



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

# Public Notice

Applicant: Wild-TX Lands, LLC

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Project No.: SWF-2021-00294

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Date: December 7, 2022

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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. Brent Jasper

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Phone Number: (817) 886-1733

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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 by Wild-TX Lands, LLC, to establish the Kickapoo Creek Mitigation Bank (KCMB), a proposed mitigation bank that would be located northeast of Troup in Smith County, Texas.

**APPLICANT:** Wild-TX Lands, LLC  
c/o Cliff J. Sunda, Wildwood Environmental Credit Company,  
LLC, Manager  
P.O. Box 6602  
Tyler, Texas 75711

**APPLICATION NUMBER:** SWF-2021-00294

**DATE ISSUED:** December 7, 2022

**LOCATION:** The proposed bank is located along Kickapoo Creek, in southeast Smith County, Texas approximately 2.8 miles northeast of Troup. The approximate center of the proposed KCMB is located at latitude 32.1849 North and -95.0959 West as mapped on the *Troup E 7.5-minute* U.S. Geological Survey quadrangle map. The site is located within the Upper Angelina watershed (8-digit HUC 12020004) and the South Central Plains U.S. Environmental Protection Agency (EPA) Level III Ecoregion (Griffin, et al. 2003). Maps of the proposed KCMB are provided as figures 1-7.

**PROJECT DESCRIPTION:** The Sponsor is proposing the restoration, enhancement, and permanent protection of approximately 16,214 linear feet of intermittent streams, 5,710 linear feet of perennial streams, 71 acres of associated riparian habitats, and 57.2 acres of palustrine forested wetlands within the KCMB. The bank site is located within the Upper Angelina watershed of the Neches River basin. The goal of the Sponsor in developing the KCMB is to provide high quality restoration/enhancement of stream ecosystems as compensation for adverse impacts to Waters of the United States (WOTUS) occurring within the Bank's proposed Service Area. It is anticipated that ecological lift associated would generate forested wetland, in-channel perennial stream, riparian buffer perennial stream, in-channel intermittent stream, and riparian buffer intermittent stream credits.

The purpose of the KCMB is to provide potential permittees with the mitigation credits needed to compensate for unavoidable impacts to WOTUS within the proposed service areas in accordance with the Mitigation Banking Guidelines (CESWF-10-MIT, dated June 16, 2011, CESWF-12-MITB, dated July 5, 2016, CESWF-18-MITB, dated January 24, 2019) and the Stream Mitigation Method (SWF-2011-00078, dated October 2, 2013).

The proposed service area includes in-kind habitat and out-of-kind habitat types located within the U.S. Army Corps of Engineers (USACE), Fort Worth District and the Neches River Basin (HUC 120200). The Sponsor is proposing primary, secondary, and tertiary service areas all within the Neches River basin. The proposed primary service area includes the Upper Angelina HUC (12020004). Upper Angelina is within the South Central Plains Level III Ecoregion. It includes portions of Angelina, Cherokee, Nacogdoches, Rusk, and Smith counties. The proposed secondary service area includes the Upper Neches HUC (12020001), Middle Neches HUC (12020002), and Lower Angelina HUC (12020005) within the South Central Plains Level III Ecoregion. This includes portions of Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Rusk, Sabine, San Augustine, Shelby, Smith, and Van Zandt counties. The proposed tertiary service area includes the Upper Neches HUC (12020001) within the Texas Blackland Prairie Level III Ecoregion. This includes portions of Henderson, Smith and Van Zandt counties.

The KCMB property is currently being maintained as a pine plantation with oil/gas activity remaining. In addition, several intermittent streams and ponds are identified within the site boundary. Approximately 106.7 acres of the Bank is mapped as wetland by the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) map. Floodplains along the majority of mapped streams within the site are shown to be potential wetland areas. Soils at the site are mapped by the Natural Resource Conservation Service (NRCS) as loam, fine sandy loam, loamy fine sand, and very fine sandy loam. The three most dominant soil types are the Mattex loam, 0 to 1 percent slopes, frequently flooded (Ma), Cuthbert fine sandy loam, 5 to 20 percent slopes (CfE), and the Owentown loamy fine sand, occasionally flooded (Ow).

All mitigation creditable areas within the Bank boundary would be protected in perpetuity through a conservation easement administered by a 501(c)(3) land trust.

