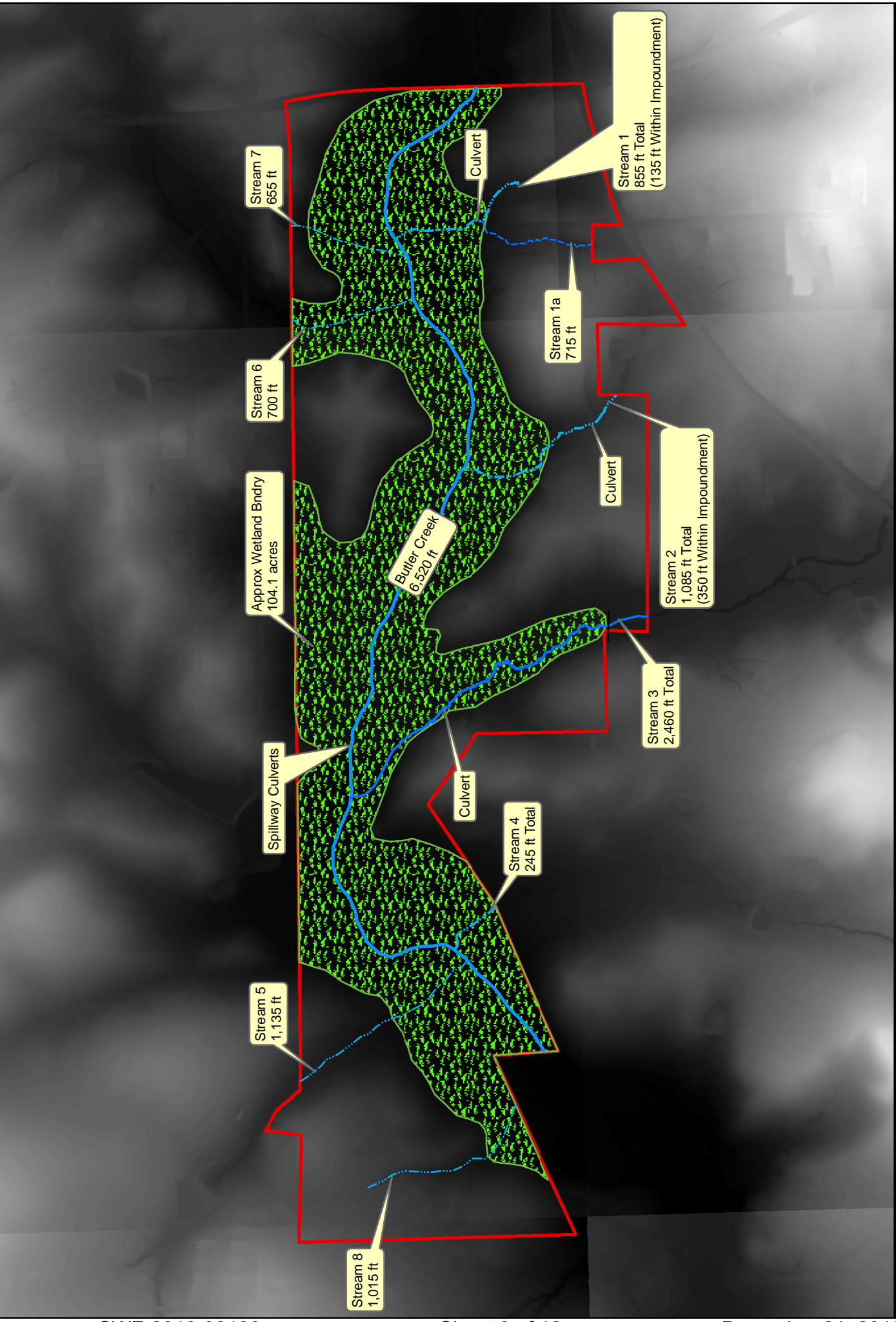


222 Acre Butler Creek Mitigation Bank Property Boundary



Exhibit 4  
 2016 Aerial Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall





Stream 7  
655 ft

Stream 6  
700 ft

Approx Wetland Bndry  
104.1 acres

Spillway Culverts

Stream 5  
1,135 ft

Stream 8  
1,015 ft

Butler Creek  
6,520 ft

Culvert

Stream 4  
245 ft Total

Stream 1a  
715 ft

Culvert

Stream 2  
1,085 ft Total  
(350 ft Within Impoundment)

Stream 3  
2,460 ft Total

Culvert

Stream 1  
855 ft Total  
(135 ft Within Impoundment)

