



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

Public Notice

Applicant: Butler Creek Mitigation, LLC

Project No.: SWF-2018-00180

Date: May 6, 2020

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

Phone Number: 817-886-1820

PUBLIC NOTICE

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

SUBJECT: On December 21, 2018, the USACE issued a public notice for the Butler Creek Mitigation Bank (BCMB). Due to a lapse in activity and sponsor change, a second public notice is being issued to provide interested parties an opportunity to comment on a proposal to create the BCMB, located west of the city of Tyler, in Smith County, Texas.

APPLICANT: Butler Creek Mitigation, LLC
4803 River Place Blvd.
Austin, Texas 78730

APPLICATION NUMBER: SWF-2018-00180

DATE ISSUED: May 6, 2020

LOCATION: The BCMB property of 138.5 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: Through the removal of an artificial impoundment, the BCMB would restore pattern, profile and dimension to 9,000 linear feet (LF) of perennial stream (Butler Creek), and 11,553 LF of intermittent streams, with their associated 111.3 acres of riparian buffers. BCMB would also restore 8.5 acres of wetland that is currently open-water associated with the impoundment, enhance 10.6 acres of wetland that have been negatively influenced by the impoundment, and enhance 5.5 acres of upland buffer within the mitigation bank. The mitigation bank would be permanently protected through a conservation easement.

The following figures depict the BCMB site and mitigation plan. Exhibit 1: Site Location (Countywide); Exhibit 2: Site Location (Road Map); Exhibit 3: Topographic Map; Exhibit 4: 2018 Aerial Photography; Exhibit 5: Current Conditions (2018 Aerial Photography); Exhibit 6: Mitigation Plan (2018 Aerial Photography); Exhibit 7: National Wetlands Inventory (NWI) / FEMA Floodzones / National Hydrography Dataset (NHD) Map; Exhibit 8: Natural Resources Conservation Service (NRCS) Soils Map; and Exhibit 9: Proposed Service Areas Map. Concept stream design plans are also included as Exhibits 10-12.

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 (CESWF-13-MIT-1, dated October 2, 2013). The Sponsor is proposing primary, and secondary service areas for the proposed bank (see Exhibit 9 – 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 Upper Neches Sub-basin (8-digit HUC 12020001). 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, 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, Butler Creek Mitigation, LLC. Historical land uses of the proposed BCMB and immediate surrounding areas consist of forestry and agriculture operations and rural homesteads. 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. The area of the lake nearest the berm is 8 to 10 feet deep at the thalweg and becomes shallower moving east. Currently, BCMB consists of the following based on a delineation and functional assessment conducted by Hydrex Environmental, Inc.:

- 2,938 LF of perennial streams (Butler Creek). The majority of Butler Creek is currently impounded.
- 5,110 LF of intermittent streams. Many intermittent tributaries to Butler Creek are also impounded.
- 127 LF of ephemeral stream.
- 32.7 acres of open water associated with the impoundment.
- 25.9 acres of emergent fringe wetland associated with the impoundment.
- 11.0 acres of early successional forested wetlands.
- 7.6 acres of mature river birch slope/seep wetland
- 2.0 acres of scrub-shrub river birch slope/seep wetland
- 3.5 acres of emergent wetland managed as pasture.
- Remaining portions of BCMB consist of various upland habitat including mixed hardwood/pine forested areas, pasture, roads/trails, and a pipeline ROW.

The Sponsor intends to reestablish Butler Creek and associated tributaries through Priority 1 (P1) restoration utilizing Natural Channel Design (NCD) techniques as well as restoring the contributing wetlands and riparian buffers 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 138.5-acre bank under a perpetual conservation easement;
- Remove the impoundment located on Butler Creek and restore streams and wetlands that have been impacted by the dam and/or other negative influences. This specifically includes:
 - Remove all, or a portion of, the approximate 800 ft. long by 8 ft. deep earthen dam
 - Restore 9,000 ft. of Butler Creek (perennial stream) that has been negatively impacted by the impoundment.
 - Restore 11,533 ft. of intermittent tributaries to Butler Creek that have been negatively impacted by the impoundment.
- Restore or enhance approximately 111.3 acres of riparian buffers that have been negatively impacted by the impoundment and/or other influences. Of the 111.3 acres, 80.8 acres consists of riparian buffer with wetland, and 30.5 acres are within uplands.
- Enhance 10.6 acres of wetland that have reduced function due to the impoundment and other influences such as timber harvesting conducted approximately 10-years ago.
- Restore 8.5 acres of wetland that are currently open water habitat associated with the impoundment.
- Enhance 5.5 acres of additional upland buffer habitat within the bank.

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. The applicant is coordinating with USACE and the Texas Historical Commission and will conduct an archeological assessment of areas where subsurface construction impacts will occur.

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.

