



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SWF DISTRICT
819 TAYLOR STREET
FORT WORTH, TEXAS 76102

CESWF-RD

14 October 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ [SWF-2025-00375](#).

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable [in Texas](#) due to litigation.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. S2, intermittent stream, non-jurisdictional, no authority
 - ii. S1, ephemeral stream, non-jurisdictional, no authority
 - iii. S3, ephemeral stream, non-jurisdictional, no authority
 - iv. S4, ephemeral stream, non-jurisdictional, no authority
 - v. S5, ephemeral stream, non-jurisdictional, no authority
 - vi. S6, ephemeral stream, non-jurisdictional, no authority
 - vii. UP1, Upland pond, non-jurisdictional, no authority
 - viii. EF1, Erosional Feature, non-jurisdictional, no authority

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

REVIEW AREA. The review area is located north of County Road 205 and west of Trinity Falls Parkway in McKinney, Collin County, Texas. The study area appears to be located in the East Fork Trinity River-Levon Lake watershed (USGS Hydrologic Unit Code (HUC) 1203010602). Majority of the site appears to be utilized for agriculture and contains two vegetative communities including Agricultural Field, Cropped and Riparian Forest. There are 3 soils on the site and none are listed as being hydric soil. According to the USGS Topographic map, one "blue-line" feature is located within the study area, and the feature was generally identified as an intermittent stream, ephemeral streams, and an pond. The FEMA flood hazard map designates the entire site as Zone X: Area of Minimal Flood Hazard. The USFWS NWI map identifies one freshwater forested/shrub wetland feature and two riverine features located within the study area. Based on results of the aquatic resources delineation, one intermittent stream, five ephemeral streams, one upland pond, and one erosional feature were identified within the study area. Coordinates: Latitude: 33.294420 and Longitude: -96.631356

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3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Trinity River](#)
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [The topography map shows the site as the headwater of a stream flowing into the East Fork of the Trinity River, which flows into Lewisville Lake and exits eventually into the Trinity River \(TNW\). There has been significant development downstream of the headwater tributary along with some redirecting of stream through culverts and swales or ditches.](#)
5. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ [N/A](#)
6. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): [N/A](#)

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

- b. Interstate Waters (a)(2): [N/A](#)
- c. Other Waters (a)(3): [N/A](#)
- d. Impoundments (a)(4): [N/A](#)
- e. Tributaries (a)(5): [N/A](#)
- f. The territorial seas (a)(6): [N/A](#)
- g. Adjacent wetlands (a)(7): [N/A](#)

7. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. [N/A](#)
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.

[EF1, erosional feature, 105 LF, connected to S2 and appears to be formed by surface runoff. This feature is not connected to a jurisdictional feature.](#)

Feature	Amount of Aquatic Feature		Coordinates
	Length	Area	
Erosional Feature EF1	105 LF	0.007	33.2934500, -96.62814500

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. [N/A](#)

⁷ 51 FR 41217, November 13, 1986.

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- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. *N/A*
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*.

UP1, upland pond, 3.37 acres, the feature was once an online pond and connected to S1 and S5, however these stream features are no longer connected to a RPW and drain out to upland.

Feature	Amount of Aquatic Feature		Coordinates
	Length	Area	
Upland Pond UP2	-	3.37 acres	33.29399200, -96.62963300

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Feature	Amount of Aquatic Feature		Coordinates
	Length	Area	
Intermittent Stream, Non-RPW			
Stream S2	241 LF, 2-to-6 foot OHWM	0.03 acre	33.29313300, -96.62777100
Stream S1	77 LF; 3-foot OHWM	<0.01 acre	33.29426800, -96.63066600
Stream S3	77 LF; 2-foot OHWM	<0.01 acre	33.29323700, -96.62765800
Stream S4	382 LF; 3-foot OHWM	0.03 acre	33.29324600, -96.62753300

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Stream S5	280 LF; 4-to-7 Foot OHWM	0.03 acre	33.29467700, -96.62901900
Stream S6	520 LF; 2-to-15-foot OHWM	0.04 acre	33.29391000, -96.62859500
Total Ephemeral Streams	1,336 LF	0.10 acre	

Ephemeral streams S1-S6 total 1,336 LF of stream, these streams are no longer connected to a RPW stream. S1 and S5 are connected to UP1 pond but are no longer connected to the downstream remnants. S3 and S4 are connected to S2, intermittent stream, which is not longer connected to downstream RPWs. S6 is a remnant ephemeral that once was connected to S5, but connections no longer exist based on in-field investigations.

8. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Field visit by contractor occurred on February 28, 2025; USACE and contractor field visit occurred on September 18, 2025. Office evaluation was conducted on August 27, 2025.
 - b. Google Earth Pro data layers for USGS topography and aerial photos
 - c. National Regulatory Viewer layers for topography, NWI, NHD, HUC, aerials and hillshade.
9. OTHER SUPPORTING INFORMATION. [Attachment 2, Aquatic Resources Delineation Report, Proposed City of McKinney Park, McKinney, Collin County, Texas, September 18, 2025, prepared by Kimley Horn, Dallas, Texas.](#)
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



FIGURE 1	DATE: 08/11/2025
	DRAWN: BLD
	CHECKED: AMB
	KHA NO.: 068150347

Vicinity Map
Source: ESRI Basemap

Proposed City of McKinney Park
McKinney, Collin County, Texas

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Phillip K. DAL... GIS/DA... ETV... GIS/Project GIS/068150347... Trinity Falls... Mission... Jackson Woodruff RPR... 2025/Trinity Falls PLU-S RPR/Trinity Falls PLU-S RPR.aprx

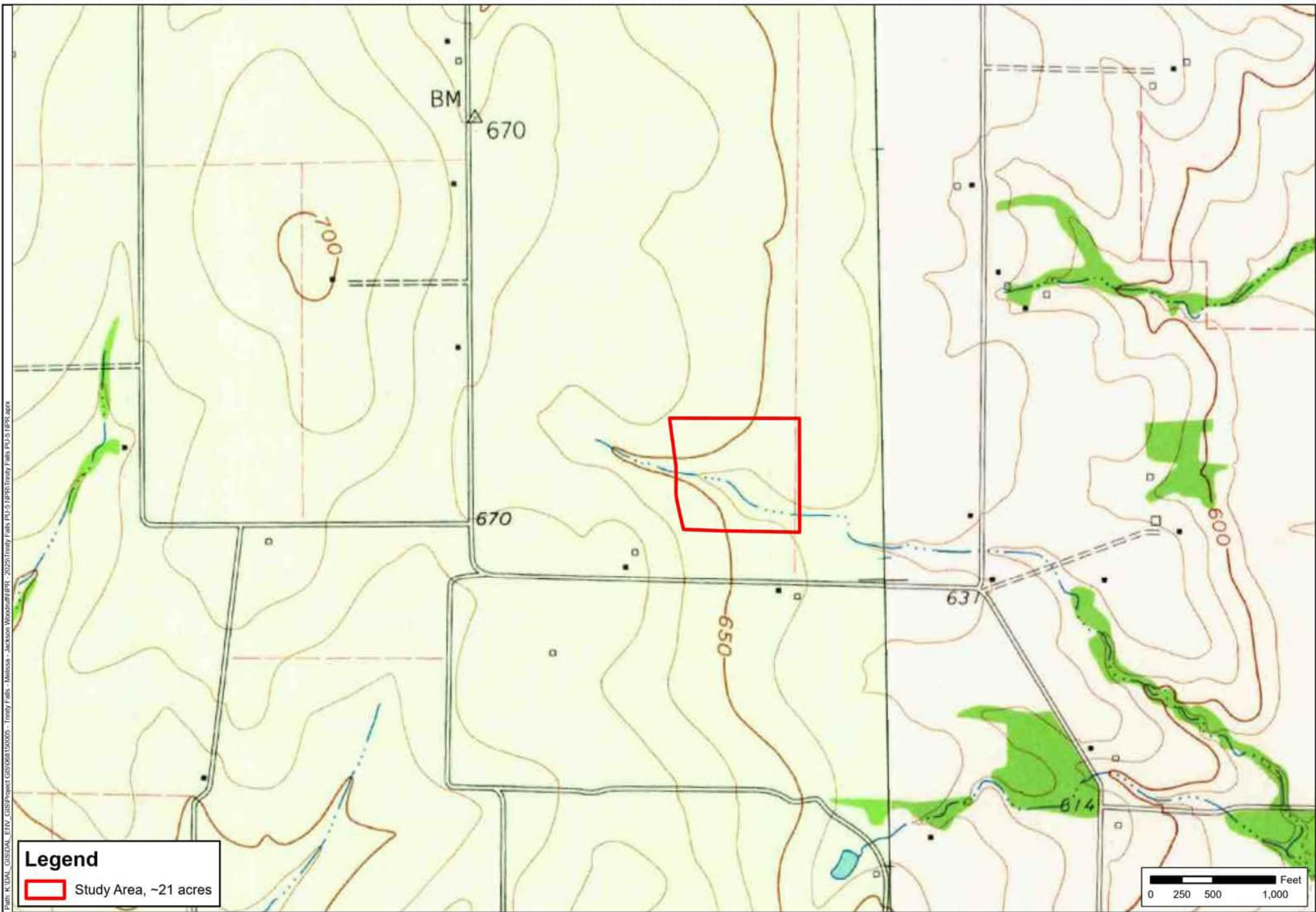


FIGURE
2

DATE:	08/11/2025
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KHA NO.:	068150347

USGS Topographic Map
 Quads: Weston and Anna

Proposed City of McKinney Park
 McKinney, Collin County, Texas

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Phill K'DAL - GIS/DAL - ETV - GIS/Project GIS/068150005 - Timmy Falls - Mission - Jackson Woodcut/RR - 2025/Timmy Falls PLU-5 NFR/Timmy Falls PLU-5 NFR.aprx

Legend

Study Area, ~21 acres

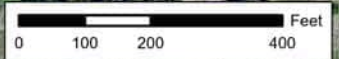


FIGURE 3	DATE: 08/11/2025
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	KHA NO.: 068150347

