



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

SWT-2014-291
Public Notice No.

June 12, 2014
Public Notice Date

July 12, 2014
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 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 through Section 404 of the Clean Water Act (33 U.S.C. 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

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Application No. SWT-2014-291

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS
AND
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
(30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act. The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

The application is for the conversion of a stream channel and portions of 1.05 acre on-channel pond into a stormwater management basin and access road.

Name of Applicant:

Mr. Will Ralph
BD Creekside Apartments, Phase 1, LLC
Post Office Box 11890
Bozeman, MT 59718

Name of Agent:

Ms. Kathryn Herzog
Terracon Consultants, Inc.
25809 Interstate 30 South
Bryant, AR 72022

Location: This proposal would be constructed in the unnamed tributary of Mingo Creek. The location of the proposed project is in the Northeast 1/4 of Section 33, Township 19 North, Range 14 East, in Broken Arrow, Tulsa County, Oklahoma. The project site can be found on the Broken Arrow, Oklahoma, 7.5 Minute USGS Quadrangle map.

North Latitude: 36.085502, West Longitude: 95.817637 Decimal Degrees

Purpose: The basic purpose of this work is to manage the 100-year flood frequency event as required by an ordinance from the City of Broken Arrow.

A water dependency determination is not required because no special aquatic sites are located within the project site.

The overall purpose of this work is for construction of an apartment complex with 380 rental units and associated facilities.

Table of Impacts:

Original Proposal					
<u>Number or Location</u>	<u>Impact Activity</u>	<u>Type of Impact</u>	<u>Type of Fill Material</u>	<u>Quantity of Material (CY) below OHWM</u>	<u>Footprint (AC and/or LF)</u>
Unnamed tributary of Mingo Creek	Placement of Fill Material	Construction of Stormwater Management Basin	Earthen Material-Clay	900 CY	245 LF 0.06 AC
On-channel pond (pond)	Placement of Fill Material	Construction of Stormwater Management Basin-Access Road	Earthen Material-Clay Riprap	1,147 CY 33 CY	0.41 AC Fill 0.31 AC Re-grade 0.72 AC Total
Access Road (pond)	Placement of Fill Material	Access Road	Earthen Material-Clay	721 CY	60 LF Stream 0.17 AC Pond

Description of Work: The applicant proposal requires the placement of fill material into an existing 1.05-acre pond and stream channel for the construction of a stormwater retention basin and access road in Reserve Area B. The applicant has proposed the placement of 900 CY of clay into 245 linear feet (0.06 acre) of stream channel. Also, the placement of 1,868 CY of clay and 33 CY of riprap would be placed into 0.72 acre of the existing on-channel pond. The size of the manipulated pond would be reduced to 0.33 acre. An approximately 70-LF long dual 5- by 5-foot box culvert and a 14- by 15- foot concrete wing wall would be constructed for a road crossing and would discharge water from the stormwater management basin into the unnamed tributary of Mingo Creek.

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:

Avoidance and minimization of impacts to the stream channel and on channel pond are some of the top goals of the proposed project. Throughout the conceptual design phase, the project's development planning team has taken proactive steps to minimize the potential for impacts to natural resources located at the site. For example, placement of the access road further north would have been more economically feasible for this development but with more impacts of the natural resources; therefore, it was placed further south and west, avoiding further impacts to local natural resources. The project footprint has been re-evaluated and redesigned to avoid further stream and pond areas onsite. The proposed apartment complex development design and resulting footprint were made as compact as practicable without substantially compromising safety and operational functionality.

Four alternative configurations were considered during the preliminary design of the project.

1. No Action: This alternative would not allow for the construction of a luxury apartment home complex and associated facilities in Broken Arrow, Oklahoma, thus not accommodating present and future growth.
2. Alternative 1: This alternative would allow for construction of a luxury apartment home complex with approximately 1.01 acres of stream and pond impacts. The impacts would be 350 LF of stream impacts and creation of the stream to the west of the culvert, and 0.58 acre of impacts to the on-channel pond.
3. Alternative 2: This alternative would allow for the construction of a luxury apartment home complex without a stormwater detention basin and an emergency access road. Terracon understands that this alternative was not further analyzed because of the unfeasibility due to the City of Broken Arrow's ordinances; therefore, the amount of impacts was not configured.
4. Alternative 3: This alternative would allow for the construction of a luxury apartment home complex with approximately 0.78 acre of stream and pond impacts. Specifically, 245 LF of stream channel with maintaining as much of existing stream as possible, as well as 0.72 acre of pond impacts. Included in these measurements are the impacts from the construction of the access road. Specifically, the access road will impact 60 LF of stream channel and 0.17 acre of the pond. This alternative would also allow for construction of the necessary associated facilities (preferred alternative design).