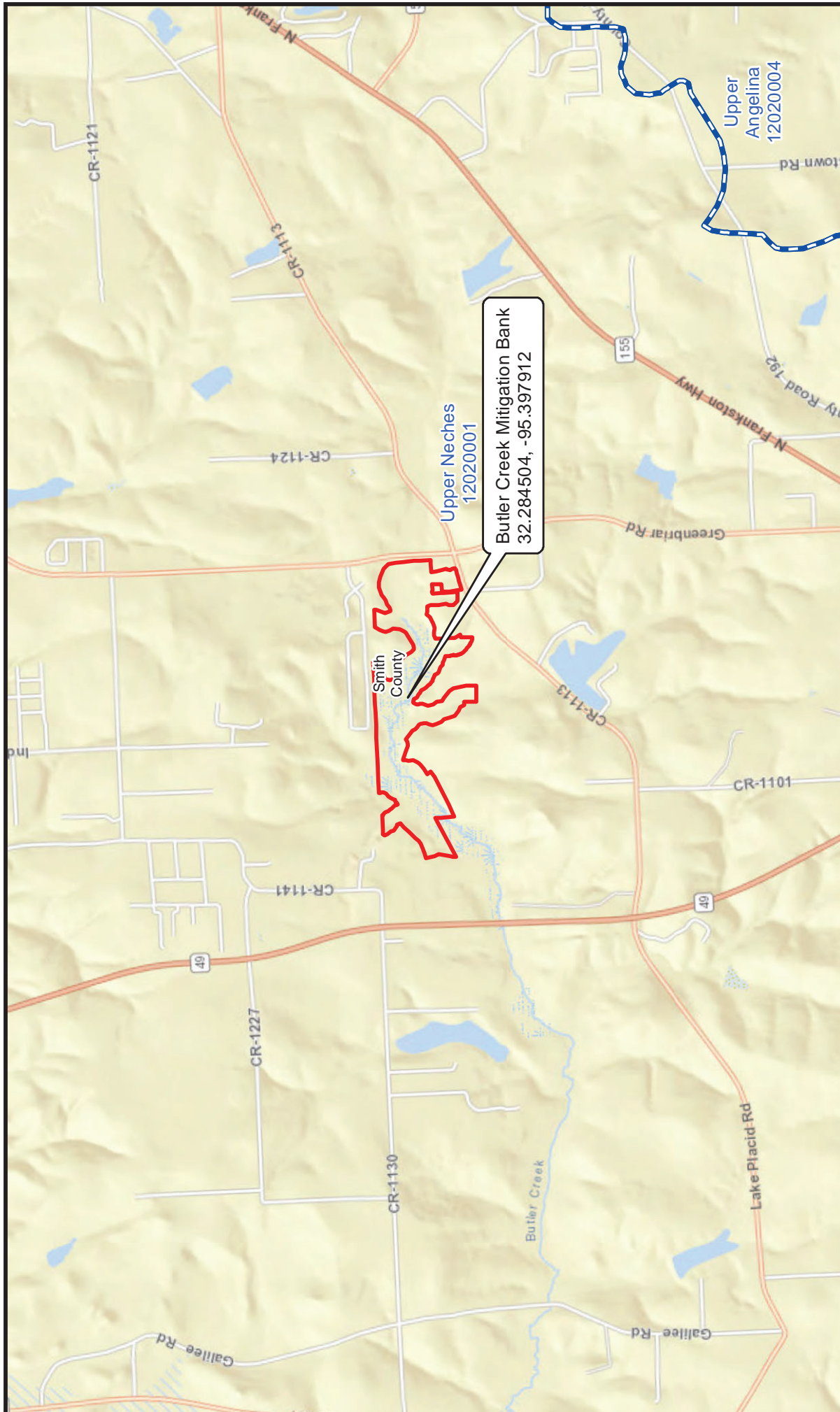
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted 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 June 5, 2020, 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-RDE; 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.

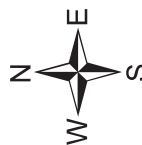
DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS



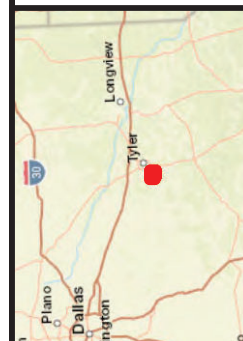
- ▬ BCMB Boundary - 138.5 Ac.
- ▬ County Boundaries
- ▬ 8-Digit HUC (Sub-Basins)