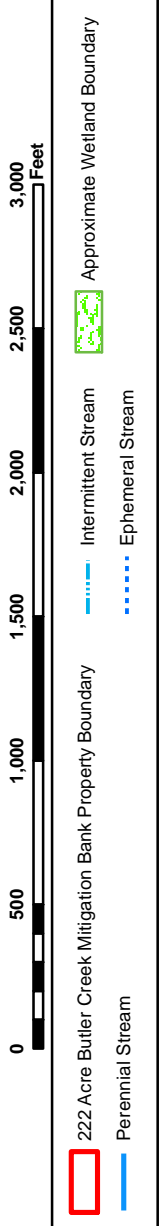
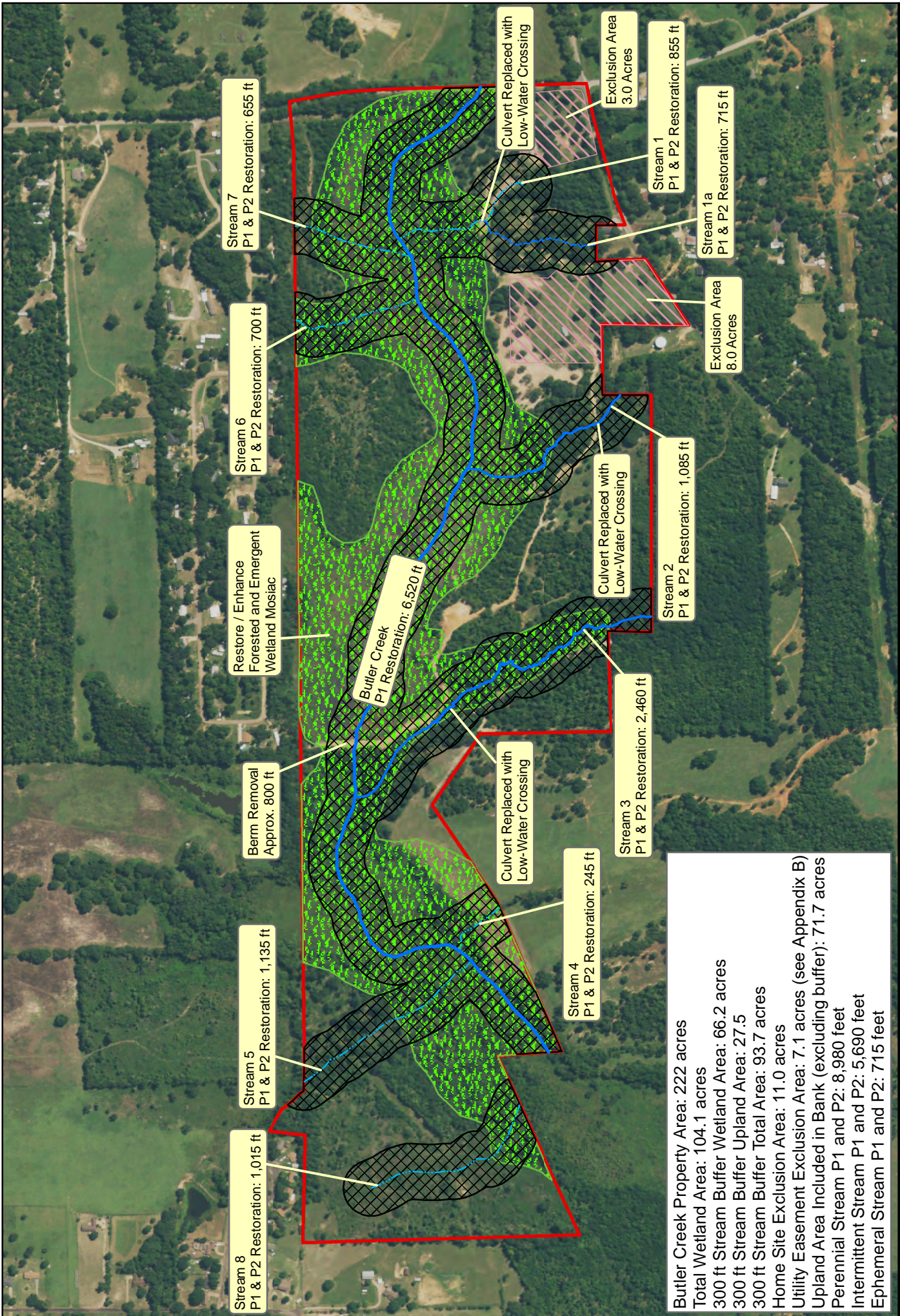


