



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

# Public Notice

Applicant: Delek Refining, Ltd. / Infinity Project  
Management

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Project No.: SWF-2012-00237

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Date: July 20, 2012

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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. Darvin Messer

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Phone Number: 817-886-1744

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JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**SUBJECT:** Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States (WOUS) associated with the construction of two crude oil tanks expanding the existing tank farm at the Delek Refinery in the city of Tyler, Smith County, Texas.

**APPLICANT:** Delek Refining, Ltd. / Infinity Project Management  
c/o Bryan Howell  
425 McMurrey Drive  
Tyler, TX 75702

**APPLICATION NUMBER:** SWF-2012-00237

**DATE ISSUED:** July 20, 2012

**LOCATION:** The proposed crude oil tanks would be located on an unnamed intermittent tributary of Black Fork Creek and its adjacent forested wetlands along the east side of the existing Delek Refinery, which is on the east side of Tyler, northwest of the intersection of Loop 323 and Commerce Street, in Smith County, Texas (See attached Figures 1-4 of 7). The project area is centered at approximately 32.361° latitude and -95.275° longitude on the Tyler South 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12020001.

**OTHER AGENCY AUTHORIZATIONS:** State Water Quality Certification

**PROJECT DESCRIPTION:** The applicant proposes to discharge approximately 4,000 cubic yards of earthen fill into approximately 1.4 acres of WOUS, in conjunction with the construction of two crude oil tanks (See attached Figures 5-7 of 7). The purpose of the proposed project would be to increase crude oil storage capacity at the refinery. Changes in delivery methods and policies require that a constant rate of crude oil be supplied to the facility without interruption. At times the refinery must shut down operations. During such times, the flow of crude oil into the refinery ceases and, therefore, must be stored. The current storage capacity is of insufficient size to accommodate present needs. As such, the applicant is proposing to construct two additional tanks. Undeveloped land adjacent to the refinery has variable topography and the logical location for the proposed crude oil tanks is adjacent to the existing refinery where flow line elevations can be matched with existing tanks. A balanced cut and fill approach to site grading will result in a somewhat recessed pad requiring the installation of earthen dikes around the perimeter.

WOUS located within the proposed project limits total approximately 1.3 acre of forested wetlands and 830 linear feet (0.1 acre) of intermittent stream. The applicant proposes to grade

the site to provide for tank construction. The applicant proposes to discharge approximately 4,000 cubic yards of earthen fill into approximately 1.3 acres of forested wetlands and 830 linear feet (0.1 acre) of intermittent stream. The applicant believes that the 12-acre project area provides the most practicable site for the proposed new crude oil tanks, considering such factors as location, design constraints, existing infrastructure, and other environmental constraints. The applicant provided information to demonstrate that no other tank configuration would meet their needs and have fewer impacts to aquatic resources.

During project planning, the applicant considered several alternatives in an effort to avoid and minimize adverse impacts to WOUS. The no action alternative would result in the proposed project not being built and subsequently, there would be no adverse impacts to WOUS. However, the no action alternative would have significant financial and operational implications for the refinery. The crude oil tanks must be constructed at an equal elevation of the existing crude oil tanks to allow the tanks to function as a single reservoir. To reduce variability in the crude oil characteristics, the crude is constantly mixed and homogenized in the reservoir. The applicant considered constructing the tanks at a location northeast of the existing tanks, but this alternative would have resulted in the permanent loss of approximately 5 acres of wetlands in the Black Fork Creek floodplain. The applicant considered constructing the tanks at more remote locations on property they own to the east; however, the topography of surrounding property is not conducive to constructing the tanks at a similar elevation to allow function as a single reservoir. A prohibitive amount of excavation would be required on remote properties to match tank elevations.

The applicant's preferred alternative would minimize impacts by placing the tanks immediately adjacent to the existing tanks, but at the location where impacts to WOUS would be minimized by avoiding and minimizing impacts to wetlands in the Black Fork Creek floodplain. The tank foundation has been minimized to the extent practicable to further avoid impacts to WOUS. This alternative would result in a permanent loss of forested wetlands totaling 1.3 acres and a permanent loss of 830 linear feet (0.1 acre) of intermittent stream. The area of impact would be limited to what is necessary to construct the new crude oil tanks. Multiple location and functional constraints, such as grade, existing infrastructure, wetland locations, and property availability preclude an economically reasonable alternative.

