

# PUBLIC NOTICE



**US Army Corps  
of Engineers  
Kansas City District**

**Permit No. NWK-2015-00160  
Issue Date: February 4, 2015  
Expiration Date: March 6, 2015**

**30-Day Notice**

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**UPPER OSAGE RIVER WETLAND AND STREAM  
UMBRELLA MITIGATION BANK INSTRUMENT  
AND  
THE POTTAWATOMIE CREEK WETLAND  
AND STREAM MITIGATION SITE #1**

This notice is to announce the **proposed** establishment of the Upper Osage River Wetland and Stream Umbrella Mitigation Bank Instrument (Umbrella Bank Instrument). The Kansas City District, Corps of Engineers, Regulatory Branch requests comments from the public and from local government agencies and State and Federal resource agencies concerning the proposed establishment of this Umbrella Bank Instrument. If approved by the District Engineer, in consultation with the Interagency Review Team (IRT), the mitigation sites established under this Umbrella Bank Instrument will be used to replace lost aquatic resources that result from Department of the Army (DA) permits issued for the discharge of dredged or fill material into waters of the United States. If a final Umbrella Bank Instrument is approved, the Corps of Engineers will authorize the construction of this first mitigation project described below and all subsequent mitigation project sites proposed by the sponsor in the service area described in the Umbrella Bank Instrument using Nationwide Permit (NWP) No. 27, Aquatic Habitat Restoration, Establishment and Enhancement Activities.

The Prospectus, for this proposed Umbrella Bank Instrument, is available for review at: <http://www.nwk.usace.army.mil/Media/PublicNotices.aspx>. Please review the Prospectus for this proposed Umbrella Bank Instrument and provide comments to: U.S. Army Corps of Engineers, Kansas City District, Regulatory Branch, 601 East 12th Street, Room 402, Kansas City, Missouri 64106, ATTN: Justin Hughes. Please include the Corps of Engineers permit number (NWK-2015-00160) in your comment letter.

The first compensatory mitigation site proposed under the Umbrella Bank is the Pottawatomie Creek Wetland and Stream Mitigation Site # 1 (Pottawatomie Creek Site # 1). The Pottawatomie Creek Site # 1 was previously submitted as a standalone mitigation bank but was later withdrawn by the sponsor. If you previously submitted comments on the public notice dated January 15, 2014 for the Pottawatomie Creek Wetland and Stream Mitigation Bank, you must re-submit those comments again for them to be considered along with any additional comments addressing the Umbrella Bank proposal prior to the expiration date of this notice as listed above.

**APPLICANT/SPONSOR:** Swallow Tail, LLC  
24820 Miller Road  
Harrisonville, Missouri 64701

**UMBRELLA BANK SERVICE AREA:** The proposed service area for the Umbrella Bank is located entirely within Kansas and includes Hydrologic Unit Codes (HUC) 10290101, 10290102, 10290103, as well as, a small portion of HUC 10290108 and 10300101. The boundaries of the service area are shown in Figure 3 of the Umbrella Bank Prospectus. The Pottawatomie Creek Site # 1 service area will be the same as the Umbrella Bank.

**PROJECT LOCATION** (As shown on the attached drawings): The first mitigation project site, Pottawatomie Creek Site #1, is located primarily on the floodplain of Pottawatomie Creek, in Sections 13 and 24, Township 18 South, Range 21 East and in Section 18, Township 18 South, Range 22 East, in Miami County, Kansas. USGS 7.5 Minute Quad - Lane, Kansas. Approximate Center - Latitude: 38.476485 -- Longitude: -95.031231.

The bank sponsor may propose additional mitigation project sites within the boundary of this proposed service area in order to continue to provide available mitigation credits to DA permit recipients.

**AUTHORITY:** Section 404 of the Clean Water Act (33 USC 1344).

**MITIGATION ACTIVITIES** (As shown on the attached drawings): Swallow Tail, LLC proposes to establish the first compensatory mitigation project site, under this proposed Umbrella Bank Instrument, by creating, restoring, enhancing and preserving aquatic resources and upland resources on 280 acres of land adjacent to Pottawatomie Creek. In addition, the stream channel grade will be restored and accelerated bank erosion will be addressed in various stream channels on the property using various stream restoration methods. Most of the land area is used for agricultural crop production while the land adjacent to the streams is mostly forested. The sponsor proposes to cease farming the property in order to construct the mitigation project and then maintain the diverse habitats in perpetuity.

