



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
2488 E 81st Street
Tulsa, OK 74137

SWT-2024-00399

Public Notice No.

August 15, 2024

Public Notice Date

September 15, 2024

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 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 through Section 404 of the Clean Water Act (33 USC 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

This public notice has been provided as a public service and may be reprinted at your discretion. However, any cost incurred as a result of reprinting or further distribution shall not be a basis for claim against the Government.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81 ST. STREET
TULSA, OKLAHOMA 74137-4609

**THIS NOTICE ANNOUNCES A PROPOSED PROSPECTUS FOR THE
ESTABLISHMENT OF A MITIGATION BANK (Lightning Creek Mitigation Bank
SWT-2024-00399) IN OKLAHOMA**

AUTHORITY: Pursuant to the Final Rule for the Compensatory Mitigation for Losses of Aquatic Resources, referred to as the Mitigation Rule (33 CFR Parts 325 and 332, and 40 CFR Part 230), dated April 10, 2008; this notice announces a prospectus submitted for the establishment of a Mitigation Bank (MB) within the State of Oklahoma.

MITIGATION BANK (SPONSOR): Hoffman Environmental, Inc.
Post Office Box 452
Sulphur Springs, Texas 75483
jhoffman@hoffmanenv.com
www.hoffmanenv.com

PROJECT LOCATION: The proposed Lightning Creek Mitigation Bank (LCMB) site consists of approximately 140 acres of land located approximately ten miles east-southeast of Nowata, Nowata County, Oklahoma. The property associated with the LCMB consists of rural undeveloped land primarily used for livestock grazing and hay production. The LCMB is centered at Latitude 36.666931 North: Longitude -95.453946 West in the northeast quarter of Section 11, Township 25 North, Range 17 East.

PURPOSE AND PROPOSED DESCRIPTION: The prospectus outlines the proposal for developing and operating the MB, which is known as the banking instrument. After public comments are received and any issues are resolved on the prospectus, Hoffman Environmental, Inc. will submit a draft banking instrument to the District Engineer of the Tulsa District. The District Engineer will then distribute the draft banking instrument to the Interagency Review Team (IRT), which is made up of the U.S. Army Corps of Engineers and the pertinent state and Federal resource agencies. The IRT will review the banking instrument and coordinate with Hoffman Environmental, Inc. on any issues until a final banking instrument is completed. Finally, the District Engineer will review the final instrument and make a decision to approve or not approve. The below is an excerpt from the MB Sponsor's LCMB prospectus:

The purpose of LCMB is to provide compensatory stream and wetland mitigation for unavoidable impacts to waters of the U.S. resulting from activities authorized under Section 404 of the Clean Water Act (CWA), provided such activities have met all applicable requirements. LCMB will provide environmentally responsible, economical, efficient, and flexible off-site compensatory mitigation opportunities for those seeking to

develop land in accordance with the relevant Federal, State, and local regulations. LCMB will be established to compensate for losses of aquatic resources from authorized development within the LCMB Geographical Service Area in a manner that contributes to improvements in long-term ecological function of the Verdigris River watershed. Three primary objectives of the proposed LCMB are summarized below:

1. Provide for the replacement of chemical, physical, and biological functions of wetlands and other aquatic resources that are lost or degraded as a result of USACE-authorized impacts.
2. Provide USACE permit applicants greater flexibility in compensating for unavoidable adverse impacts to the aquatic ecosystem after appropriate and practicable measures have been taken to avoid and minimize project-related impacts on site, and after practicable compensation has been conducted or shown not to be in the best interest of the environment, especially when those impacts would be relatively minor.
3. Provide more extensive, higher quality, and more cost-effective protection of wetlands and other aquatic resources over that which is typically achieved by other forms of compensatory mitigation for activities that have minor adverse impacts on the aquatic ecosystem.