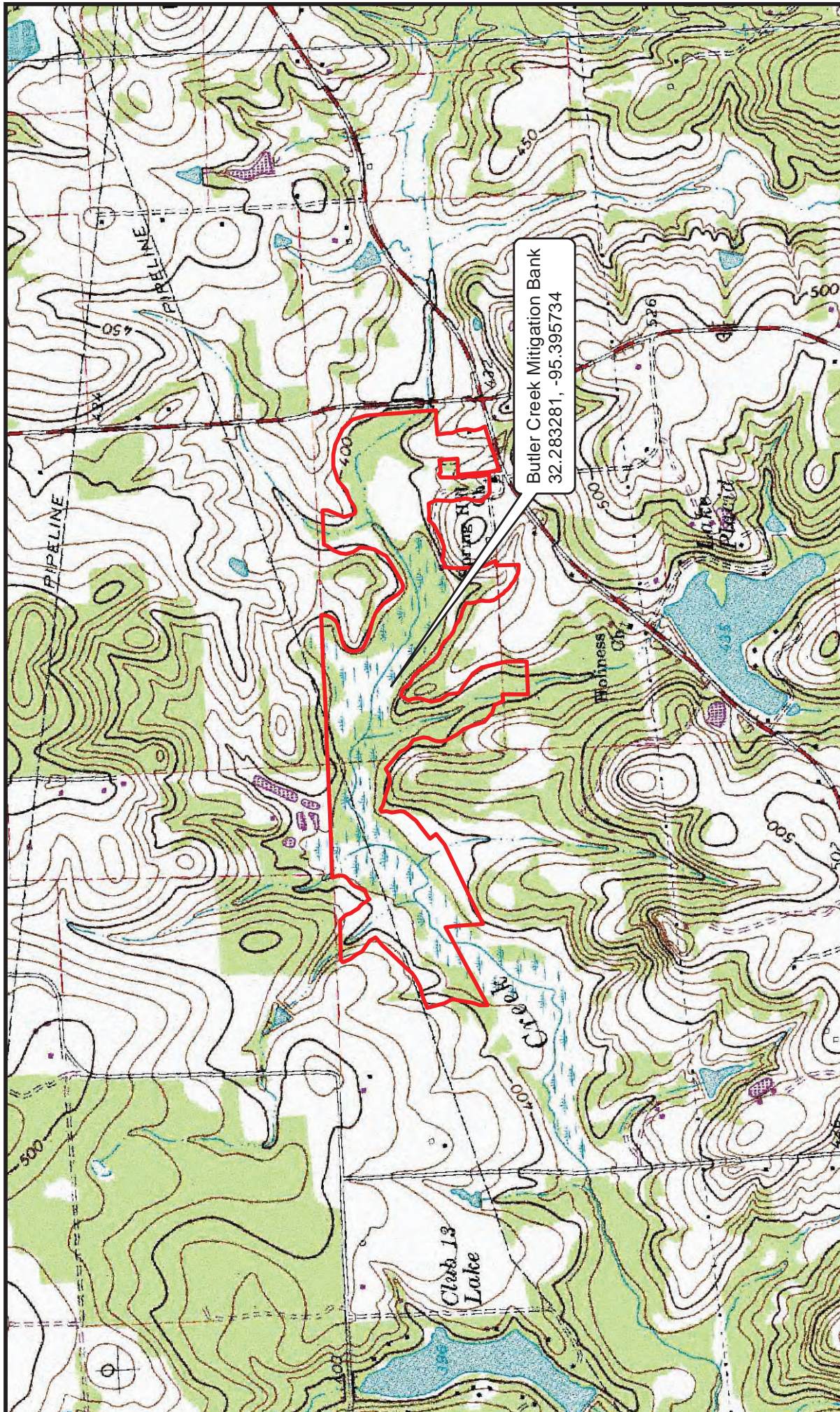
EXHIBIT 2 - ROAD MAP

Butler Creek Mitigation Bank
SWF-2018-00180
Smith County Texas
Sponsor: Butler Creek Mitigation, LLC



Date: 5/1/2020





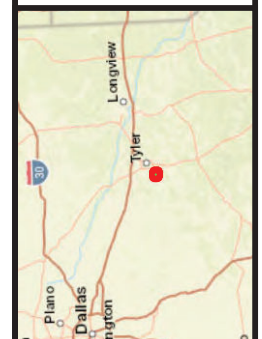
□ BCMB Boundary - 138.5 Ac.

EXHIBIT 3 - TOPOGRAPHIC MAP

Butler Creek Mitigation Bank
SWF-2018-00180
Smith County Texas
Sponsor: Butler Creek Mitigation, LLC



Date: 4/28/2020



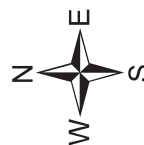


Butler Creek Mitigation Bank
32.283281, -95.395734

BCMB Boundary - 138.5 Ac.



Coordinate System: NAD 1983 2011 StatePlane Texas Central FIPS 4203 FUS



Date: 4/28/2020

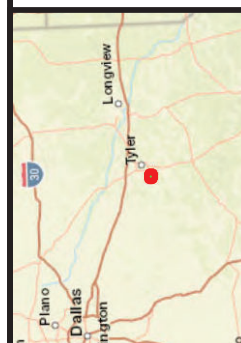


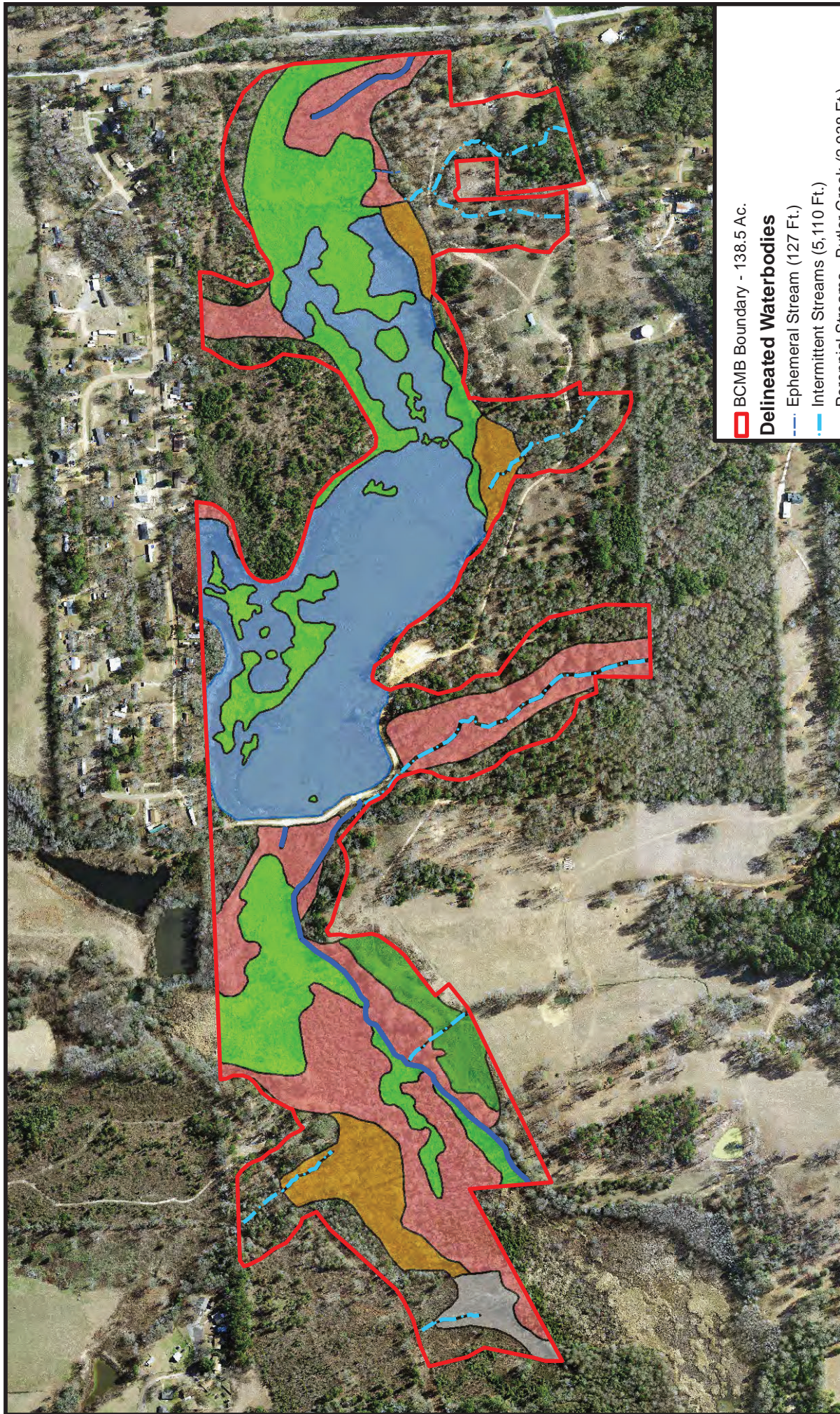
EXHIBIT 4 - 2018 AERIAL MAP

Butler Creek Mitigation Bank

SWF-2018-00180

Smith County Texas

Sponsor: Butler Creek Mitigation, LLC



BCMB Boundary - 138.5 Ac.

