



# Public Notice

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U.S. Army Corps  
of Engineers  
Tulsa District

Reply To:

U.S. Army Corps of Engineers  
ATTN: Regulatory Office  
2488 East 81<sup>ST</sup> Street  
Tulsa, Oklahoma 74137-4290

SWT-2017-00503  
Public Notice No.

March 29, 2019  
Public Notice Date

April 28, 2019  
Expiration Date

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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 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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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, TULSA DISTRICT  
2488 EAST 81ST STREET  
TULSA, OKLAHOMA 74137-4290

Application No. SWT-2017-00503

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 (CWA). The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

Applicant: Jackie L. Tow  
Love County Conservation District  
1215 N Highway 77  
Marietta, OK 73448

Agent: Michael G. Sams  
USDA, Natural Resources Conservation Service  
100 USDA, Suite 206  
Stillwater, OK 74074

Location: The proposed project is in Sections 6, 7, 8, and 17, Township 6 South, Range 2 West, Love County, Oklahoma. The project site can be found on the Healdton SW, Oklahoma 7.5 Minute, U.S. Geological Survey Quadrangle map at North Latitude 34.052179 and West Longitude -97.444101.

Project Description: The application is to place dredge and fill material in Simon Creek, a perennial stream, unnamed ephemeral tributaries of Simon Creek, and emergent wetlands adjacent to Simon Creek, to construct a floodwater retarding structure (FWRS), referenced as Lower Bayou Watershed Site 12, for flood prevention in the Walnut Bayou watershed.

Purpose: The basic purpose of this work is flood prevention in the Walnut Bayou watershed. The project is not a water dependent activity.

The overall project purpose is to construct a FWRS, on Simon Creek, for flood prevention in the Walnut Bayou watershed, in accordance with the Lower Bayou Watershed Work Plan.

Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Primary Source	Footprint (ac and/or lf)
Emergent Wetlands	Dredge/Fill	Emergent Wetland	Earthen Material	Direct Placement	0.09 ac
Emergent Wetlands	Dredge/Fill	Emergent Wetland	Earthen Material	Inundation and Sedimentation	0.83 ac
Simon Creek	Dredge/Fill	Perennial Stream	Earthen Material	Direct Placement	360 lf
Simon Creek	Dredge/Fill	Perennial Stream	Earthen Material	Inundation and Sedimentation	8,369 lf
Ephemeral Streams	Dredge/Fill	Ephemeral Stream	Earthen Material	Inundation and Sedimentation	3,505 lf
cubic yards (cys), ordinary high water mark (OHWM), acre (ac), linear feet (lf)					

Description of Work: The applicant proposes to construct an earthen FWRS, on Simon Creek, for flood prevention in the Walnut Bayou watershed, in accordance with the Lower Bayou Watershed Work Plan. Approximately 15,500 cys of clay would be discharged during construction of the FWRS. The FWRS is intended to reduce flooding, streambank erosion, and sediment deposition to the downstream floodplain. There would be a 92 acre conservation pool associated with this structure, which would experience sediment retention.

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:

Reducing downstream flooding and sediment deposition was explored in an Environmental Assessment (1985). Alternatives included installing FWRS (proposed herein), channelizing 9.5 miles of stream, and a combination of the two as a third alternative. Constructing FWRS was the recommended action and a Finding of No Significant Impact was published. Also, an Environmental Evaluation (EE) was completed on the construction of this FWRS. The EE determined no significant impact in comparison to a no-action alternative contingent on obtaining State Historic Preservation Office clearance and a Section 404 Clean Water Act permit, for which mitigation is planned to compensate for unavoidable impacts.

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

Compensation for impacts to waters of the United States would be accomplished through on-site, in-kind, and out-of-kind mitigation. Habitat created immediately upstream of the structure would produce functional gains for wildlife species associated with wetlands and lentic ecosystems. Habitat would be increased for migratory waterfowl and shorebirds from the development of mudflats, fringe wetland habitat, and open water loafing areas. The conservation pool would provide 9.2 ac of fringe wetland habitat that is less than 1 foot deep and 18,226 lf of shoreline. Because of sediment deposition, channel elevation would be restored to 1,821 lf of an upstream portion of Simon Creek restoring and enhancing floodplain connectivity and reducing the depth of the water table along of the creek. Mitigation efforts along 7,245 lf of Simon Creek downstream of the structure would restore habitat for stream, riparian, and wetland dependent species while improving landscape connectivity and water quality.

