



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

Public Notice

Applicant: McKinney SH II, LTD

Project No.: SWF-2018-00477

Date: September 27, 2019

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 proposed 380 Towne Centre High-Hazard Dam Removal, located on the southeast corner of U.S. 380 and Hardin Boulevard, city of McKinney, Collin County, Texas.

APPLICANT: Mr. Eric Seitz
McKinney SH II, LTD
1110 Cowan Road
Celina, Texas 75009

APPLICATION NUMBER: SWF-2018-00477

DATE ISSUED: September 27, 2019

LOCATION: The 380 Towne Centre High-Hazard Dam is on the southeast corner of U.S. 380 and Hardin Boulevard, city of McKinney, Collin County, Texas, at latitude 33.21381° and longitude -96.65925° (**Sheet 1 of 8**). The site is mapped on the 7.5-minute USGS quadrangle map (**Sheet 2 of 8**), McKinney West, Texas. The site is in the Wilson Creek, East Fork Trinity drainage basin, USGS Hydrologic Unit 120301060206.

OTHER AGENCY AUTHORIZATIONS: Section 401 State Water Quality Certification; Texas Commission on Environmental Quality (TCEQ) Dam Safety Program, Dam Removal Permit; Texas Parks and Wildlife Department (TPWD) Marl, Sand, Gravel Shell or Mudshell Permit.

PROJECT DESCRIPTION: The Applicant proposes to discharge approximately 4,345 cubic yards of dredged and fill material into approximately 2.69 acres of waters of the United States, including 425 linear feet of intermittent stream in conjunction with the 380 Towne Centre High-Hazard Dam Removal. Direct and indirect permanent impacts would include 330 linear feet (0.05 acre) of intermittent stream, 0.12 acre of emergent wetland, and 2.50 acre of open water impoundment. Temporary impacts would include 95 linear feet (0.02 acre) of intermittent stream impacts (**Sheet 3 of 8**).

INTRODUCTION: According to the Applicant, the project purpose is to remove an existing high-hazard dam following TCEQ guidelines to reduce the possibility of damage and danger to downstream properties and human life; the proposed project directly pertains to safety of downstream properties and human life. The Applicant proposes to remove the earthen high-hazard dam and excavate to the lowest point of the pond onsite to allow for pond dewatering. The majority

of the proposed impacts to Waters of the U.S. would be due to dewatering of the existing impoundment.

The project also includes placing erosion control structures (armorflex erosion control) where there are erosive flow velocities and flow dissipators (rock check dams) downstream of the dam. The flow dissipators would be removed following grading activities and when soils stabilize in the areas to be graded. Flow would continue within the streams where the armorflex erosion control would be installed. The dewatering would be at such a slow rate that it would not cause significant increase in flow downstream. A channel would be constructed within the current extent of the pond; however, there would not be any impoundments to water in the area and water would continue to flow downstream without increased threat to properties and people.

A multi-use development which associated infrastructure and parking (380 Town Centre) is planned within the parent tract; however, this development would not result in impacts to Waters of the U.S. (**Sheet 4 of 8**).

The Applicant stated that the purpose of the proposed project is to remove an existing high hazard dam as categorized by the TCEQ to reduce the possibility of damage and danger to downstream properties and human life.

EXISTING CONDITIONS: According to the USGS Topographic Map (**Sheet 2 of 8**), the study area generally slopes toward the south. There are two stream reaches within this study area, separated by a pond. The mapped streams were confirmed during a site visit. The USFWS National Wetland Inventory (NWI) map identifies linear forested wetlands and riverine features along the general area of the mapped creek within the study area (**Sheet 7 of 8**). All observed streams were characterized as having an intermittent flow regime. One emergent wetland was observed (**Sheet 5 of 8**).

The open water feature was observed to be on-channel with Stream 1 (S1) flowing to the northeast portion of the impoundment (OW1) and Stream 2 (S2) flowing out of the southwest portion of OW1. Portions of OW1 were observed to contain submerged aquatic vegetation (**Sheet 5 of 8**).

The majority of the study area was comprised of upland riparian areas vegetated with a wide range of species. Vegetation observed within the study area can best be characterized by current and historic land use practices. The vegetation can be divided into three categories: (1) Upland Pasture, (2) Upland Woodlands, and (3) Emergent Wetlands:

- (1) Upland Pasture: Approximately 10 percent of the study area was dominated by Johnsongrass (*Sorghum halepense*), little bluestem (*Schizachyrium scoparium*), and various ruderal species such as annual ragweed (*Ambrosia artemisiifolia*);
- (2) Upland Woodlands: Approximately 85 percent of the study area consisted of American elm (*Ulmus americana*), common persimmon (*Diospyros virginiana*), cedar elm (*Ulmus crassifolia*) and Eastern red cedar (*Juniperus virginiana*); and,
- (3) Emergent Wetlands: Approximately 5 percent of the study area was dominated by spikerush (*Eleocharis palustris*) but also containing marsh thistle (*Cirsium muticum*), Johnsongrass, and giant ragweed (*Ambrosia trifida*).

Soil Survey

According to the USDA Soil Survey for Collin County, mapped soil types within the study area include: Altoga silty clay, 5 to 8 percent slopes, eroded (AID2), Lewisville silty clay, 3 to 5 percent slopes, eroded (LeC2), and water (W) (**Sheet 6 of 8**). None of these mapped soil types are located

on the Collin County hydric soils list; however, following completion of the aquatic resources delineation, hydric soils were determined to exist within W1 and OW1 (**Sheet 3 and 6 of 8**). Sheet 6 shows the mapped soil composition data for the study area. According to the Collin County Soil Survey, three soil types are depicted within the study area. Specific information for each soil type is provided in Table 1 below (**Sheet 6 of 8**).

