

TERRA TECHNOLOGIES

Final Mitigation Banking Instrument

For the
Sni-A-Bar Creek
Wetland & Stream Mitigation Bank



August 2008

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This Mitigation Banking Instrument regarding the establishment, use, operation, and maintenance of the Sni-A-Bar Creek Wetland & Stream Mitigation Bank (hereinafter, the Bank) is made and entered into, by, and among Swallow Tail, LLC (hereinafter, Sponsor), the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the Missouri Department of Natural Resources (MDNR), and the Missouri Department of Conservation (MDC), with reference to the following:

I. PREAMBLE

A. Purpose: Whereas, the purpose of this Mitigation Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used with the intent to sell credits commercially for compensatory mitigation for impacts to waters of the United States, including wetlands, which result from activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, provided such use has met all applicable requirements and is authorized by the appropriate authority.

B. Location and Ownership of Parcel: Whereas, Swallow Tail, LLC owns approximately 69.73 acres of land in unincorporated Jackson County, Missouri to the northwest of the City of Grain Valley (see Figures in Appendix A) for which the Sponsor has developed a preliminary mitigation plan to re-establish, rehabilitate, enhance, preserve, and maintain persistent emergent wetlands, broad-leaved forested wetlands, and riparian corridors. The subject parcels are contained within Sections 24 & 25 Township 49N Range 30W and are comprised mainly of fields containing agricultural row crops, a few existing wetlands, and riparian corridors. As shown in the Site Figures in Appendix A, the proposed Bank lands are contained within three separate areas, (referred to in the aggregate as the Site). Area 1 is approximately 19.45 acres in size and is bordered on the north by Duncan Road, the east by an adjoining third-party wetland mitigation site and a residence, the south by another adjoining third-party wetland mitigation site, and the west by a neighboring agricultural parcel. Area 2 is a small area 0.36 acres in size. It is bordered to the south and west by Sni-A-Bar Creek, to the east by Howell Road, and to the north by a residential parcel. Area 3 is roughly 49.92 acres in size and is bordered on the west by Howell Road, by an unnamed perennial stream and a privately owned agricultural parcel to the north, and by Sni-A-Bar Creek on the east and south. The surrounding area is predominantly agricultural floodplain with some light residential development.

C. Project Description: Whereas, under this Mitigation Banking Instrument, the Sponsor will create the Sni-A-Bar Creek Wetland & Stream Mitigation Bank, which will be approximately 69.73 acres in area. To achieve this goal, the Sponsor proposes to re-establish 20.90 acres of Broad-leaved Forested Wetland, 6.61 acres of Persistent Emergent Wetland, and 24.68 acres of Riparian Corridor (using the



terminology described in *Classification of Wetlands and Deepwater Habitats of the United States*, by Cowardin, *et al.*, 1979). Additionally, the Sponsor intends to rehabilitate 1.76 acres of Existing Wetlands, enhance 15.29 acres of existing Riparian Corridor, and preserve 0.49 acres of Existing Wetlands [See Table 3 in Section IV.E]. All of these activities are in accordance with the provisions of this Mitigation Banking Instrument and the Bank Development Plan (Appendix C). The Sponsor shall then maintain the Bank in such condition in perpetuity.

D. Baseline Conditions: Whereas, much of the Bank area can be accurately depicted by the description provided in this section. Virtually the entire Site exists as either existing wooded riparian corridor or as agricultural fields which have been in production for decades, producing corn, wheat and soybeans. These agricultural fields contain a small number of farmed wetlands including one drainage swale in Area 1. The riparian corridor contains one wetland in the southern part of Area 1 and two wetlands in the southern portion of Area 3. Historically, the site has been profoundly influenced by its location in the floodplain of Sni-A-Bar Creek. Topographic and site location information is shown in Figures 1 and 2. A Section, Township, and Range map is presented as Figure 3 and an aerial photograph of the Site is included as Figure 4.