Exhibit 6  
 Current Conditions - LiDAR Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall



Stream 8  
P1 & P2 Restoration: 1,015 ft

Stream 5  
P1 & P2 Restoration: 1,135 ft

Berm Removal  
Approx. 800 ft

Restore / Enhance  
Forested and Emergent  
Wetland Mosaic

Stream 6  
P1 & P2 Restoration: 700 ft

Stream 7  
P1 & P2 Restoration: 655 ft

Butler Creek  
P1 Restoration: 6,520 ft

Culvert Replaced with  
Low-Water Crossing

Stream 4  
P1 & P2 Restoration: 245 ft

Culvert Replaced with  
Low-Water Crossing

Stream 3  
P1 & P2 Restoration: 2,460 ft

Culvert Replaced with  
Low-Water Crossing

Stream 2  
P1 & P2 Restoration: 1,085 ft

Stream 1a  
P1 & P2 Restoration: 715 ft

Stream 1  
P1 & P2 Restoration: 855 ft

Exclusion Area  
8.0 Acres

Exclusion Area  
3.0 Acres

Butler Creek Property Area: 222 acres  
 Total Wetland Area: 104.1 acres  
 300 ft Stream Buffer Wetland Area: 66.2 acres  
 300 ft Stream Buffer Upland Area: 27.5 acres  
 300 ft Stream Buffer Total Area: 93.7 acres  
 Home Site Exclusion Area: 11.0 acres  
 Utility Easement Exclusion Area: 7.1 acres (see Appendix B)  
 Upland Area Included in Bank (excluding buffer): 71.7 acres  
 Perennial Stream P1 and P2: 8,980 feet  
 Intermittent Stream P1 and P2: 5,690 feet  
 Ephemeral Stream P1 and P2: 715 feet

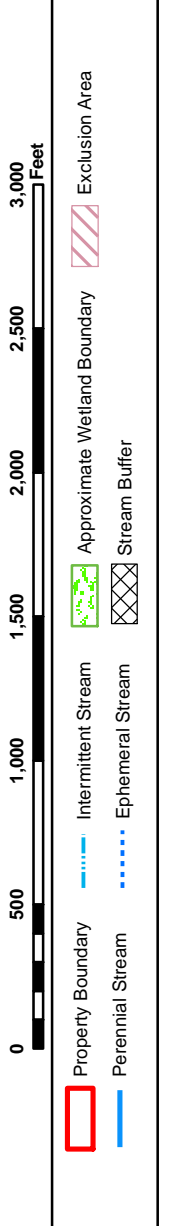
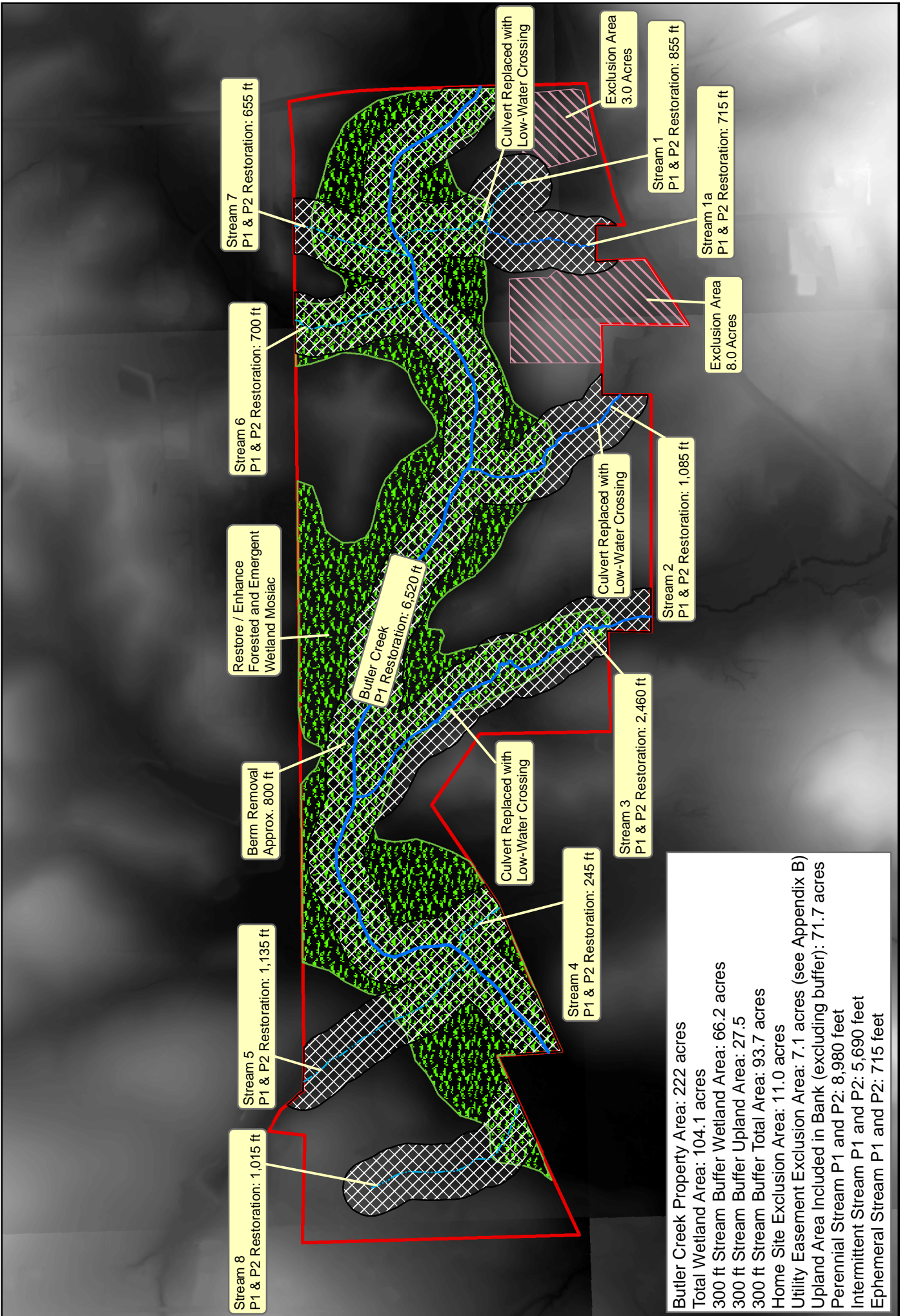