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, EPA, 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 using Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

**ENDANGERED AND THREATENED SPECIES:** The USACE has reviewed the USFWS's latest published version of endangered and threatened species to determine if any might occur in the project area. The proposed project is in a county where the Piping Plover (*Charadrius melodus*) and Red Knot (*Calidris canutus rufa*) are known to occur or might potentially occur. The Piping Plover and Red Knot are 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:** In accordance with 36 CFR 800 and 33 CFR 325 (Appendix C), the District Engineer has consulted the latest version of the National Register of Historic Places. The proposed project area has never been surveyed for the presence of historic or prehistoric cultural resources. A cemetery is located approximately 1 mile east and 1 mile west of the site. A survey of the permit area will be required to identify and assess known archeological sites and any cultural resources identified. The USACE will be coordinating with the Applicant and the Texas Historic Commission to ensure compliance with Section 106 of the National Historic Preservation Act.

**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 to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. 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 reasons for the request. The District Engineer would 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 would 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 6, 2023, 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: U.S. Army Corps of Engineers, Fort Worth District, Regulatory Division, Permits Branch by emailing [CESWF-Permits@usace.army.mil](mailto:CESWF-Permits@usace.army.mil) and must include "Project Number SWF-2021-00294" in the email subject line. Requests for additional information should be submitted to: Mr. Brent Jasper by emailing [brent.j.jasper@usace.army.mil](mailto:brent.j.jasper@usace.army.mil) and must include "Project Number SWF-2021-00294" in the email subject line. Telephone inquiries should be directed to (817) 886-1733. 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 ENGINEER