Mitigation: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project:

On-site mitigation includes creation (out of the approximately 696 LF of stream that will exist on-site) of 411 LF of stream, preservation of 400 LF of stream, restoration of 285 LF of stream, 0.15 acre of restoration and preservation stream buffer, and 0.23 acre of restoration and 0.33 acre of preservation of the remain pond. The creation, restoration, and preservation mitigation activities are proposed in order to compensate for impacts made to the existing on-site tributary and pond. Stream mitigation activities include the installation of boulders and riprap within the channel to create dynamic and sinuosity. Stream and pond buffer mitigation include planting native grasses and trees in the proposed mitigation area (Zone 1 and Zone 2). The applicant has proposed to plant 7,000 square feet of big bluestem (*Andropogon gerardii*), fifty-five 1-gallon American holly (*Ilex opaca*), and sixty-four 5-gallon American elm (*Ulmus americana*) trees. The applicant has proposed to monitor the mitigation areas for 5 years with performance standard of 80% survival rates for the trees and place a deed

restriction to protect the mitigation areas from future development. For mitigation of the on-channel pond the applicant has proposed to construct a 0.64 acre off-channel pond in the uplands (Reserve Area A) and has proposed to protect the remaining 0.33 acre on-channel pond.

This mitigation plan is the applicant's proposal. The Corps 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.

Site History: One Sierra Plaza Place, Regulatory Project Identification Number SWT-2008-268, a similar project for this parcel of land was authorized by the Corps in September 2009. Consultation with the U. S. Fish and Wildlife Service and Section 106 National Historic Preservation Act was completed. The Service advised in a letter dated April 21, 2009, that because of the level of development surrounding the project site, the Service believes the project is unlikely to affect the American bury beetle (*Nicrophorus americanus*), or other federally-listed endangered and threatened species. The Oklahoma Historical Society advised in a letter dated April 22, 2009, that there are no known historical properties affected by the proposed project. The Oklahoma Archaeological Survey advised in a letter dated March 31, 2009, that there are no known archaeological properties affected by the proposed project.

Project Setting: This project is located within the Oklahoma Ecoregion of Cross Timber Transition, which is part of the Central Great Plains geomorphic province. The Transition is characterized by a series of grasslands and prairies.

Existing Conditions: The 23.7-acre parcel of land is comprised mostly grasslands in the uplands. The intermittent stream channel and on-channel pond which are jurisdictional waters of the United States are located in the southern portion of the property has native shrubs and trees. The primary uses for the land historically was for agriculture that was composed of fields of corn, soybeans, and wheat, as well as cattle.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice (Enclosure 1 of 5). If additional information is desired, it may be obtained from 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 DE has consulted the National Register of Historic Places and it has been determined that there are no properties currently listed in the National Register which would be directly affected by the proposed work. The DE has also consulted the listing of Eligibility Determinations for Oklahoma and determined that the proposed project is not in the vicinity of properties eligible for listing. This public notice is

also being sent to State Historic Preservation Officer and to Native American Tribal governments to reveal if other known historic or archeological resources may be eligible for listing in the National Register exist in the project area and which could be directly affected by the proposed work. This coordination is being done to fulfill our requirements under the National Historic Preservation Act of 1966 (Public Law 89-665) and associated historic preservation laws. 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 may be affected by the proposed work, the DE will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966, as amended, and 36 CFR Part 800, in accordance with implementing regulations 33 CFR 325, Appendix C.