The objective of LCMB is to develop a mitigation bank in the Verdigris River watershed in association with the granting of Department of Army permits through restoration and enhancement of perennial and intermittent streams, emergent wetland habitat, and associated riparian and upland buffers. The specific design objectives of LCMB include:

1. Restoration of floodplain connectivity for Lightning and Madden Creeks.
2. Water quality enhancement in the Lightning and Madden Creeks watersheds through sediment reduction, nutrient removal, stream bank stability, and erosion control.
3. Water quantity improvement through water storage and flood control, improved ground water recharge, and improved and restored hydrologic connections.
4. Restoration and enhancement of riparian corridors to promote aquatic and terrestrial habitats by improving substrate and in-stream cover, addition of woody debris, reduction in water temperature due to shading, increase of spatial extent of natural area, and improved aesthetics, reduce habitat fragmentation and improve wildlife travel corridors.
5. Enhance low quality emergent wetland habitat.
6. Upland buffer protection

More specifically, LCMB will enhance existing altered streams and wetlands to their natural stable condition, considering recent and future watershed conditions. Streams and wetlands would be protected with a perpetual conservation easement, and fences would be constructed at the limits of the site to exclude cattle and other anthropogenic actions. Restored and enhanced streams and wetlands would improve habitat and species diversity, water quality, and provide increased flood storage capacity, which would facilitate a net ecological uplift to the site and Verdigris River watershed. The long-term goal of LCMB is a net gain of stable stream and wetland functions and services. LCMB will establish and encourage stable, natural streams with riparian buffers and tertiary wetland communities that would provide a positive contribution to water quality, native plant and animal habitat, and erosion control.

INTERAGENCY REVIEW TEAM: Pursuant to 33 CFR 332.8(b)(1)-(3), an interagency group of Federal, State, and/or local regulatory and resource agency representatives will review the prospectus, instrument, and other appropriate documents and provide comments to the District Engineer. The IRT consists of representatives of the Corps (chair), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), Natural Resources Conservation Service (NRCS), Oklahoma Department of Environmental Quality (ODEQ), Oklahoma Department of Wildlife Conservation (ODWC), and the Oklahoma Conservation Commission (OCC).

The sponsor is responsible for preparing all documentation associated with establishment of the MB, including the prospectus, instrument, and other appropriate documents, such as mitigation plans for a MB. The prospectus provides an overview of the proposed MB and serves as the basis for public and initial IRT comment. For a MB, the mitigation plan, as described in 33 CFR 332.4(c), provides detailed plans and specifications for the MB site. The instrument provides the authorization for the MB to provide credits to be used as compensatory mitigation for future Corps permits.

The proposed prospectus is complete in accordance with the Mitigation Rule and includes geographic service areas, accounting procedures, and legal responsibilities (proposed ownership and long-term management).

WATER QUALITY CERTIFICATION: By copy of this public notice, the applicant is requesting water quality certification from the ODEQ in accordance with Section 401 of the Clean Water Act. Upon completion of the comment period and a public hearing, if held, a determination relative to water quality certification will be made. Evidence of this water quality certification or waiver of the right to certify must be submitted prior to the issuance of a Corps permit.

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 is no 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.

ENDANGERED SPECIES: The following federally listed species (or proposed to be listed) are known to occur in the vicinity or are listed for the county in which the proposed action is located: Tricolored Bat (*Perimyotis subflavus*), Piping plover (*Charadrius melodus*), Red knot (*Calidris canutus rufa*), Alligator Snapping Turtle (*Macrochelys temminckii*), and American burying beetle (*Nicrophorus americanus*). A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. The IPAC consultation number is 2024-0129007. 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.

FLOODPLAIN: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work would adversely impact the floodplain.

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

COMMENTS: The Corps 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 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 specificity, the reasons for holding a public hearing. The District Engineer will determine if the issues raised are substantial and whether a hearing is needed for making a decision. Copies of all comments, including names and addresses of commenter's will be provided to the sponsor. All comments should be mailed to Mr. Ed Parisotto at U.S. Army Corps of Engineers, 2488 East 81 St. Street, Tulsa, OK 74137; telephone 918-669-7009; or email to edward.parisotto@usace.army.mil. This public notice and MB prospectus is posted for review on the Tulsa District's Regulatory web page: <http://www.swt.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>.

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

NOTE: The Corps has not endorsed this MB proposal. This MB is not authorized until the MB Instrument has been established and approved. The MB Instrument is a legal document for the establishment, operation, and use of an MB.