The soils on the Site are mapped as Zook silty clay loam, Colo silty clay loam, and Kennebec silt loam (Figure 5). All of these soils are included in the 2006 Natural Resources Conservation Service (NRCS) National Hydric Soil List. The entire Site is within the 100-year floodplain (Figure 6).

The National Wetlands Inventory (NWI) map shows two Inland Herbaceous Wetlands and one Inland Forested Wetland in Area 1. The two Inland Herbaceous Wetlands are located in the drainage swale and in the western field while the Inland Forested Wetland exists within the riparian corridor of Sni-A-Bar Creek. All of Area 2 is shown as an Inland Forested Wetland. The NWI map also shows two Inland Herbaceous Wetlands in Area 3, both in the northern field. In addition, almost the entire existing riparian corridor in Area 3 is mapped as Inland Forested Wetland (Figure 7). A review of farmed wetland records at the Jackson County Soil and Water Conservation office revealed that farmed wetlands were mapped in the drainage swale in Area 1 and in the largest NWI-mapped location in the central field of Area 3 (Figure 8).

A crop slide review of the site was undertaken to acquire more information regarding hydrologic conditions during the growing season. The USDA Farm Services Agency in Blue Springs, Missouri had aerial photographs taken in July from 1992 to 2001, as well as in May of 1993, 1994, and 1995. A review of these crop slides showed crop success across most of Area 1 with areas of inundation and crop loss in nine out of the eleven years. The areas of inundation had some variability across the years, but some areas showed relatively consistent surface hydrology. These conditions indicate that the fields on the Site are well suited for wetland development if a sufficient amount of microtopography is created.

From January to August 2006 scientists from Terra Technologies made several visits to the Site to determine the location and extent of waters of the U.S., including wetlands, on the proposed Bank. Figure 9 shows the results of the Jurisdictional Assessments of the Site. It is the opinion of Terra Technologies that the Site contains four farmed wetlands, one herbaceous wetland in the drainage swale and three forested wetlands, totaling 4.09 acres. While the Corps has issued an Approved Jurisdictional Determination for Area 1, they have issued a Preliminary Jurisdictional Determination for Area 3.

Hydrologically, Area 1 receives surface water from a culvert beneath Duncan Road, which directs flow into the very northern end of the swale. The entire proposed Bank also likely receives subsurface flow from the uplands to the north and west and is occasionally inundated by Sni-A-Bar Creek. Additionally, water from Howell Road has been flooding areas on both sides of the road. A berm that the previous farmer has built on the western border of the northern field of Area 3 has been breached and will allow more hydrology to enter that Area.

E. Establishment and Use of Credits: Whereas, in accordance with the provisions of this Mitigation Banking Instrument and upon satisfaction of the success criteria contained in Section IV.D, a total of 29.32 wetland credits and a total of 57,225.62 stream credits will be available to be used as compensatory mitigation for impacts to waters of the U.S, including wetlands, in accordance with all applicable requirements (see Section IV.E). Credits will be sold to third parties at an appropriate market rate to be determined by the Sponsor.

F. Interagency Review Team Members: Whereas, the Interagency Review Team (IRT) consists of:

1. U.S. Army Corps of Engineers, Kansas City District (Corps), Chair.
2. U.S. Environmental Protection Agency, Region 7 (EPA).
3. U.S. Fish and Wildlife Service, Columbia Missouri Field Office (FWS).
4. Missouri Department of Natural Resources (MDNR).
5. Missouri Department of Conservation (MDC).

G. Definitions: Whereas, the following definitions, which are adapted from Regulatory Guidance Letter No. 02-2 [Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899] apply throughout this document:

1. Enhancement: The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.



2. Restoration: The manipulation of the physical, chemical, or biological characteristics present with the goal of returning natural or historic functions to a former or degraded wetland.

a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland.

b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland.