Threatened and Endangered Species: The following federally listed species are known to occur in the vicinity or are listed for the county in which the proposed action is located: interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), and the American burying beetle (*Nicrophorus americanus*), red knot (*Calidris canutus rufa*) (proposed listing). A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. This notice constitutes a request to those agencies for information on whether any other listed or proposed-to-be-listed endangered or threatened species may be present in the area which would be affected by the proposed activity.

We are currently assessing the potential effects of the proposed action on these species and will comply with the Endangered Species Act with regard to any affect of our decision on this permit application.

Environmental Considerations: The decision whether to issue a permit will be based on an evaluation of the probable impacts 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: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain 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.

Comments: In order to consider and evaluate the impacts of this proposed activity the Corps is soliciting comments from the public, federal, state, and local agencies and officials; Indian tribes; and other interested parties. Comments concerning the issuance

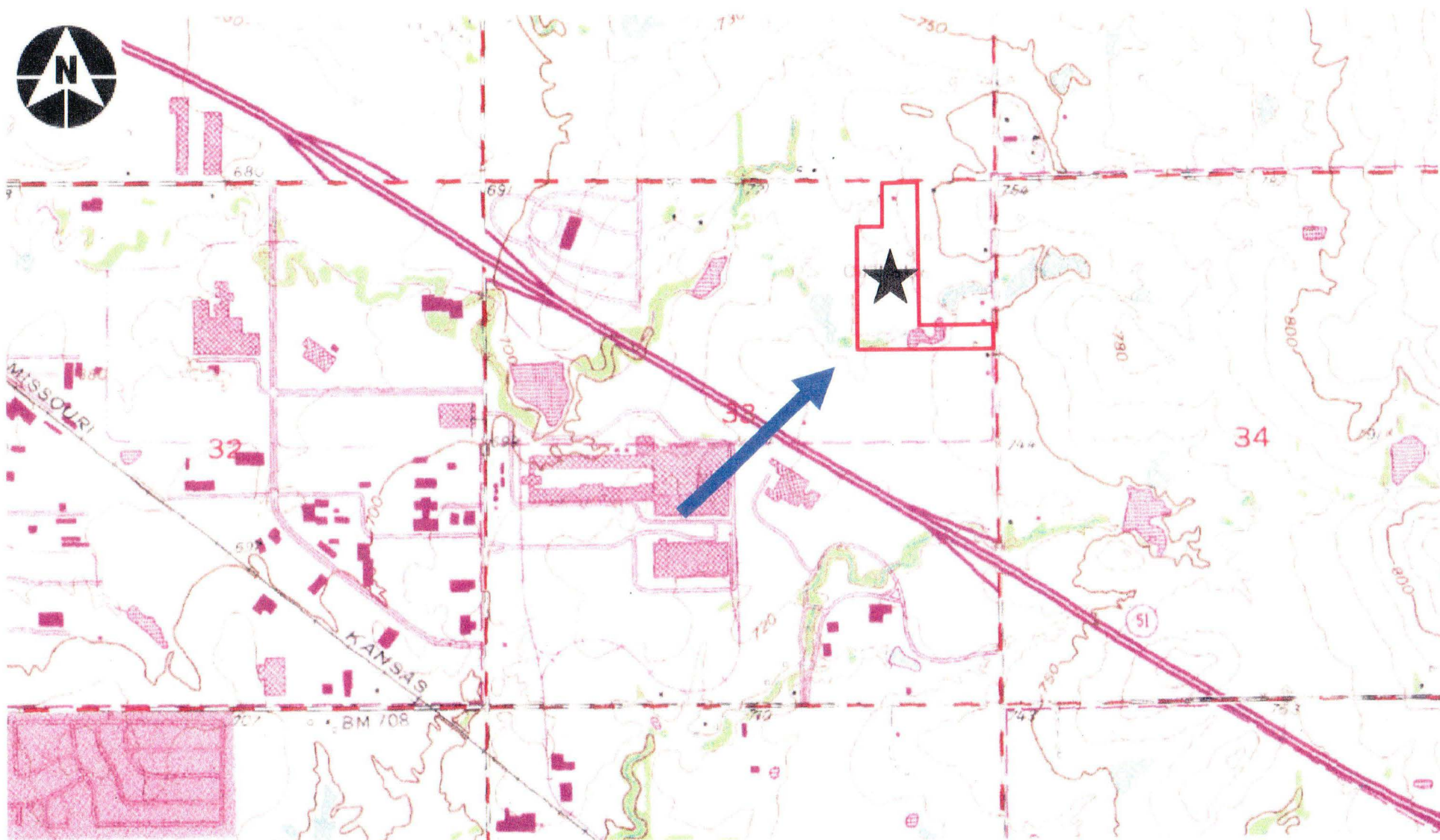
of this permit should be received by the DE no later than 30 days from the date of this public notice. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts 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.