Delineated Waterbodies

--- Ephemeral Stream (127 Ft.)

--- Intermittent Streams (5,110 Ft.)

--- Perennial Streams - Butler Creek (2,938 Ft.)

Open Water (32.7 Ac.)

WAA 1 (25.9 Ac.) - Emergent Fringe Wetlands

WAA 2 (11.0 Ac.) - Early Successional Forested Wetlands

WAA 3 (7.6 Ac.) - Mature River Birch Slope/Seep Wetlands

WAA 4 (2.0 Ac.) - Scrub-Shrub River Birch Slope/Seep Wetlands

WAA 5 (3.5 Ac.) - Emergent Wetlands Managed as Pasture



Coordinate System: NAD 1983 2011 StatePlane Texas Central FIPS 4203 FLUS



Date: 4/28/2020

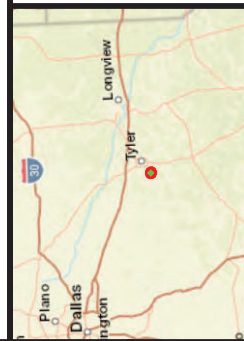
EXHIBIT 5 - CURRENT CONDITIONS MAP

Butler Creek Mitigation Bank

SWF-2018-00180

Smith County Texas

Sponsor: Butler Creek Mitigation, LLC



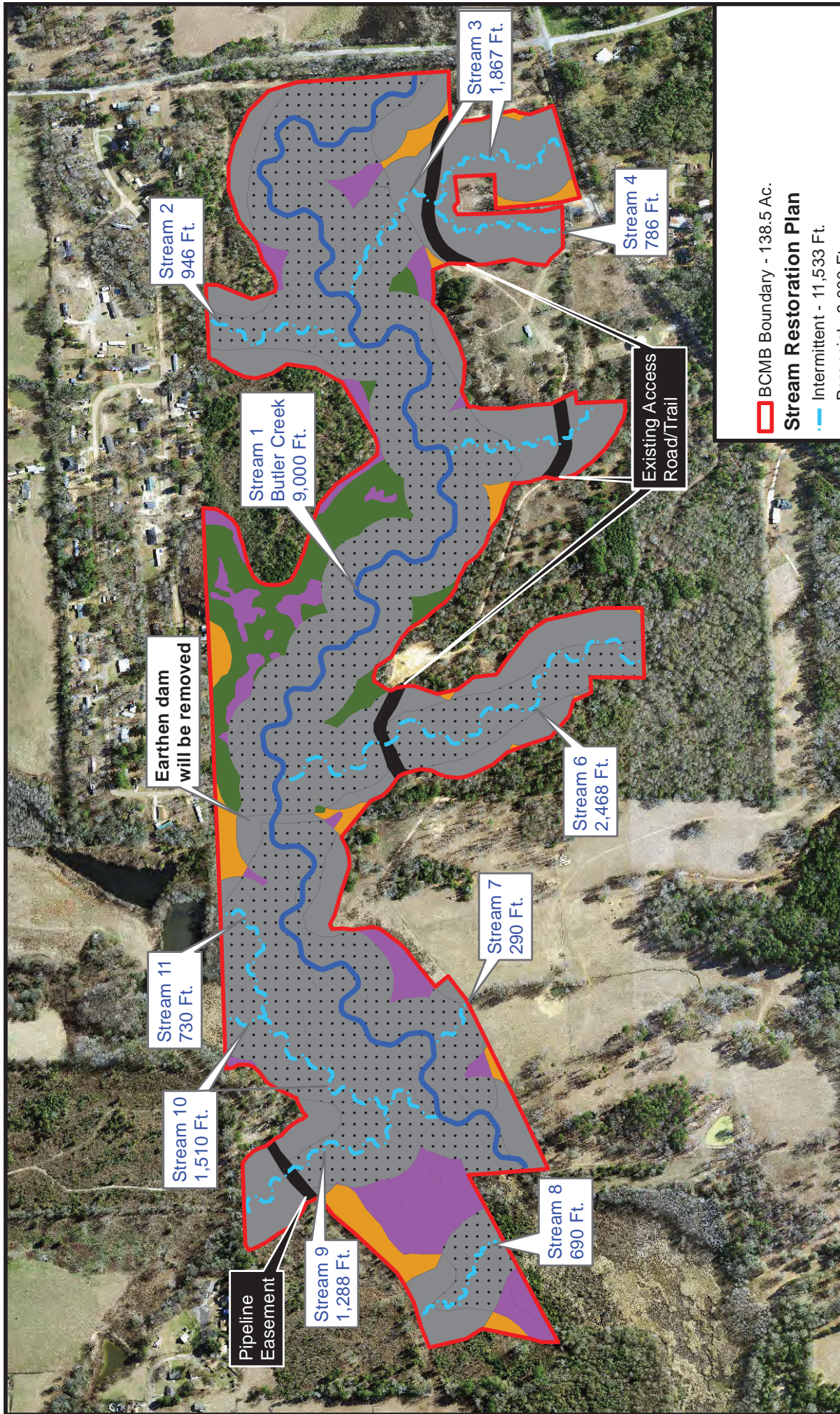