Table 1: Soils within Study Area

Soil Type	Natural Drainage Class	Depth to Water Table	Frequency of Ponding	Frequency of Flooding	NRCS Hydric Soils?
Altoga silty clay, 5 to 8 percent slopes, eroded (AID2)	Well-drained	+80 inches	None	None	No
Lewisville silty clay, 3 to 5 percent slopes, eroded (LeC2)	Well-drained	+80 inches	None	Occasional	No
Water (W)	N/A	N/A	N/A	N/A	N/A

The four intermittent streams (S1-S4) are Waters of the U.S., they exhibit an ordinary high water mark, and flow to the Trinity River, a Section 10 Rivers and Harbors Act, Navigable Waters of the U.S., via the East Fork, a traditional navigable water. The emergent wetland (W1) is a Water of the U.S. and is directly connected to S1. The open water impoundment (OW1) is Water of the U.S., it is located on-channel and connects other aquatic features (S1 and S2).

Topographic Map

Sheet 2 shows the boundaries of the study area on the United States Geological Survey (USGS) Topographic base data (McKinney West, Texas quadrangles). According to the topographic map, a stream and pond are located within the study area. The stream appears to discharge into Franklin Branch south of the study area. The remainder of the study area is depicted as undeveloped land.

National Wetlands Inventory (NWI) Map

Sheet 7 of 8 shows the boundaries of potential wetlands and waters as depicted and recorded by the NWI. The data is published by the U.S. Department of the Interior's Fish and Wildlife Service (USFWS) and shows potential wetland areas and waterbodies based on stereoscopic analysis of high altitude aerial photographs. The published data is not regularly updated and has not been validated in the field by the USFWS. According to the NWI map, two riverine features, two linear wetland features, and one pond feature are shown within the study area.

FEMA Floodplain: The areas of minimal flood hazard, which are the areas outside the Special Flood Hazard Area and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded). The FEMA Floodplain Map (**Sheet 8 of 8**) shows the project area to be in Zone X. The project area is outside the 100 and 500-year FEMA floodplains.

Need and Purpose: The Corps has not defined its project purpose at this time and the Corps' alternative analysis will be controlled by the Corps' definition.

The Applicant's state Need is, "There is a need to remove an earthen dam that has been classified as high-hazard by the Texas Commission on Environmental Quality (TCEQ) to reduce the possibility of damage and danger to downstream properties and human life. According to the TCEQ, a dam is classified as high-hazard if loss of life is expected in the breach inundation area downstream of the dam or if excessive economic loss, located primarily in or near urban areas where failure would be expected to cause extensive damage to public facilities; agricultural, industrial, or commercial facilities; public utilities, including the design of the utility; main highways; or railroads used as a major transportation system. During early coordination with the TCEQ, the TCEQ Dam Safety Program recommended that the dam be removed for protection of downstream interests. No maintenance has been conducted on the dam; therefore, it is likely that the dam will deteriorate and eventually fail. If the dam remains in place, the threat to downstream property and human life will remain a major concern."

The Applicant's stated Purpose is, "The purpose of this project is to remove an earthen dam classified as high-hazard by the TCEQ."

As proposed, the Preferred Alternative requires impacts to Waters of the U.S. The Applicant's Preferred Alternative involves the removal of the earthen high-hazard dam and excavating/grading to the lowest point of the pond onsite to allow for pond dewatering. The project also includes placing erosion control structures (armorflex erosion control) where there are erosive flow velocities and flow dissipators (rock check dams) downstream of the dam. The impacts have been determined to be necessary by the Applicant to provide safety to downstream properties and human life. The flow dissipators would be removed following grading activities and when soils stabilize in the areas to be graded.

ALTERNATIVES: An analysis of the alternatives has been completed by the Applicant. The USACE has not completed an evaluation of the applicant's alternatives analysis.

No Action Alternative: The Applicant approached the analysis of the No-Action Alternative in two ways. For the first, the Applicant assumes that the dam would not be removed. In this scenario, the downstream threat of damage and loss of human life would remain if no other action was taken. In a second No-Action Alternative scenario, the Applicant would seek to remove the TCEQ high-hazard classification from the existing dam in a way that would fully avoid all onsite aquatic resources, meaning that no USACE permitting would be required. This second No-Action Alternative scenario is not practicable as construction and/or grading activities would be required within the limits of jurisdictional aquatic resources.

Offsite Alternatives: The high-hazard dam is located onsite. Based on this unique situation and project location, offsite alternatives do not exist. During early coordination with the TCEQ, the TCEQ Dam Safety Program recommended that the dam be removed for protection of downstream interests. Offsite improvements to the drainage system would not remove the high-hazard dam classification; therefore, the downstream threat to damage and loss of human life would remain. Therefore, the Applicant has determined offsite alternatives are not applicable.

Onsite Alternatives: The Applicant's Preferred Alternative involves the removal of the earthen dam and excavating/grading to the lowest point of the pond onsite to allow for pond dewatering. The

project also includes placing erosion control structures (armorflex erosion control) where there are erosive flow velocities and flow dissipators (rock check dams) downstream of the dam. The impacts have been determined by the Applicant to be necessary to provide safety to downstream properties and human life. The flow dissipators would be removed following grading activities and when soils stabilize in the areas to be graded. The Preferred Alternative would result in impacts to jurisdictional aquatic resources as listed in the Project Description on Page 2.