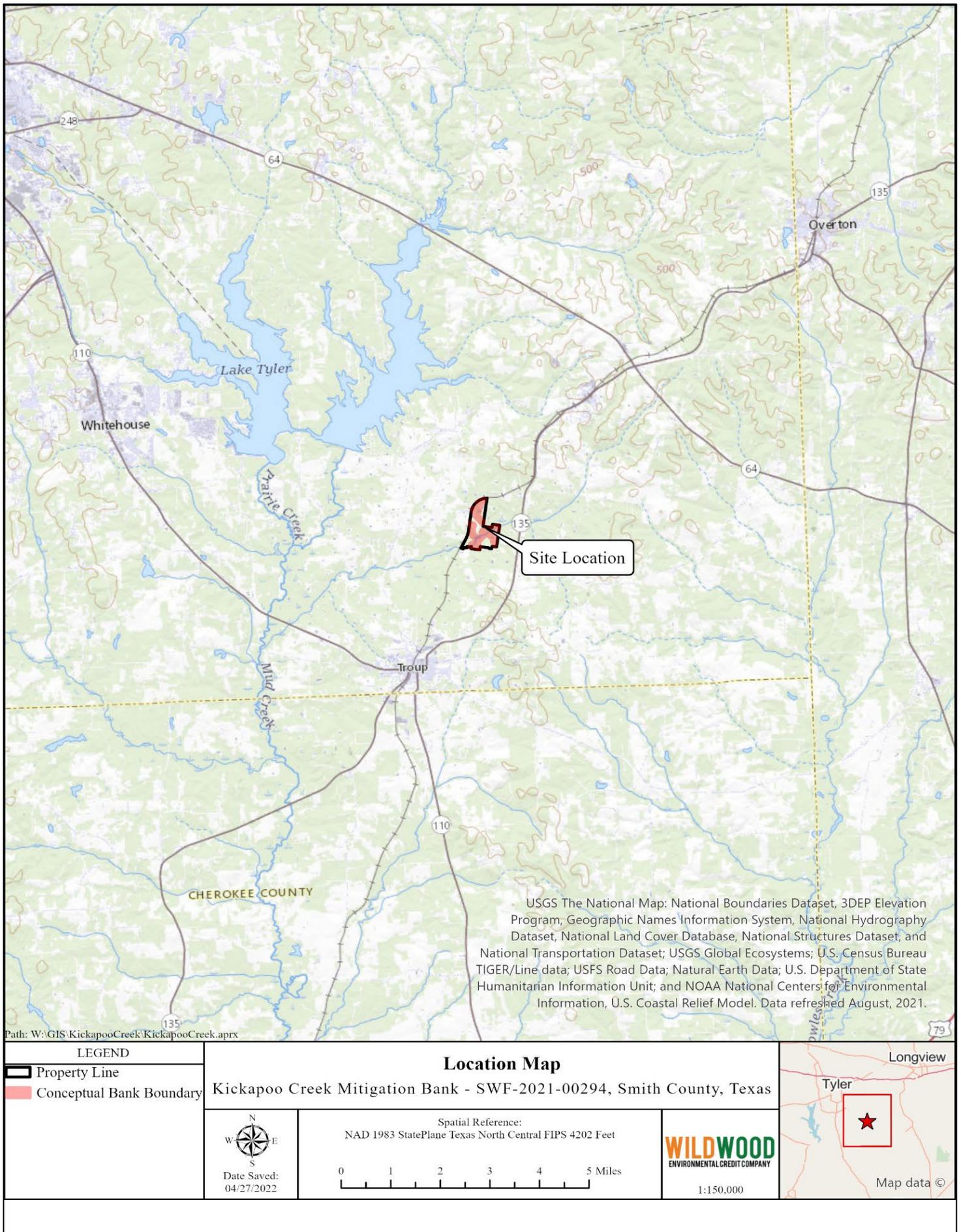
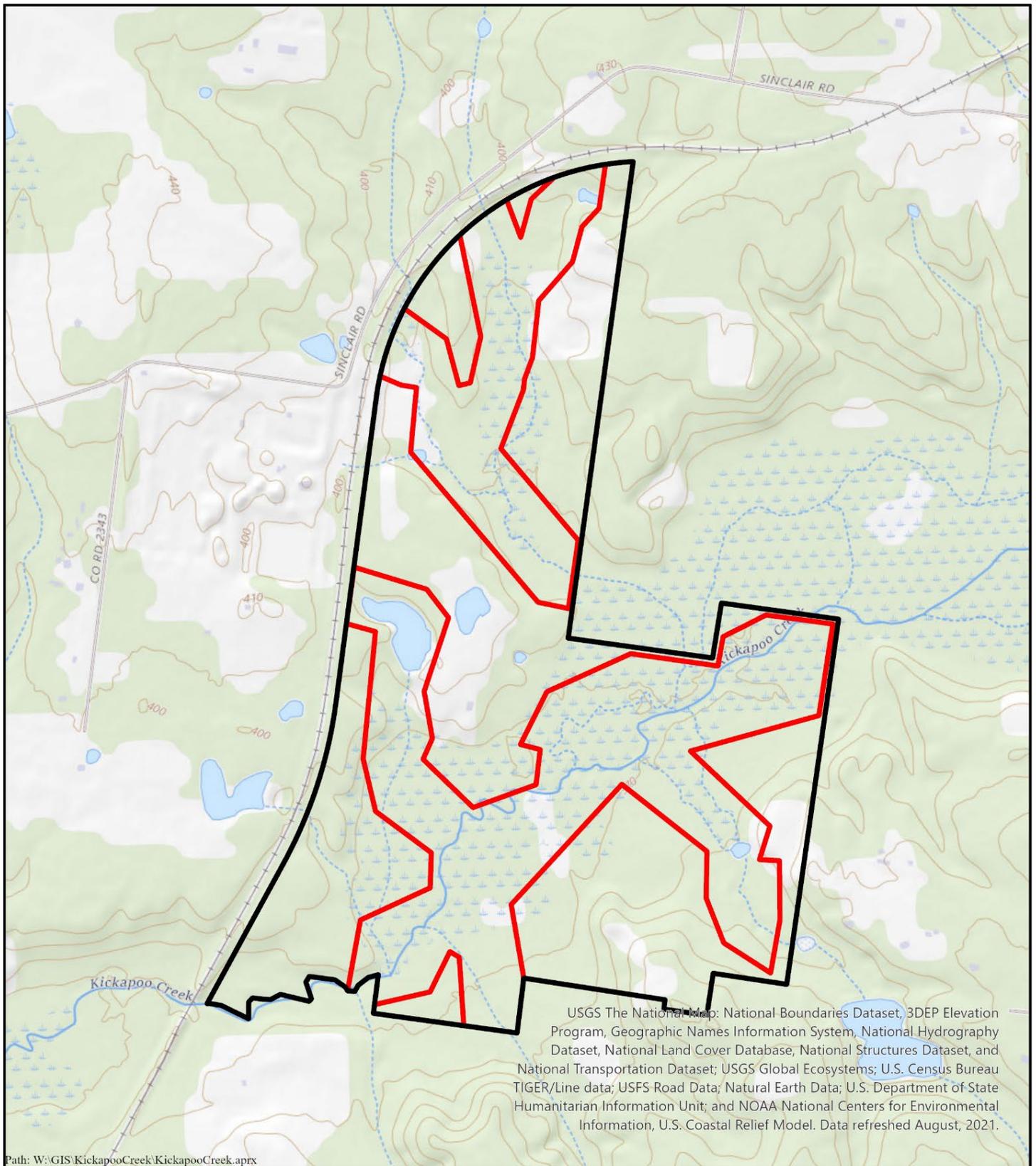


Figure 1. Location map of the site.



