

Application No. SWT-2013-101

JOINT PUBLIC NOTICE  
U.S. Army Corps of Engineers  
and  
Texas Commission on Environmental Quality (TCEQ)  
(30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer has received an application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA). The application is for an after-the-fact (ATF) permit for the placement of fill material into 226 linear feet of ephemeral stream and 0.29 acre of forested wetland, both are considered waters of the United States. The purpose of the work is to construct a multi-family residential development and an associated mixed use office-commercial development.

Name of Applicant: Mr. Tom Johnson  
TPJ Properties, Ltd  
15283 Highway 56 West  
Sherman, TX 75091

Name of Agent: Mr. Rudi Reinecke  
Integrated Environmental Solutions, LLC  
2150 S Central Expy Ste 110  
McKinney, TX 75070

Location: The proposed project location is in an unnamed tributary to Iron Ore Creek and an adjacent forested wetland, in Denison, Grayson County, Texas. The proposed project area comprises approximately 23 acres of the larger tract controlled by the applicant, located north and east of the intersection of Farm-to-Market Road (FM-691) (Grayson Drive) and Pool Road. The project site can be found on the Sherman, Texas 7.5 Minute USGS Quadrangle map at North Latitude 33.7069 and West Longitude 96.5795.

Project Description: The basic purpose of this project is to construct a mixed use development site, which includes a multi-unit independent senior residential and assisted living complex and a commercial/office/retail center.

A water dependency determination will be made upon consideration of the basic purpose for impacts within a forested wetland.

The overall project purpose is to fulfill the need for new multi-family residential areas in a growing sector and for complimentary mixed use office-commercial space.

Table of Impact:

<b>Original Proposal</b>					
<b>Number or Location</b>	<b>Impact Activity</b>	<b>Type of Impact</b>	<b>Type of Fill Material</b>	<b>Quantity of Material (CY) below OHWM</b>	<b>Footprint (AC and/or LF)</b>
Tributary 3	Placement of Fill Material	channelization	Concrete culvert	64 CY	226 LF
Tributary 5 (Note 2 below)	Placement of Fill Material	Channel relocation	Native soil	450 CY	152 LF
Forested Wetlands	Placement of Fill Material	construction grading	Native soil	468 CY	0.29 AC

Description of Work: The applicant proposes to construct three to four commercial buildings, which would result in the placement of fill material within the unnamed tributary of Iron Ore Creek by installing a box culvert for 226 linear feet until the culvert ties into rock rip-rap in the stream’s natural downstream path (Enclosure 7). The grading and construction of the multi-unit senior residential development site consisting of three large and one small building units, and a community center has already resulted in fill being placed within 0.29 acre of forested wetlands (Enclosure 3). The total volume of fill being placed within jurisdictional waters of the United States is 64 cubic yards of concrete culvert and rock rip-rap, and 468 cubic yards of earthen fill material.

Avoidance and Minimization Information: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

“These projects are located within a larger tract of land that is being subdivided into different uses. Geographic limitations associated with an unnamed tributary to Iron Ore Creek and their associated floodplains have carved out this section of the property into the most reasonably developable portion. Overall, the applicant has avoided the majority of the tributary features on the overall parcel and has limited impacts to approximately 226 linear feet of ephemeral channel and 0.29 acre of forested wetlands.”

Mitigation: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project: The applicant provided a detailed mitigation report with the basis of utilizing the Texas Rapid Assessment Method (TxRAM) and the Aquatic Resources Compensation Calculator (ARCC) in order to establish a baseline and appropriate mitigation proposal for waters of the United States with permanent impacts.

The mitigation proposal is for the creation of a 0.38 acre emergent wetland on-site next to stream 3 (Enclosure 5). The proposed wetland would be excavated to an elevation that would receive frequent (i.e., multiple times in a single year) overbank flooding. The

slopes around the wetland would be graded to a 4:1 slope to natural grade. The created wetland would be vegetated with a combination of spreading native wetland seed before the created wetland becomes filled with water, after water is present wetland plant plugs would be hand planted for additional success.

The applicant is also providing stream rehabilitation mitigation on stream 5 for approximately 405 linear feet (Enclosure 6). The objective of the tributary mitigation area is to stabilize the cut banks of the tributary and promote a long-term stable condition that reduces the localized erosion and sedimentation of the tributary. This objective would be accomplished through stabilizing the cut banks along the embankment and spillway/breach, and redirecting the stream energy away from the eroding banks, without altering the natural course of the tributary.

The need for re-grading the excessively steep cut banks originated from a historically created pond dam, that has failed and the stream is now routed around the embankment in an aggressive manor. The banks would be graded at a 4 to 1 slope starting at 3 feet above the current channel bed and would extend up slope until it reaches natural grade. All areas exposed due to grading would be planted with a native grass seed mix.

To reduce the hydraulic energy at the channel toe, channel deflections would be constructed on these channel meanders (Enclosure 8). A minimum of 8 log vanes would be used to deflect near bank erosional forces away from the unstable streambank and can be used to improve and create aquatic habitat through the formation of scour pools.

The applicant is proposing to place the wetland and stream/riparian corridor mitigation sites into a deed restricted preserve totaling approximately 2.39 acres.

This mitigation plan is the applicant's proposal: The Corps of Engineers has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines. The Corps is accepting comments on the need for and nature of the proposed mitigation in addition to comments on the applicant's primary proposal. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Other:

Note 1: The ATF permit proposal is the result of the applicant submitting multiple applications for several Nationwide Permit projects all within a conjoined property boundary, arriving at the Regulatory Office within a very short time of each other. The Corps determined these projects to be associated and considered a "single and complete project." A site visit dated March 4, 2013 revealed that a majority of the upland impacts had already occurred and some of the impacts to waters of the United States had occurred as well. The wetland impacts have been fully conducted already,

and some of the stream impacts have not occurred. The Environmental Protection Agency (EPA) decided to pursue the unauthorized activity as an enforcement investigation on June 12, 2013. The EPA finalized their investigation on April 8, 2014 resulting in a "Consent Agreement and Final Order," requiring a financial penalty of \$9,675.00.