At the request of the Oklahoma Water Resources Board's National Flood Insurance Program State Coordinator, we are sending a copy of this notice to the local floodplain administrator to apprise the administrator of proposed development within their jurisdiction. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a floodplain development permit is required. The local floodplain administrator is required to perform this review for all proposed development and maintain records of such review.

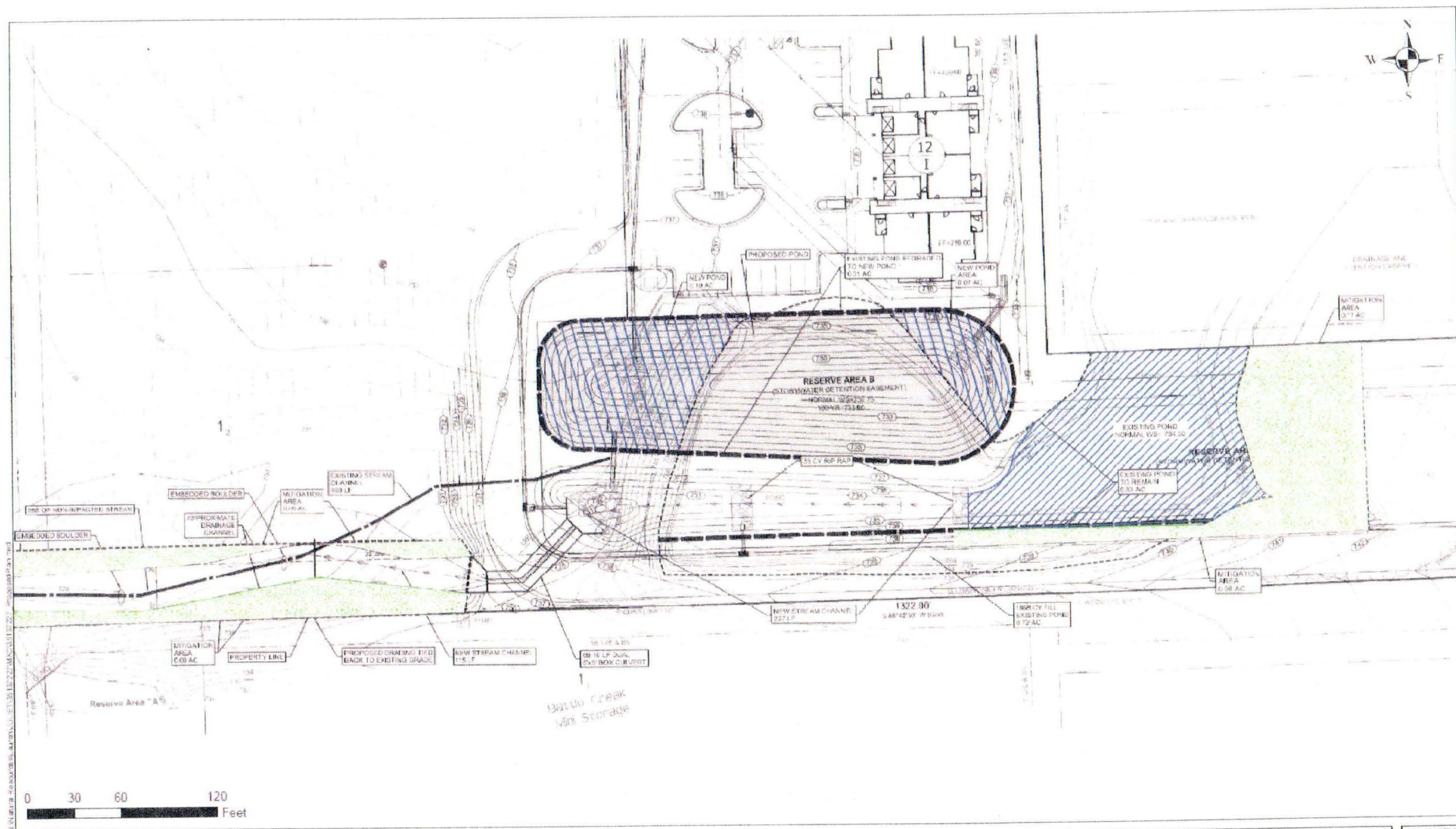
Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Water Quality Section 401 certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404 of the Clean Water Act.