Path: W:\GIS\KickapooCreek\KickapooCreek.aprx

<p><b>LEGEND</b></p> <p> Property Line</p> <p> Conceptual Bank Boundary</p>		<p><b>USGS Topographic Map</b></p> <p>Kickapoo Creek Mitigation Bank - SWF-2021-00294, Smith County, Texas</p>		<p>Map data ©</p>
<p>Date Saved: 04/27/2022</p>		<p>Spatial Reference: NAD 1983 StatePlane Texas North Central FIPS 4202 Feet</p> <p>0 500 1,000 1,500 2,000 Feet</p>		

Figure 2. USGS topographic map of the site.

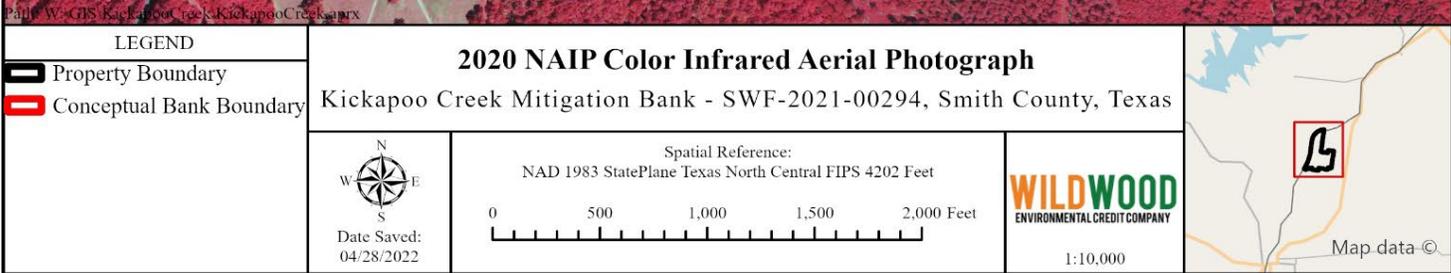
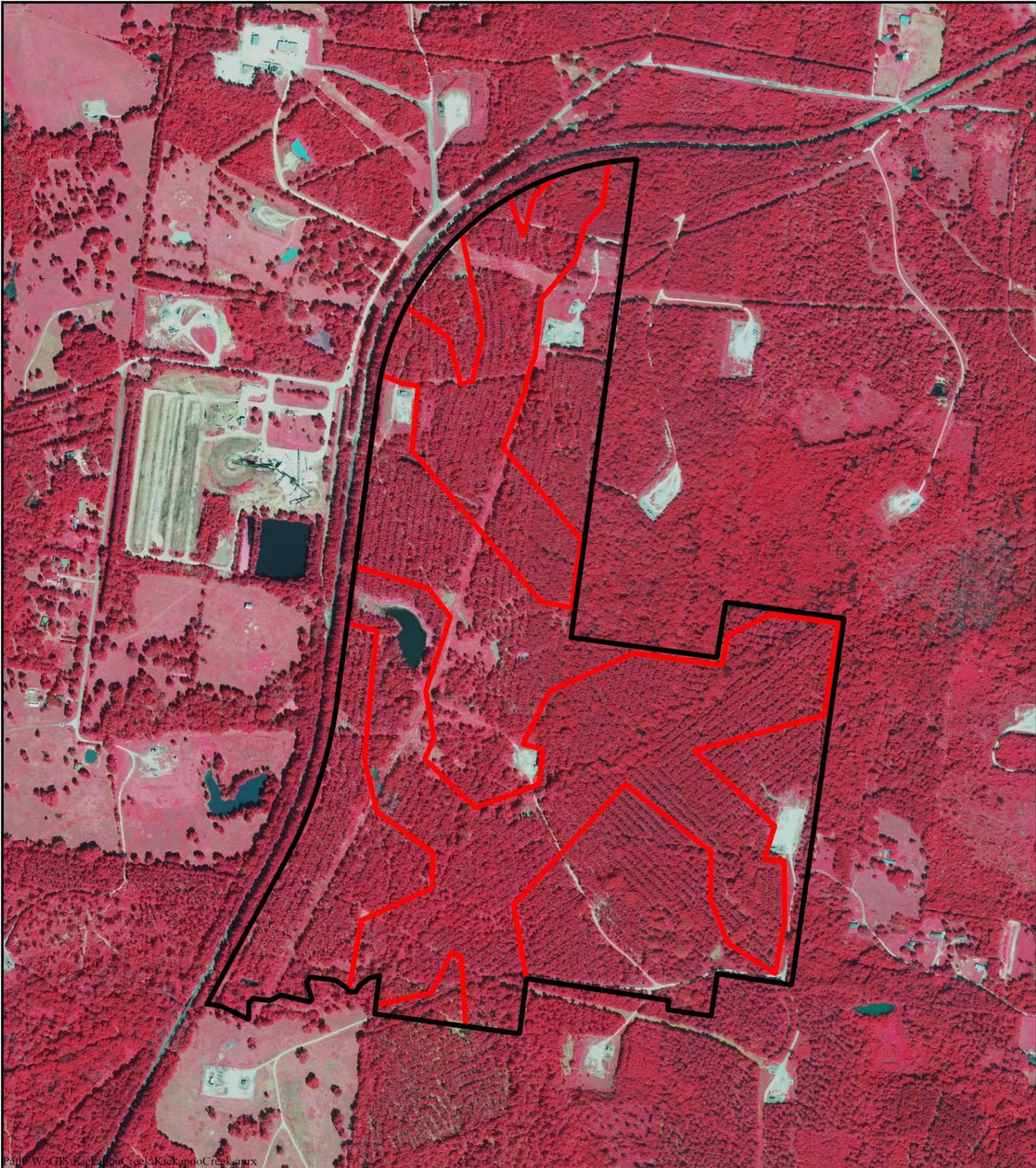