Note 2: Before the determination that the projects were considered a single and complete project, the Corps issued a NWP for 152 linear feet of impacts to stream 5, under the Corps ID SWT-2012-887. The Corps considers these impacts associated with the ATF permit and will evaluate the need for mitigation for these impacts in conjunction with the impacts outlined above.

Note 3: The Texas Department of Transportation (TxDOT) is planning to expand the box culvert under road FM-691. The unnamed tributary of Iron Ore Creek flows through this site to tie into the proposed box culvert for this project. The TxDOT culvert would result in 97 linear feet of stream being placed in a box culvert, and would constitute 8 cubic yards of concrete.

Note 4: Following the EPA process in Note 1, the Corps began their role as lead agency and resume preparing the public notice document for the ATF permit and mitigation. New information on the site resulted in the identification of an additional violation of approximately 1,000 linear feet of an unnamed tributary to Iron Ore Creek on the project site that had occurred during the original site grading phase; no further work occurred on site after a cease and desist order was issued for this site. This violation is not part of the applicant's ATF permit except that it is on the same contiguous property. The Corps has accepted a restoration plan provided by the agent. This included information is only to provide additional background for site condition and comments pertaining to the restoration plan will not accepted.

Project Setting: The following statements were provided within the application:

"The property lies within the ecotonal edge of the Northern Blackland Prairie and Northern Post Oak Savanna Level IV ecoregion. The *Illustrated Flora of East Texas* (vol. 1) illustrates the property to lie approximately within the transitional areas between the Cross Timbers and Prairies and Blackland Prairie vegetation areas of Texas. More specifically, the area is within the Red River Area, which is a sandier occurrence of Post Oak Savanna and considered a transitional area between the more eastern/southern Post Oak Savanna occurrences and the Eastern Cross Timbers. A treatise on the historic vegetation communities of in the *Illustrated Flora of East Texas* lists the broad characterization of having a post oak (*Quercus stellata*), blackjack oak (*Quercus marilandica*) overstory with an understory of grasses, primarily little bluestem (*Schizachyrium scoparium*). The site was dominated by a forested riparian community. The forested riparian community dominated the majority of the Project Site and consisted of dominant species such as box elder (*Acer negundo*), cottonwood (*Populus deltoides*), common persimmon (*Diospyros virginiana*), soapberry (*Sapindus saponaria*), poison ivy (*Toxicodendron radicans*), Chinese ligustrum (*Ligustrum sinense*), American

elm (*Ulmus americana*), rough-leaf dogwood (*Comus drummondii*), black willow (*Salix nigra*), bur oak (*Quercus macrocarpa*), and Shumard oak (*Quercus shumardii*) with an understory of Virginia creeper (*Parthenocissus quinquefolia*), broadleaf woodoats (*Chasmanthium latifolium*), and Canada wild-rye (*Elymus canadensis*). The understory of the forested riparian community was dominated by coralberry (*Symphoricarpos orbiculatus*), box elder, yaupon (*Ilex vomitoria*), saw-tooth greenbrier (*Smilax bona nox*), Alabama supple jack (*Berchemia scandens*), elderberry (*Sambucus nigra*), Virginia creeper, and broadleaf woodoats. Several small areas dominated by wetland communities were located throughout the site and were consisted of dominant species such as common persimmon, green ash, salt-marsh aster (*Aster subulatus*), greenbrier, curly dock (*Rumex crispus*), yellow nut-grass (*Cyperus esculentus*), toothcup (*Ammannia coccinea*), giant ragweed (*Ambrosia trifida*), and American elm.”

“Historic land uses for the site were cattle grazing and other animal agricultural activities in the grassed areas. Current land use is undeveloped land.”

“The proposed project areas are bounded by 100-year floodplain of several un-named tributaries to Iron Ore Creek. As previously mentioned, the property lies within the Iron Ore Creek (12-digit HUC) and the greater Bois D'Arc Island (8-digit HUC) watersheds. Within the Bois D'Arc Island watershed the state of Texas has listed Bois D'Arc Creek and Choctaw Creek as impaired with Total Maximum Daily Load (TMDL) needed. All other large classified and unclassified segments within the 8-digit HUC are considered good. There is currently no watershed level planning document or other watershed plans for either Bois D'Arc Island or Iron Ore Creek. The proposed project areas are being driven by the completion and further development of the Texoma Medical Center just west and north of the property along US 75. The Texoma Medical Center is a primary economic driver for the Denison area and is encouraging complimentary development along the US 75 corridor. To support the Texoma Medical Center and growth within the immediate area, the Texas Department of Transportation (TxDOT) is widening FM 691 fronting the property to handle increased future traffic. Several large developments are currently in progress including a hotel conference center across US 75 and complimentary family service centers to support the families of patients at the Texoma Medical Center (e.g., Reba's Ranch House).”

Plans and Other Data: Plans showing the location of the proposed activity and other data are enclosed with this notice (Enclosures 1-8). The application is on file and may be viewed during normal working hours at the Tulsa District, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, Oklahoma. If additional information is desired, it may be obtained from Mr. Bryan Noblitt, U.S. Army Corps of Engineers, Tulsa District, ATTN: Regulatory Office, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, or telephone 918-669-7400.

Cultural Resources: The applicant provided a survey for this site indicating that no resources were identified through a field investigation. The report received a “No Effect” concurrence dated February 20, 2013 by the State Historic Preservation Officer, tracking # 20130464. The District Engineer has consulted the National Register

of Historic Places (Register), and it has been determined that there are no properties currently listed in the Register nor any properties which have been determined eligible for listing in the Register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological or other historic properties which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 (Public Law 89-665), as amended, and 36 CFR 800, in accordance with implementing regulations 33 CFR 325, Appendix C.