Onsite alternatives were evaluated by the Applicant that may result in fewer impacts to jurisdictional aquatic resources. The alternatives evaluated, and rationale as to why the Applicant thinks they are not practicable are provided below.

1. Onsite Alternative 1: This alternative includes filling the existing pond area and lowering the embankment to be outside the high-hazard criteria. This would leave a shallow amount of flow to remain in the pond area and the impounded flow would be able to pass over the spillway. The practicability of this alternative is addressed below.

- This plan could remove the high-hazard classification, pending TCEQ review. Following further coordination with the TCEQ, the TCEQ Dam Safety Program recommended that the dam be removed for protection of downstream interests. No maintenance has been conducted on the dam; therefore, it is likely that the dam will deteriorate and eventually fail. If the dam remains in place, the threat to downstream property and human life will remain a major concern.
- The spillway would be approximately 450 feet long, the amount of flow regularly spilling over the embankment would be a large swath and would likely increase erosion downstream.
- The wide spillway would change the existing streams down gradient of the pond.
- The embankment would be required to be improved which would be a substantial financial undertaking for the Applicant.
- The embankment would require regular monitoring and maintenance to ensure erosion wasn't changing the geometry of the embankment. This presents ongoing liability for the Applicant.
- The Applicant states that the City of McKinney would not allow for this alternative to occur.

2. Onsite Alternative 2: This alternative includes removing only a portion of the embankment in an effort to disturb as little of the existing aquatic resources as possible. The practicability of this alternative is addressed below.

- Partial removal of the embankment would not remove the high-hazard classification.
- The Applicant states that the City and TCEQ would not allow this alternative to occur without substantially improving the embankment of the dam, including but not limited to, removing all trees within embankment.
- Improvements to the remaining portion of the embankment and/or entire removal of the embankment would still be required to remove the high-hazard classification
- Under this option, ongoing monitoring would be required, and liability would still be present.

3. Onsite Alternative 3: This alternative includes improving the embankment to be in compliance with TCEQ dam safety criteria. The practicability of this alternative is addressed below.

- This alternative would satisfy the City of McKinney and TCEQ criteria for development.
- The liability of a dam failure is still present when considering the threat to loss of property and human life.

- Long term maintenance and inspection would be required. This presents ongoing liability for the Applicant.

Based on the information above, onsite alternatives 1 through 3 were evaluated by the Applicant, are not thought to be practicable by the Applicant, and are not preferred by the Applicant. The Applicant wants to remove the dam entirely to remove liability of a dam failure.

MITIGATION: Mitigation credits are anticipated to be purchased from an approved Fort Worth District Mitigation Bank in accordance with the appropriate Mitigation Banking Instrument (MBI).

FIGURES ATTACHED

Sheet 1 of 8 Vicinity Map
 Sheet 2 of 8 USGS Map
 Sheet 3 of 8 Site Plan
 Sheet 4 of 8 Larger Plan of Development
 Sheet 5 of 8 Waters of the U.S.
 Sheet 6 of 8 Soils Survey Map
 Sheet 7 of 8 National Wetland Inventory Map
 Sheet 8 of 8 FEMA Floodplains Map

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 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 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 interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), and whooping crane (*Grus americana*), are known to occur or may occur as migrants. The interior least tern and whooping crane are listed as endangered species. The piping plover and red knot are listed as 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.