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. Compensatory Mitigation for unavoidable impacts may be required to ensure that this activity, requiring a Section 404 permit, if issued, complies with the Section 404 (b)(1) Guidelines. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

#### Project Setting:

The proposed FWRS is located in the Walnut Bayou 10-character Hydrologic Unit (Code 1113020106) in the Cross Timber ecoregion and within the floodplain of Simon Creek. Walnut Bayou, the terminal drainage of the watershed, is an impaired stream listed on the State's 303(d) list. The upstream watershed of the proposed FWRS is 9,440 acres, which is 19% of Simon Creek's entire watershed. Dominant soils at the site include Gracemont and Gracemore soil series (59%), Pulaski fine sandy loam (26%), and Elandco silt loam (6.1%). The proposed FWRS involves 32 acres of Pulaski and Elandco soils which are considered prime farmland. Harjo soils, which are considered hydric, can be found as minor inclusions within the dominant soil series. Vegetation within the project site has largely been converted to bermudagrass (*Cynodon dactylon*) pasture with 27.7 ac of riparian woodland. Dominant tree species include elms (*Ulmus* spp.), hackberry (*Celtis* spp.), box elder (*Acer negundo*), and pecan (*Carya illinoensis*). Post oak (*Quercus stellata*) are present in low amounts and black willow (*Salix nigra*) occur on sand bars within the channel of Simon Creek. Cottonwoods (*Populus deltoids*) and oaks appear underrepresented in the riparian corridor based on accounts from the region within the vascular plant database and land survey records.

Existing Condition: Most of the land is characterized by open fields (pasture); there is an existing riparian area along Simon Creek. The area has been utilized for grazing. Simon Creek is deeply incised as a result of past channelizing efforts (prior to 1956). Riparian tree canopy extends on average 47 and 158 feet from the water's edge for the

left and right banks of Simon Creek, respectively. Riparian vegetation in the gaps in tree cover is predominately bermudagrass. Using seven elements of the Stream Visual Assessment Protocol Version 2 (USDA-NRCS 2009), overall condition of Simon Creek within the impact site is rated as poor. Baseline conditions of the impacted ephemeral streams are highly variable. The emergent wetlands exist as small depressions within the floodplain of Simon Creek, with dominant hydrology from overbank flow.

Cultural Resources: The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended, and other cultural resources laws and Executive Orders. A preliminary review has been completed of the state's records for the presence of sites included in, or eligible for, inclusion in the National Register of Historic Places, as well as the Oklahoma Landmark Inventory Database. Based on the preliminary information, there may be historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area. The Corps will comply with the NHPA to resolve any potential effects.

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: least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), and whooping crane (*Grus americana*). The U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation Code is: 02EKOK00-2019-SLI-1297. A copy of this notice is being furnished to the USFWS and appropriate state agencies. 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 effect of our decision on this permit application.

Evaluation Factors: 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.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from

Mr. David Carraway, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

Comments: The Corps of Engineers 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 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 comments on this proposal must be submitted to be received by the Corps by the expiration date of this public notice comment period. Comments received after this date will not be considered in our decision. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137 or email CESWT-RO@usace.army.mil. Please include the public notice number SWT-2017-00503 in the subject line of your email message.