Figure 3. Aerial photograph of the site in 2020 showing the reforested portions of the site.

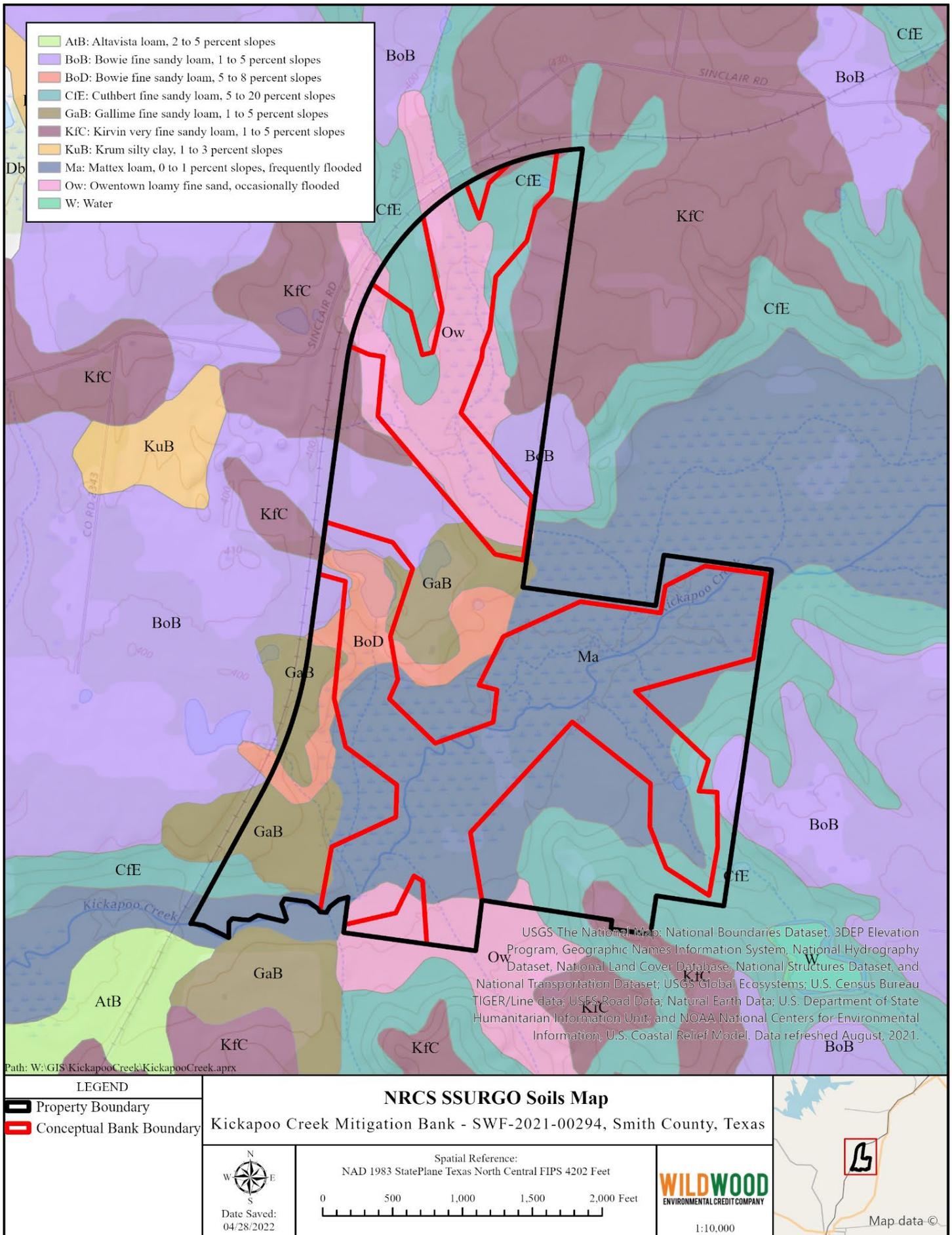