The mitigation project site will be owned and operated by Swallow Tail, LLC. The sponsor proposes to maintain the property, in perpetuity, as wildlife habitat for both aquatic and for terrestrial species. The sponsor proposes to place a conservation easement on the property in order to restrict the use and the activities that are allowed to take place on the mitigation land. The sponsor proposes to grant the conservation easement to the Midwest Mitigation Oversight Association (MMA) in order to assure the sponsor and any subsequent owner complies with the easement stipulations. The MMA has been approved by the Kansas City District, Corps of Engineers, to hold easements on compensatory mitigation sites. As a grantee, the MMA is responsible for enforcing the stipulations of the conservation easement in perpetuity. Any fees associated with the perpetual easement are strictly negotiated between the sponsor and the easement grantee.

The sponsor will be responsible for the development and the implementation of the construction work plan and the adaptive management plan, if necessary, to achieve performance standards. When described performance standards are met at the mitigation project site, the mitigation credits become eligible to be released and can then be sold to DA permit recipients. The sponsor

is also responsible for the long-term management plan and will maintain the created habitats in perpetuity. Financial assurances, for construction and for long-term management, will be provided by means of an irrevocable letter of credit (LOC) from a FDIC member financial institution. The Corps must approve the monetary value of the LOC for both construction of the project and for the long-term management of the site.

**WETLANDS/AQUATIC HABITAT:** The existing streams and wetlands identified by the delineation consultant have been reviewed and approved by the Corps of Engineers. The sponsor has been notified that the Pottawatomie Creek Site #1 currently contains approximately 6.08 acres of wetlands and approximately 18,258 linear feet of stream channels that are jurisdictional waters of the United States.

**APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES:** As part of the establishment and the operation of the Umbrella Bank, the sponsor shall avoid and minimize all impacts to jurisdictional waters to the maximum extent possible unless the impact is determined by the Corps to be necessary or desirable for habitat or aquatic ecosystem function improvement. The overall purpose of the project is to restore aquatic resources to serve as replacement of aquatic resources lost from the issuance of DA permits. Should placement of fill material into jurisdictional waters be determined to be necessary, or desirable, as part of the Bank's design, the sponsor shall submit a DA permit application to the Corps for review. Mitigation activities within waters of the United States will be authorized by Nationwide Permit No. 27.

**ADDITIONAL INFORMATION:** Additional information about this application may be obtained by contacting Mr. Justin W. Hughes, U.S. Army Corps of Engineers, Kansas City District, Regulatory Branch, 601 East 12<sup>th</sup> Street, Kansas City, Missouri 64106, telephone: 816-389-3211 or email: [justin.w.hughes@usace.army.mil](mailto:justin.w.hughes@usace.army.mil). All comments to this public notice must be directed to Mr. Hughes and contain the project number (NWK-2015-00160).

**STATE AUTHORIZATION:** To our knowledge the applicant has not applied for a permit from the Kansas Department of Agriculture (KDA) pursuant to Kansas Statutes Annotated 82a-301 to 305. At this time, it is unknown if a KDA permit is required for this project. The applicant is responsible for obtaining the permit if necessary.

**CULTURAL RESOURCES:** Kansas City District will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We have checked the National Register of Historic Places and the Federal Register and no property listed in the Register or proposed for listing is located in the vicinity of the Pottawatomie Creek Site #1. An archaeological survey has been completed resulting in the discovery of four archeological sites. By letter to the Corps dated January 21, 2014, the Kansas State Historic Preservation Office has determined that none of the sites are eligible for listing in the National Register of Historic Places and that the project would have no effect on cultural resources as defined in 36 CFR 800.