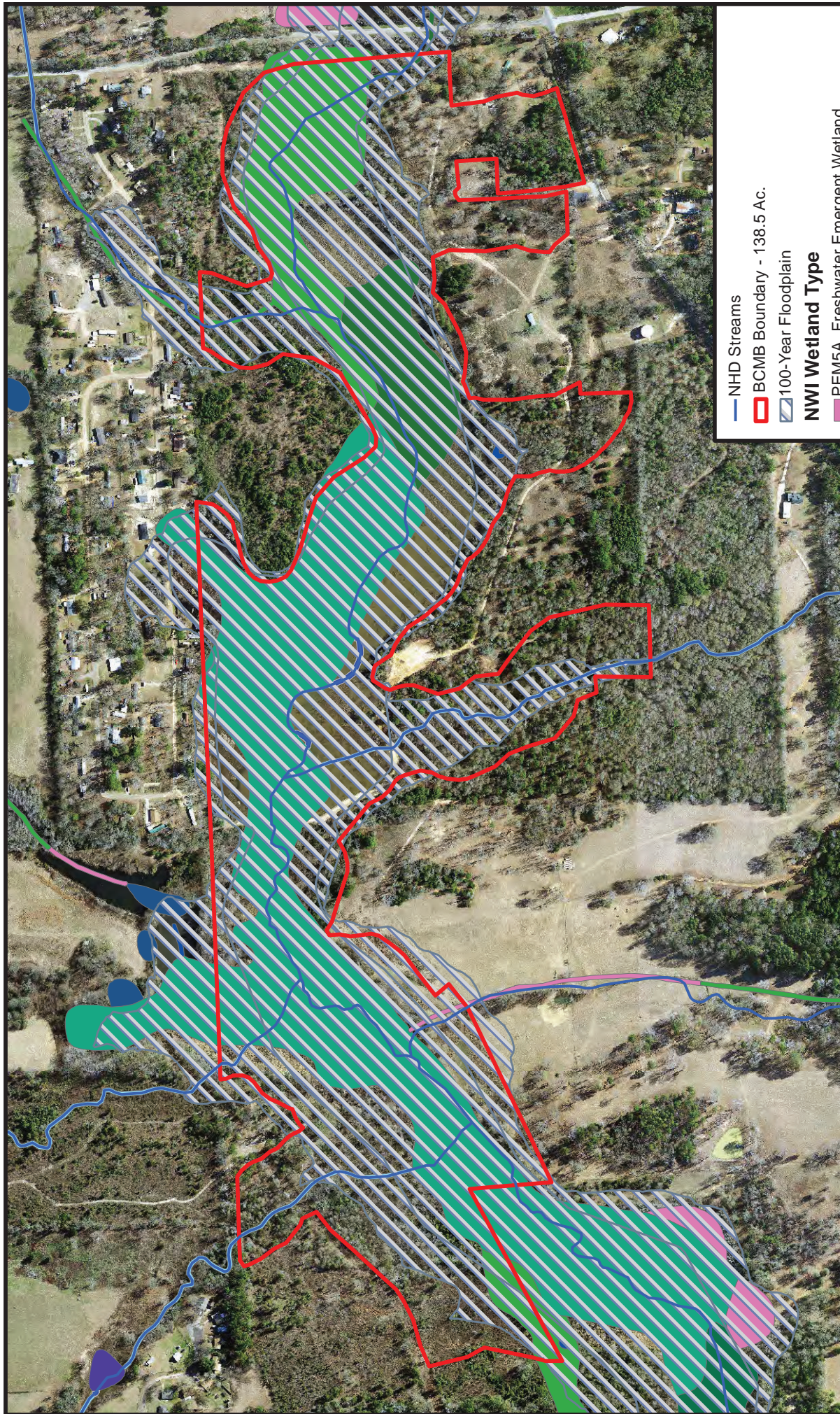


EXHIBIT 6 - MITIGATION PLAN MAP

Butler Creek Mitigation Bank
SWF-2018-00180

Smith County Texas
Sponsor: Butler Creek Mitigation, LLC

Date: 4/29/2020



— NHD Streams
 [Red Outline] BCMB Boundary - 138.5 Ac.
 [Blue Hatched] 100-Year Floodplain

NWI Wetland Type

[Pink] PEM5A, Freshwater Emergent Wetland
 [Light Green] PFO1A, Freshwater Forested/Shrub Wetland
 [Dark Green] PFO1C, Freshwater Forested/Shrub Wetland
 [Teal] PSS1/EM5F, Freshwater Forested/Shrub Wetland
 [Dark Teal] PSS1/UBF, Freshwater Forested/Shrub Wetland
 [Blue] PUBH, Freshwater Pond
 [Dark Blue] PUBHh, Freshwater Pond
 [Light Blue] PUBHx, Freshwater Pond
 [Medium Blue] R4SBC, Riverine
 [Dark Blue] R5UBH, Riverine