Threatened and Endangered Species: Our preliminary determination is that the proposed activity would not affect listed Endangered Species or their critical habitat. A copy of this notice is being furnished the U.S. Fish and Wildlife Service and appropriate State agencies and constitutes a request to those agencies for information on whether any listed or proposed-to-be-listed endangered or threatened species may be present in the area which would be affected by the proposed activity.

Environmental Considerations: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity and its intended use on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit 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 the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownerships, and, in general, the needs and welfare of the people. A permit will be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) Guidelines. Subject to the 404(b)(1) Guidelines and any other applicable guidelines or criteria, a permit will be granted unless the DE determines that it would be contrary to the public interest.

Authorization from other Agencies:

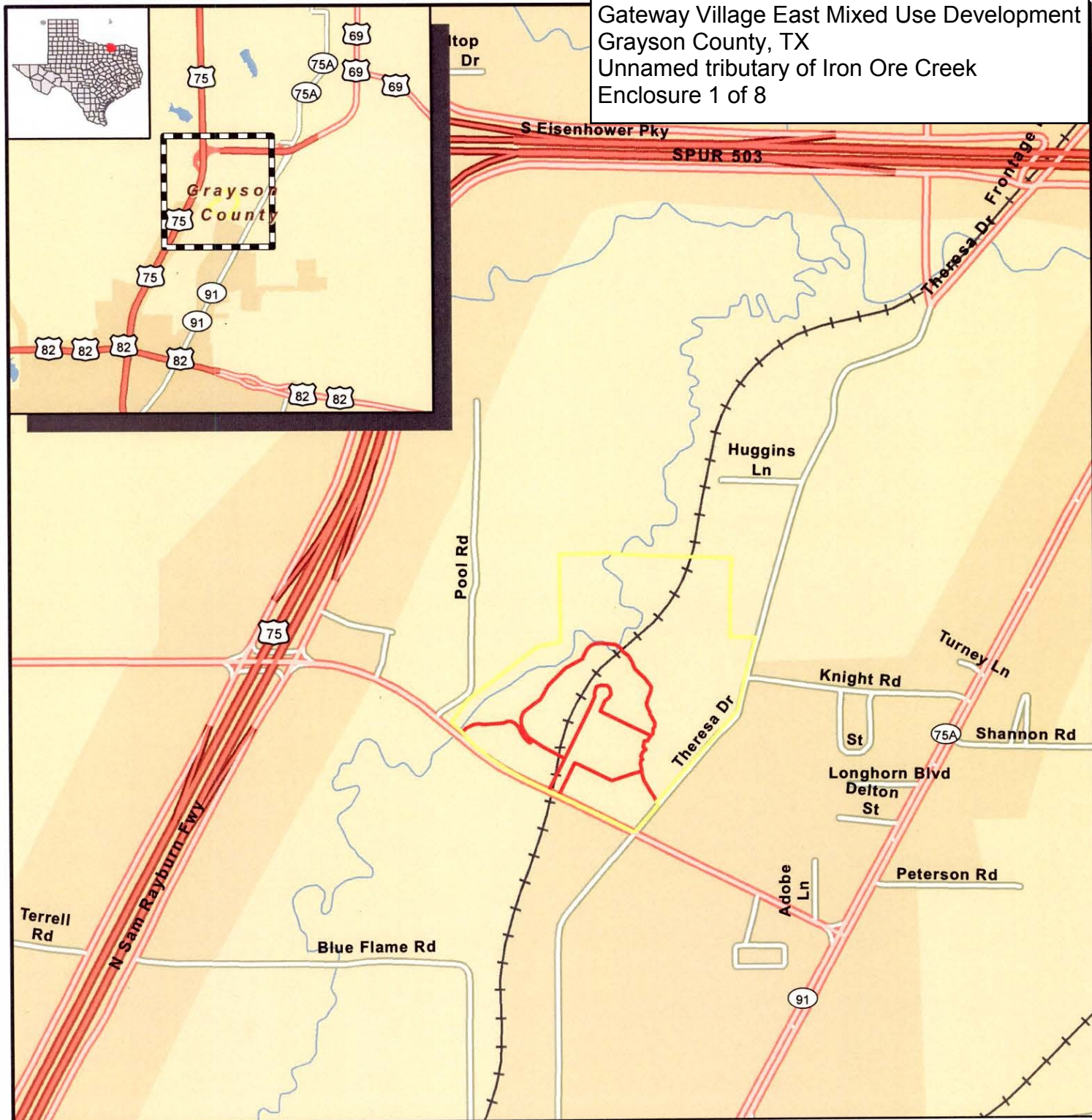
Tier I projects: This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those which result in a direct impact of three acres or less of waters of the state or 1500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices (BMPs) and other provisions designed to safeguard water quality. The U.S. Army Corps of Engineers (Corps) has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for CWA Section 401 water quality certification is not necessary and there will be no additional TCEQ review.