**ENDANGERED SPECIES:** In compliance with the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

**FLOODPLAINS:** This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development

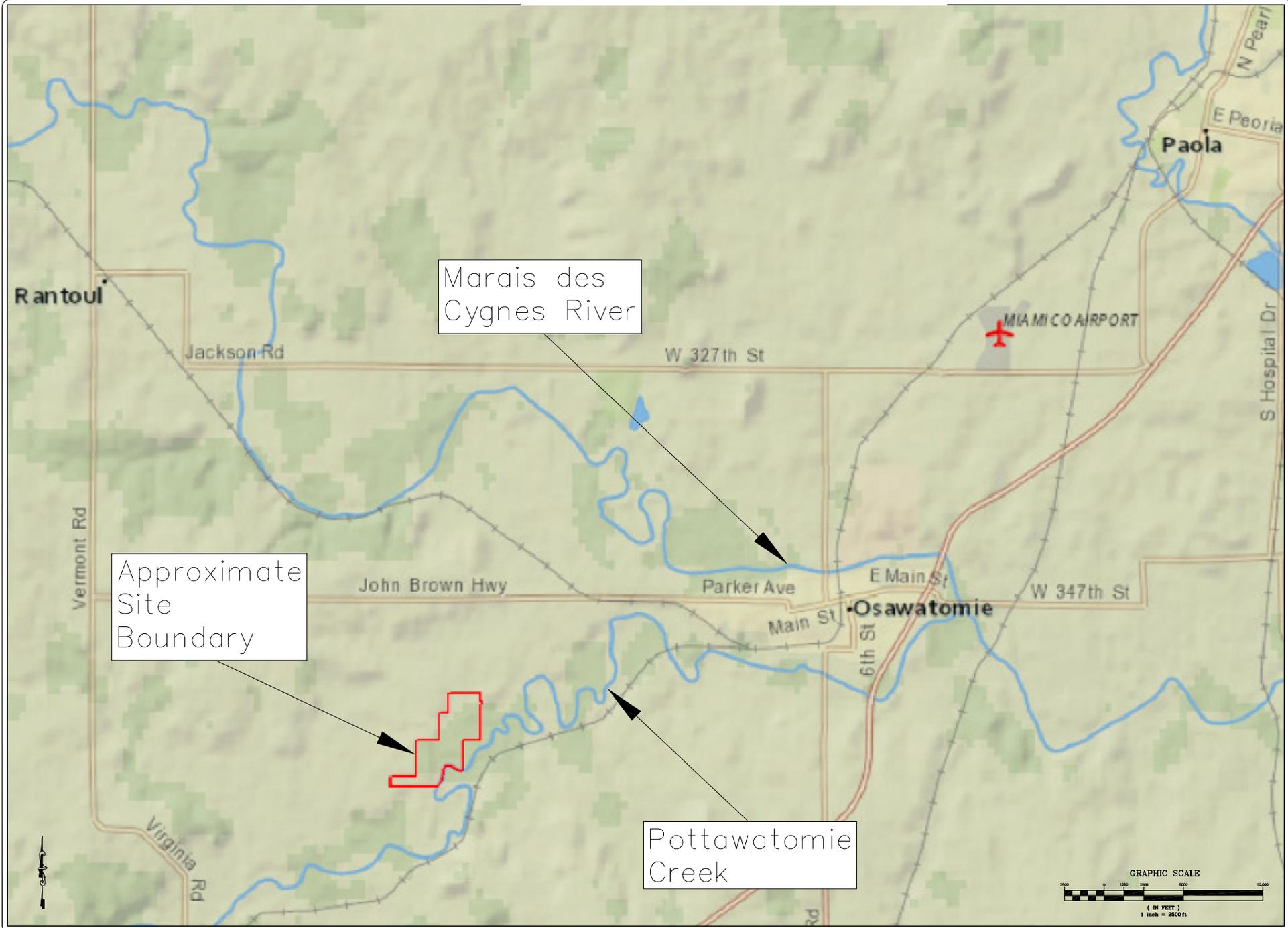
whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain.

**WATER QUALITY CERTIFICATION:** Section 401 of the Clean Water Act (33 USC 1341) requires that all discharges of dredged or fill material must be certified by the appropriate state agency as complying with applicable effluent limitations and water quality standards. The discharge must be certified before a Department of the Army permit can be issued. Certification, if issued, expresses the state's opinion that the discharge will not violate applicable water quality standards. Any activities within waters of the United States associated with construction of the mitigation bank will be verified under NWP No. 27, Aquatic Habitat Restoration, Establishment and Enhancement Activities. The Kansas Department of Health and Environment has issued water quality certification for NWP No. 27.