Andrew R. Commer
Chief, Regulatory Office

Enclosures

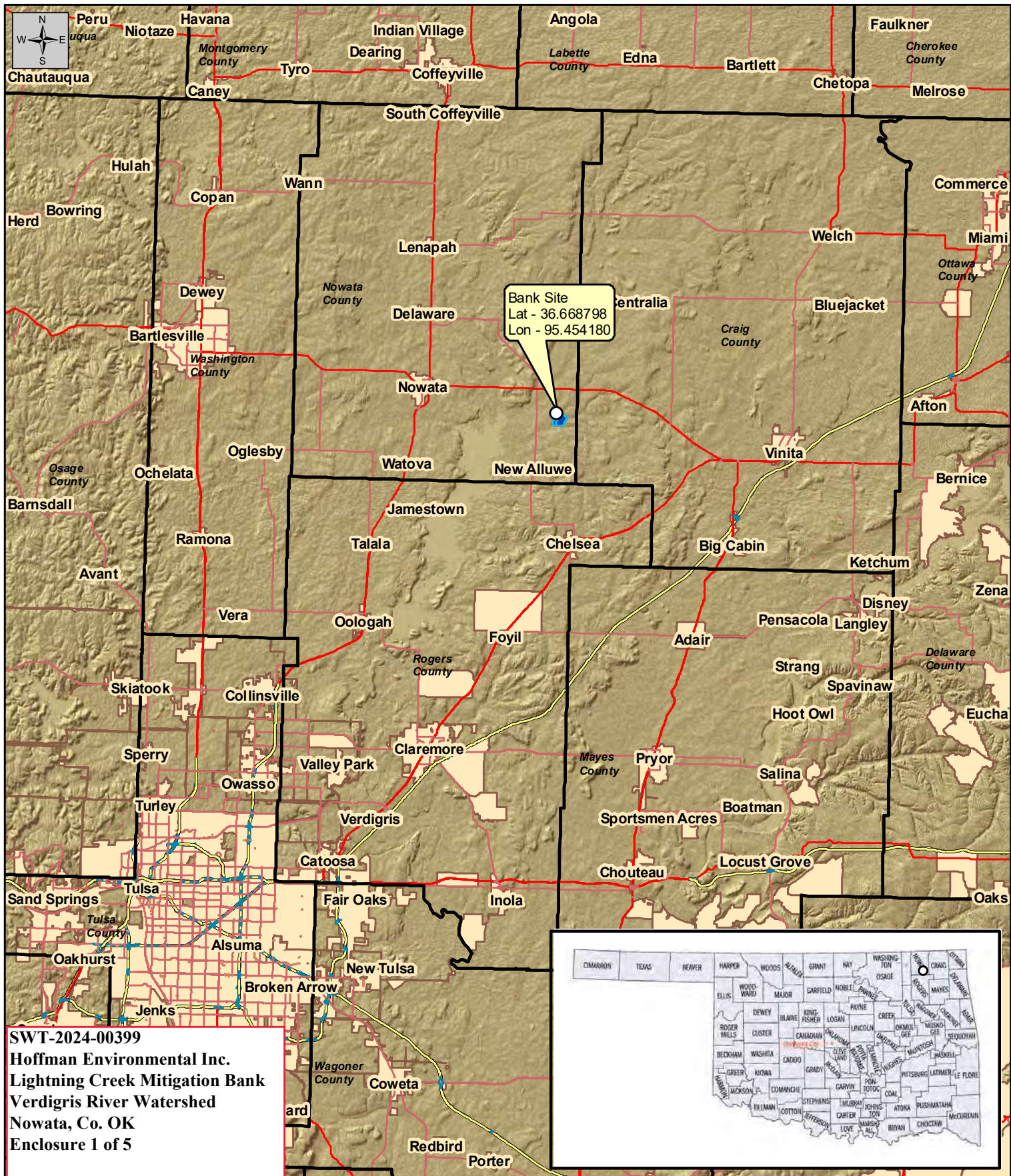


Figure 1 of 6
Location Map

Lightning Creek Mitigation Bank

Date: July 08, 2024

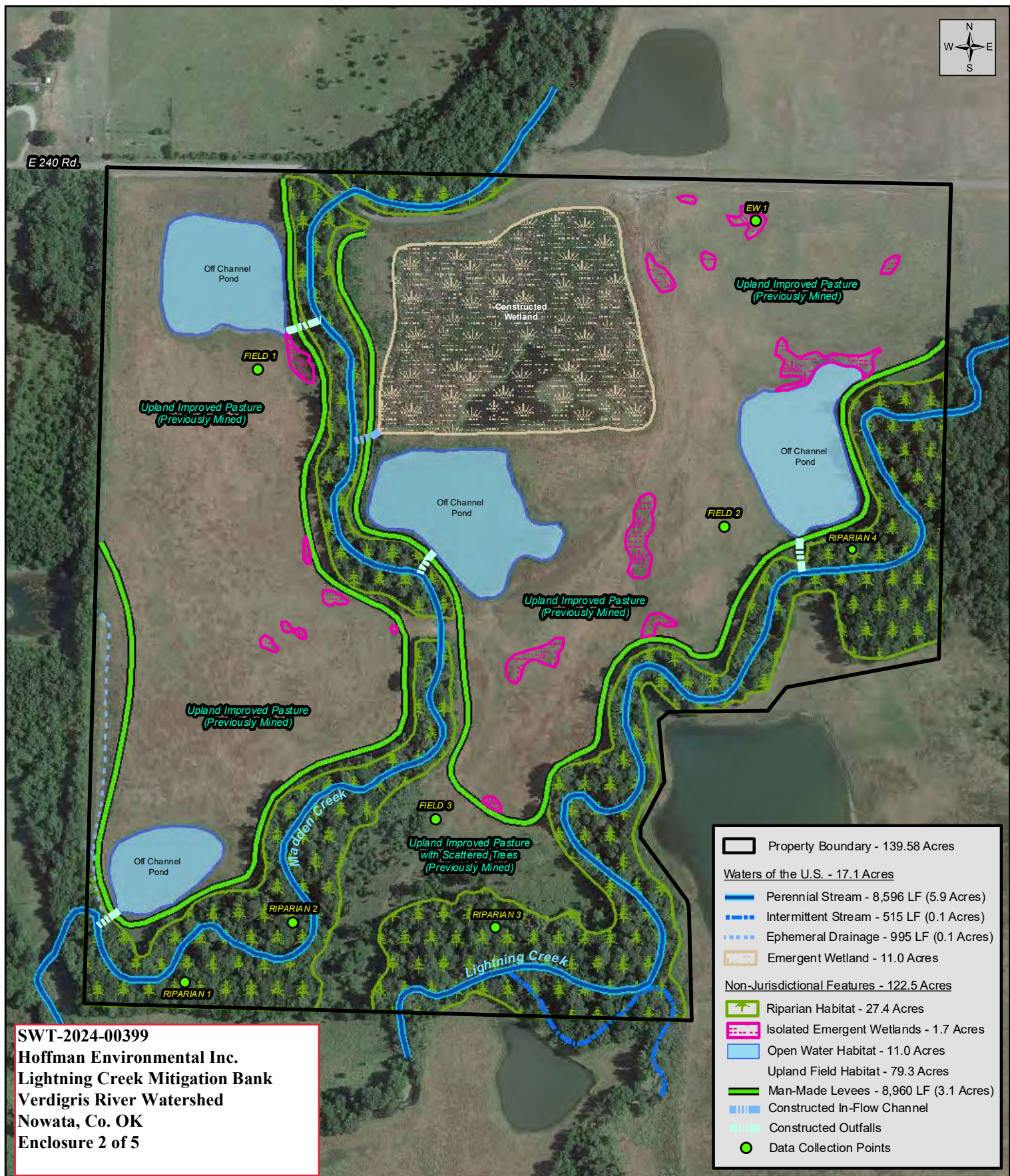


Figure 2 of 6
 Existing Conditions & Waters
 of the US Map - 2022 Aerial

Lightning Creek Mitigation Bank

Date: July 08, 2024



Created By:
 Jason Hoffman
 HEI Project No. HEI-24-13

Section 11 - T25N - R17E
 Nowata County, Oklahoma

Datum: NAD83
 Imagery Source: NAIP
 Vector Source: HEI

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 PO Box 452
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 (903) 885-0304
 www.hoffmanenv.com

