



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

Public Notice

Applicant: Heath Phillips Investments, LLC

Permit Application No.: SWF-2011-00373

Date: January 9, 2012

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 would 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. Stan Walker

Phone Number: (817) 886-1740

JOINT PUBLIC NOTICE

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

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: After-the-Fact 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 fill material into waters of the United States associated with The Barracks II Subdivision, a proposed residential and commercial development, in College Station, Brazos County, Texas.

APPLICANT: Heath Phillips Investments, LLC
Heath Phillips, Manager
3302 General Parkway
College Station, Texas 77845

APPLICATION NUMBER: SWF-2011-00373

DATE ISSUED: January 9, 2012

LOCATION: The proposed residential and commercial development project is located west of Old Wellborn Road between Rock Prairie Road and Cain Road in College Station, Brazos County, Texas (Figures 1 and 2 of 3). The project is located approximately UTM coordinates 757195 East and 3385290 North (Zone 14) on the Wellborn 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12070103.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

PROJECT DESCRIPTION: The project is currently under U.S. Army Corps of Engineers (USACE) review in connection with unauthorized discharge of fill material into waters of the U.S. To date, project activities have included land clearing, soil excavation and disposal, and vegetation thinning. Through order of the USACE, all activities have ceased in waters of the U.S.

Current impacts to waters of the U.S. are 0.91 acres: 0.85-acres in palustrine unconsolidated bottom impoundment (referenced as IMP 1 on permit drawings and reports) and 0.06 acres (1,334 linear feet) of impacts to non-relatively permanent (non-RPW) ephemeral waterways (referenced as WW 1 and WW 2 on permit drawings and reports). To complete the project, an additional 0.047 acres of impact, in the form of road crossings, is required: 0.03 acres to palustrine emergent wetland (referenced as WET 1 on permit drawings and reports) and 0.017

acres (174 linear feet) to non-RPW ephemeral waterway. Thus, overall project impacts would include 0.957 acres to waters of the U.S. (includes 1,508 linear feet of waterway) with an estimated discharge of $\pm 6,400$ cubic yards of mineral soil material (Figure 2). The Applicant was able to minimize and avoid additional impacts, as well as create space for on-site in-kind mitigation, by redesigning the project at the cost of lost investment, real properties, and future sales.

The project purpose is to provide for residential and commercial development. The need stems from both population growth in the Bryan/College Station area and increased enrollment to Texas A&M University and Blinn College. This growth has increased demand for more housing and associated retail markets. The Project, when fully developed would consist of approximately 105 single family homes, 320 townhome residences, 23 acres of commercial/retail sites, roads, stormwater detention, and an on-site mitigation area.

The project area is primarily pasture land, with the exception of the northwest portion being dominated by post oak uplands. The project area is drained to the north by two small, unnamed ephemeral tributaries (WW 1 and WW 2) of Bee Creek (Navasota River Basin). The topographic divide between the Navasota River Basin and the Brazos River Basin lies near the western border of the project, which limits the runoff through these tributaries. Prior to construction activities, WW 1 and WW 2 were ± 875 and $\pm 1,099$ linear feet, respectively.

The Applicant purchased the project area in 2010. Prior to the Applicant's purchase, cattle ranching was the primary land use. The cattle were watered at a small impoundment (IMP 1) that was created by damming WW 1. The estimated size of IMP 1 is 0.85 acres with average depth of 4.0 feet. IMP 1 was breached shortly after the land was purchased and it and a portion of WW 1 (286 linear feet) were filled. The remaining portion of WW 1 (545 linear feet) was excavated and expanded for a proposed detention facility (Figure 2). Only a short, 44-foot segment located downstream of the detention facility, between it and the project boundary, was unaffected.

At approximately the same time as the above activities, excavation began on a ± 6.7 -acre detention facility near the northern project boundary where WW 1 and WW 2 flow offsite. The detention facility is currently excavated to a depth varying between 18" to 24" below natural ground level; however, upon completion it would be ± 6.5 feet deep. Spoils from the excavation are being used on site for other construction activities. The detention pond is generally situated in the correct location for use, but significant earthwork in and around it would be necessary to obtain the correct volume and slope to make it function properly.

Like WW 1, a portion of WW 2 (438 feet) was excavated and expanded for the proposed detention facility. Upstream of the detention facility, a 640-foot segment of WW 2 was channelized and is now ± 575 linear feet. Only a short, 21-foot segment located downstream of the detention facility, between it and the project boundary, was unaffected. A 0.24-acre linear palustrine emergent wetland (WET 1) connects WW 2 to the southeastern project boundary. WET 1 is unaffected.

Aside from the partially excavated detention facility, the Applicant has stabilized disturbed areas by sowing wheat and rye. Additionally, the Applicant has implemented a stormwater pollution prevention plan to manage stormwater discharge.