Although the applicant considered these alternate configurations to avoid and minimize impacts to WOUS, the proposed project would result in the permanent loss of 1.3 acres of forested wetlands and 830 linear feet (0.1 acre) of intermittent stream. The applicant has proposed a conceptual compensatory mitigation plan involving the acquisition of wetland credits from the Pineywoods Mitigation Bank. The bank is located in the Neches River basin, and the project site is located within the primary service area of the bank. Stream mitigation would be provided through the acquisition of bank credits (based on availability) and/or the development of a permittee-responsible mitigation project.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the

guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits 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 its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

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. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, 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.

**STATE WATER QUALITY CERTIFICATION:** 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 that result in a direct impact of three acres or less of waters of the State or 1,500 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 USACE has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

**ENDANGERED AND THREATENED SPECIES:** The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in Smith County, Texas, where no species are listed. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

**NATIONAL REGISTER OF HISTORIC PLACES:** The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

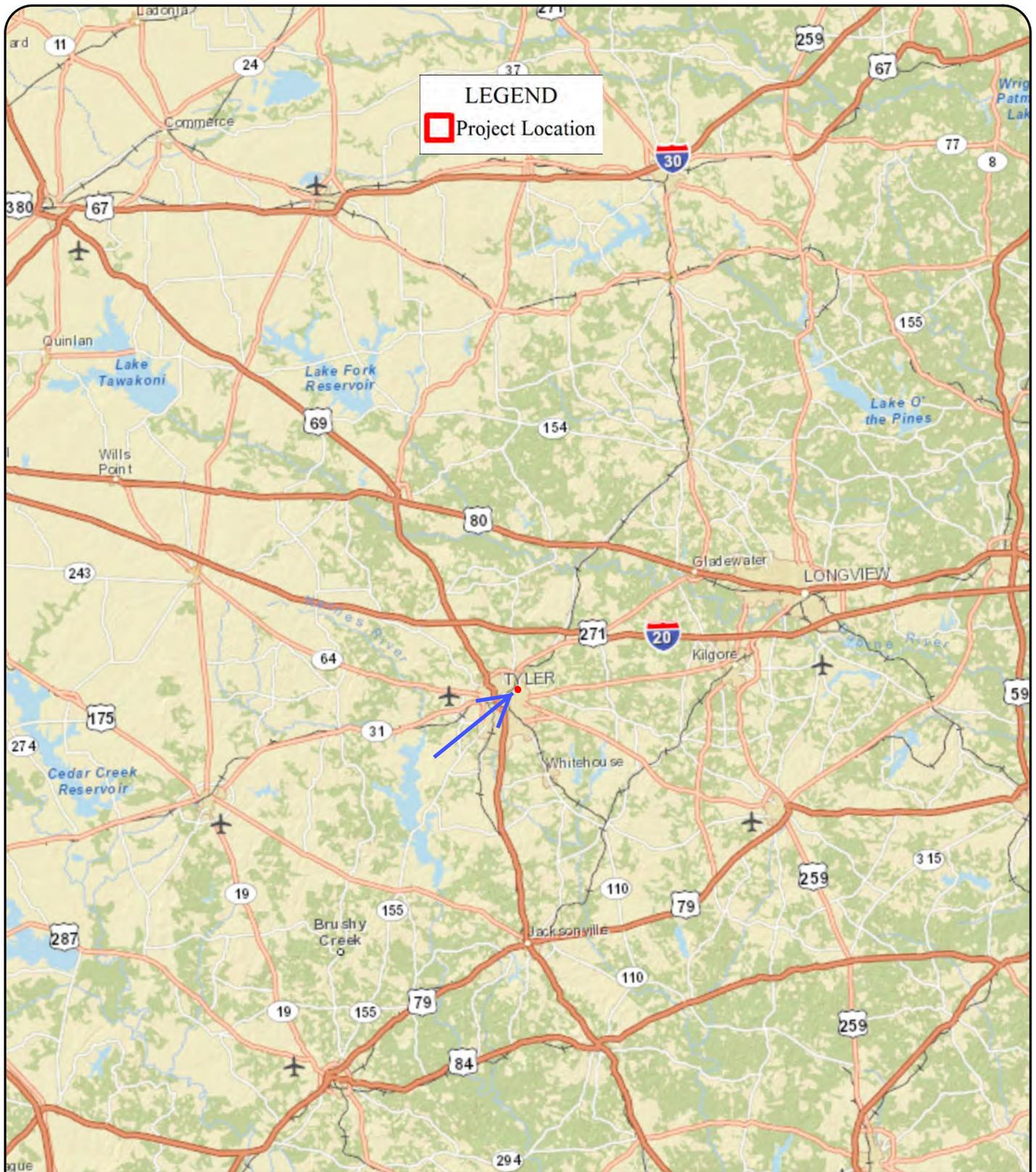
**FLOODPLAIN MANAGEMENT:** The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review 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 in order to assist in developing fact upon which a decision by the USACE may be based. 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 particular reasons for the request. The District Engineer will 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 will be notified of the time, date, and location.