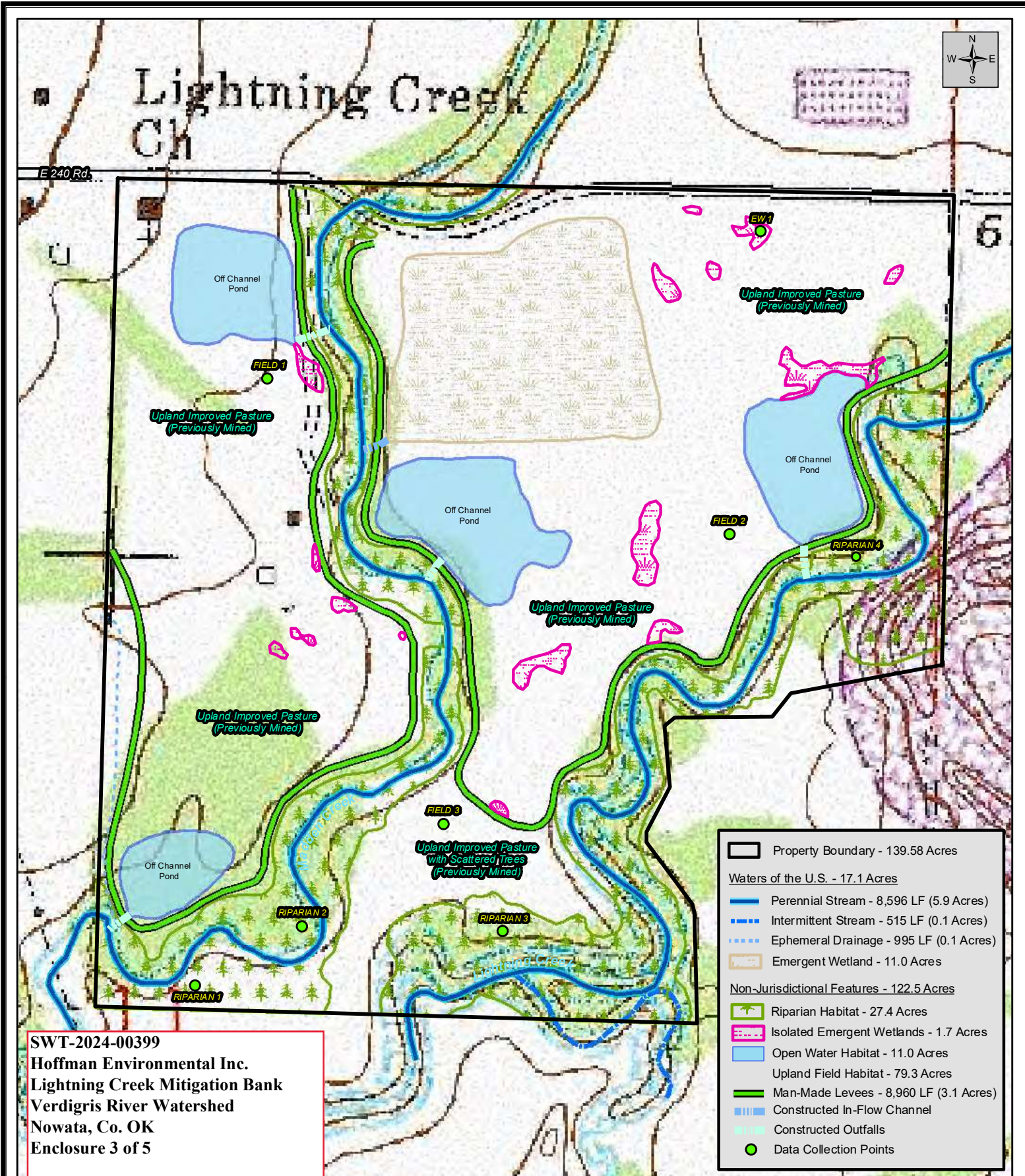


Figure 3 of 6
 Existing Conditions & Waters
 of the US Map - USGS Topo

Lightning Creek Mitigation Bank

Date: July 08, 2024



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 Jason Hoffman
 HEI Project No. HEI-24-13