Exhibit 7  
 Mitigation Plan - Aerial Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall



Stream 8  
P1 & P2 Restoration: 1,015 ft

Stream 5  
P1 & P2 Restoration: 1,135 ft

Berm Removal  
Approx. 800 ft

Restore / Enhance  
Forested and Emergent  
Wetland Mosaic

Stream 6  
P1 & P2 Restoration: 700 ft

Stream 7  
P1 & P2 Restoration: 655 ft

Butler Creek  
P1 Restoration: 6,520 ft

Culvert Replaced with  
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Stream 4  
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Stream 3  
P1 & P2 Restoration: 2,460 ft

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P1 & P2 Restoration: 855 ft

Exclusion Area  
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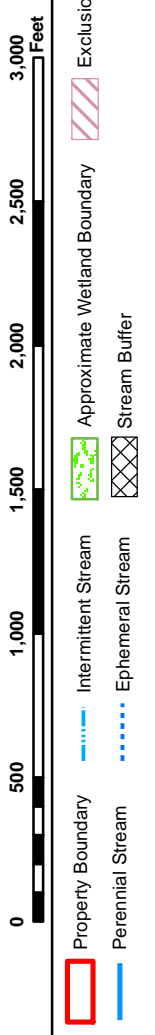
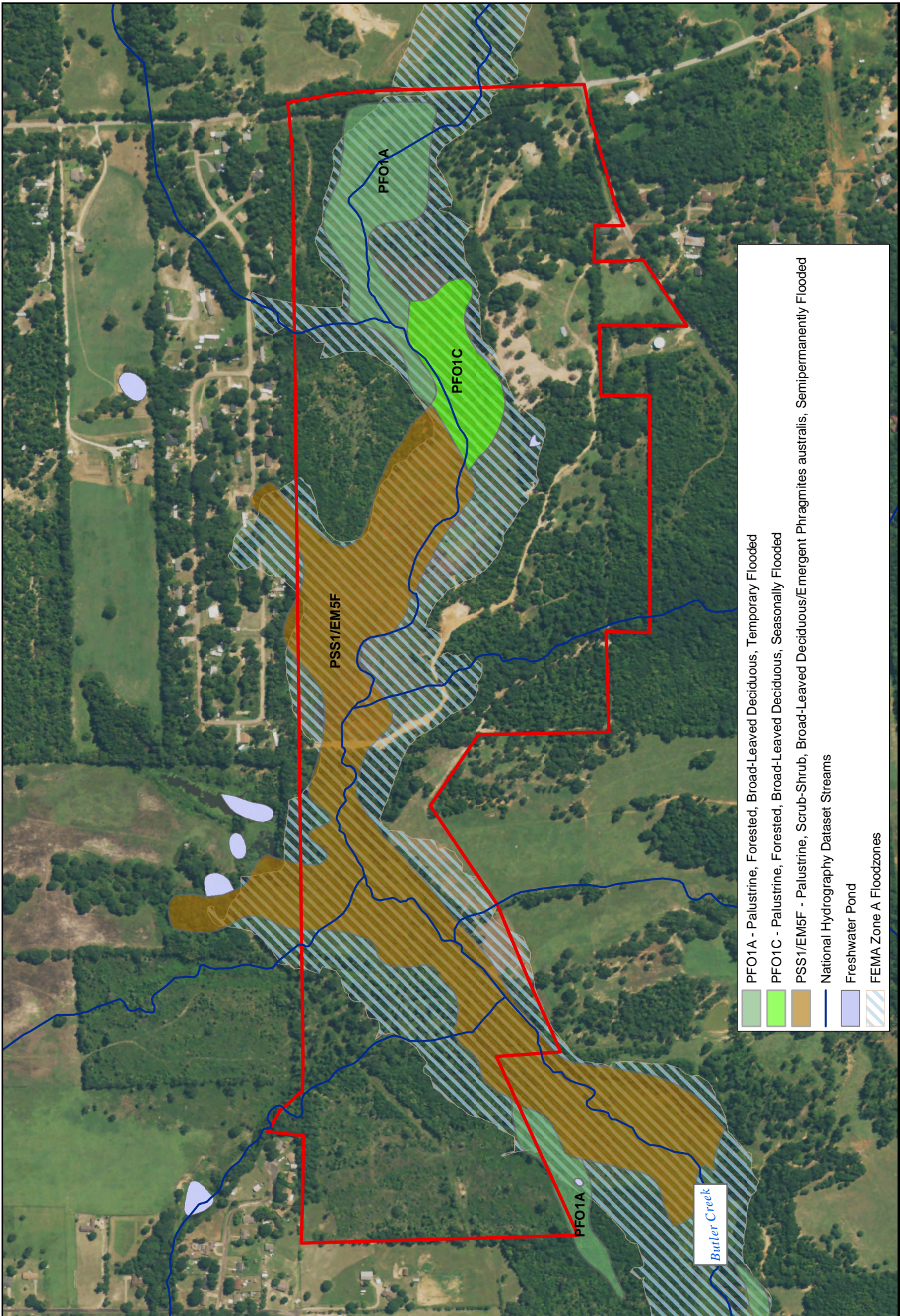


Exhibit 8  
 Mitigation Plan - LIDAR Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall