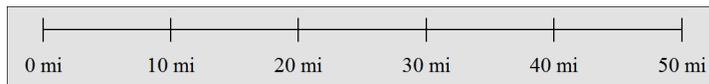
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before August 20, 2012, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no 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 ; Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1731. 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 ENGINEERS



**LEGEND**  
 Project Location

**FIGURE 1 of 7**  
**REGIONAL MAP**  
 USACE Project No. SWF-2012-00237



**Rowden Consulting, LLC**  
 Environmental Services

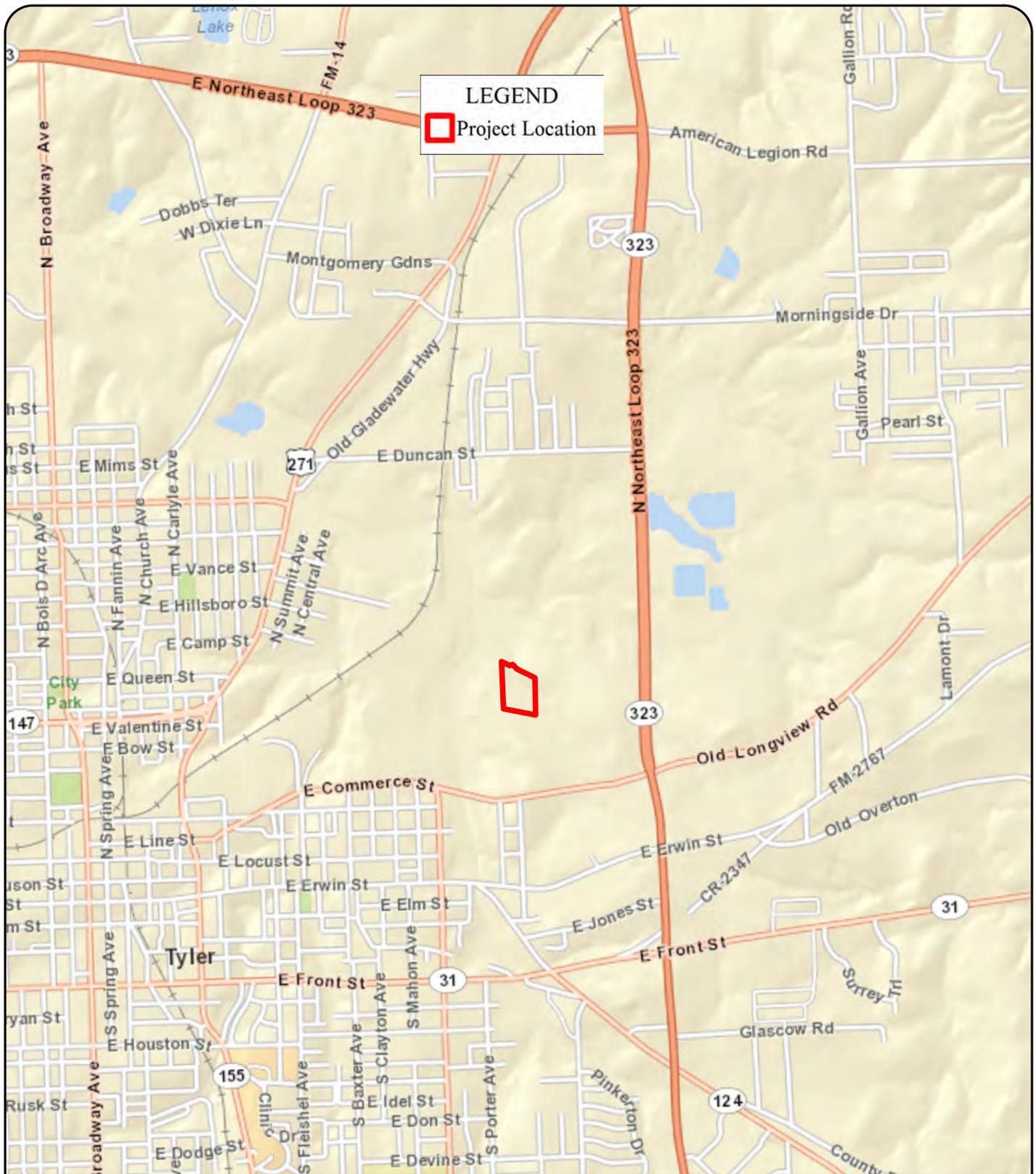


FIGURE 2 of 7  
LOCATION MAP

USACE Project No. SWF-2012-00237



**Rowden Consulting, LLC**  
Environmental Services

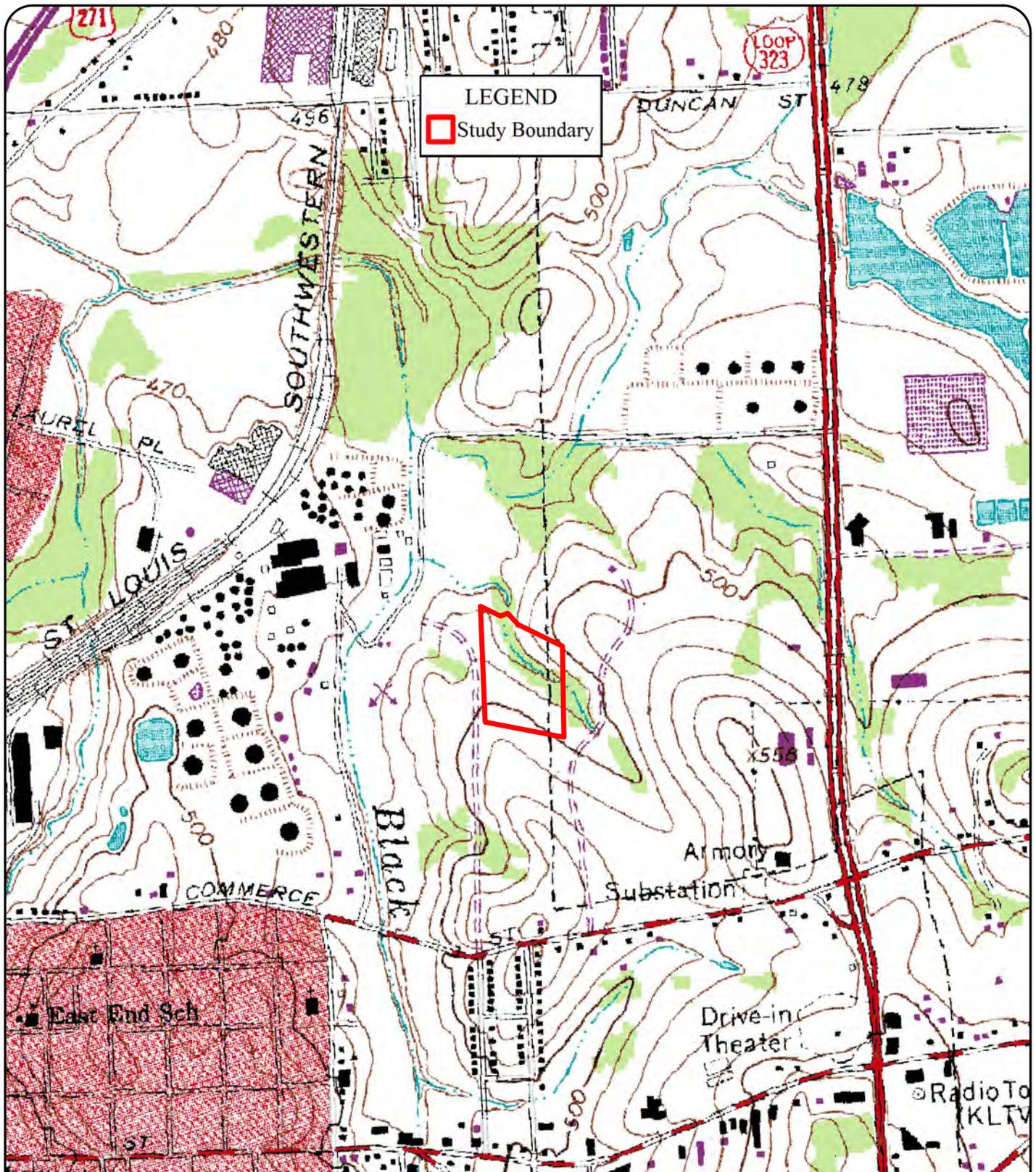


FIGURE 3 of 7