Coordinate System: NAD 1983 2011 StatePlane Texas Central FIPS 4203 FLUS



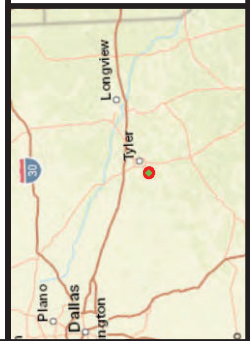
EXHIBIT 7 - NWI, NHD & FLOODPLAIN MAP

Butler Creek Mitigation Bank

SWF-2018-00180

Smith County Texas

Sponsor: Butler Creek Mitigation, LLC



Date: 4/29/2020

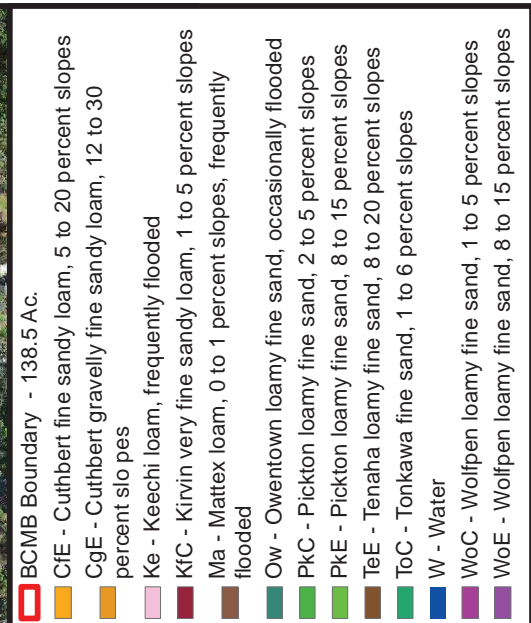
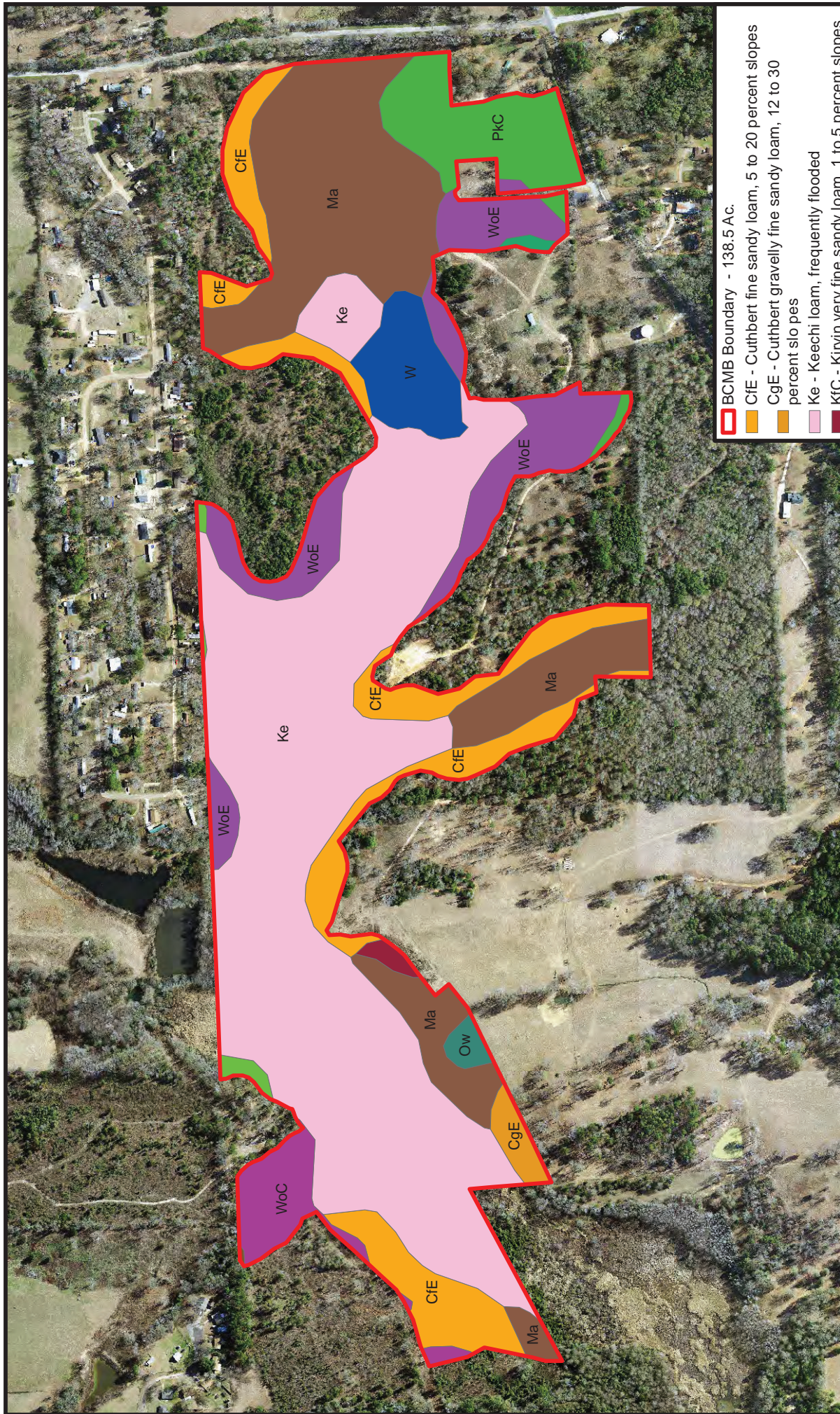
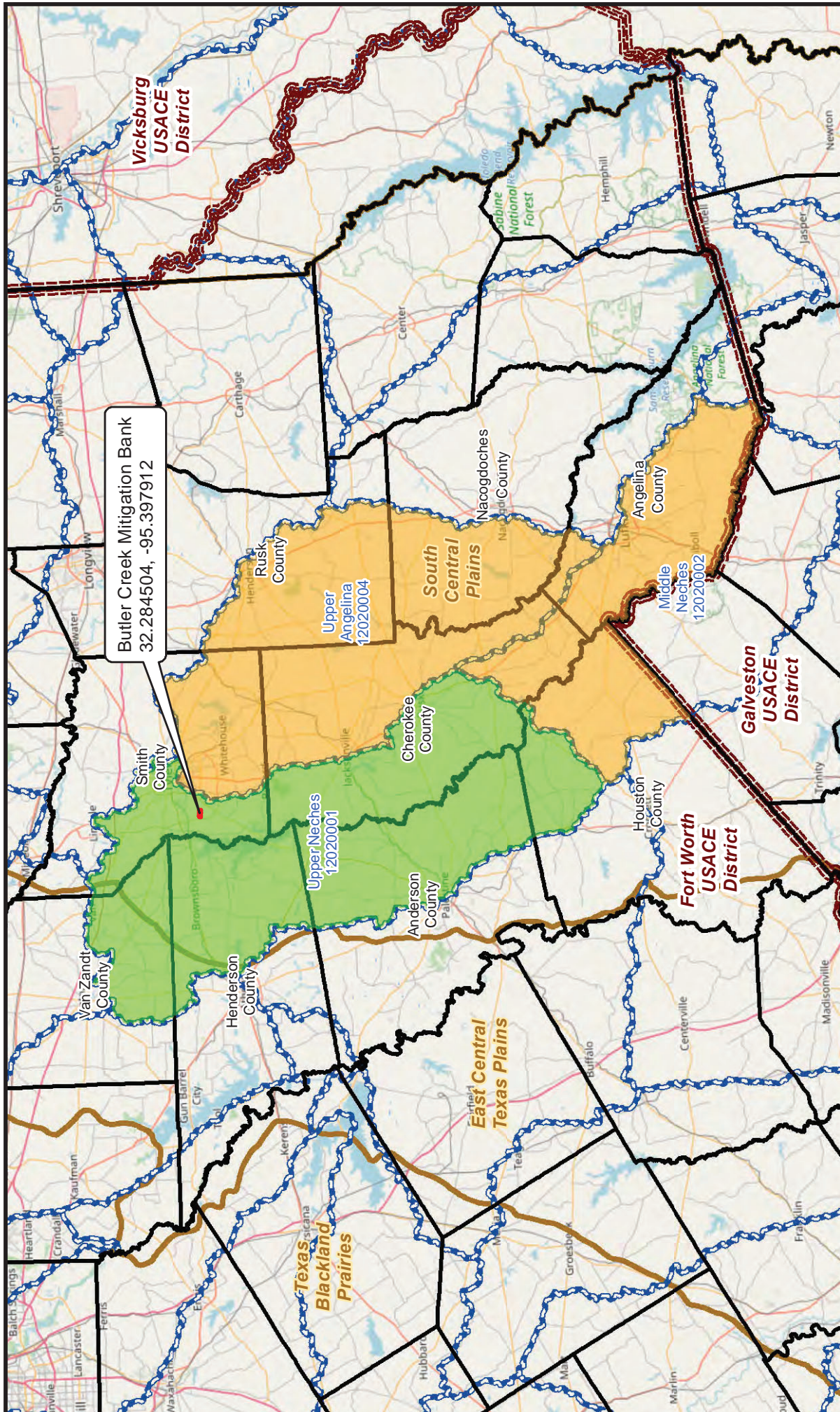