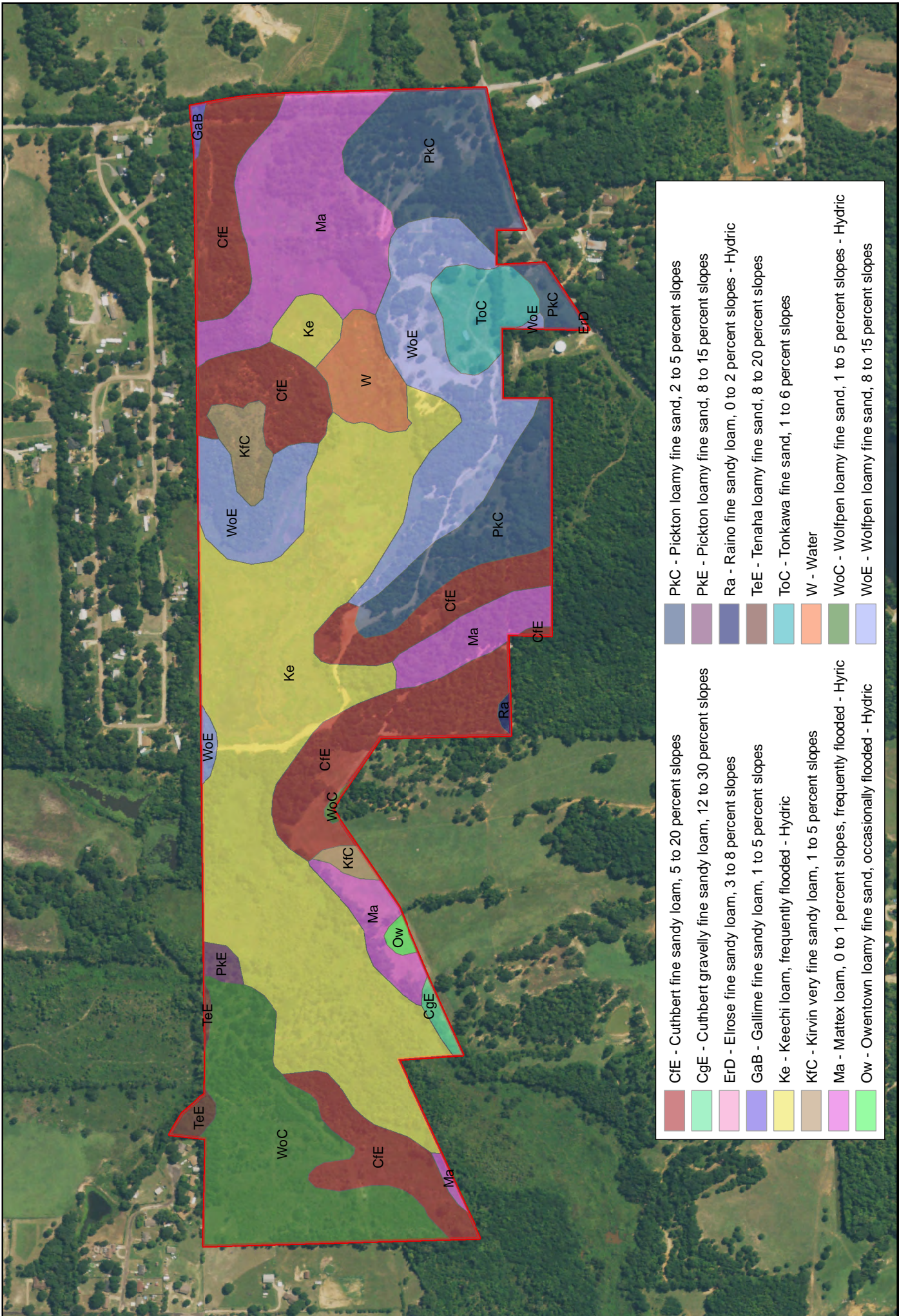
- PFO1A - Palustrine, Forested, Broad-Leaved Deciduous, Temporary Flooded
- PFO1C - Palustrine, Forested, Broad-Leaved Deciduous, Seasonally Flooded
- PSS1/EM5F - Palustrine, Scrub-Shrub, Broad-Leaved Deciduous/Emergent Phragmites australis, Semipermanently Flooded
- National Hydrography Dataset Streams
- Freshwater Pond
- FEMA Zone A Floodzones



222 Acre Butler Creek Mitigation Bank Property Boundary

Exhibit 9  
 National Wetlands Inventory, FEMA Zone A, and  
 National Hydrography Dataset Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall

  
 Prepared by: A. Russell, Date: 04/02/2018  
 Last Saved: 01/15/2018, Project: 115-0072-001  
 SOURCES: Imagery: NAD and NCRCS, Boundary: Marshall, NSH, NWI



CfE - Cuthbert fine sandy loam, 5 to 20 percent slopes	PkC - Pickton loamy fine sand, 2 to 5 percent slopes
CgE - Cuthbert gravelly fine sandy loam, 12 to 30 percent slopes	PkE - Pickton loamy fine sand, 8 to 15 percent slopes
ErD - Elrose fine sandy loam, 3 to 8 percent slopes	Ra - Raino fine sandy loam, 0 to 2 percent slopes - Hydric
GaB - Gallime fine sandy loam, 1 to 5 percent slopes	TeE - Tenaha loamy fine sand, 8 to 20 percent slopes
Ke - Keechi loam, frequently flooded - Hydric	ToC - Tonkawa fine sand, 1 to 6 percent slopes
KfC - Kirvin very fine sandy loam, 1 to 5 percent slopes	W - Water
Ma - Mattex loam, 0 to 1 percent slopes, frequently flooded - Hydric	WoC - Wolfpen loamy fine sand, 1 to 5 percent slopes - Hydric
Ow - Owentown loamy fine sand, occasionally flooded - Hydric	WoE - Wolfpen loamy fine sand, 8 to 15 percent slopes