H. Disclaimer: Whereas, this Mitigation Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties.

I. Appendices: Whereas, the following exhibits are incorporated as appendices to this Mitigation Banking Instrument:

1. "Appendix A", Figures Showing Bank Location and Conditions Prior to Restoration Activities
2. "Appendix B", Photo Documentation Showing Conditions Prior to Restoration Activities
3. "Appendix C", Bank Development Plan
4. "Appendix D", Crediting and Debiting Procedures
5. "Appendix E", Contingency Measures: Letter of Credit
6. "Appendix F", Real Estate Provisions

II. AUTHORITIES

The establishment, use, operation and maintenance of the Bank will be carried out in accordance with the following authorities:

A. Federal:

1. Clean Water Act (33 USC 1251 et seq.)
2. Rivers and Harbors Act (33 USC 403)
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.)
4. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-330)
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230)

6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
7. Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 F.R. 58605 et seq.) (November 28, 1995)
8. Proposed Rule for the Compensatory Mitigation for Losses of Aquatic Resources issued by the Corps and the EPA, (March 28, 2006)

B. State:

1. Missouri State Water Quality Certification (10 CSR 20-6.060)
2. Missouri State Water Quality Standards (10 CSR 20-7.031)
3. Missouri Clean Water Law, Chapter 644 Missouri Revised Statute

NOW, THEREFORE, the parties agree to the following:

III. ESTABLISHMENT OF THE BANK

A. Sponsor Agreements: The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Mitigation Banking Instrument, to establish and maintain approximately 69.73 acres of wetland and upland habitat, as shown in Appendix C, until it is demonstrated to the satisfaction of the Corps, in consultation with the IRT, that the project complies with all conditions contained herein, or until all credits are sold, whichever is later. Work shall include implementing the Bank Development Plan (Appendix C) and then maintaining the site in perpetuity.

B. Appropriate Environmental Documentation: The Sponsor will obtain all appropriate environmental documentation, permits or other authorizations needed to establish and maintain the Bank. This Mitigation Banking Instrument does not fulfill or substitute for such authorization.

C. Adherence to the Bank Development Plan and Credit Schedule: Establishment of the Bank will be performed in its entirety as described in the Bank Development Plan (Appendix C), and the credits will become available in accordance with the schedule specified in Section IV.F of this Mitigation Banking Instrument. In the event the Sponsor determines that modifications must be made in the Bank Development Plan to ensure successful establishment of habitat within the Bank, the Sponsor shall submit a written request for such modification to the IRT, through the Corps, for approval. Documentation of implemented modifications shall be made consistent with Section III.F *infra*.

Plants to be installed on the Bank will be provided from a local source of native wetland, upland, and prairie plants. An experienced biotechnical engineering contractor will install the plants on the Bank site.

D. Financial Assurance Requirements: Sponsor agrees to provide the following financial assurances for the work described in this Mitigation Banking Instrument. The Sponsor shall provide the sum of \$40,000 U.S. Dollars as a Letter of Credit to the Midwest Mitigation Oversight Association, a non-profit group that will monitor compliance with the conservation easement. These funds shall be termed Contingency Funds and shall be used by a third party to be designated by the Midwest Mitigation Oversight Association in the event that the Sponsor fails to comply with the terms of this Banking Agreement or to rectify any unforeseen events as determined by the Corps, in consultation with the IRT. The said sum shall be reduced by 50% after the Corps, in consultation with the IRT, has agreed that the Bank has completed all construction and planting activities and the vegetative success criteria included in Section IV.D have been met. The remaining 50% of the contingency funds shall remain until the Sponsor receives a letter from the Corps, in consultation with the IRT, stating that they are satisfied that the Bank has met all of its success criteria as well as all of the terms and conditions of this Mitigation Banking Instrument and Bank Development Plan or until all credits have been sold, whichever is later. A draft copy of the letter of credit is included in Appendix E.