Comments: 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. Comments concerning the issuance of this permit should be received by the District Engineer not later than 30 days from the date of this public notice. Any comments received will be considered by the USACE to determine whether to issue, modify, condition, 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. Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Andrew R. Commer  
Chief, Regulatory Office

Enclosures

SWT-2013-101  
 Gateway Village East Mixed Use Development  
 Grayson County, TX  
 Unnamed tributary of Iron Ore Creek  
 Enclosure 1 of 8



**Figure 4**  
 General Location Map

- Property Boundary
- Proposed Project Areas

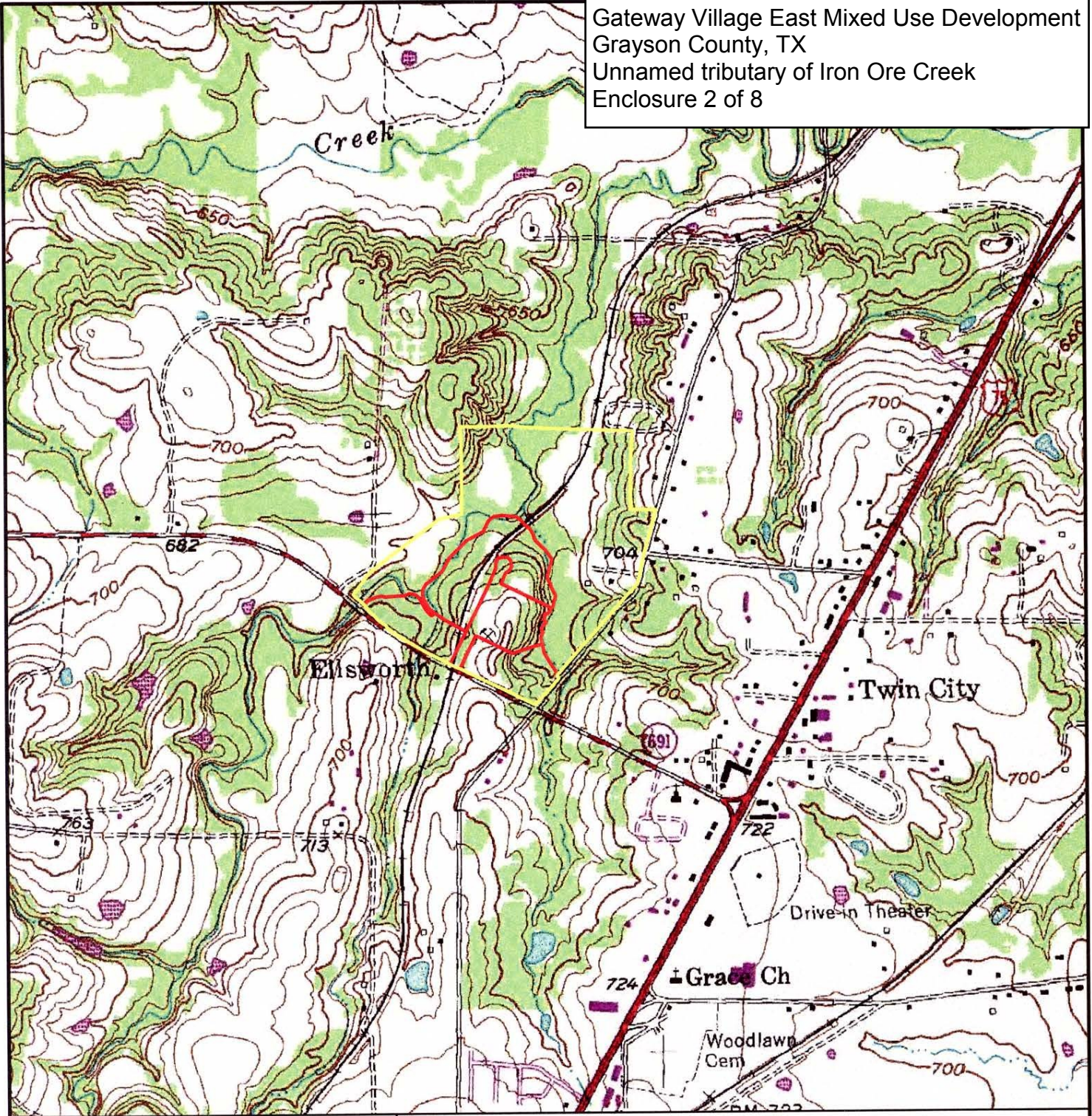


1 inch = 1,250 feet



County: Grayson  
 State: Texas  
 Date map created: 5/20/2013  
 Source: ESRI 10 Streetmap  
 North America





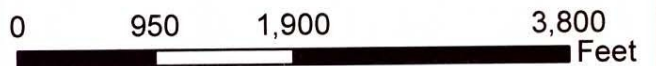
**Figure 5**  
**Topography of the Project Area**