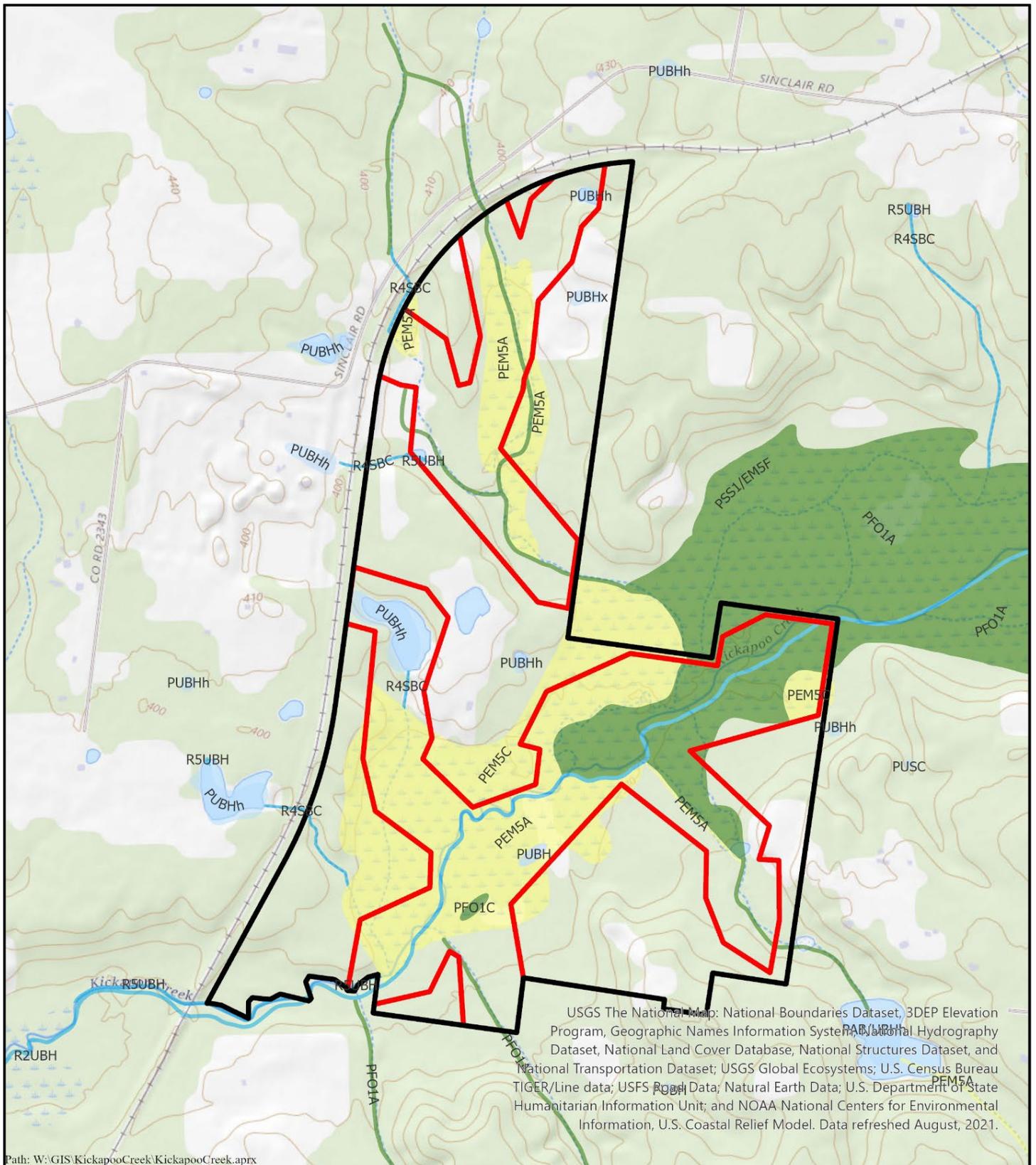


Figure 4. NRCS SSURGO Soil survey map of the site over the National Map baselayer.