Andrew R. Commer
Chief, Regulatory Office

Enclosures



SWT-2014-291
Stormwater Management Basin and Access Road Project
BD Creekside Apartments Phase 1
Unnamed tributary and Pond of Mingo Creek
Broken Arrow, Tulsa County, Oklahoma
Enclosure 1 of 5



LEGEND

- Mitigation Area
- New Pond Area
- Existing Pond Area to Remain

Project No.	100
Drawn By	LB
Checked By	JAC
Project No.	311722
Date	03/02/04

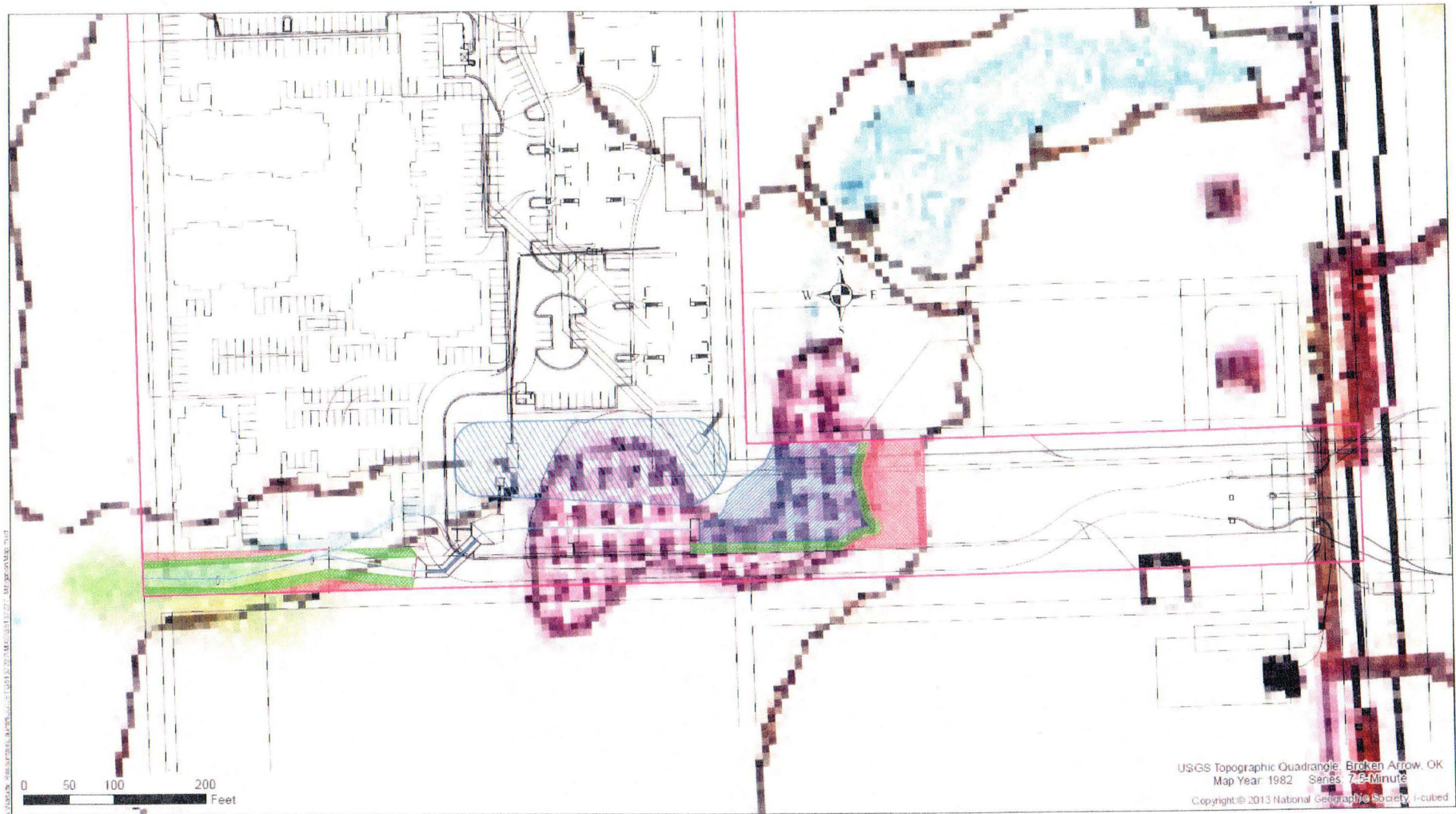
Terracon
Consulting Engineers & Scientists
25809 Interstate 30 South PH 501.647.9292
Broken Arrow 72002 FAX 501.647.9215