Recent Aerial

 Source: Nearmap May 2025

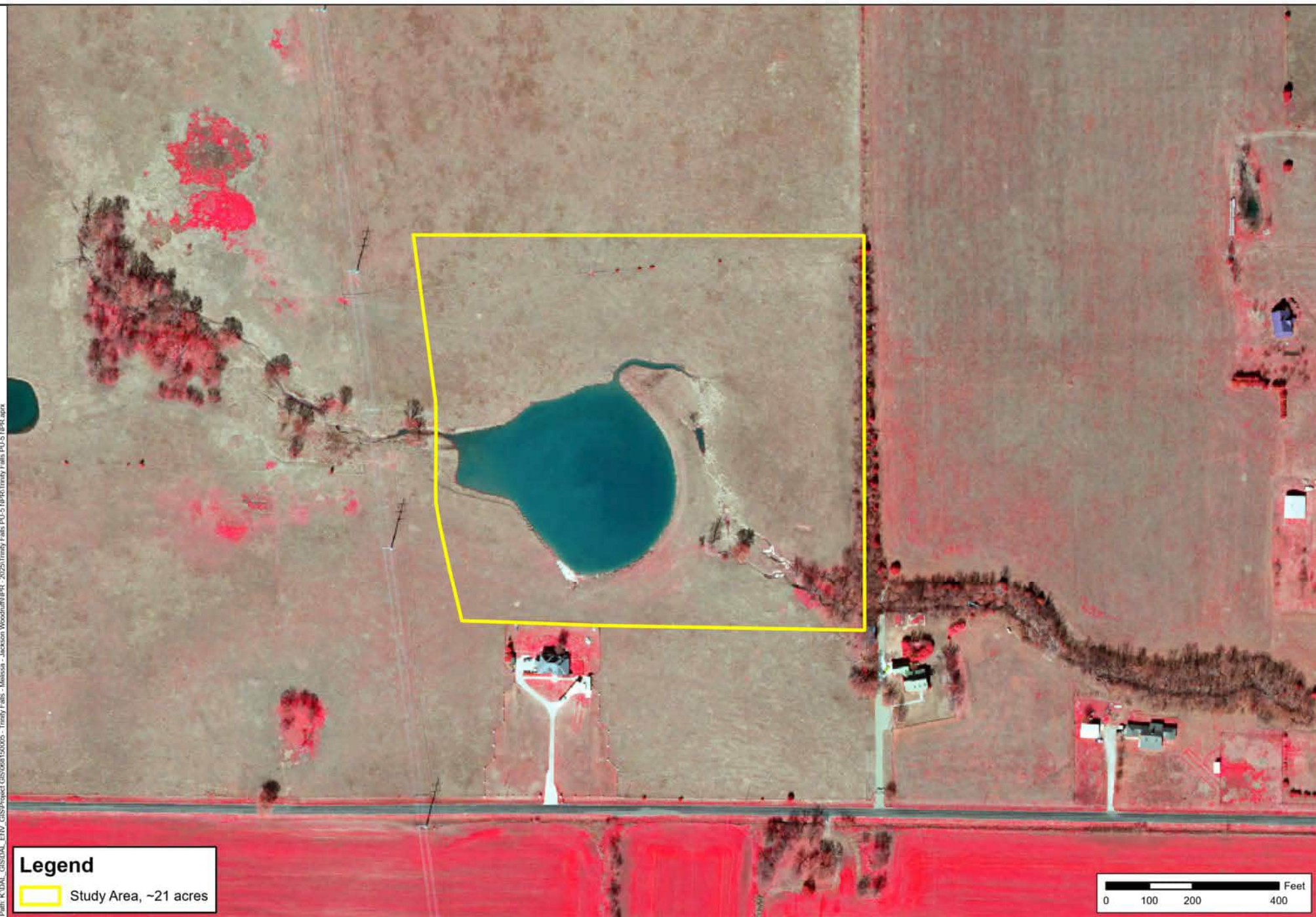
Proposed City of McKinney Park

 McKinney, Collin County, Texas


Kimley »» Horn

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Legend

 Study Area, ~21 acres

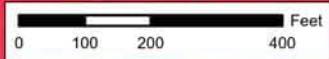


FIGURE 4	DATE: 05/30/2025
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Historic Color Infrared Aerial