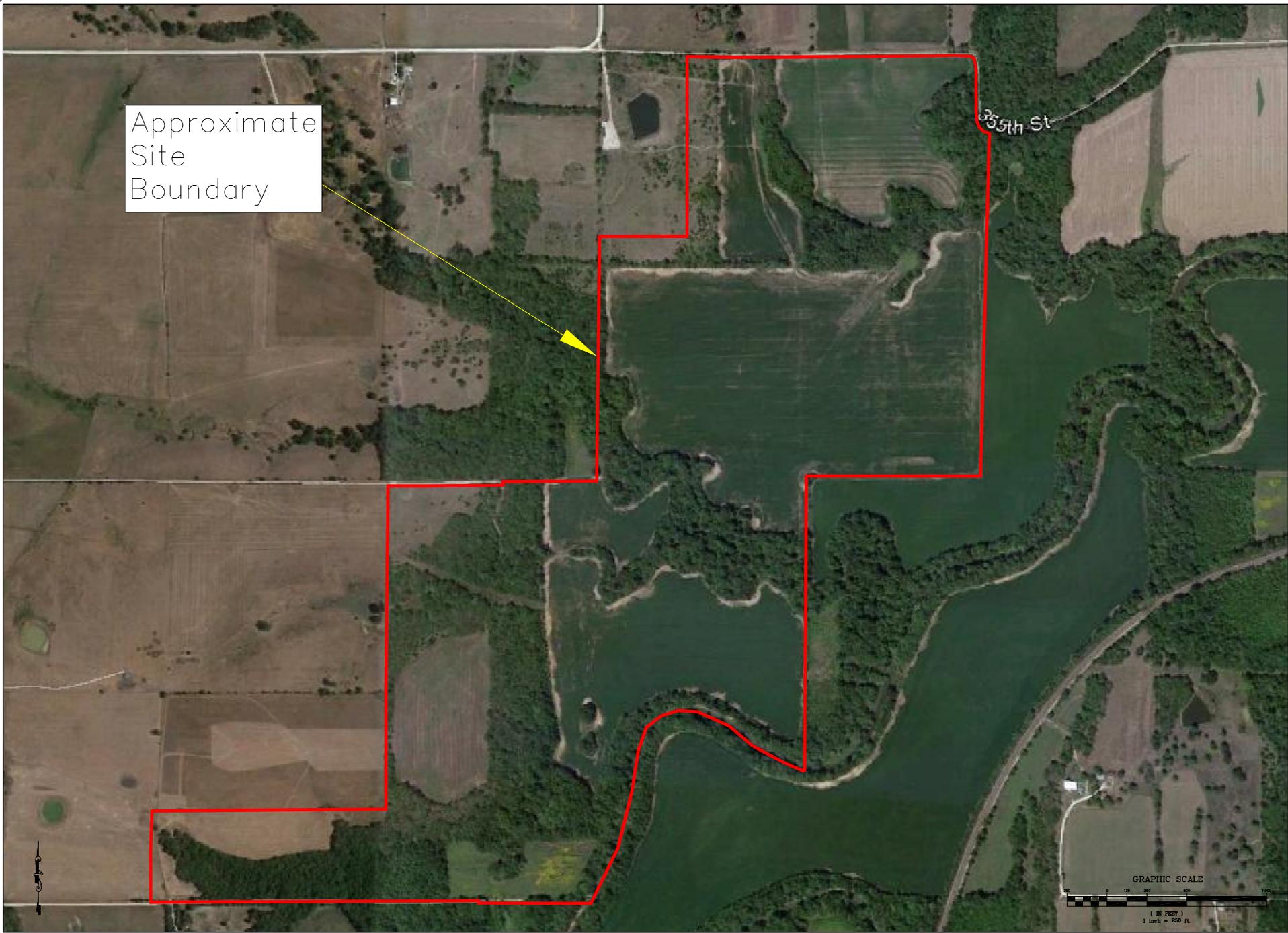
**PUBLIC INTEREST REVIEW:** The decision to authorize the Umbrella Bank Instrument and issue a permit authorizing construction of the Bank will be based on an evaluation of the probable impact including the cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern 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 the cumulative effects thereof; among those are conservation, economics, esthetics, general environmental concerns, wetlands, cultural values, 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 and, in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (33 USC 1344). 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 of Engineers 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 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.

**COMMENTS:** This notice is provided to outline details of the above-described activity so this District may consider all pertinent comments prior to determining if issuance of a permit would be in the public interest. Any interested party is invited to submit to this office written facts or objections relative to the activity on or before the public notice expiration date. Comments both favorable and unfavorable will be accepted and made a part of the record and will receive full consideration in determining whether it would be in the public interest to issue the Department of the Army permit. Copies of all comments, including names and addresses of commenters, may be provided to the applicant. Comments should be mailed to the address shown on page three of this public notice.