E. Real Estate Provisions: To ensure that the Site remains in its desired state in perpetuity, the entire area must be protected by means of conservation easement. A Conservation Easement for Area 1 that is enforceable by the Midwest Mitigation Oversight Association has been recorded with Jackson County, Missouri and is included in Appendix F. Other than site boundaries and other site-specific information, the text for the Conservation Easement for Areas 2 & 3 will be identical to the text of the Conservation Easement for Area 1. After the Bank is approved, copies of the finalized and recorded Conservation Easement for Areas 2 & 3 shall be provided to the Corps.

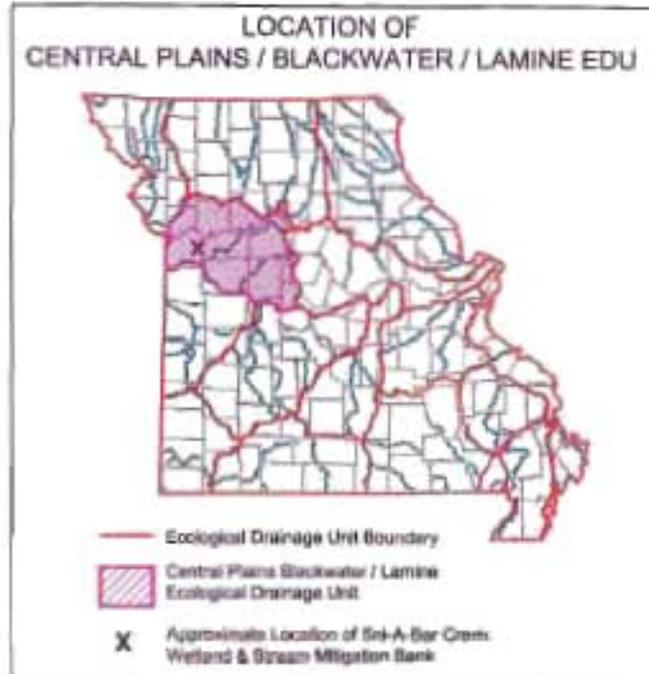
F. As-Built Reports: After approval of this document, the Sponsor agrees to submit an as-built report for construction of the Bank no more than 60 days following the completion of any construction phase of the Bank restoration. The as-built report will describe in detail any minor deviations from the design described in the Bank Development Plan (Appendix C), and will include a plan showing finished grades, surface elevations, and planting plans, as appropriate.

IV. OPERATION OF THE BANK

A. Geographic Service Area: The Bank shall be established to provide mitigation to compensate for impacts to the waters of the United States, including wetlands, within the primary Geographic Service Area of the Central Plains/Blackwater/Lamine Ecological Drainage Unit (EDU) in Missouri, where the Bank is located. This EDU surrounds the Missouri River in western Missouri [for more information on Ecological Drainage Units, please reference the Missouri Resource Assessment Partnership's document *The Aquatic Component of Gap Analysis: A Missouri Perspective*]. Decisions authorizing use of credits from the

Bank outside the Central Plains/Blackwater/Lamine EDU will be made by the Corps on a case-by-case basis in accordance with applicable requirements.

B. Access to the Site: The Sponsor will allow, or otherwise provide for, access to the Bank site by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Mitigation Banking Instrument. Inspecting parties shall provide reasonable notice of not less than 24 hours to the Sponsor prior to inspection of Bank.



C. Projects Eligible to Use the Bank: The Corps, in consultation with the IRT as necessary, will determine the eligibility of projects to use the Bank on a case-by-case basis. Projects that can be considered include those requiring authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, as well as mitigation projects, Supplemental Environmental Projects, unauthorized activities, and after-the-fact permits.

D. Success Criteria: The following criteria, in addition to the general success criteria used by the Corps, will be used to assess project success. If any of the following success criteria are based on meeting the hydrophytic vegetation, hydric soils, or wetland hydrology criteria in the 1987 U.S. Army Corps Wetlands Delineation Manual, then achieving the criteria for the applicable regional supplement to the original manual will also be acceptable as proof that the Bank is meeting its success criteria.