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

Andrew R. Commer  
Chief, Regulatory Office

Enclosures

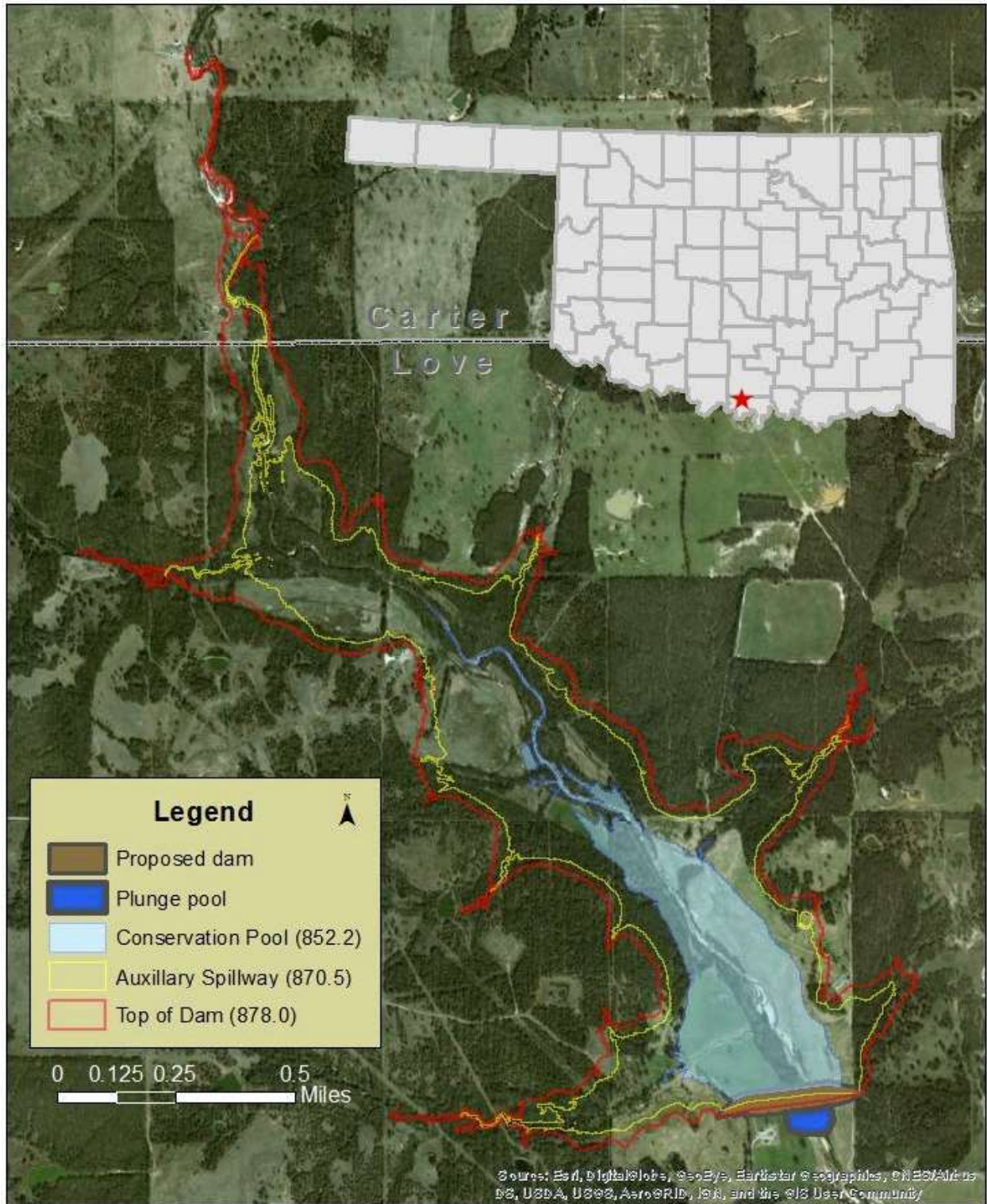


Figure 1. Proposed PL566 watershed dam, Lower Bayou 12, on Simon Creek in Love County, Oklahoma. Predicted using LIDAR overlay in ArcMap.