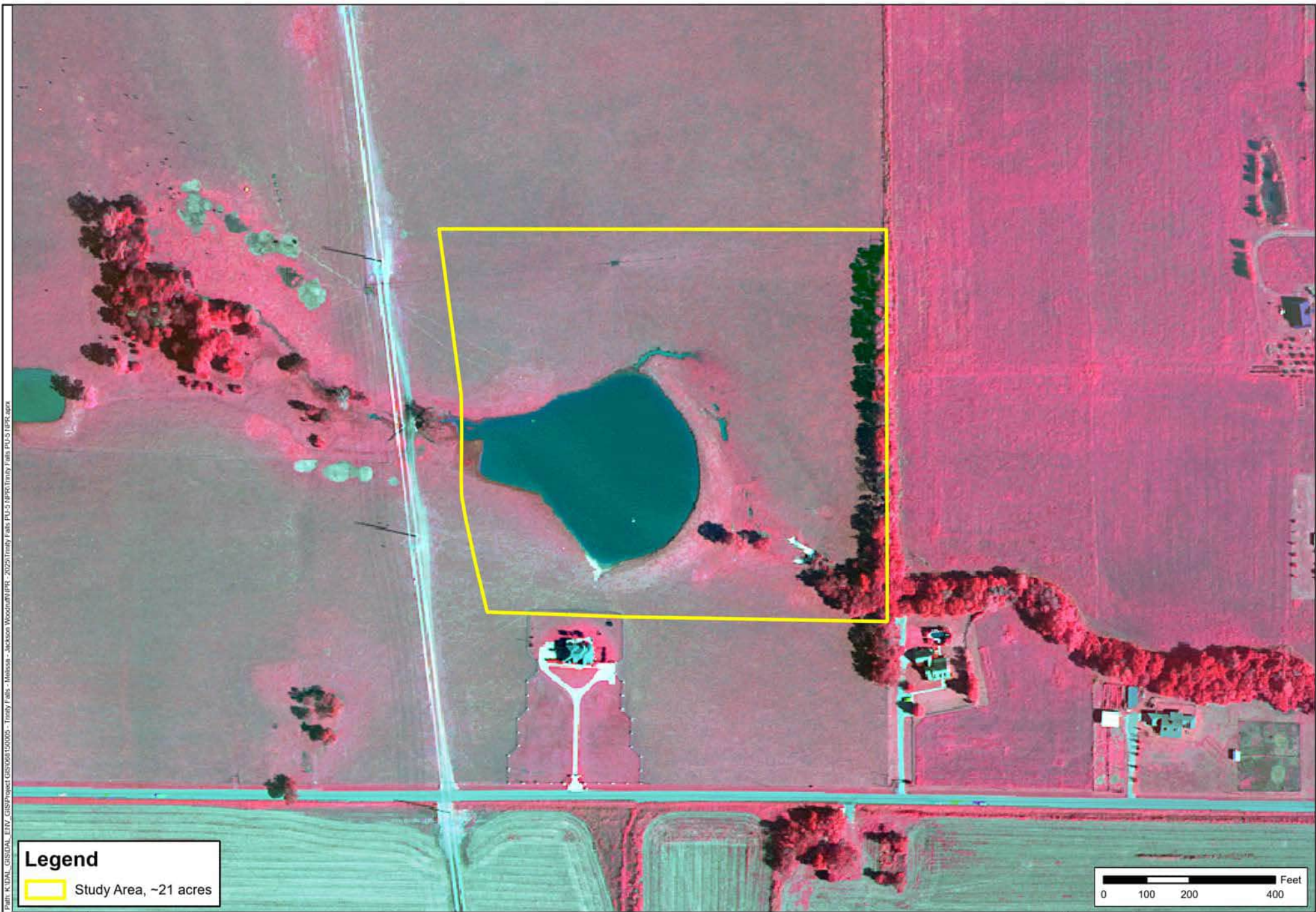
Source: TxGIO TOP 2015

Proposed City of McKinney Park

McKinney, Collin County, Texas

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Legend
 Study Area, ~21 acres

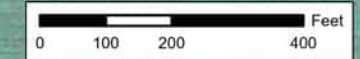
FIGURE 5	DATE: 08/11/2025
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	KHA NO.: 068150347

Historic Color Infrared Aerial

Source: TxGIO NAIP 2004

Proposed City of McKinney Park

McKinney, Collin County, Texas



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Legend

Study Area, ~21 acres



FIGURE 6	DATE: 08/11/2025
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	KHA NO.: 068150347

Historic Color Infrared Aerial

 Source: TxGIO TOP 1996

Proposed City of McKinney Park


 McKinney, Collin County, Texas


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Legend

 Study Area, ~21 acres

 Zone X: Area of Minimal Flood Hazard

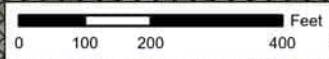


FIGURE 7	DATE: 08/11/2025
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FEMA Mapped Flood Hazard Layer