1. Establishment of Hydrology: Attainment of appropriate wetland hydrology will be determined by the presence of hydrology criteria included in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual for a continuous period of not less than 5% of the growing season (11 days) for a number of years to be determined appropriate by the Corps, in consultation with the IRT. This period of time will be a minimum of 2 years. According to the Jackson County Soil Survey, 5 out of 10 years have a growing season of 220 days above 28 degrees Fahrenheit (the accepted method of determining the length of the growing season according to the US Army Corps of Engineers Wetlands Delineation Manual Modifications and Clarifications CECW-OR 20 Feb 1992). Five percent of 220 days is 11 days.



2. Establishment of Wetland Conditions: Before the final credits can be released, as detailed in Section IV.F, the presence of hydric soils, wetland hydrology, and hydrophytic plants will be demonstrable for the large majority of sampling data taken during the course of the monitoring of the project. It will be the decision of the Corps, in consultation with the IRT, to determine that areas proposed for wetland establishment shall have met all three criteria described in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual with sufficient regularity to prove the establishment of wetland conditions across all areas intended for wetland development. Upland areas will be determined to be successful based on percent cover of the intended vegetation and the relative absence of invasive species, as described below.

3. Vegetative Cover: The portion of the Bank planned to be wetlands will meet the required hydrophytic vegetation criteria in the 1987 US Army Corps of Engineers Wetlands Delineation Manual. Specifically, at least 51% of the relative vegetative cover in wetland areas will be of species that are Facultative, Facultative Wetland or Obligate Wetland (excluding Facultative- species). All wetland and upland areas on the Bank will have at least a 75% absolute vegetative cover, except in areas of near-constant inundation that cannot support such a high absolute vegetative cover percentage. Trees and shrubs planted on the Bank as part of the restoration shall have a 75% survival rate. If areas do not meet any requirements related to survival rate or vegetative cover, appropriate planting and/or seeding activities will be initiated.

4. Soils: Soils shall meet the criteria described in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual. Indicators of inundation or saturation to within 12 inches of the surface can be used as an indicator that this criterion is being met before other indicators of hydric soil are achieved.

5. Invasive Species: Management of invasive species will be undertaken as is suitable to maintain biodiversity and wetland function. There shall be two categories of invasive plants: Highly Aggressive Invasive Species and Undesirable Species. Until five years after the Corps has released all credits for sale, invasive species shall be controlled as follows. Species on the list of Highly Aggressive Invasive Species (Table 1) will be eradicated upon observation and shall not, in the aggregate, cover more than 5% of the absolute cover of the Bank. In addition, a combination of the absolute cover of species on the Highly Aggressive Invasive Species list and the absolute cover of species on the Undesirable Species list (Table 2) shall not comprise more than 20% of the Bank property.

Table 1. Highly Aggressive Invasive Species

Scientific Name	Common Name
Alliaria petiolata	Garlic Mustard
Carduus nutans	Musk Thistle
Cirsium arvense	Canada Thistle
Dipsacus fullonum	Common Teasel
Dipsacus lanciniatus	Cut-leaf Teasel
Elaeagnus umbellata	Autumn Olive
Euonymus fortunei	Wintercreeper
Euphorbia esula	Leafy Spurge
Festuca spp.	Tall Fescue
Lespedeza cuneata	Sericea lespedeza
Lonicera japonica	Japanese Honeysuckle
Lonicera morrowii & Lonicera maackii	Bush Honeysuckles
Lythrum salicaria	Purple Loosestrife
Melilotus alba & Melilotus officinalis	Sweet Clover (White & Yellow)
Phalaris arundinacea	Reed Canarygrass
Pueraria lobata	Kudzu
Rhamnus cathartica	Common Buckthorn
Rosa multiflora	Multiflora Rose
Securigera varia	Crown Vetch
Sesbania exaltata	Sesbania
Sorghum halepense	Johnson Grass
Typha spp.	Cattails