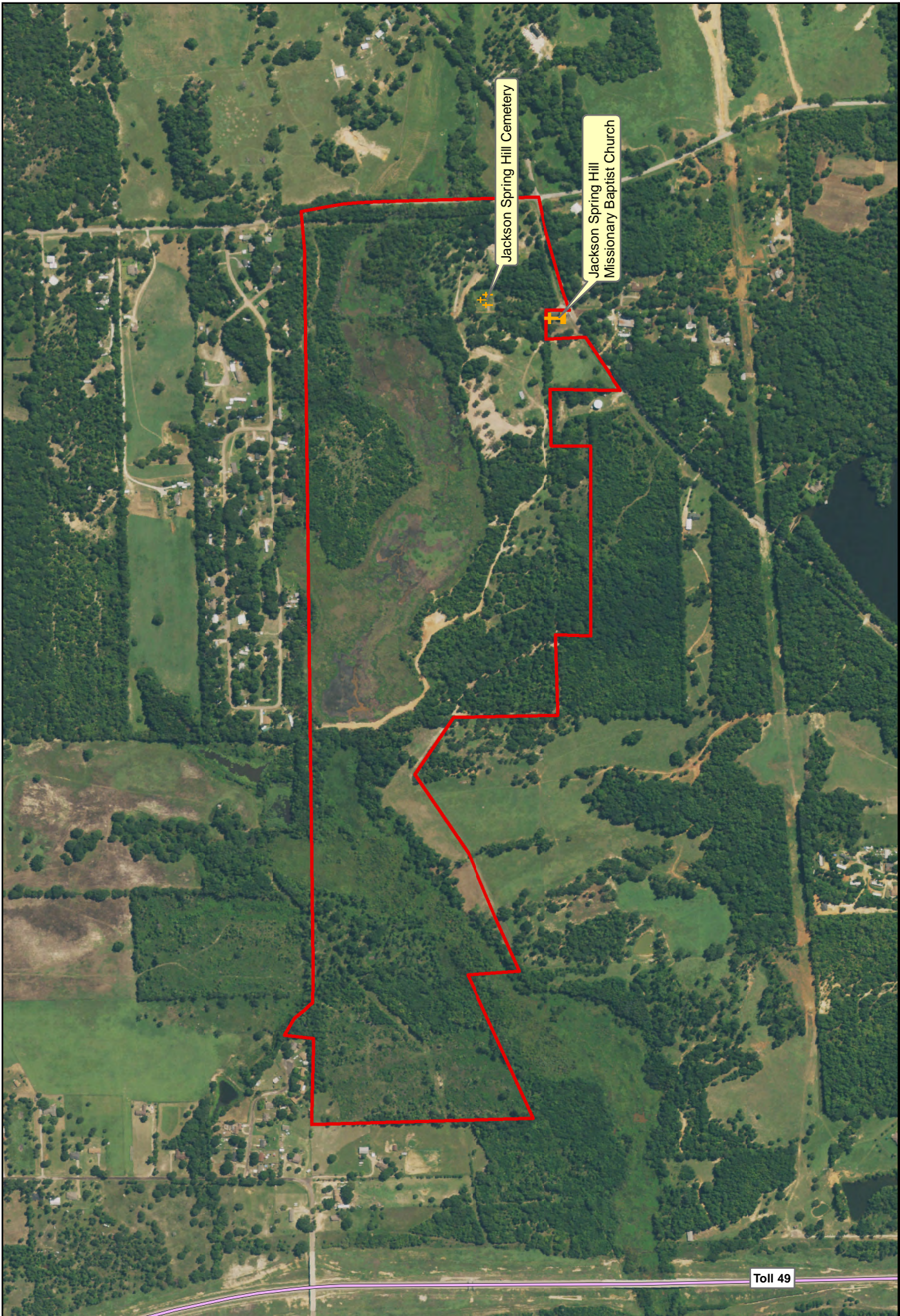
Exhibit 10  
 NRCS Soils Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall



222 Acre Butler Creek Mitigation Bank Property Boundary



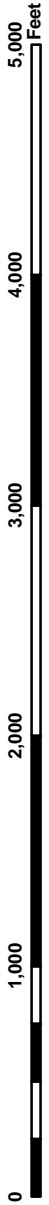
Prepared by: A. Russell, Date: 6/02/2018  
 Last Saved: 8/6/2018, Project: 115-0075-001  
 SOURCES: Imagery: NAD and NRCS, Boundary: Marshall