Source: FEMA

Proposed City of McKinney Park

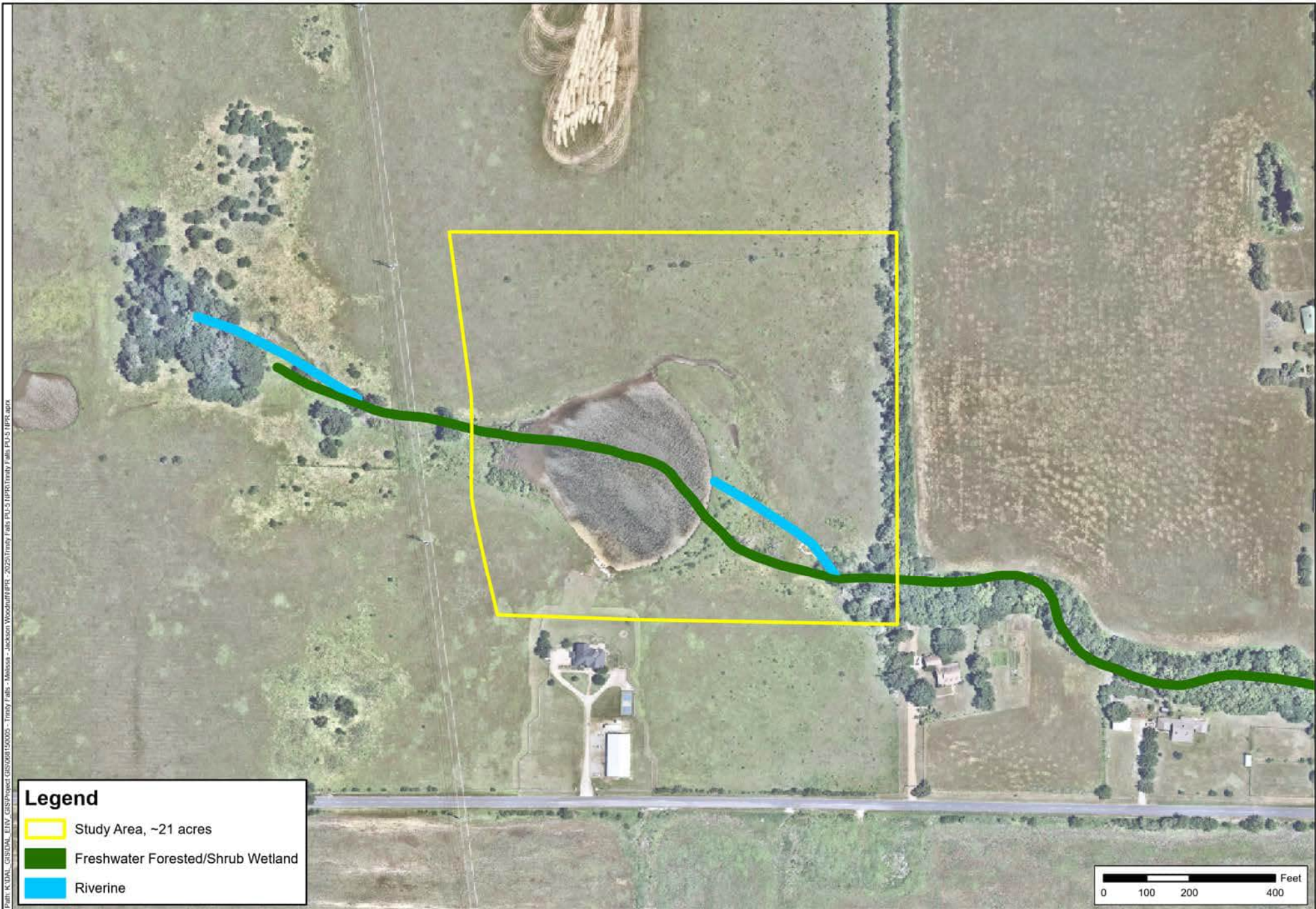
McKinney, Collin County, Texas






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PHILLI, K. | DAL, C. | SIDA, E. | V, C. | S | P | R | O | J | E | C | T | G | I | S | 0 | 6 | 8 | 1 | 5 | 0 | 0 | 0 | 5 | - | T | r | i | n | y | F | a | l | l | s | - | M | i | s | s | o | n | - | J | a | c | k | s | o | n | W | o | o | d | l | a | n | R | P | R | - | 2 | 0 | 2 | 5 | | T | r | i | n | y | F | a | l | l | s | P | L | U | S | R | P | R | T | i | m | y | F | a | l | l | s | P | L | U | S | R | P | R | a | d | P | R



Legend

-  Study Area, ~21 acres
-  Freshwater Forested/Shrub Wetland
-  Riverine

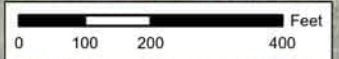


FIGURE 8	DATE: 06/03/2025
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National Wetlands Inventory Map