Table 2. Undesirable Species

Scientific Name	Common Name	Month	Factor	Method
Abutilon spp.	Velvet Leaf	July-Oct	Discovery	1,2
Agrostis spp.	Redtop	April-Nov	Discovery	3
Amaranthaceae family	Pigweed (All species)	June-Sept	Discovery	1,2
Ambrosia spp.	Ragweed (All)	July-Nov	Height=1 feet	1,3,4
Anthriscus spp.	Parsley	April-July	Discovery	1,3
Arctium spp.	Burdock	July-Sept	Height=1 feet	1,3,4
Brassicaceae family	Mustard	March-May	Height=1 feet	1,3
Bromus spp.	Bromegrass	April-Nov	Discovery	3
Cannabis spp.	Hemp	July-Sept	Discovery	1,2
Carduus spp.	Musk Thistle	May-Sept	Discovery	3
Centaurea spp.	Knapweed	May-Sept	Height=2 feet	3
Chenopodium spp.	Lamb's Quarters	May-Sept	Height=2 feet	1,2
Cicuta spp.	Water Hemlock	June-Sept	Height=2 feet	1,3
Cirsium spp.	Thistles (All)	May-Sept	Discovery	3
Conium spp.	Poison Hemlock	May-Aug	Height=2 feet	1,3
Conyza spp.	Horseweed	June-Oct	Height=2 feet	1,2,4
Croton spp.	Wooly Croton	July-Sept	Height=2 feet	1,2
Dactylis spp.	Orchardgrass	April-Nov	Discovery	3
Datura spp.	Jimson Weed	July-Sept	Discovery	1,3
Gaura spp.	Gaura	June-Sept	Discovery	1,3
Helianthus spp.	Common Sunflower	July-Nov	Discovery	1,2,3
Kochia spp.	Fireweed, Mexican	July-Sept	Height=1 feet	1,2
Lactuca spp.	Prickly Lettuce	June-Oct	Discovery	1,3
Lolium spp.	Ryegrass	April-Nov	Discovery	3
Lotus spp.	Birdsfoot Trefoil	May-Sept	Discovery	3
Maclura pomifera	Osage Orange	June-Oct	Discovery	2,3
Oenothera spp.	Biennial gaura	July-Oct	Height=2 feet	1,2,4
Oenothera spp.	Evening Primrose	June-Oct	Height=2 feet	1,2,4
Phleum spp.	Timothy	April-Nov	Discovery	3
Poa spp.	Bluegrass	April-Nov	Discovery	3
Populus deltoides	Cottonwood	April-Nov	Height=2 feet	2,3
Sonchus spp.	Sow Thistle	May-Oct	Discovery	1,3
Sorghum spp.	Sorghum hybrids	June-Nov	Discovery	3
Trifolium spp.	True Clovers	March-May	Discovery	3
Vicia spp.	Vetch	May-Oct	Discovery	1,3
Xanthium spp.	Cocklebur	July-Nov	Discovery	1,3

Methods of removal include:

- (1) Extirpation
- (2) Hand cut
- (3) Chemical spray
- (4) Seedhead separation



The methods of removal described above provide insight into the techniques commonly used to control weeds. Extirpation refers to the removal of the plant and roots from the ground. After pulling, the plant can be left on the ground. For other species, hand cutting or power trimming to a height of 12-inches will suffice to prevent the plant material from making a seed head. Chemical spraying should be completed with an approved product containing glyphosate (Rodeo or equal). Control of tree saplings should utilize Tordon RTU or equal. All label directions and safety precautions will be followed while using approved herbicides. Herbicides will be applied with a back-pack or bottle sprayer for best results and to minimize overspray onto native plant materials.