The Applicant proposes to compensate for all impacts through on-site, in-kind mitigation on a functional basis. The applicant did consider other options such as an in-lieu fee program or mitigation bank; however neither was available as the project is not in a bank service area.

Out of the 0.957 acres of impact, it is proposed the planned 6.7-acre detention basin would compensate for 0.895 acres (includes 983 linear feet of non-RPW ephemeral waterway). For the remaining impacts (0.015 acre [351 linear feet] of waterway) and the proposed 0.047 acres of additional impacts (including 174 linear feet of waterway), the Applicant is proposing to (1) restore and enhance portions of WW 2 by improving channel, riparian buffer, and/or in-stream condition; (2) enhance WET 1; and (3) establish additional wetlands.

The proposed mitigation would provide a more permanent and functional aquatic landscape and an increase in ecological functional capacity within the watershed by replacing lost functions as well as enhance functions that were historically of low quality. Additionally, portions of the mitigation site would serve as storm water control and detention, recreation, and potentially as a city park.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the 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 would 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 does not result in a direct impact of greater than three acres of waters of the state. However, the project does impact greater than 1,500 linear feet of waterways (e.g. streams) and, as noted, is in conjunction with an after-the-fact permit. Therefore, the project is not eligible for inclusion in the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria and an individual water quality certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

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 project would be located in a Brazos County where the Whooping Crane (*Grus americana*) and Navasota ladies'-tresses (*Spiranthes parksii*), are known to occur or may occur as migrants. The Whooping Crane and Navasota ladies'-tresses are endangered species. 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 project is located outside of FEMA-mapped floodplains. 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 would 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 would 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 February 8, 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 would 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