<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li> Property Boundary</li> <li> Conceptual Bank Boundary</li> <li><b>Wetland Type</b></li> <li> Freshwater Emergent Wetland</li> <li> Freshwater Forested/Shrub Wetland</li> <li> Freshwater Pond</li> <li> Riverine</li> </ul>	<p><b>National Wetland Inventory Map</b></p> <p>Kickapoo Creek Mitigation Bank - SWF-2021-00294, Smith County, Texas</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div data-bbox="397 1816 527 1963"> <p>Date Saved: 04/28/2022</p> </div> <div data-bbox="560 1816 1063 1963"> <p>Spatial Reference: NAD 1983 StatePlane Texas North Central FIPS 4202 Feet</p> </div> <div data-bbox="1079 1816 1242 1963"> <p>1:10,000</p> </div> </div>	<p>Map data ©</p>
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Figure 5. National Wetland Inventory classification of the site.

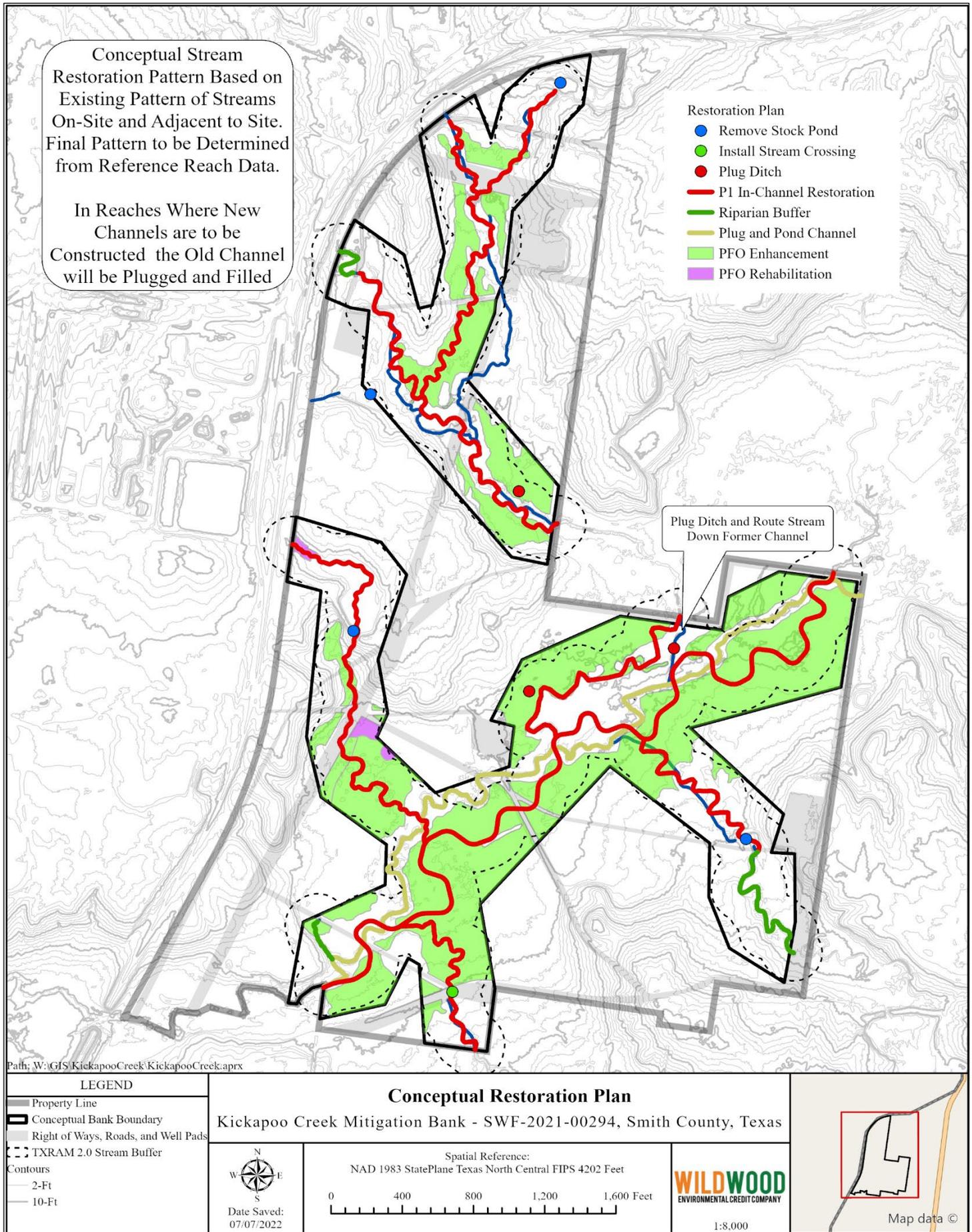


Figure 6. Conceptual Mitigation Work Plan for Kickapoo Mitigation Bank.