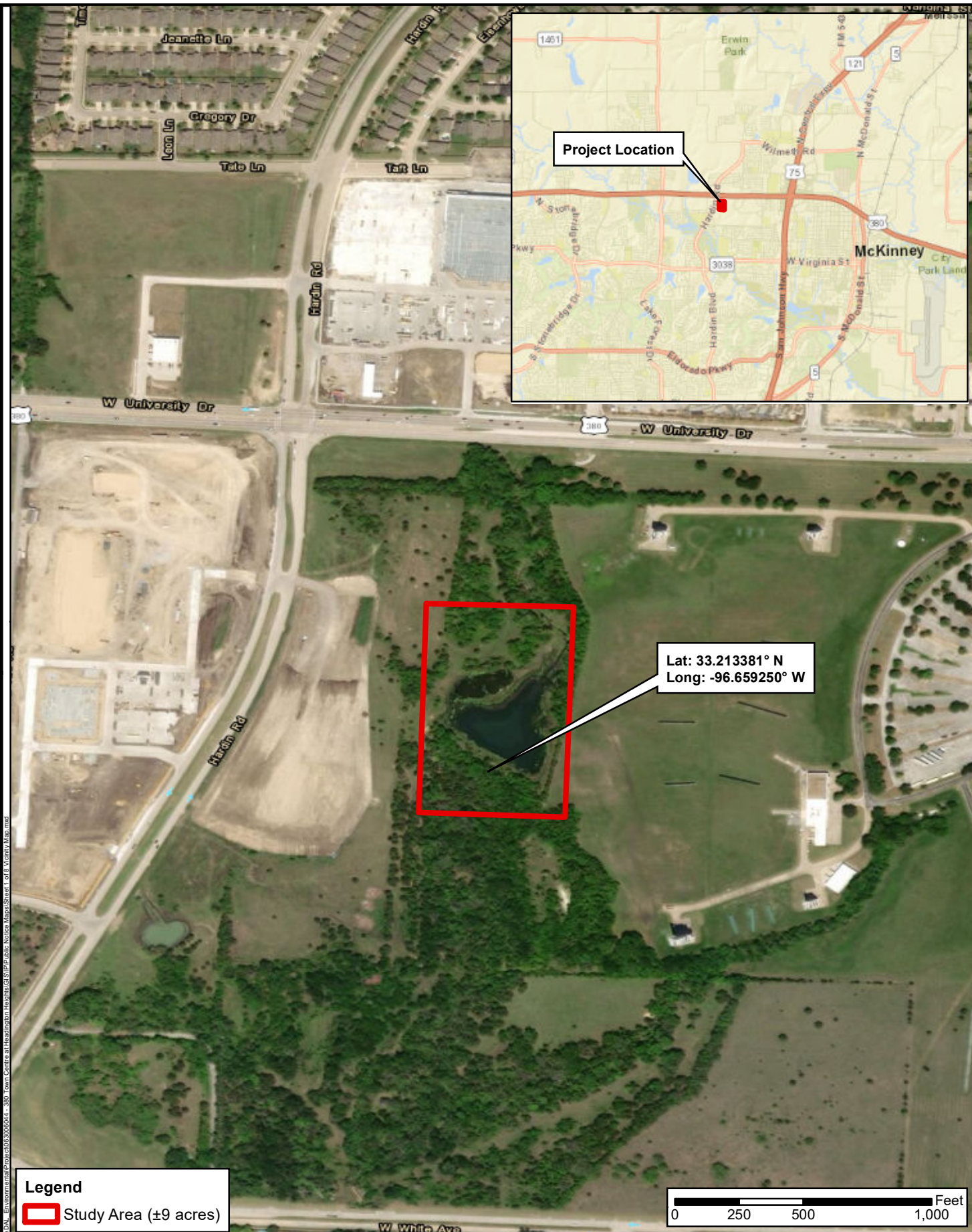
FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review 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 October 28, 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; Regulatory Branch, 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) 886-1731. 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



Legend

Study Area (±9 acres)

SHEET
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OF 8

DATE: 08/13/2019
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Vicinity Map