- Property Boundary
- Proposed Project Areas

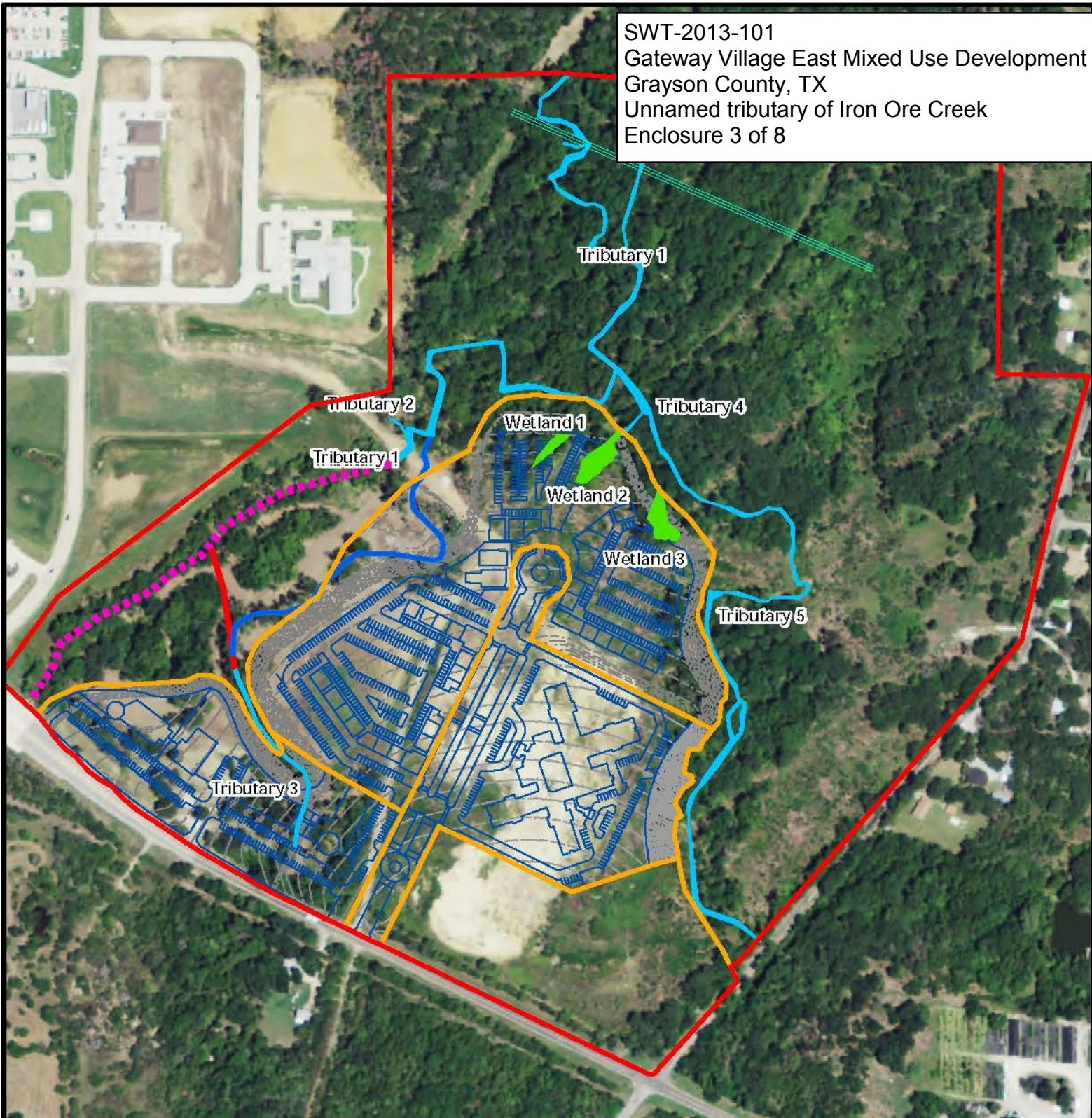
County: Grayson  
 State: Texas  
 Date map created: 5/21/2013  
 Source: USDS Topographic Map,  
 Sherman Quadrangle, 1975



1 inch = 1,250 feet















SWT-2013-101  
 Gateway Village East Mixed Use Development  
 Grayson County, TX  
 Unnamed tributary of Iron Ore Creek  
 Enclosure 3 of 8




**Figure 1B**  
**Site Plan**

County: Grayson  
 State: Texas  
 Date map created: 07/22/2014  
 Source: 2012 USDA NAIP  
 Aerial Photography

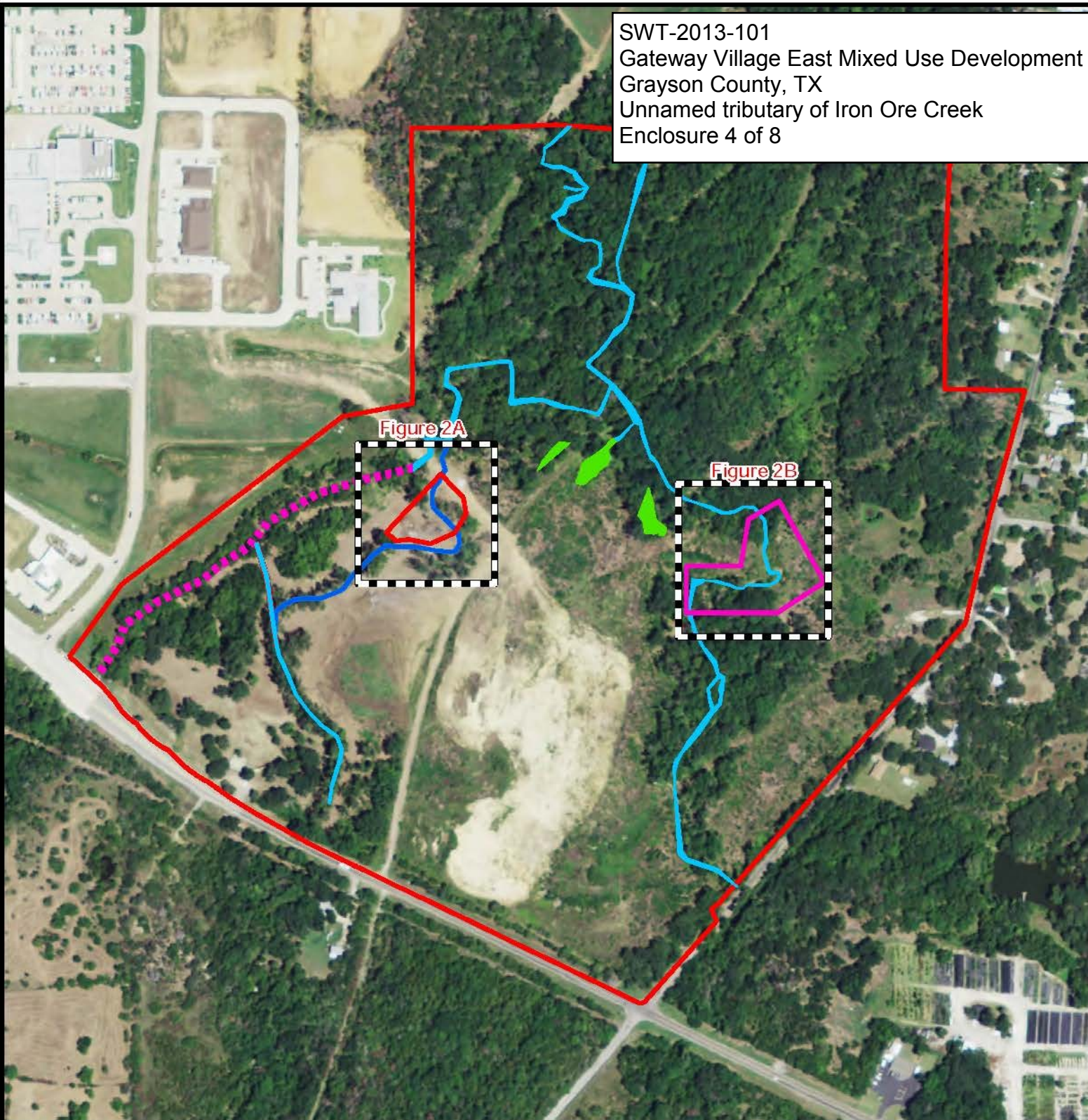
	Property Boundary		Proposed Project Areas		Proposed Sanitary Sewer Line
	Proposed Infrastructure		Proposed Buildings		Proposed Grading
<b>Features that meet a definition of a water of the United States</b>					
	Tributary		Wetland		Filled Original Tributary
	Bypass Channel Alignment		Approximate Tributary Centerline (Not Delineated)		