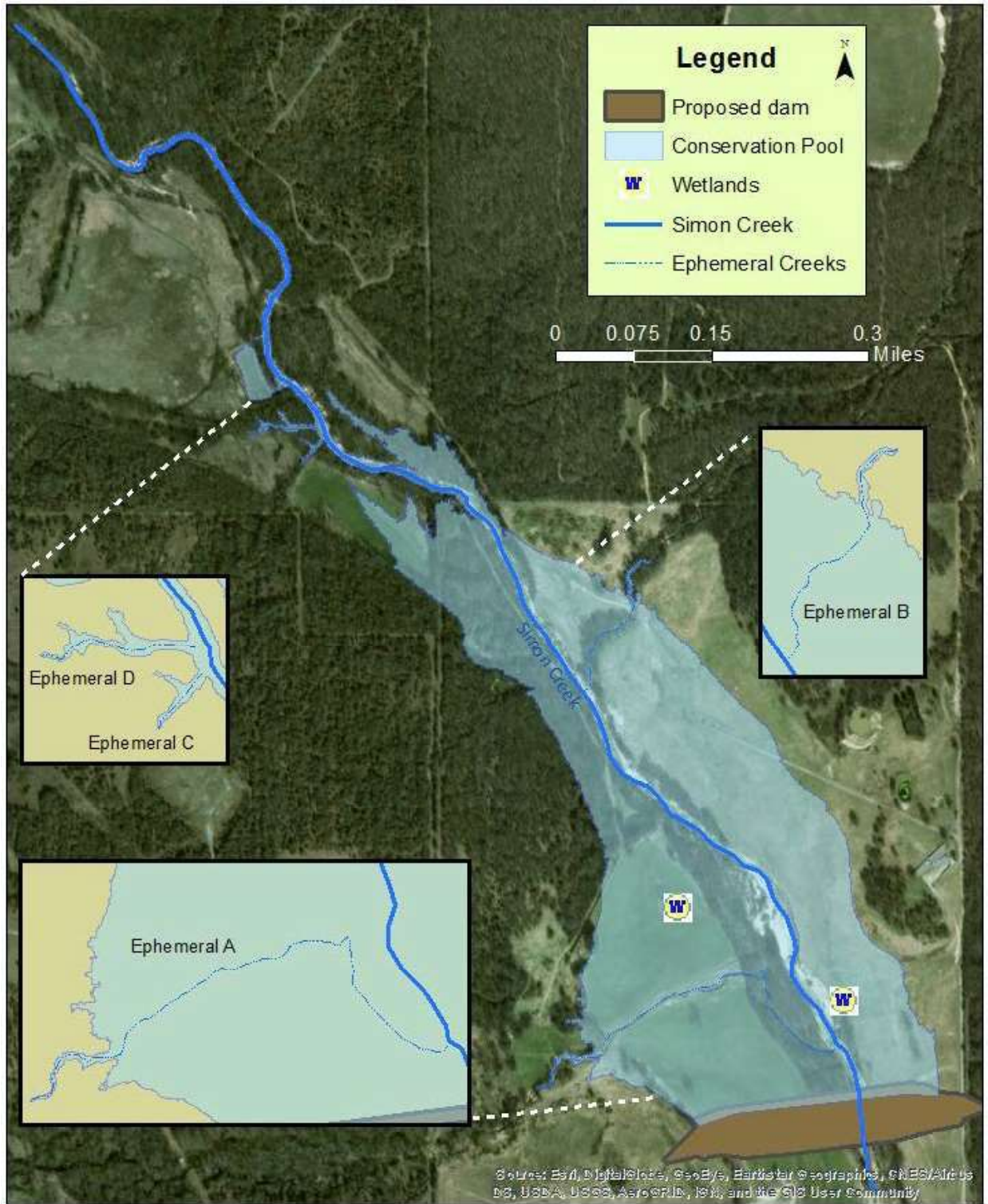


Figure 2. Potential jurisdictional waters impacted by inundation and sediment retention (fill) from the construction of the proposed PL566 watershed dam, Lower Bayour 12, in Love County, Oklahoma. Predicted using LIDAR overlay in ArcMap.