Aerial: ESRI Basemap

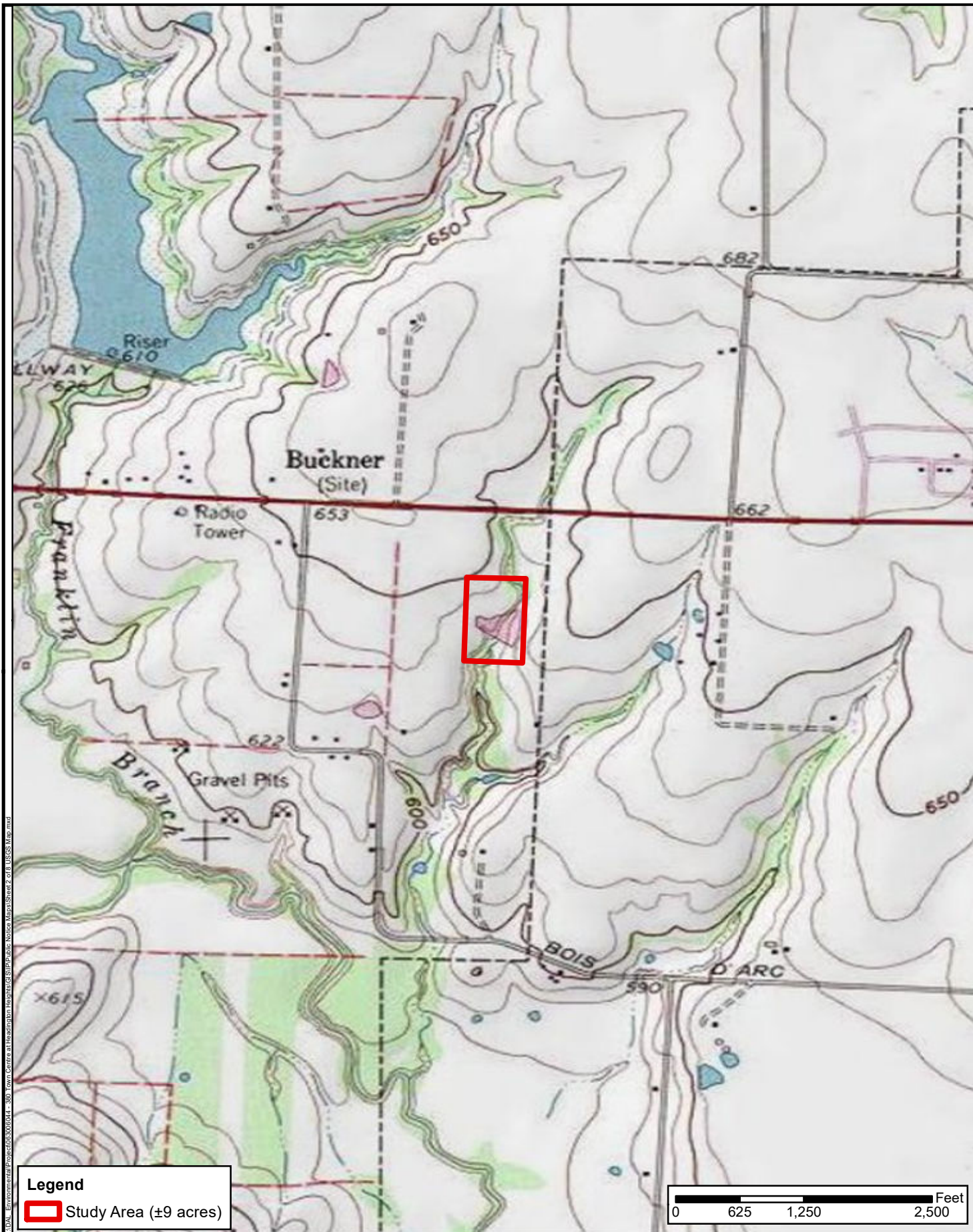
SWF-2018-00477

380 Town Centre
High-Hazard Dam Removal
McKinney, Collin County, Texas



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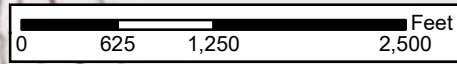
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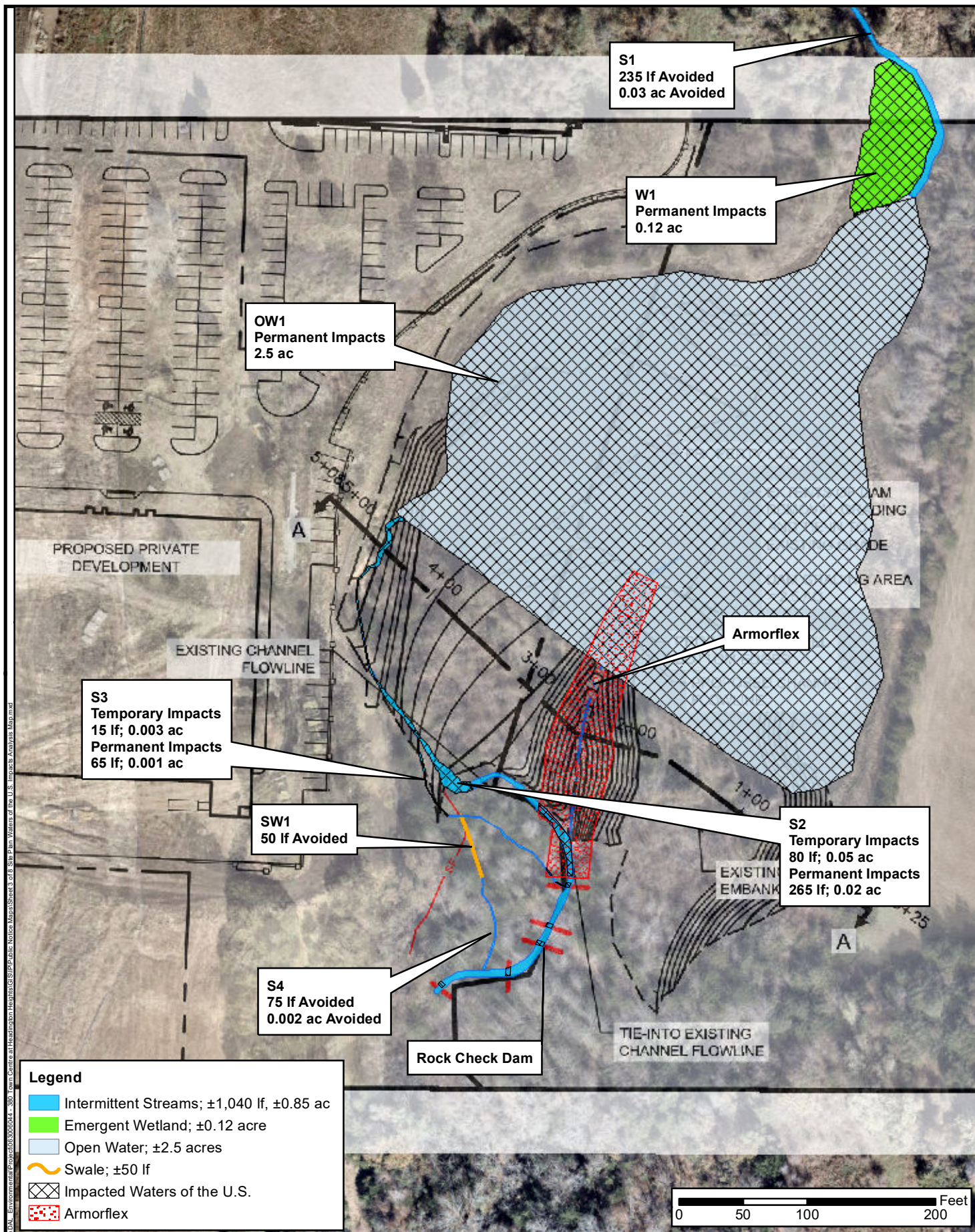
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Study Area (±9 acres)