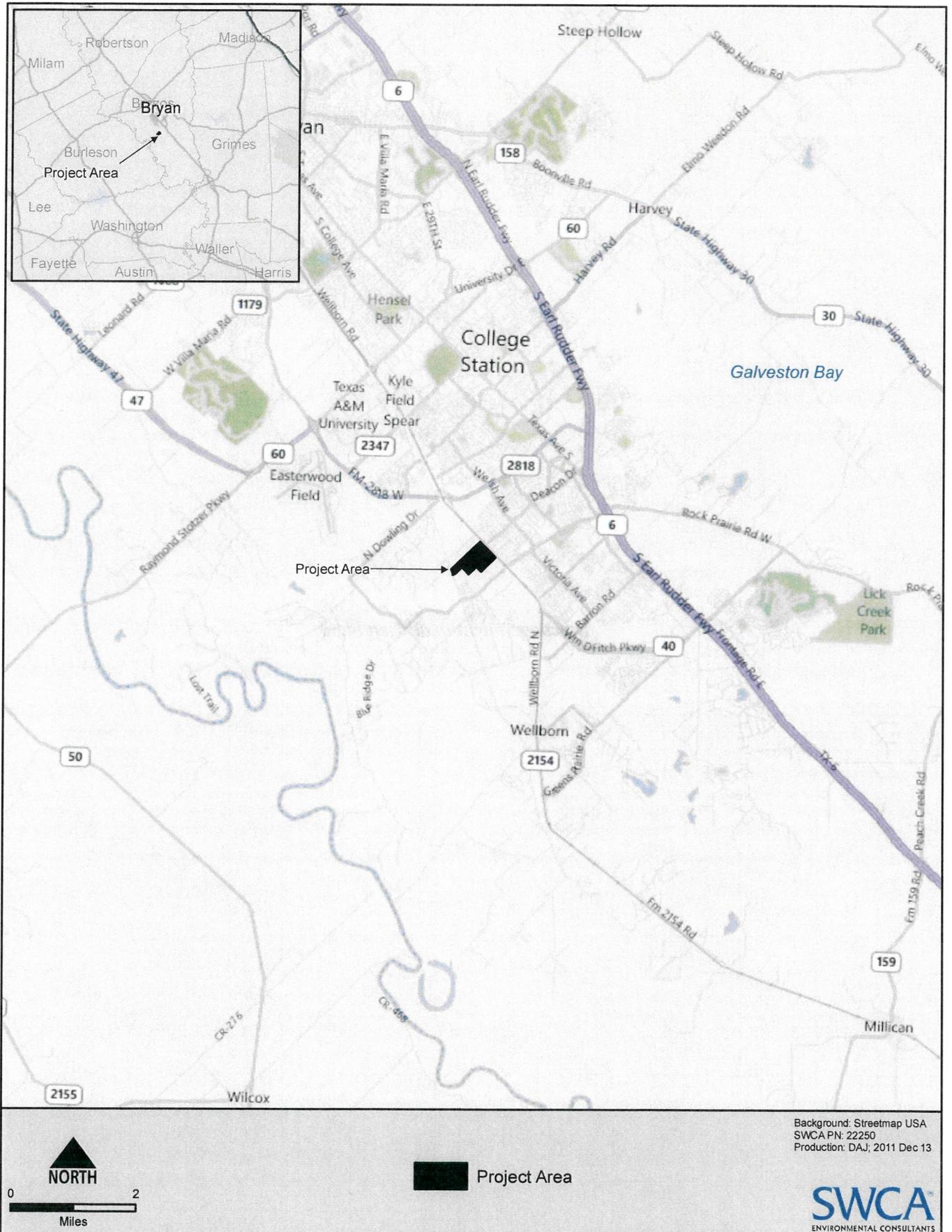
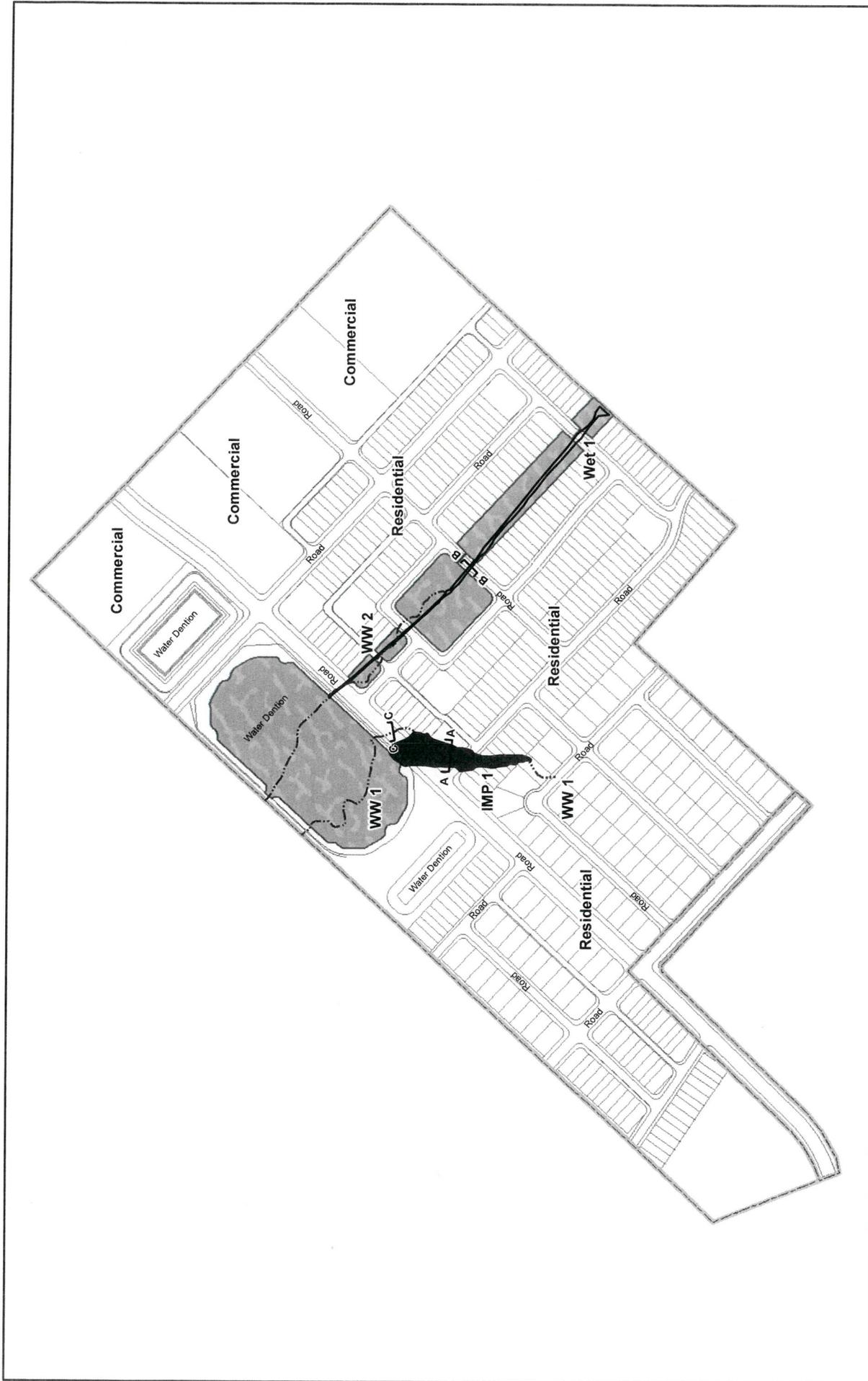


Figure 1. Location Map, The Barracks II Subdivision (USACE File No. SWF-2011-00373), Brazos County, Texas



Background: n/a
 SWCA PIN: 22250
 Production: DAJ, 2011 Dec 29



Proposed Land Plan

Impacted Impoundment
 Proposed Mitigation Area (±10 ac)
 Project Area (±113 ac)