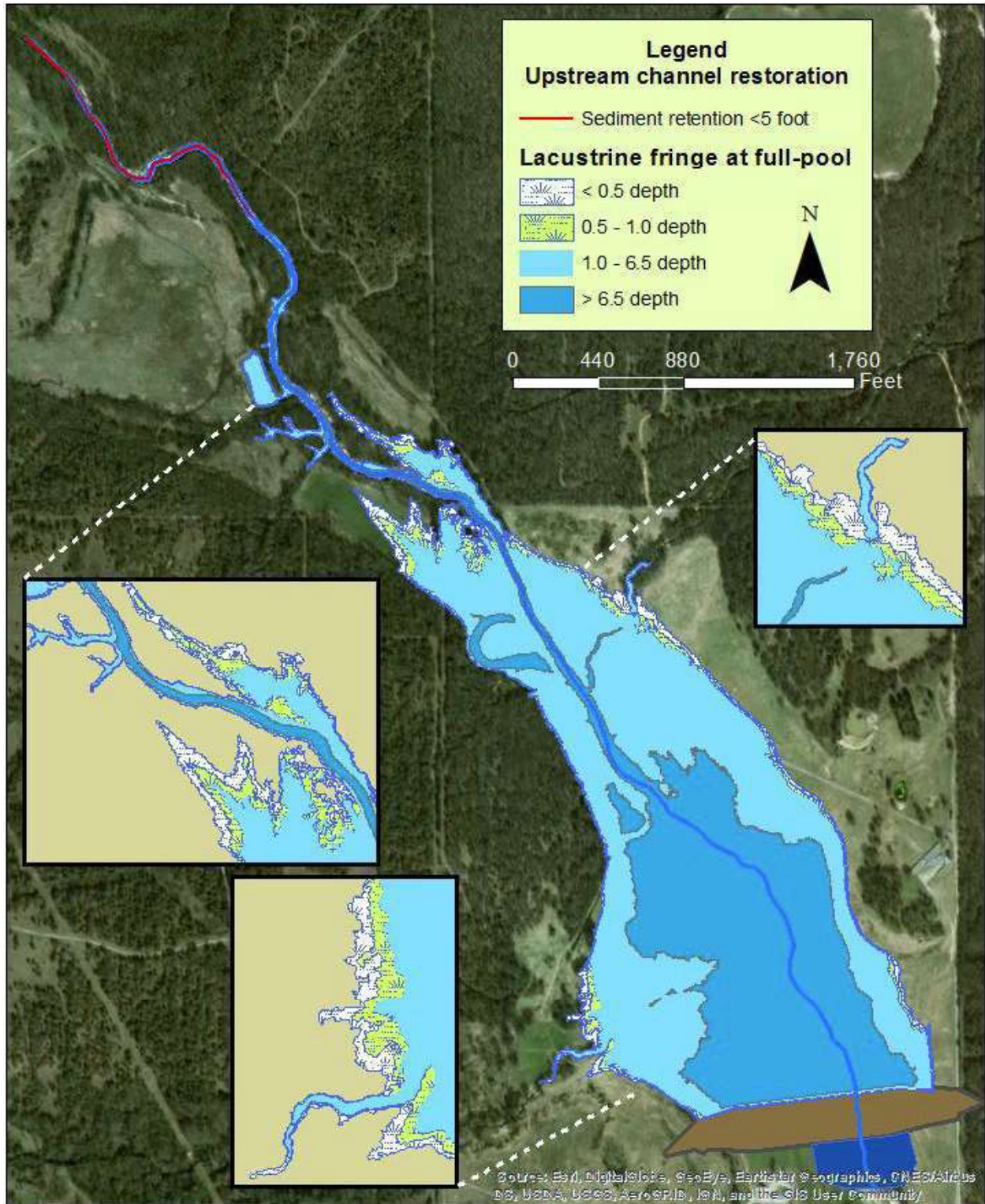


Figure 3. Channel elevation restoration (<5 foot sediment) and fringe wetlands and deepwater habitat (> 6.5 ft.) predictions derived from LIDAR within the conservation pool (852.5 ft.) of the proposed PL566 watershed dam, Lower Bayour 12, in Love County, Oklahoma.