PROPOSED PLAN
USACE PERMIT AND
PROPOSED STREAM/POND MITIGATION
BD CREEKSIDE APARTMENTS, PHASE I, LLC
BROKEN ARROW, TULSA COUNTY, OKLAHOMA

EXHIBIT

1A

SWT-2014-291
Stormwater Management Basin and Access Road Project
BD Creekside Apartments Phase I
Unnamed tributary and Pond of Mingo Creek
Broken Arrow, Tulsa County, Oklahoma
Enclosure 2 of 5



LEGEND

- | | |
|---------------------------------|------------------------------------|
| Existing Stream To Be Relocated | Proposed Stormwater Detention Pond |
| Existing Stream To Remain | Existing Pond to Remain |
| Proposed New Stream Channel | Proposed Mitigation Area (Zone 1) |
| Approximate Site Boundary | Proposed Mitigation Area (Zone 2) |

Project Manager: JWC
Drawn By: LEB
Checked By: JWC
Project No: 36137.027
Date: 04/12/2014

Terracon
Consulting Engineers & Scientists
25400 International Dr. South Ph. (501) 847-9292
Broken Arrow, OK 74011 (501) 837-9219

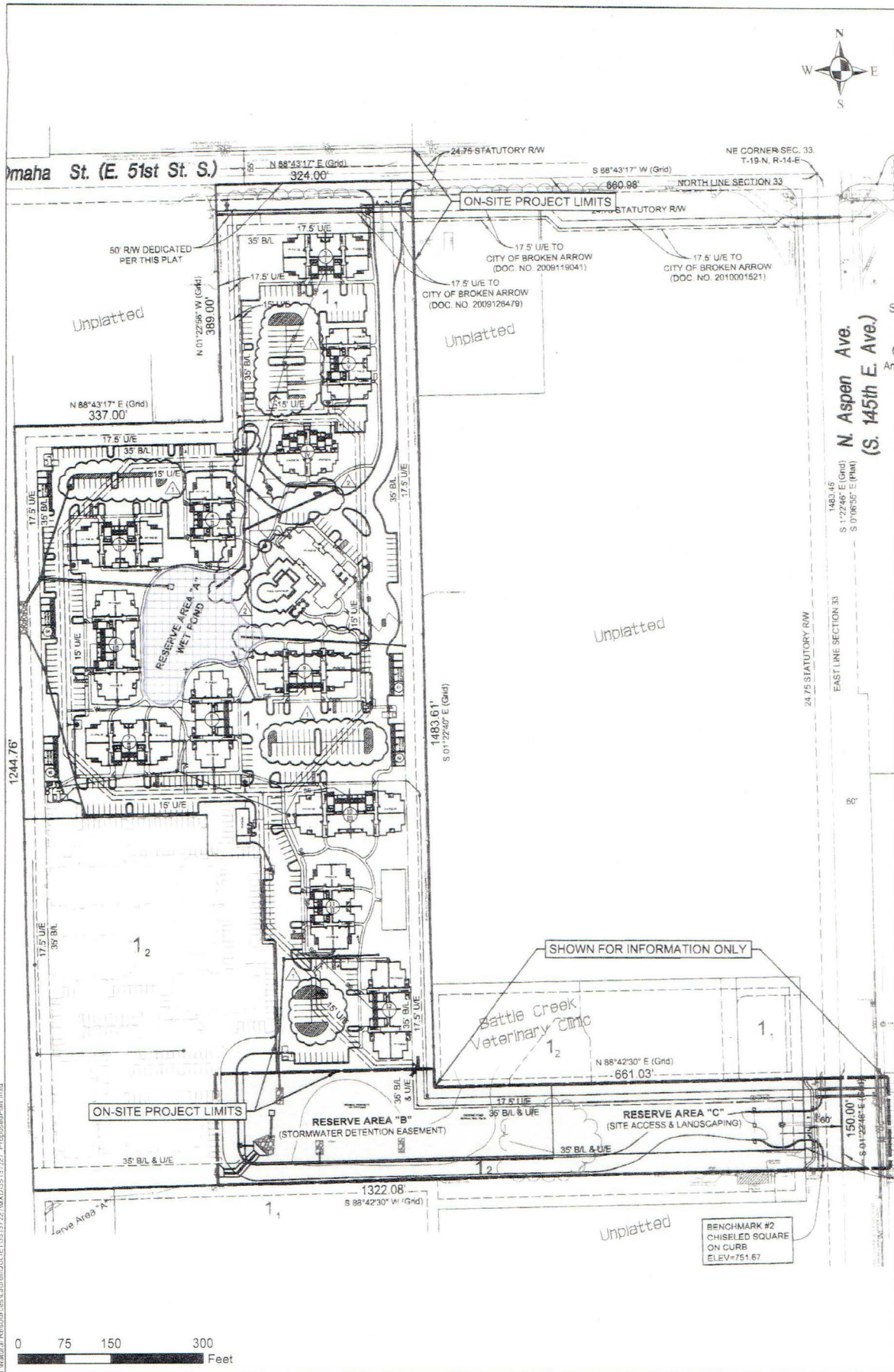
TOPOGRAPHIC MAP

USACE PERMIT AND
PROPOSED STREAM/POND MITIGATION
BD CREEKSIDE APARTMENTS, PHASE I, LLC
BROKEN ARROW, TULSA COUNTY, OKLAHOMA

EXHIBIT

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SWT-2014-291
Stormwater Management Basin and Access Road Project
BD Creekside Apartments Phase 1
Unnamed tributary and Pond of Mingo Creek
Broken Arrow, Tulsa County, Oklahoma
Enclosure 3 of 5