Additional warranted maintenance may include the pickup and piling of wind-fall limb debris, and the cutting and removal of fallen trees.

E. Approved Credit Quantities: Upon signature of this document, the Corps, in consultation with the IRT, grants the Bank the following proposed quantities of wetland and stream credits, as shown in Table 3. The release of these credits shall follow the schedule described in Section IV.F. In accordance with the Proposed Rule for Compensatory Mitigation for Losses of Aquatic Resources issued by the Corps and the EPA, dated March 28, 2006, these quantities can be adjusted downward if performance standards are not met or adjusted upward if the performance standards are significantly exceeded. Alternatively, in the event that a portion of the Bank does not meet the success criteria described in Sections IV.D.1 (Hydrology), IV.D.2 (Wetland Conditions), or IV.D.4 (Soils), or the requirement of a minimum amount of relative hydrophytic vegetative cover in wetland areas described in Section IV.D.3, but said area meets all of the other necessary success criteria (or if an area that was intended as an upland habitat meets the necessary requirements for wetland creations), then the type of credits (wetland or stream) granted to the Sponsor for restoring said area can be changed with the written approval of both the Sponsor and the Corps, in consultation with the IRT.

1. Wetland Credits:

Table 3. Proposed Wetland Credit Amounts

Restoration Activity	Area	Credit Ratio (Credits:Acres)	Resulting Credits
Broad-Leaved Forested Wetland Re-establishment	20.90 Acres	1:1	20.90
Persistent Emergent Wetland Re-establishment	6.61 Acres	1:1	6.61
Existing Wetland Rehabilitation	1.76 Acres	1:1	1.76
Existing Wetland Preservation	0.49 Acres	1:10	0.05

TOTAL WETLAND CREDITS: 29.32



As shown in Table 3, the proposed re-establishment, rehabilitation, and preservation activities shall result in the granting of 29.32 wetland credits to the Sponsor. These credits will be distributed by the Corps, in consultation with the IRT, to the Sponsor according to the schedule provided in Section IV.F.

Based on the onsite soils, the concentration of forested wetlands in similar landscape locations nearby, and the fact that Sni-A-Bar Creek was likely more connected to its floodplain historically than it is now, most of the areas proposed to be included in the Bank are believed to have been forested wetlands before conversion to agriculture. This area is on the floodplain terrace of a perennial river and all of the soils on the site are mapped as hydric. The geomorphology of the site and the remnants of the natural plant community point to the fact that the Bank site used to be either Wet-Mesic Bottomland Forest or Wet Bottomland Forest according to the terminology described in the 2005 version of *The Terrestrial Natural Communities of Missouri* by Paul Nelson. Because of this evidence of predevelopment wetland conditions, we have viewed this project as one of wetland restoration rather than of wetland creation.

Areas proposed to receive wetland credits for re-establishment or rehabilitation (at a 1 credit: 1 acre ratio) have been observed to not contain all three criteria necessary for wetland determination (wetland hydrology, hydrophytic plant community, and hydric soils) or are wetlands deemed to provide only marginal wetland ecosystem functions and which will see a vast improvement in function and ecosystem value as a result of rehabilitation. Those farmed wetlands shown in the Bank Development Plan Figure in Appendix C as being entirely surrounded by areas proposed for Broad-Leaved Forested Wetland Re-Establishment or Riparian Corridor Re-Establishment will be planted with herbaceous and woody vegetation. The drainage swale in Area 1 and the two forested wetlands in the southern portion of Area 3 are the only existing wetlands to contain any wetland vegetation. The wetland in the drainage swale will be rehabilitated through the planting of a large number of hydrophytic species which will vastly increase the species diversity and habitat quality of the wetlands.

The two existing wetlands in the southern portion of Area 3 will be preserved as part of the establishment of the Bank, resulting in the creation of 0.05 credits. In Section II.B.4, the 1995 Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 F.R. 58605 et seq.) states that:

“Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the bank.”