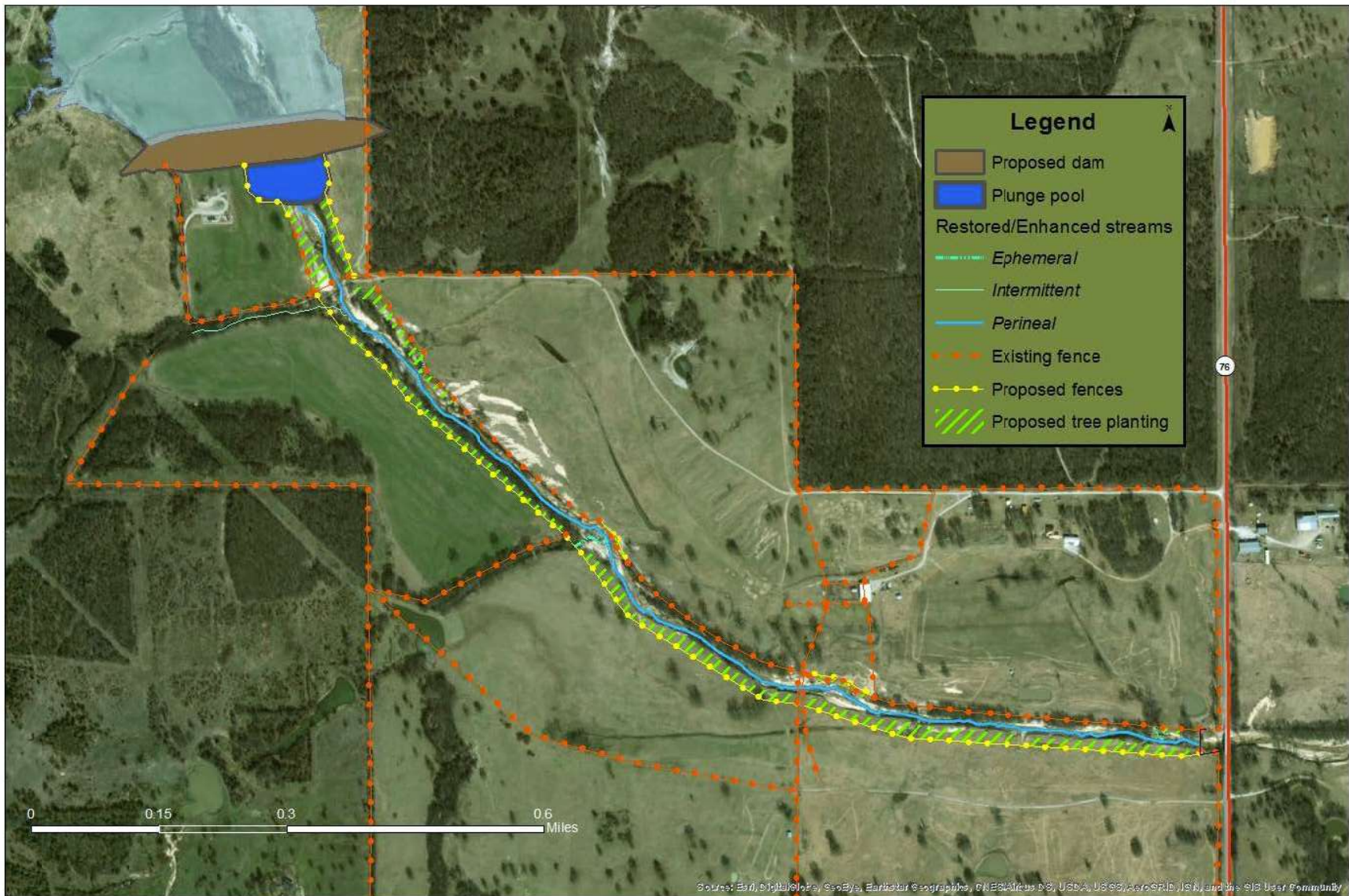


Figure 4. Proposed mitigation site and activities to satisfy, in-part, the proposed construction of a PL566 watershed dam, Lower Bayour 12, on Simon Creek in Love County, Oklahoma.