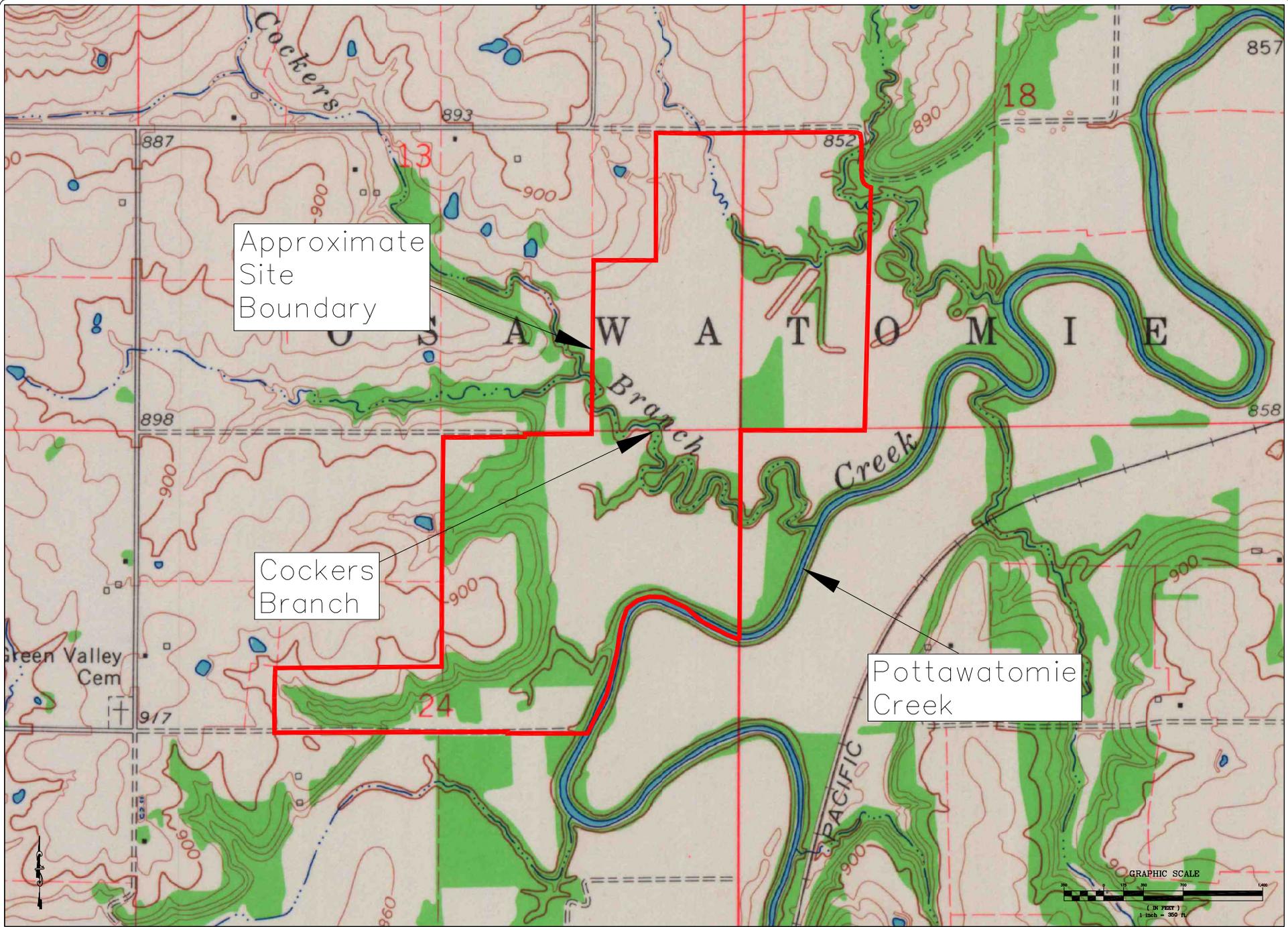
**PUBLIC HEARING:** Any person may request, in writing, prior to the expiration date of this public notice, that a public hearing be held to consider this application. Such requests shall state, with particularity, the reasons for holding a public hearing.