Impacted Waterway
 Wetland
 Current Waterway

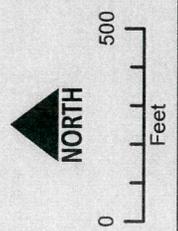
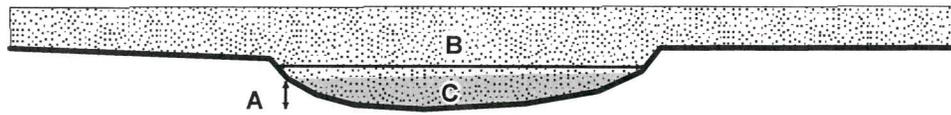


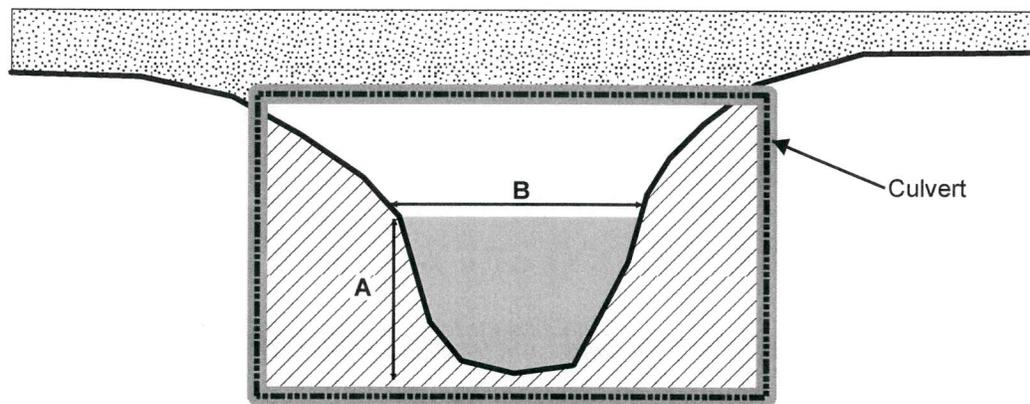
Figure 2. Typical Plan View and Proposed Mitigation Area, The Barracks II Subdivision (USACE File No. SWF-2011-00373), Brazos County, Texas

A-A
Typical Impoundment Fill
 Not To Scale



- A. Depth of impoundment averages 4 feet
- B. Area of impoundment is 0.85 acre
- C. Maximum amount of fill in is ±5,600 cubic yards

B-B
Typical Waterway/Wetland Culvert Crossing
 Not To Scale



- A. Depth of waterway/wetland average 2 to 4 feet
- B. Width of waterway/wetland average 1 to 5 feet
- C. Maximum amount of fill is ±800 cubic yards

C-C
Typical Waterway Fill
 Not To Scale

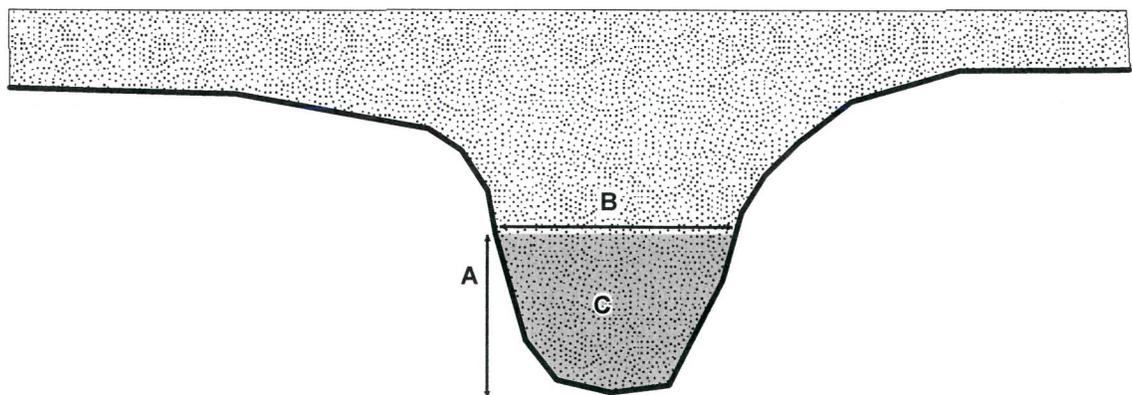


Figure 3: Typical Cross Sections

Project: The Barracks II Subdivision
 USACE PN: SWF-2011-00373
 Applicant: Heath Phillips Investments, LLC
 County: Brazos, Texas
 Nearest Named Waterbody: Bee Creek

- Existing Ground
- ▨ Fill Material
- ▨ Excavated Area
- ▨ Jurisdictional Area

SWCA PN: 22250
 Production: DAJ; 2011 Dec 13