EXHIBIT 8 - SOILS MAP

Butler Creek Mitigation Bank
SWF-2018-00180
Smith County Texas
Sponsor: Butler Creek Mitigation, LLC

Date: 4/30/2020



- ▬ BCMB Boundary
- ▬ Primary Service Area (1:1 Ratio)
- ▬ Secondary Service Area (1.5:1 Ratio)
- Admin Boundaries**
- County Boundaries
- USACE District Boundaries
- 8-Digit HUC (Sub-Basins)
- Level III Ecoregions



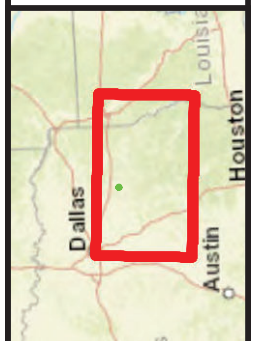
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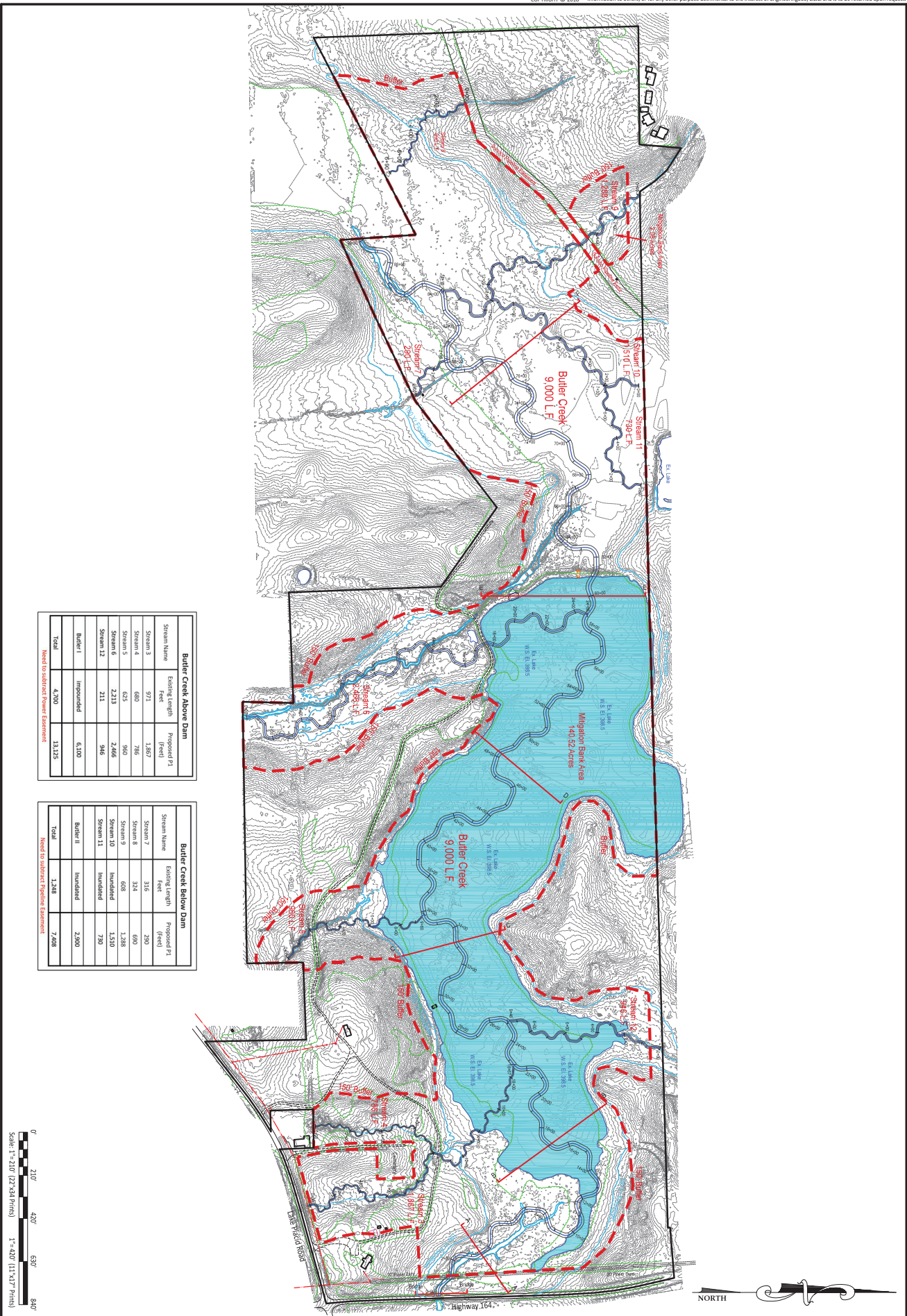
EXHIBIT 9 - SERVICE AREA MAP