USGS TOPO MAP - TYLER SOUTH  
 USACE Project No. SWF-2012-00237

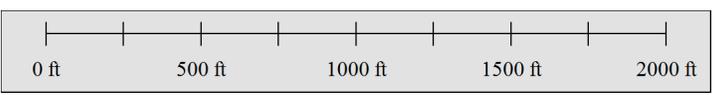


Rowden Consulting, LLC  
 Environmental Services



LEGEND  
Study Boundary

FIGURE 4 of 7  
2010 AERIAL PHOTO  
USACE Project No. SWF-2012-00237



Rowden Consulting, LLC  
Environmental Services

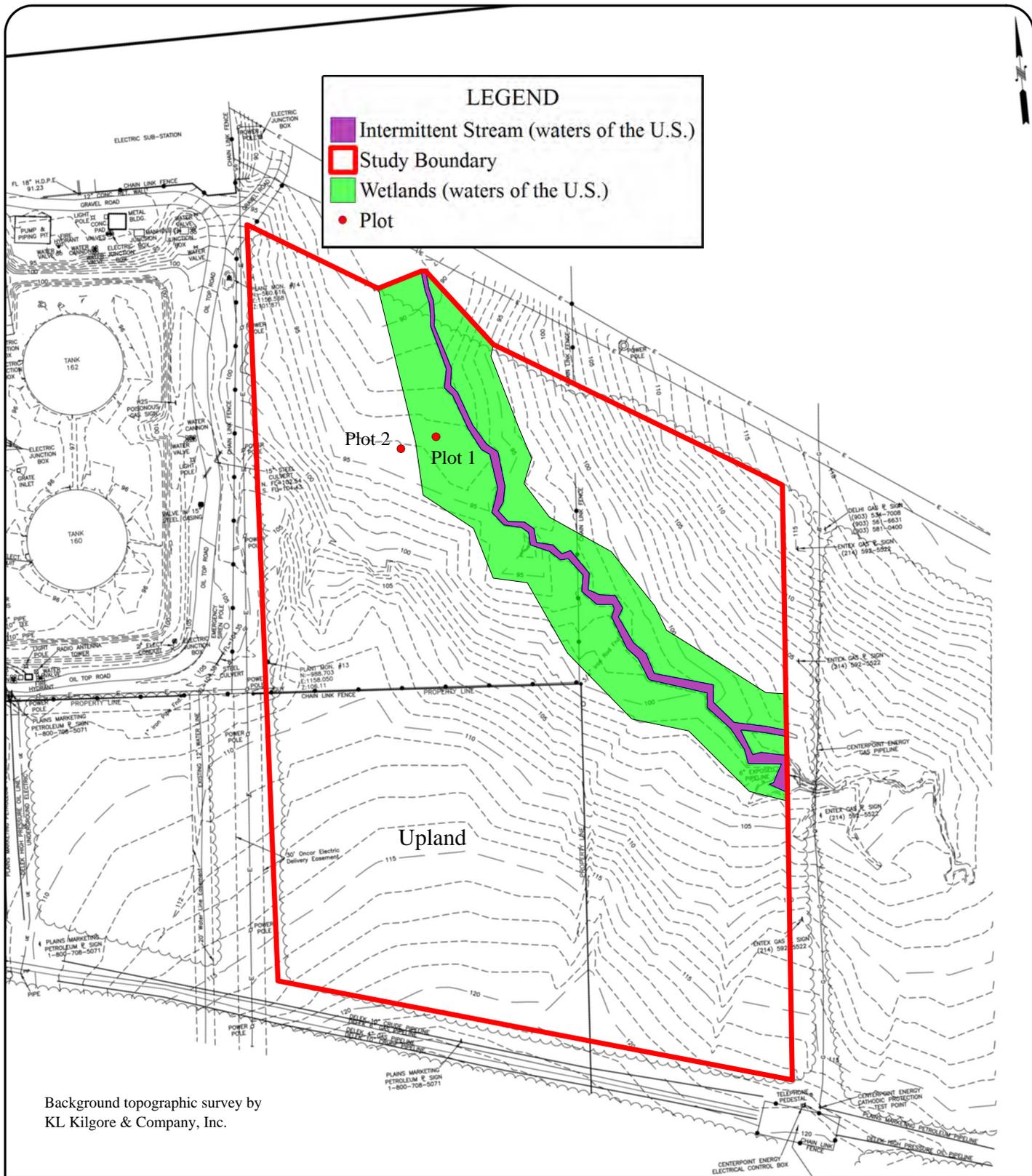
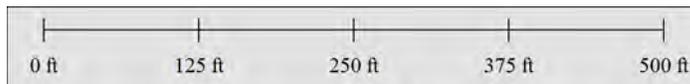