1 inch = 350 feet



SWT-2013-101  
 Gateway Village East Mixed Use Development  
 Grayson County, TX  
 Unnamed tributary of Iron Ore Creek  
 Enclosure 4 of 8



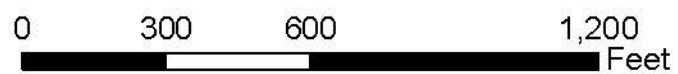
**Figure 2**  
**Proposed Mitigation Areas**

- Property Boundary
  - Wetland Mitigation Area
  - Tributary Mitigation Area
- Features that meet a definition of a water of the United States
- Tributary
  - Wetland
  - Filled Original Tributary
  - Bypass Channel Alignment
  - Approximate Tributary Centerline (Not Delineated)

County: Grayson  
 State: Texas  
 Date map created: 07/22/2014  
 Source: 2012 USDA NAIP  
 Aerial Photography



1 inch = 400 feet



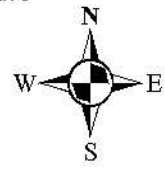
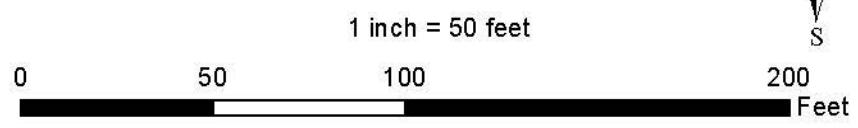
SWT-2013-101  
 Gateway Village East Mixed Use Development  
 Grayson County, TX  
 Unnamed tributary of Iron Ore Creek  
 Enclosure 5 of 8