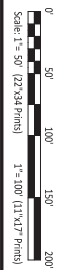
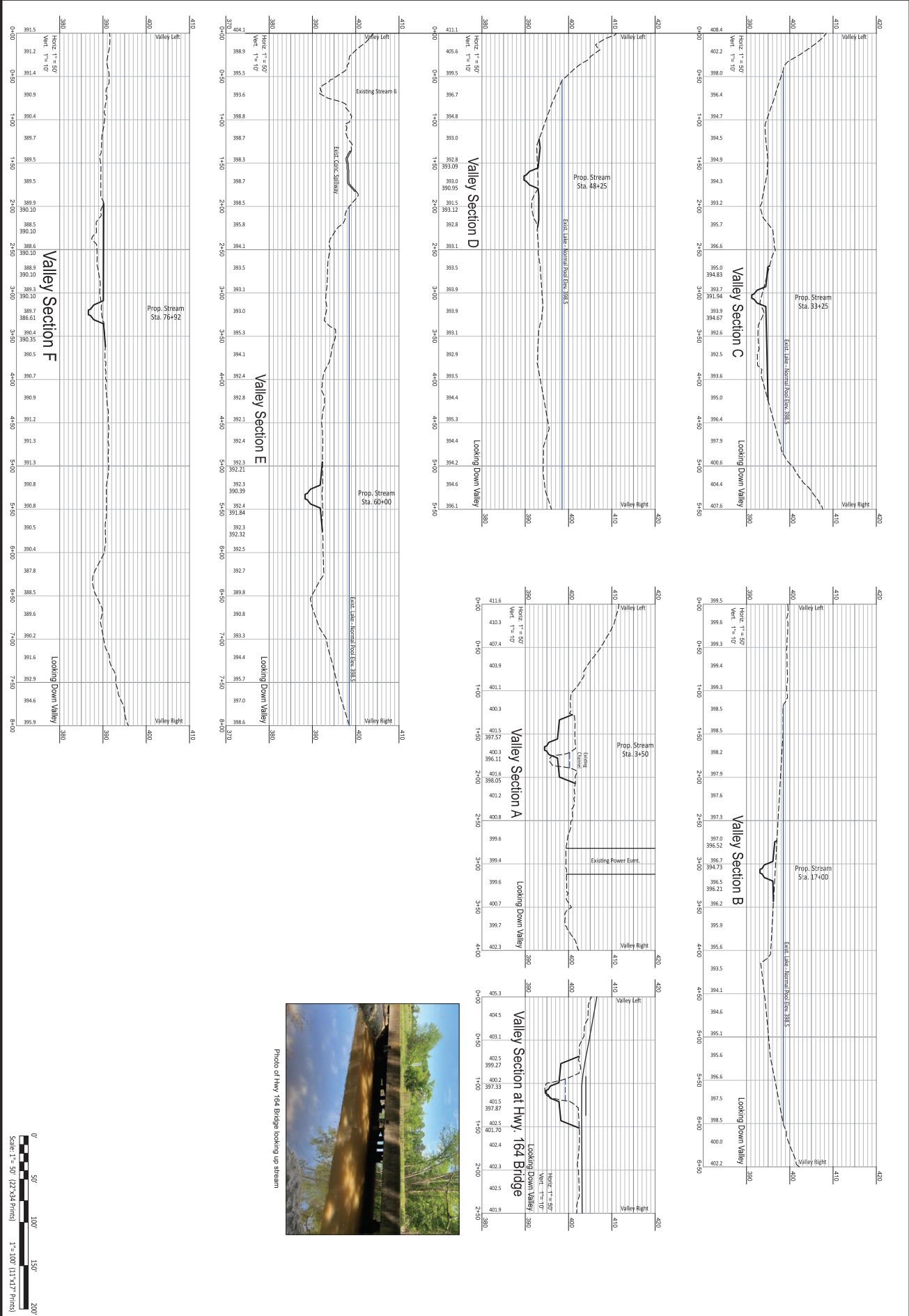
Butler Creek Mitigation Bank
SWF-2018-00180
Smith County Texas
Sponsor: Butler Creek Mitigation, LLC



Date: 5/1/2020







Valley Sections
 20-4648

Civil Engineering, Land Surveying,
 Stream and Wetland Restoration
 108 Allen Street Cumming, Georgia 30040
 Phone: 770-442-0500 www.engineering303.com



Valley Sections for:
Butler Creek Mitigation Bank
 Smith County, Tyler Texas