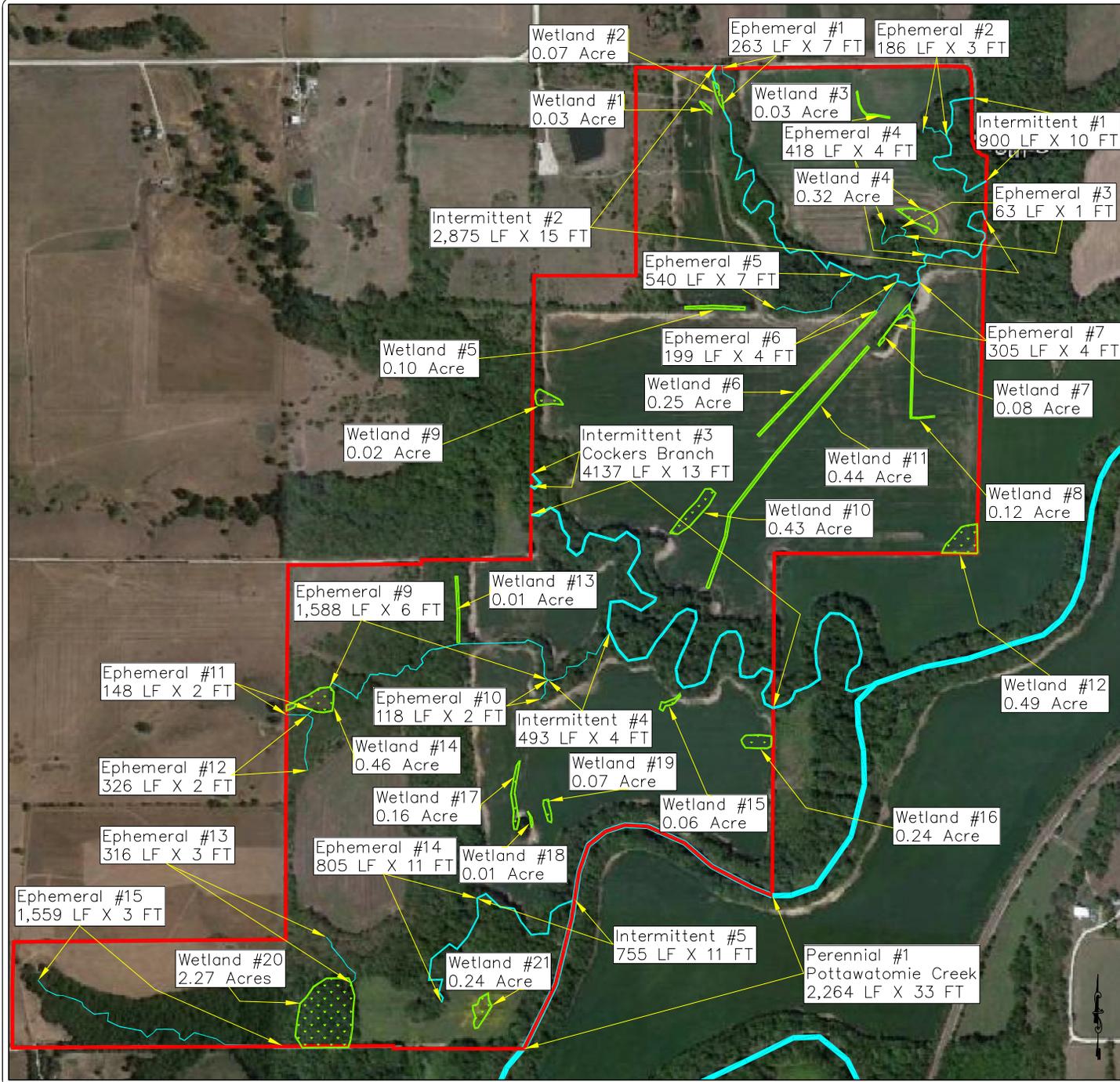
Site Location Map



AERIAL PHOTO WITH SITE BOUNDARY



TOPOGRAPHIC MAP



Sections 13 & 24 of T18S, R21E and  
 Section 18 of T18S, R22E  
 Latitude 38.476917° Longitude -95.032380°  
 Miami County, Kansas  
 322 Acres