Jackson Spring Hill Cemetery

Jackson Spring Hill Missionary Baptist Church

Toll 49



Church  
Cemetery



222 Acre Butler Creek Mitigation Bank Property Boundary

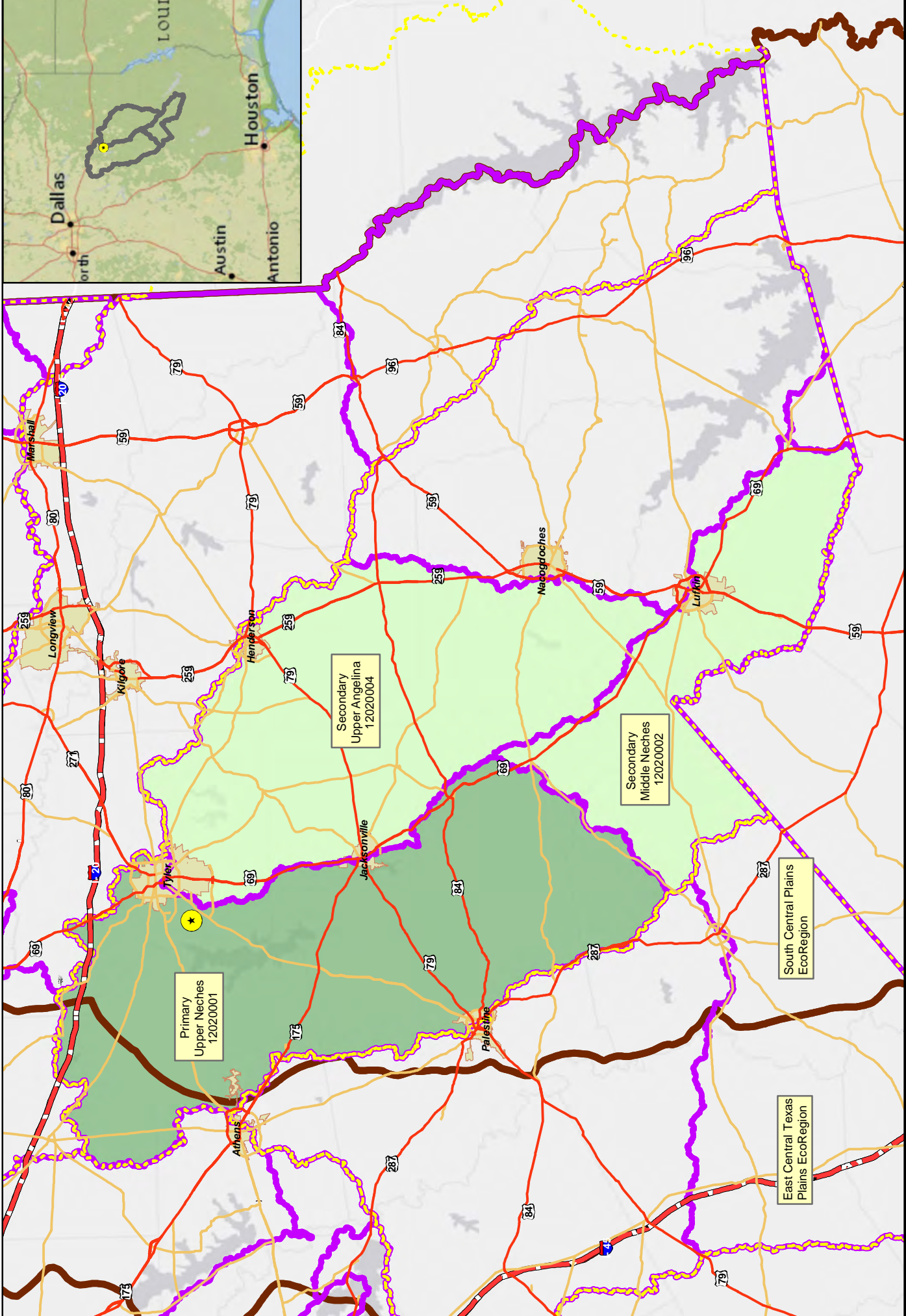


**RS&H**

Prepared by: A. Russell, Date: 04/28/2018  
Last Saved: 01/15/2018, Project: 115-0072-001  
SOURCES: Imagery: NADP, Boundary: Marshall

Exhibit 11  
Historical and Cultural Resources Map  
Butler Creek Mitigation Bank  
Smith County, Texas  
Matthew and Heather Marshall





0 20 40 60 80 Miles

- Butler Creek Mitigation Bank
- Interstate Highway
- US Highway
- State Highway
- Primary Service Area
- Secondary Service Area
- 8-Digit HUC
- 6-Digit HUC
- EcoRegion III Boundary
- County Boundary
- City Boundary

Exhibit 12  
 Service Area Map  
 Butler Creek Mitigation Bank  
 Smith County, Texas  
 Matthew and Heather Marshall