SHEET 2 OF 8	DATE: 08/13/2019	USGS Map Quad: McKinney West	SWF-2018-00477 380 Town Centre High-Hazard Dam Removal McKinney, Collin County, Texas		Kimley»Horn <small>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.</small>
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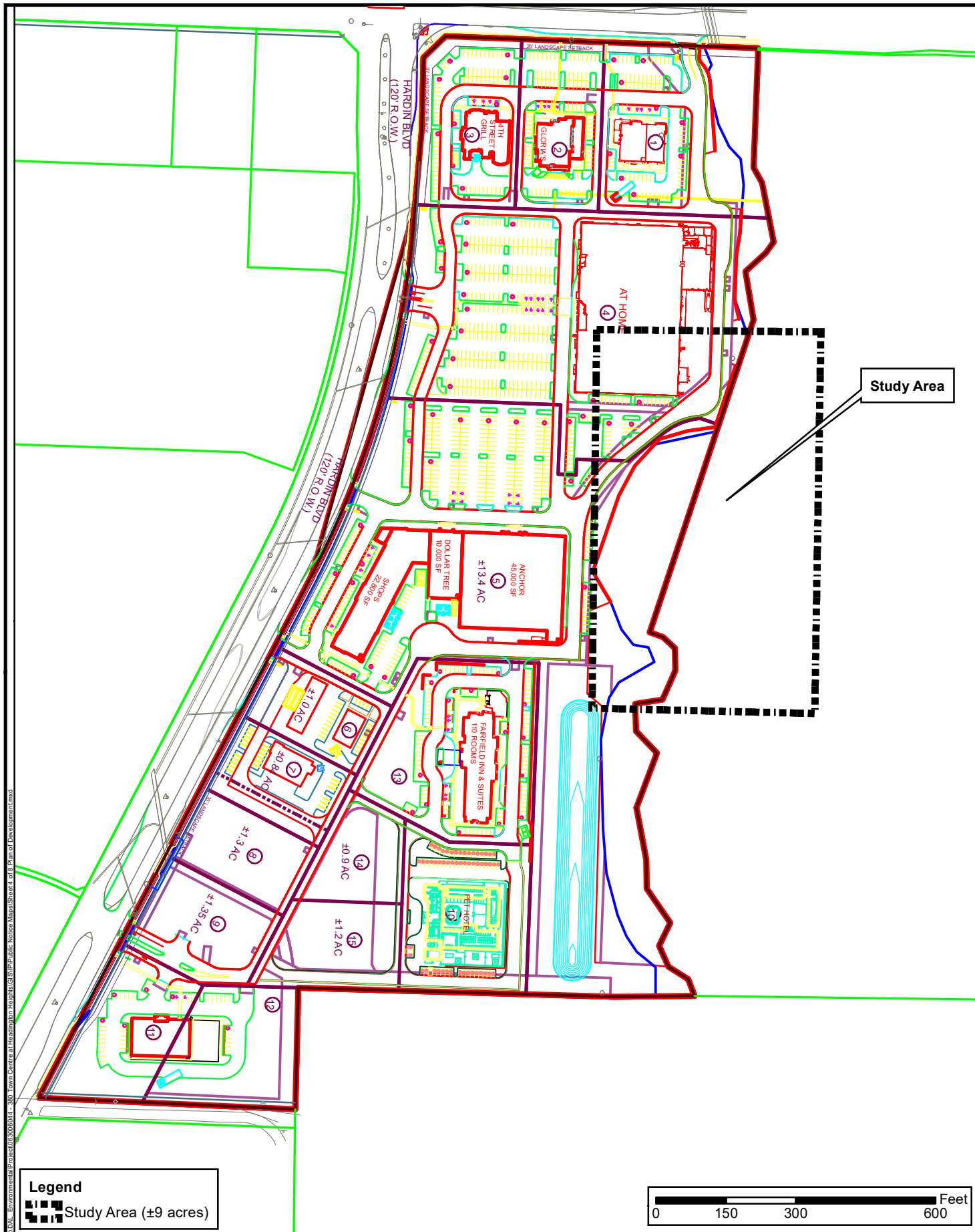
Site Plan
Waters of the U.S. Impacts
Aerial: Nearmap June 2018

SWF-2018-00477
380 Town Centre
High-Hazard Dam Removal
McKinney, Collin County, Texas