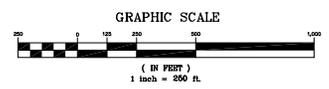
**Jurisdictional Assessment**

- Wetland #1: 0.03 Acre, Lat. N38.48341, Long. W95.02954
  - Wetland #2: 0.07 Acre, Lat. N38.48357, Long. W95.02931
  - Wetland #3: 0.03 Acre, Lat. N38.48320, Long. W95.02673
  - Wetland #4: 0.32 Acre, Lat. N38.48171, Long. W95.02572
  - Wetland #5: 0.10 Acre, Lat. N38.48045, Long. W95.02981
  - Wetland #6: 0.25 Acre, Lat. N38.47838, Long. W95.02850
  - Wetland #7: 0.08 Acre, Lat. N38.48013, Long. W95.02612
  - Wetland #8: 0.12 Acre, Lat. N38.47871, Long. W95.02601
  - Wetland #9: 0.18 Acre, Lat. N38.47917, Long. W95.03261
  - Wetland #10: 0.43 Acre, Lat. N38.47746, Long. W95.02960
  - Wetland #11: 0.44 Acre, Lat. N38.47812, Long. W95.02813
  - Wetland #12: 0.49 Acre, Lat. N38.47688, Long. W95.02486
  - Wetland #13: 0.01 Acre, Lat. N38.47590, Long. W95.03434
  - Wetland #14: 0.46 Acre, Lat. N38.47454, Long. W95.03740
  - Wetland #15: 0.06 Acre, Lat. N38.47448, Long. W95.03042
  - Wetland #16: 0.24 Acre, Lat. N38.47388, Long. W95.02857
  - Wetland #17: 0.16 Acre, Lat. N38.47318, Long. W95.03344
  - Wetland #18: 0.01 Acre, Lat. N38.47278, Long. W95.03314
  - Wetland #19: 0.07 Acre, Lat. N38.47287, Long. W95.03280
  - Wetland #20: 2.27 Acres, Lat. N38.47024, Long. W95.03740
  - Wetland #21: 0.24 Acre, Lat. N38.46985, Long. W95.03428
- Total Wetland Acres = 6.08 Acres

- Ephemeral #1: 263 LF X 7 FT, Lat. N38.48381, Long. W95.02926
  - Ephemeral #2: 186 LF X 3 FT, Lat. N38.48292, Long. W95.02530
  - Ephemeral #3: 63 LF X 1 FT, Lat. N38.48148, Long. W95.02602
  - Ephemeral #4: 418 LF X 4 FT, Lat. N38.48134, Long. W95.02574
  - Ephemeral #5: 540 LF X 7 FT, Lat. N38.48046, Long. W95.02755
  - Ephemeral #6: 199 LF X 4 FT, Lat. N38.48048, Long. W95.02623
  - Ephemeral #7: 305 LF X 4 FT, Lat. N38.48060, Long. W95.02583
  - Ephemeral #9: 1,588 LF X 6 FT, Lat. N38.47519, Long. W95.03505
  - Ephemeral #10: 118 LF X 2 FT, Lat. N38.47467, Long. W95.03277
  - Ephemeral #11: 148 LF X 2 FT, Lat. N38.47439, Long. W95.03725
  - Ephemeral #12: 326 LF X 2 FT, Lat. N38.47402, Long. W95.03727
  - Ephemeral #13: 316 LF X 3 FT, Lat. N38.47077, Long. W95.03677
  - Ephemeral #14: 805 LF X 11 FT, Lat. N38.47132, Long. W95.03418
  - Ephemeral #15: 1,559 LF X 3 FT, Lat. N38.46982, Long. W95.04060
- Total Ephemeral: 6,834 LF

- Intermittent #1: 900 LF X 10 FT, Lat. N38.48257, Long. W95.02522
  - Intermittent #2: 2,875 LF X 15 FT, Lat. N38.48125, Long. W95.02813
  - Intermittent #3: 4,137 LF X 13 FT, Lat. N38.47590, Long. W95.03125
  - Intermittent #4: 493 LF X 4 FT, Lat. N38.47506, Long. W95.03214
  - Intermittent #5: 755 LF X 11 FT, Lat. N38.47102, Long. W95.03319
- Total Intermittent: 9,160 LF

- Perennial #1: 2,264 LF X 33 FT, Lat. N38.47227, Long. W95.03199
- Total Perennial: 2,264 LF



**JURISDICTIONAL ASSESSMENT (SAMPLE POINTS)**