Source: USFWS

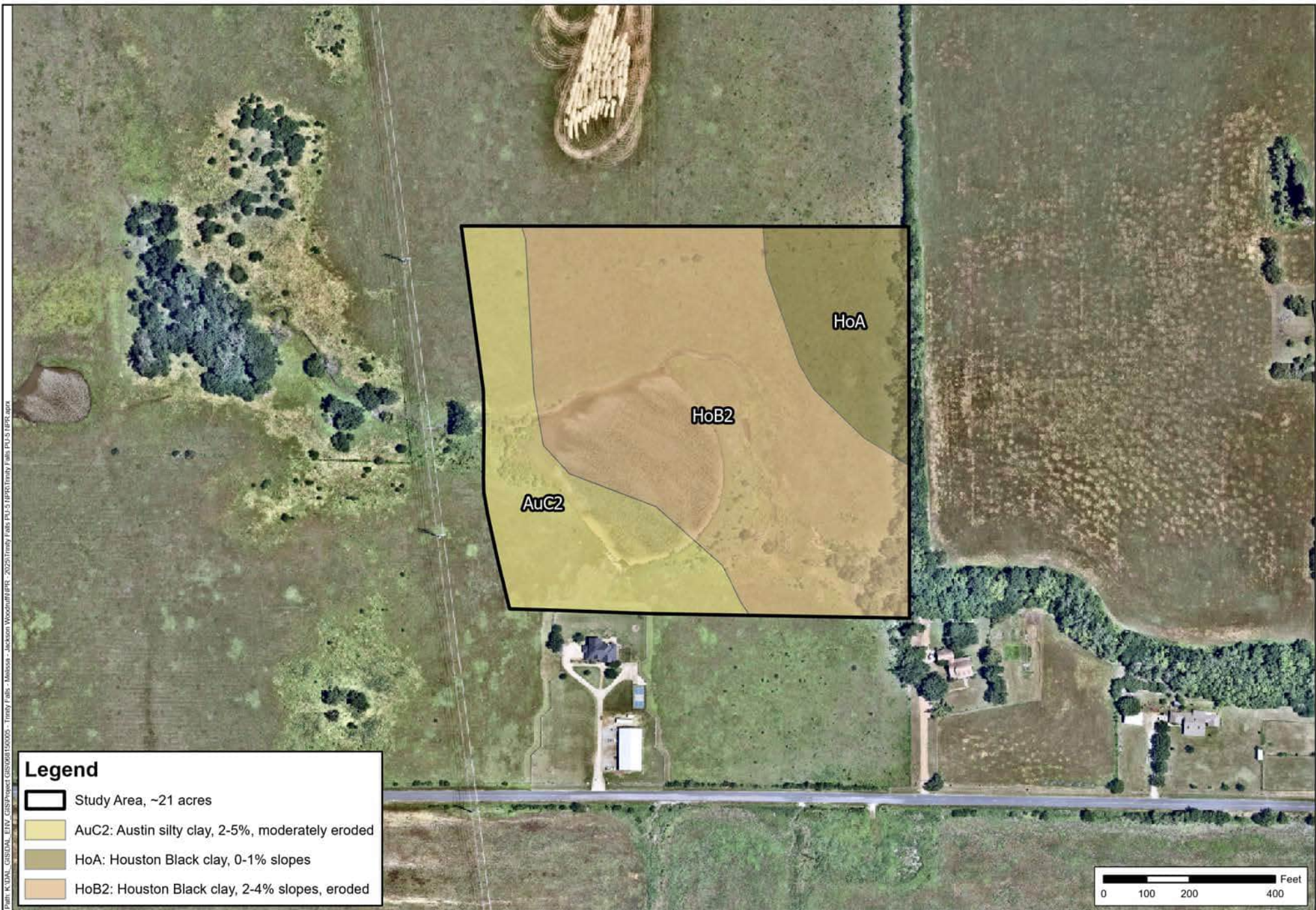
Proposed City of McKinney Park

McKinney, Collin County, Texas

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Legend

- Study Area, ~21 acres
- AuC2: Austin silty clay, 2-5%, moderately eroded
- HoA: Houston Black clay, 0-1% slopes
- HoB2: Houston Black clay, 2-4% slopes, eroded

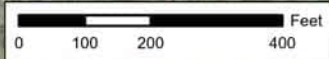


FIGURE 9	DATE: 08/11/2025
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Soils Map
Source: USDA