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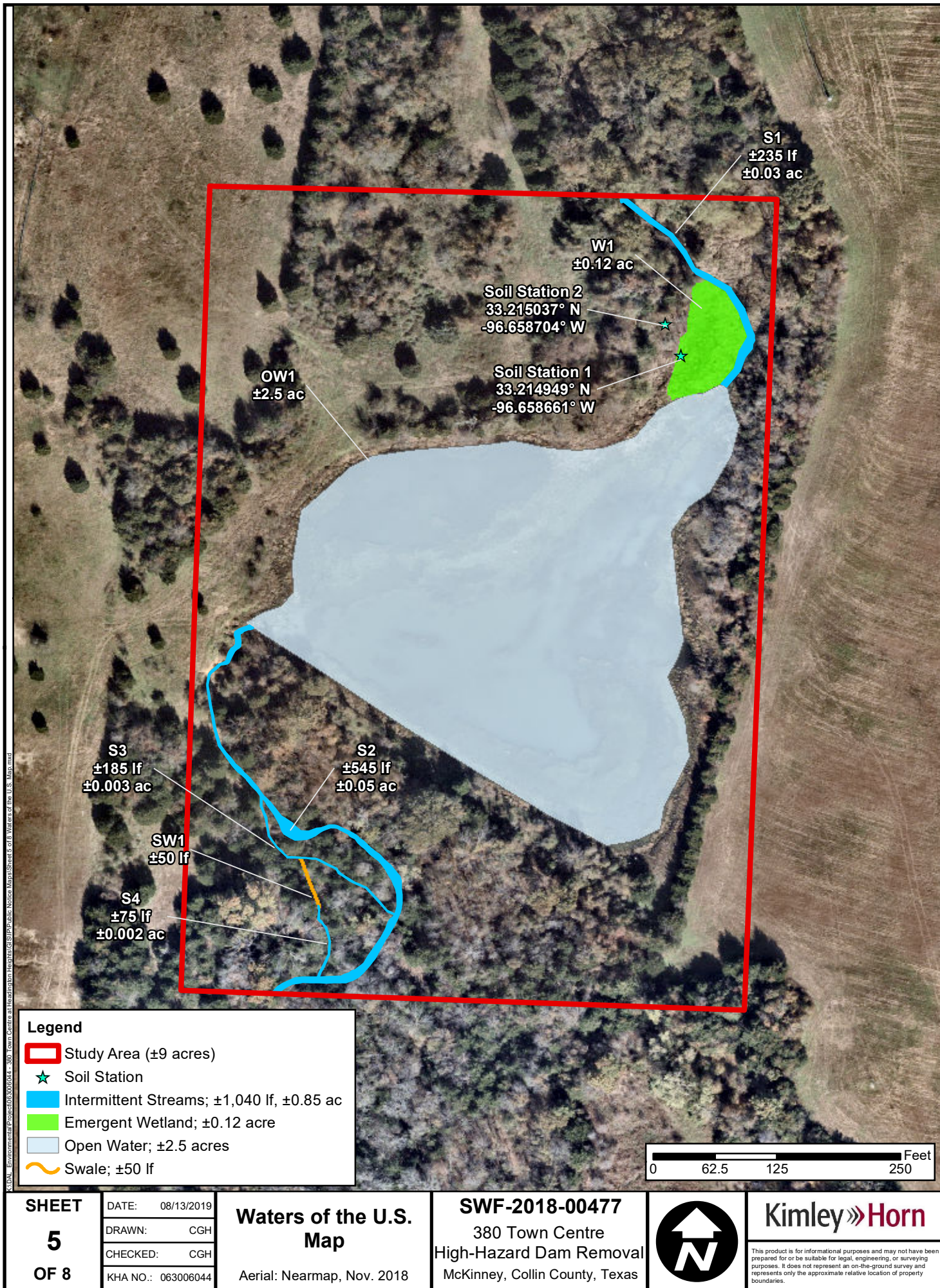


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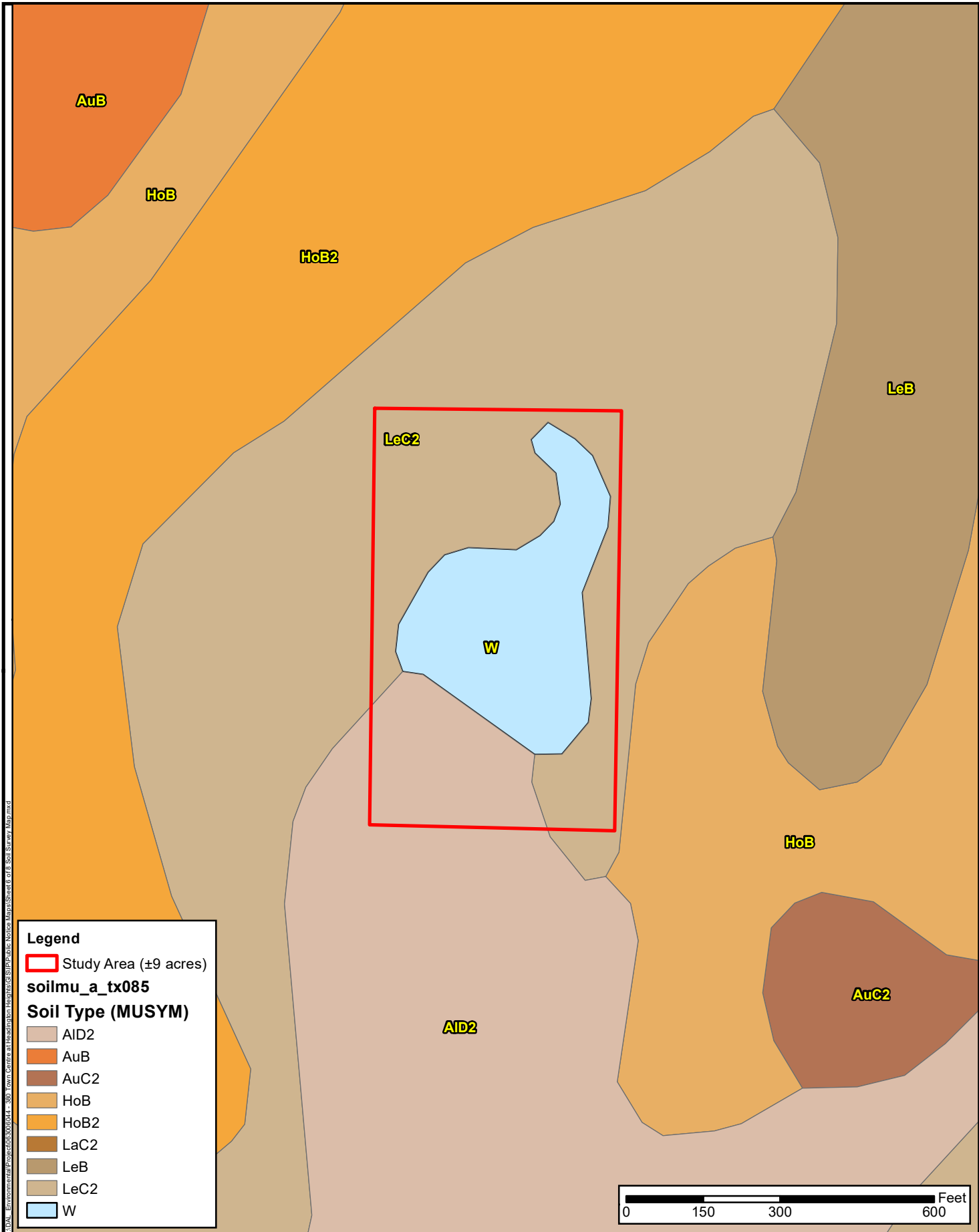
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 Study Area (±9 acres)