SW I-2014-291

Stormwater Management Basin and Access Road Project

BD Creekside Apartments Phase I

Unnamed tributary and Pond of Mingo Creek

Broken Arrow, Tulsa County, Oklahoma

Enclosure 4 of 5

0 75 150 300 Feet

Drawn By	JWC
Checked By	LEB
Project No.	36137221
Date	09/12/2014



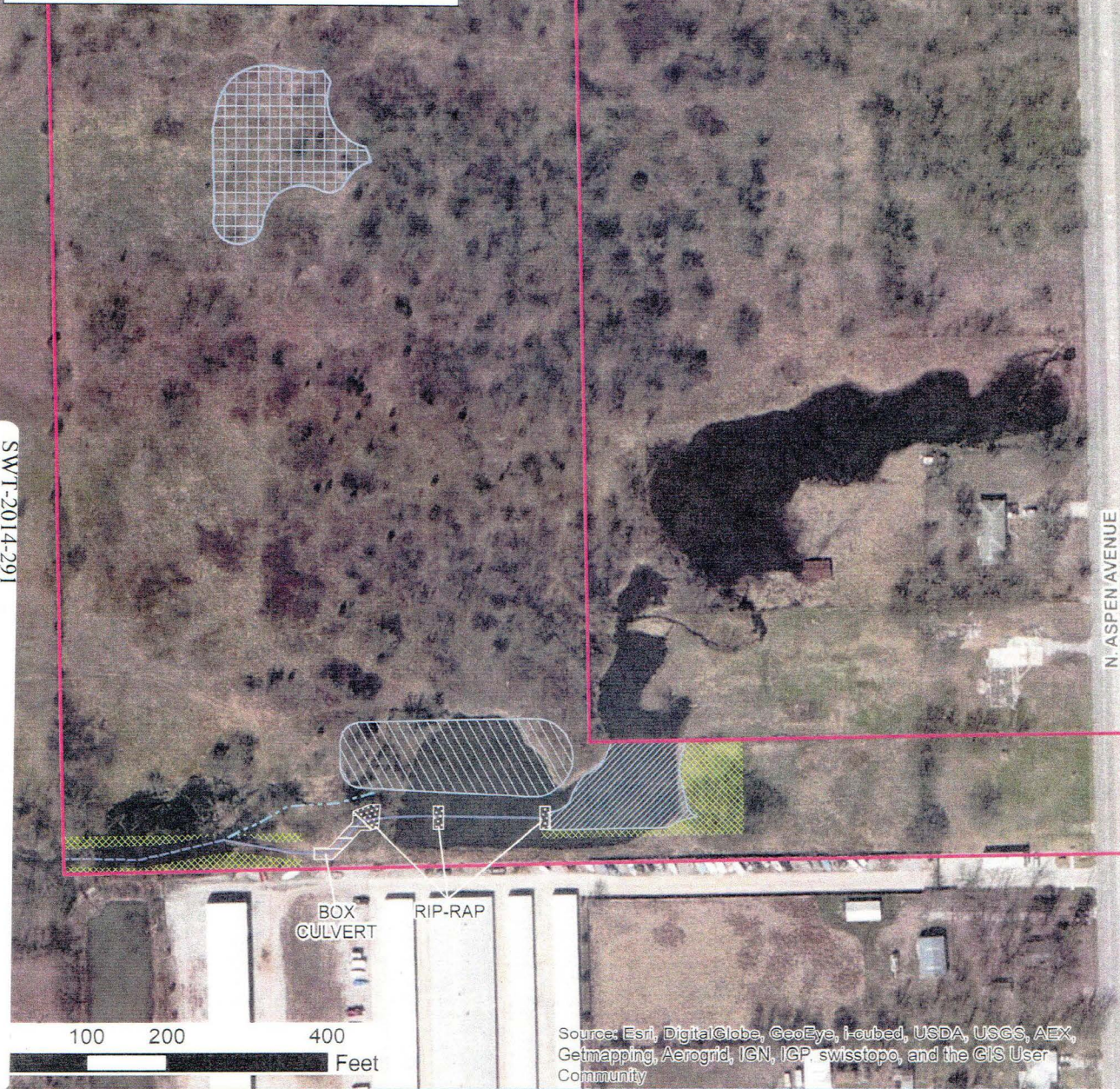
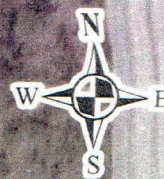
LEGEND
Proposed New Pond

PROPOSED PLAN
USACE PERMIT AND
PROPOSED STREAM/POND MITIGATION
BD CREEKSIDE APARTMENTS, PHASE I, LLC
BROKEN ARROW, TULSA COUNTY, OKLAHOMA

EXHIBIT
1B

LEGEND

- Existing Stream To Be Relocated
- Existing Stream To Remain
- Proposed New Stream Channel
- Approximate Site Boundary
- Proposed Stormwater Detention Pond
- Existing Pond to Remain
- Proposed Mitigation Area
- Proposed New Pond



SWT-2014-291
Stormwater Management Basin and Access Road Project
BD Creekside Apartments Phase I
Unnamed tributary and Pond of Mingo Creek
Broken Arrow, Tulsa County, Oklahoma
Enclosure 5 of 5

Source: Esri, DigitalGlobe, GeoEye, I-ubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Project Mgr:	JWC
Drawn By:	LEB
Checked By:	JWC
Project No:	35137227
Date:	03/12/2014

Terracon
Consulting Engineers & Scientists

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Bryant, AR 72022 Fax (501) 847 9210

STREAM AND POND MITIGATION MAP

USACE PERMIT AND
PROPOSED STREAM/POND MITIGATION
BD CREEKSIDE APARTMENTS, PHASE I, LLC
BROKEN ARROW, TULSA COUNTY, OKLAHOMA

EXHIBIT

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