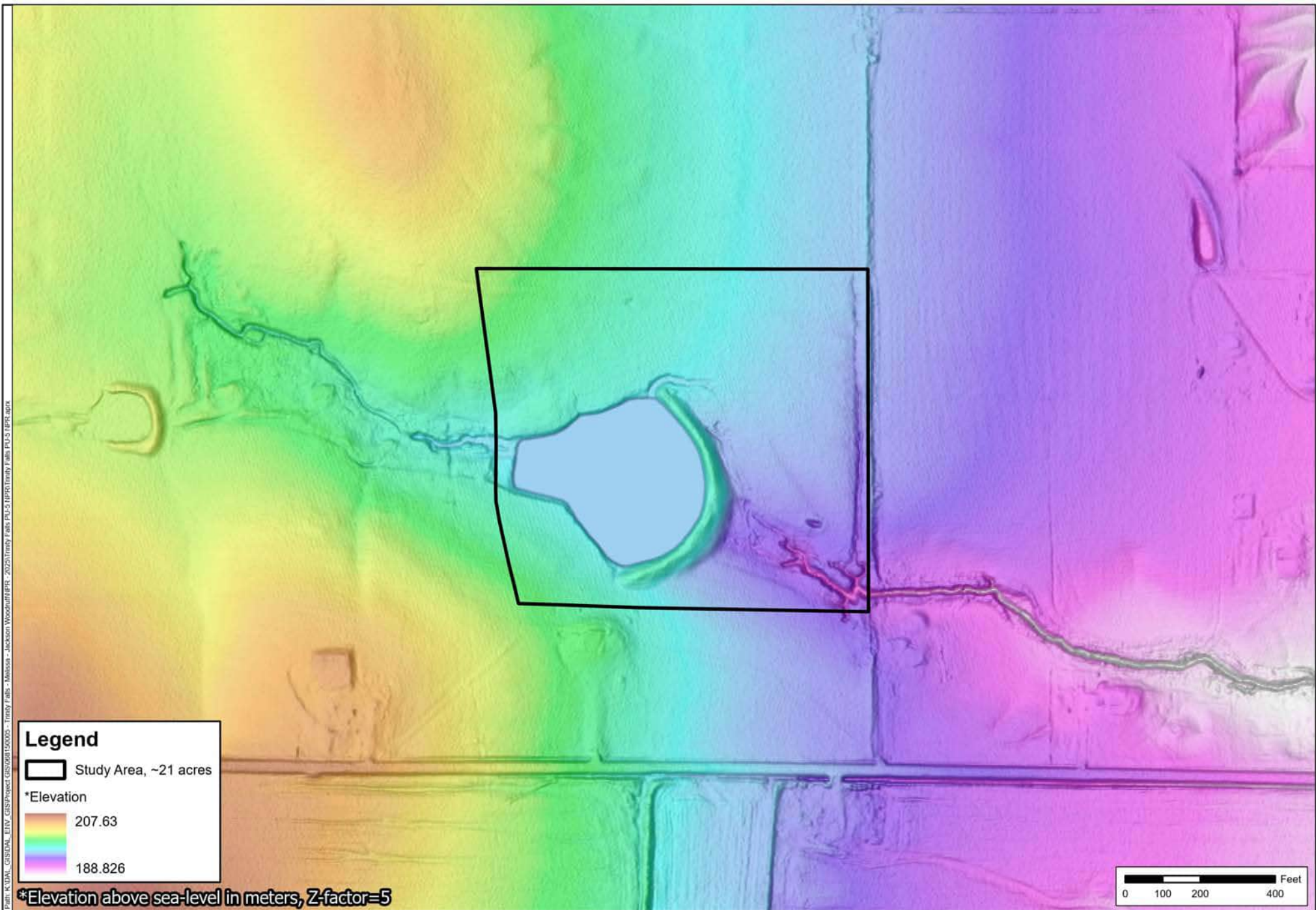
Proposed City of McKinney Park
McKinney, Collin County, Texas



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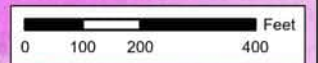
Legend

 Study Area, ~21 acres

***Elevation**

 207.63
188.826

***Elevation above sea-level in meters, Z-factor=5**



FIGURE

10

DATE: 08/11/2025
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Hillshade Map

Source: TxGIO Collin

Proposed City of McKinney Park

McKinney, Collin County, Texas



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