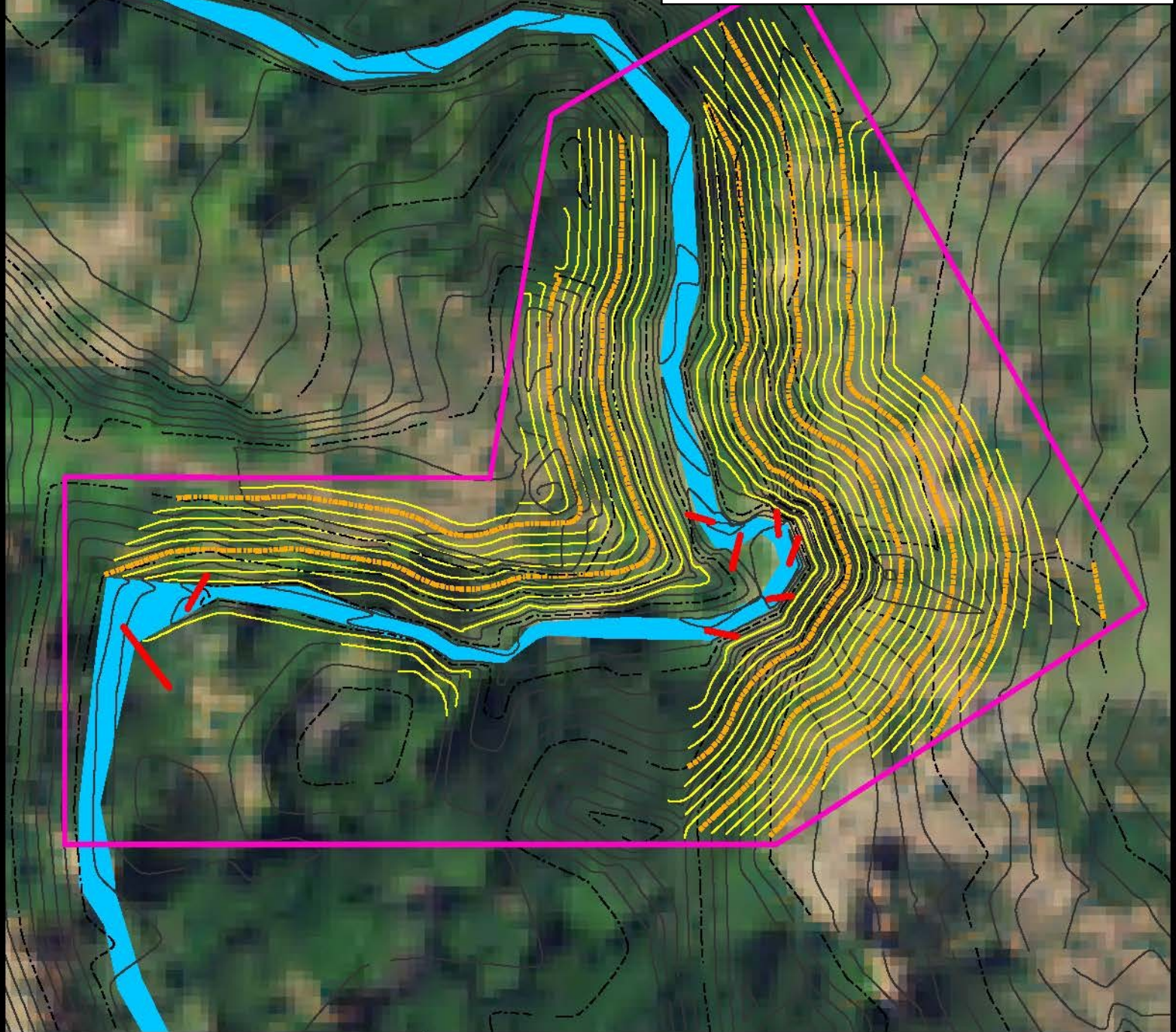


**Figure 2A**  
**Proposed Wetland**  
**Mitigation Area**

- Wetland Mitigation Area
- Proposed Wetland Contours
- Proposed Wetland
- Proposed Channel
- Proposed Channel Contours
- Existing Major Contours
- Existing Minor Contours

County: Grayson  
 State: Texas  
 Date map created: 07/21/2014  
 Source: 2012 USDA NAIP  
 Aerial Photography



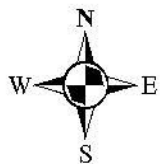


**Figure 2B**  
**Proposed Tributary**  
**Mitigation Area**

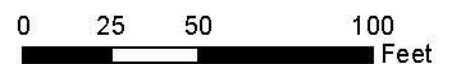
County: Grayson  
State: Texas  
Date map created: 07/21/2014  
Source: 2012 USDA FSA TOP  
Aerial Photography

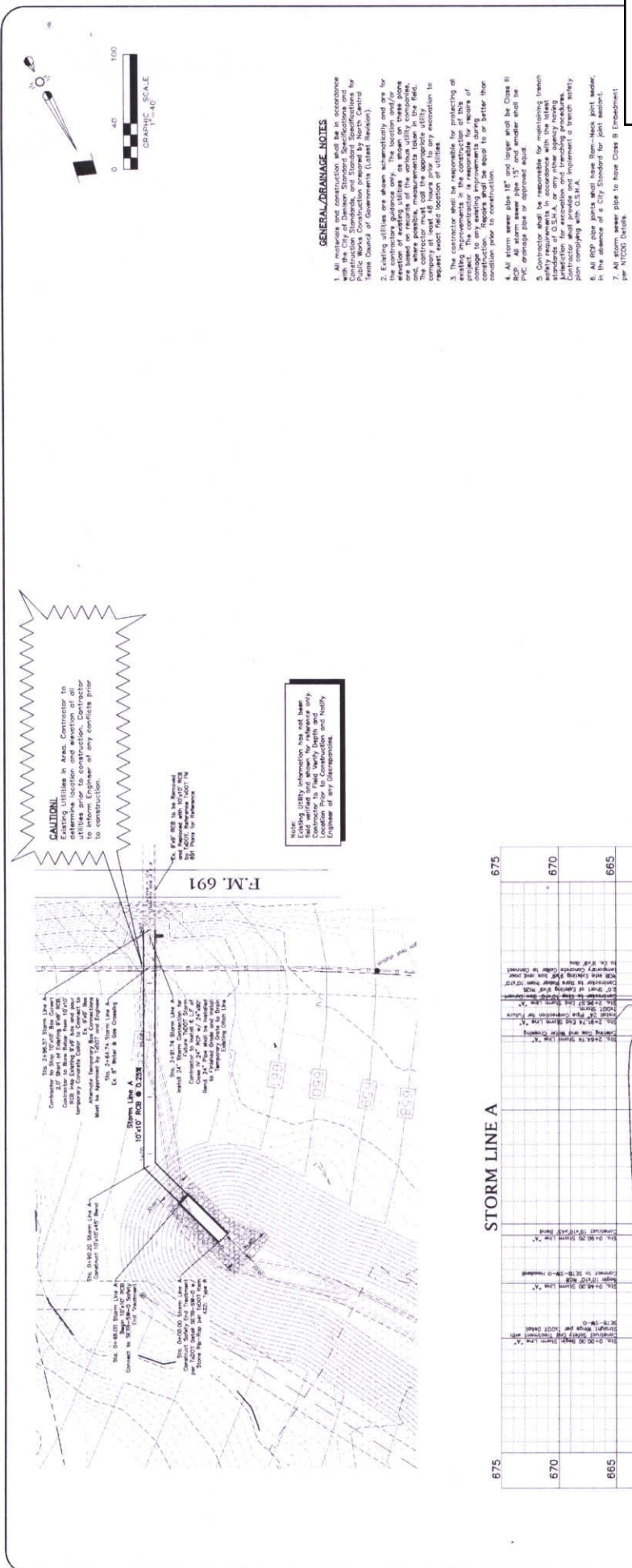
**Legend**

-  Tributary Mitigation Area Limits
-  Proposed Grading Contour - Major
-  Proposed Grading Contour - Minor
-  Existing Contour - Major
-  Existing Contour - Minor
-  Proposed Log Vanes
-  Tributary 5



1 inch = 55 feet





**STORM PLAN**  
 F.M. 691 CULVERT EXTENSION  
 TPJ PROPERTIES, LTD.  
 CITY OF DENISON, TEX

THIS DOCUMENT IS RELEASED FOR THE REVIEW UNDER THE OPEN PUBLIC INFORMATION ACT. NO. 94728 ON 02/14/13. FOR THE CITY OF DENISON, TEXAS. PREPARED BY: TPJ PROPERTIES, LTD.