FIGURE 5 of 7  
**JURISDICTIONAL DETERMINATION MAP**  
 USACE Project No. SWF-2012-00237



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 Environmental Services



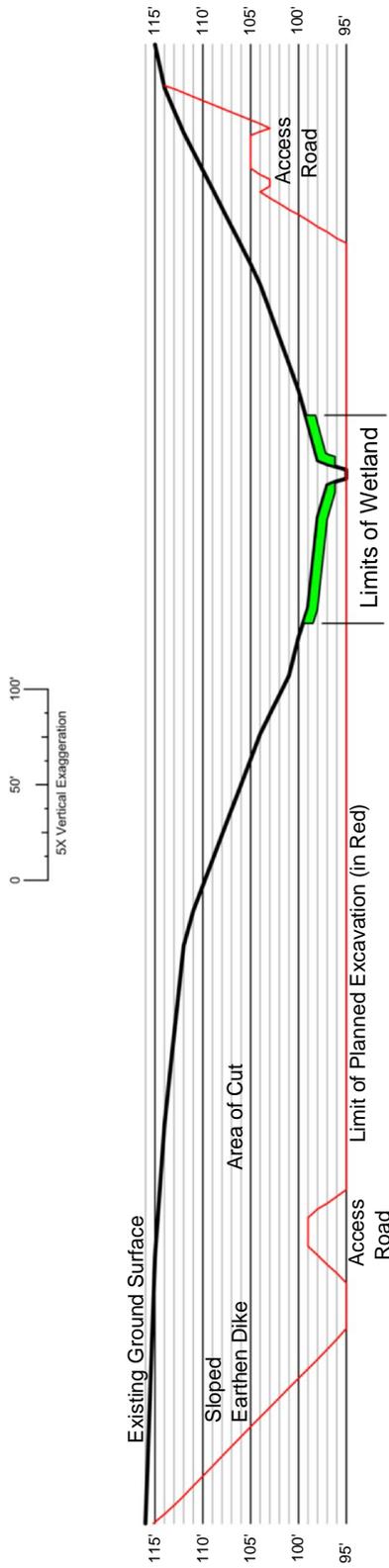


FIGURE 7 of 7  
 CROSS SECTION A - A'  
 USACE Project No. SWF-2012-00237