Section 11 - T25N - R17E
 Nowata County, Oklahoma

Datum: NAD83
 Imagery Source: USGS
 Vector Source: HEI

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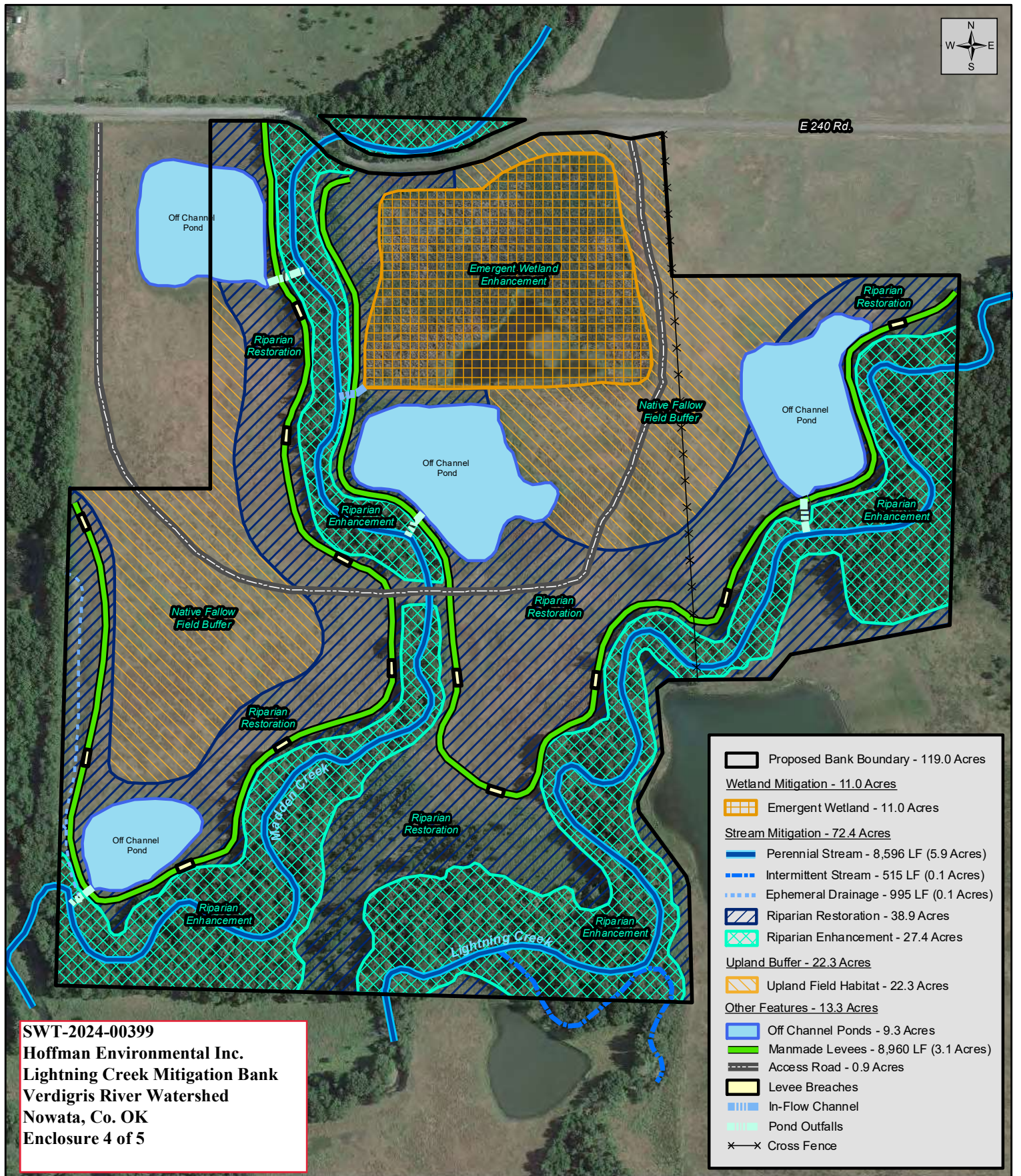