**CROSS ENGINEERING CONSULTANTS**  
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 Denison, TX 75020  
 Phone: (214) 481-2121  
 Fax: (214) 481-2122  
 Website: www.crosseng.com

Checked By: C.E.L.C.L.  
 Date: 02/14/13

Figure 3 - Culvert Extension

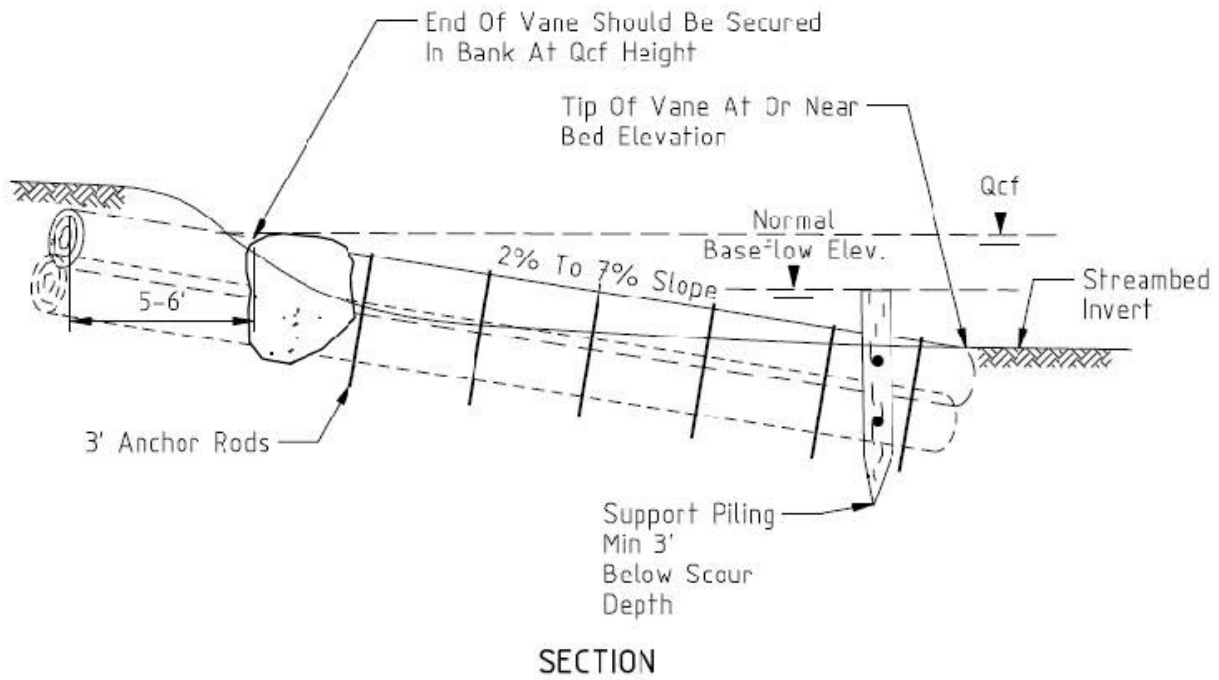
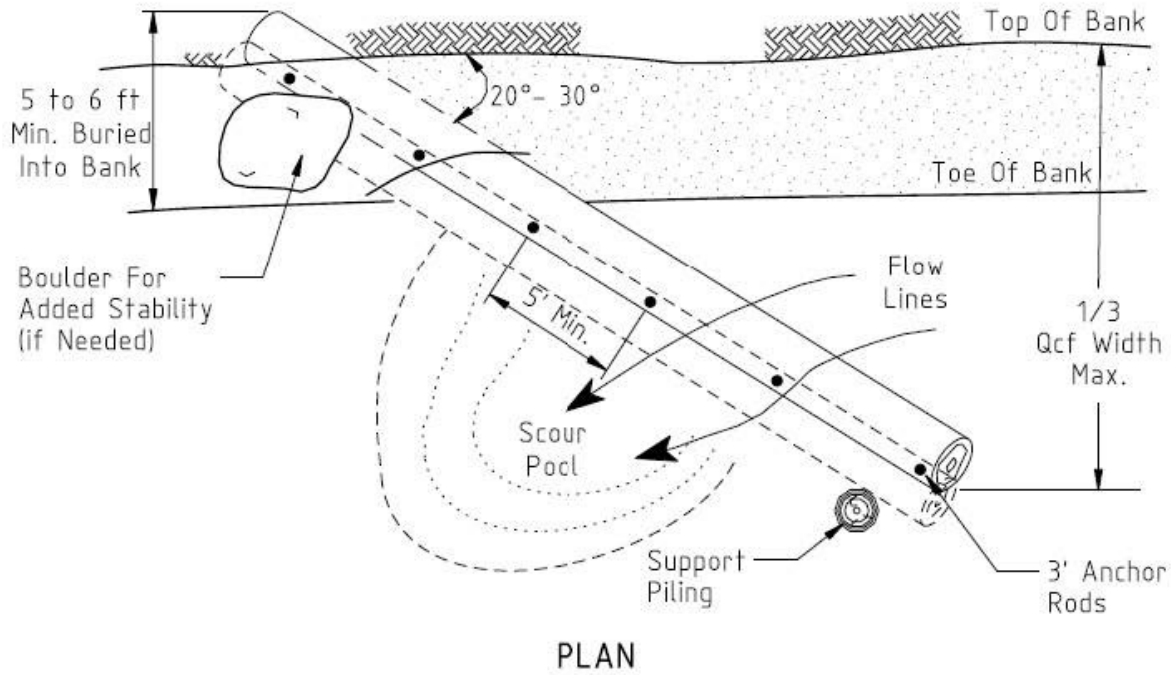


Figure 2C. Plan and Cross-Section View of Proposed Log Vanes.