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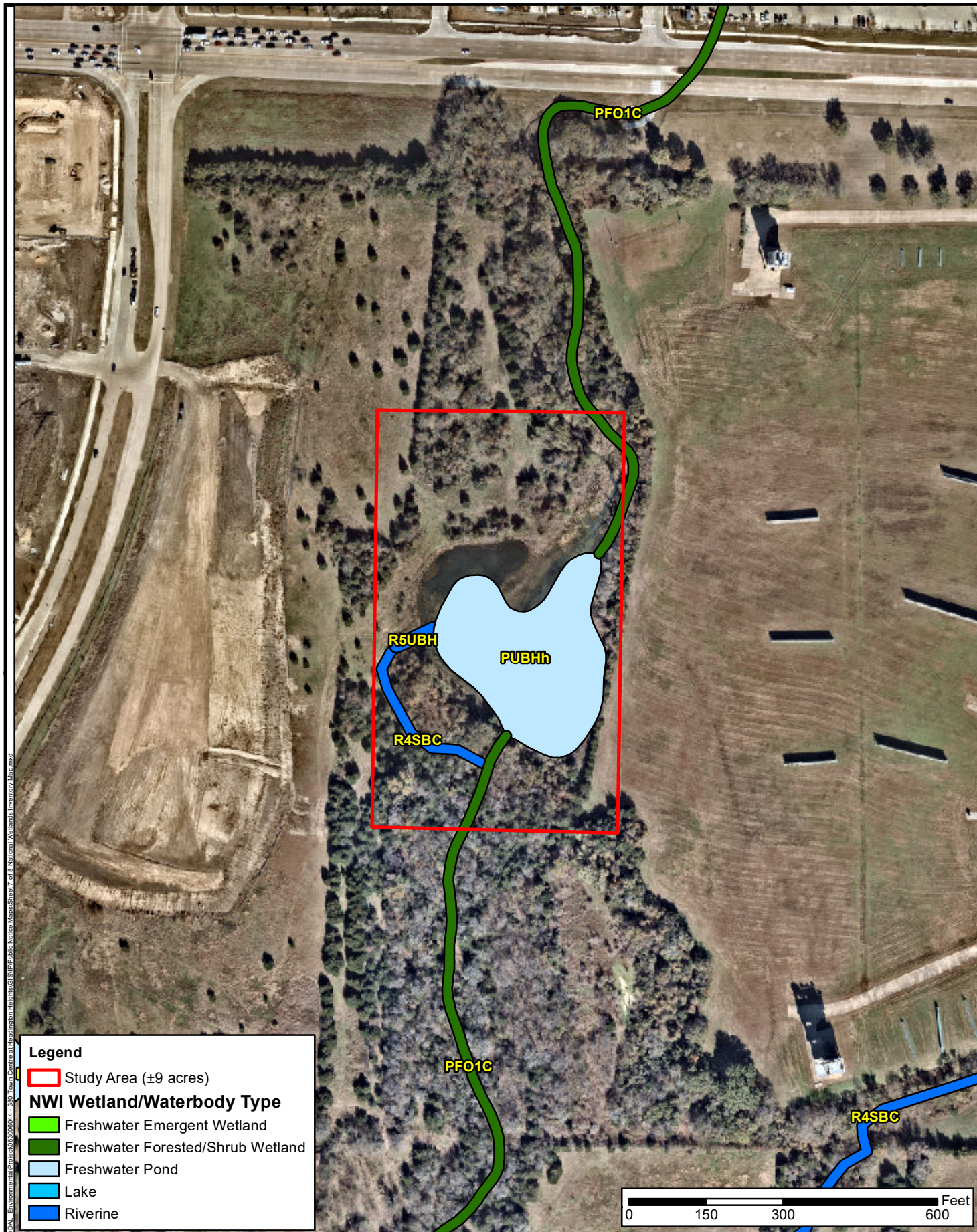
<p>SHEET 4 OF 8</p>	<p>DATE: 08/13/2019 DRAWN: CGH CHECKED: CGH KHA NO.: 063006044</p>	<p>Plan of Development Aerial: ESRI Basemap</p>	<p>SWF-2018-00477 380 Town Centre High-Hazard Dam Removal McKinney, Collin County, Texas</p>		<p>Kimley»Horn</p> <p><small>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.</small></p>
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**National Wetlands
Inventory Map**
Aerial: Nearmap, Nov. 2018

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380 Town Centre
High-Hazard Dam Removal
McKinney, Collin County, Texas



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- Study Area (±9 acres)
- FEMA Floodplain Zone**
 - 100-year Floodplain (Floodway)
 - 500-Year Floodplain Zone
 - Zone X