Figure 4 of 6
 Site Development Map
 2022 Aerial

Lightning Creek Mitigation Bank

Date: July 09, 2024

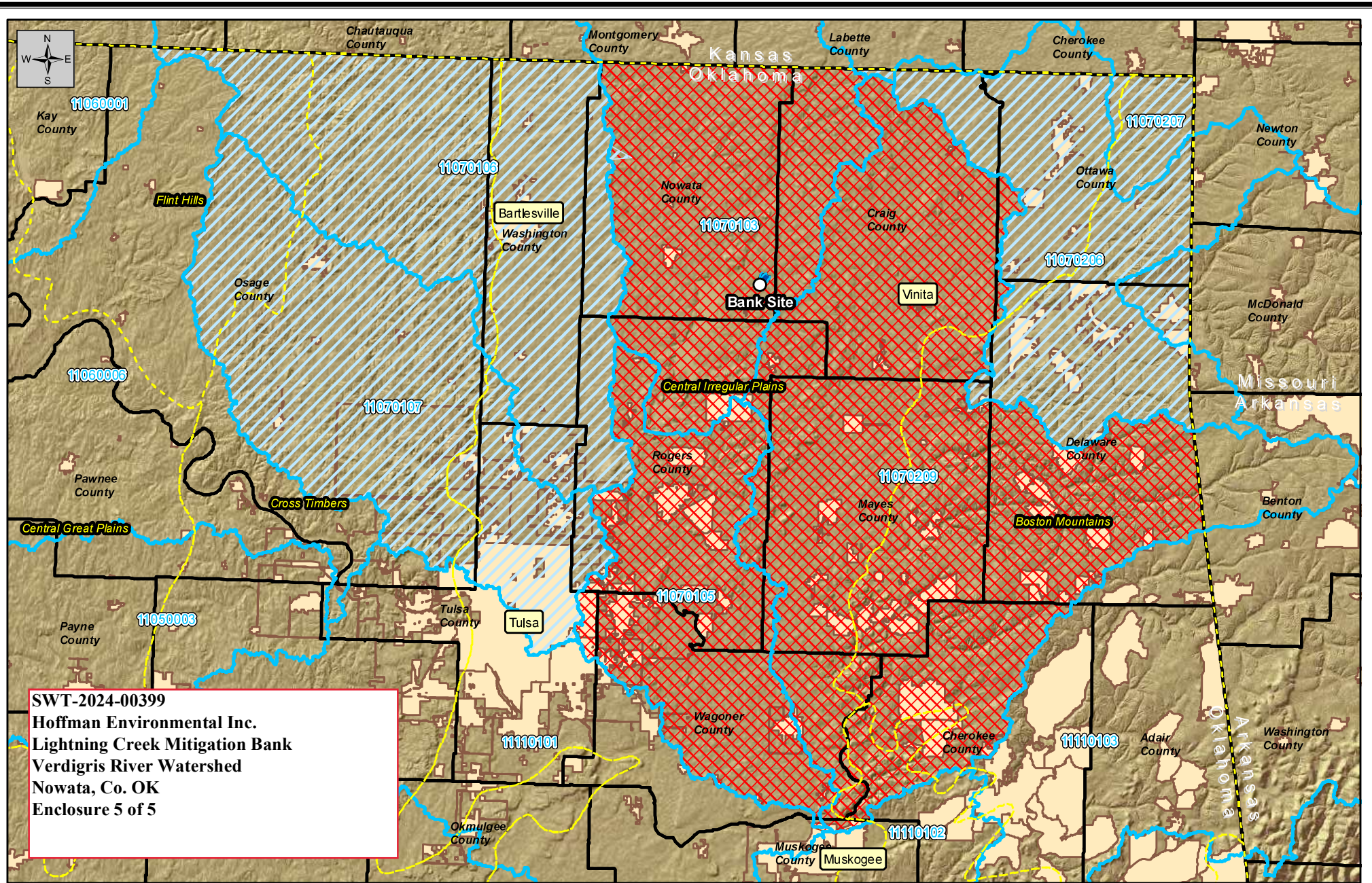


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SWT-2024-00399
 Hoffman Environmental Inc.
 Lightning Creek Mitigation Bank
 Verdigris River Watershed
 Nowata, Co. OK
 Enclosure 5 of 5

Figure 6 of 6
 Service Area Map

Lightning Creek Mitigation Bank

Date: July 08, 2024



- Primary Service Area
- Secondary Service Area
- 8-Digit HUC Boundary
- Level III Ecoregion Boundary