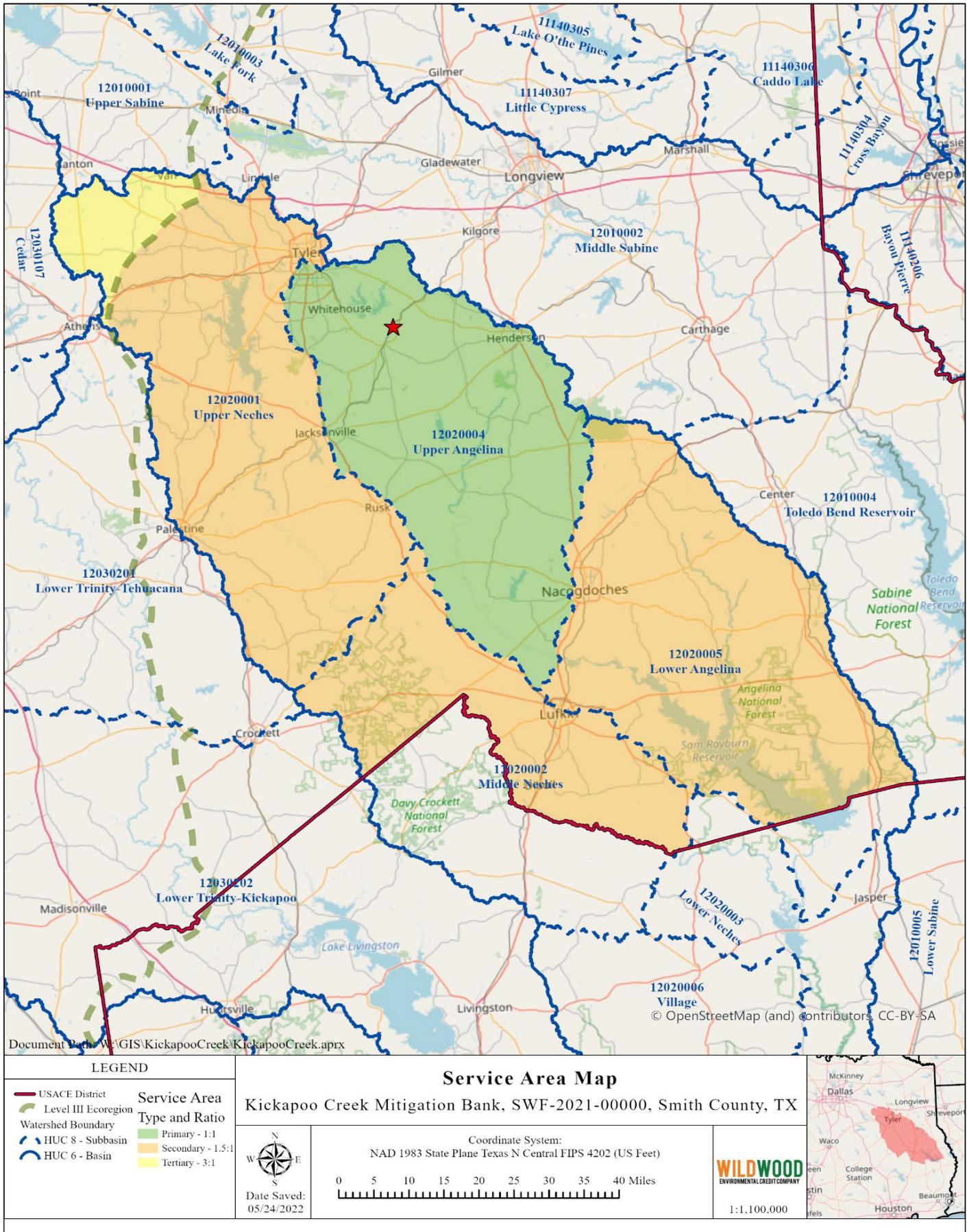


Figure 7. Proposed service area map based on guidance in CESWF-10-MITB.