The preservation of these existing wetlands benefits the surrounding re-establishment and rehabilitation efforts by providing a seed source of plant species



that are adapted to mature forested habitats. The adjacent wetland and riparian corridor re-establishment areas will have an herbaceous layer that is dominated by species adapted to early successional conditions such as full sun. As these areas mature and more shade is created by the planted woody vegetation, the species in the preserved wetlands will begin to colonize the re-establishment areas, thus augmenting the functioning of the re-establishment areas.

2. Stream Credits:

The number of proposed stream credits was determined by using the Stream Mitigation Bank Credit Assessment Worksheet contained within the Missouri Stream Mitigation Method manual. The completed worksheet for the Bank is included as Table 9.

The Bank is a secondary priority area because it is adjacent to approved mitigation sites for Corps Permit #200400739 and #200600024. Additionally, the Monitoring/Contingency Plan will be Level II because the Sponsor will provide photographic documentation and plant survival percentages as part of the monitoring of the Bank. The Net Benefit areas are described in Table 8 and shown below in Image 1.

The Sponsor is proposing to re-establish 24.68 acres of riparian corridor to Sni-A-Bar Creek and the unnamed perennial stream north of Area 3 as well as to enhance 15.29 acres of existing riparian corridor. Re-establishment would be achieved by planting trees and seeding areas in order to expand the existing corridors along the one side of Sni-A-Bar Creek and the unnamed perennial stream north of Area 3 within the Bank parcel. As shown in the Bank Development Plan in Appendix C, the area proposed for riparian corridor re-establishment would provide a 300-foot wide buffer for Sni-A-Bar Creek and for the unnamed perennial stream north of Area 3. Enhancement of the existing corridor would be achieved through prescribed fire, the harvesting of some of the many early successional tree species, the planting of additional woody species not currently present, and the introduction of a large amount of herbaceous diversity to a corridor that contains a relatively small number of herbaceous plant species.

Table 8. Net Benefit Area Descriptions

Net Benefit Area	Location / Description	Average Width (Feet)
1	Riparian Corridor Re-establishment area in the southwest corner of Area 1. Restoration activities will include extending the current average buffer width of 100 feet to an average of 275 feet, breaching the existing levee to re-establish floodplain functionality, and re-establishing wetlands in the area.	175
2	Thin Riparian Corridor Enhancement area southeast of Net Benefit Area 1. Restoration activities will enhance the existing riparian corridor, which extends from an average of 50 feet to an average of 125 feet. Additionally, willow cuttings will help to stabilize the stream channel in place.	75
3	Wide Riparian Corridor Enhancement area east of Net Benefit Area 2. Restoration activities will enhance the existing riparian corridor, which extends from an average of 50 feet to an average of 225 feet. Substantial amounts of trash will also be removed. Additionally, willow cuttings will help to stabilize the stream channel in place.	175
4	Riparian Corridor Enhancement of Area 2. Restoration activities will enhance the existing riparian corridor, which extends from the stream bank to an average of 50 feet and re-establish wetlands in the corridor. Additionally, willow cuttings will help to stabilize the stream channel in place.	50

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5	Riparian Corridor Enhancement of the existing corridor of Sni-A-Bar Creek in the southern part of Area 3. Restoration activities will enhance the existing riparian corridor, which extends from the stream bank to an average of 125 feet, and will re-establish wetlands. In addition, the exiting levee will be breached in several locations to restore floodplain functionality to Area 3.	125
6	Riparian Corridor Enhancement of the existing corridor of Sni-A-Bar Creek in the eastern part of Area 3. Restoration activities will enhance the existing riparian corridor, which extends from the stream bank to an average of 75 feet, and will re-establish wetlands. In addition, willow cuttings will help to stabilize the stream channel in place.	75
7	Riparian Corridor Re-establishment area in the southwestern portion of Area 3. Restoration activities will extend the current average buffer width of 125 feet to an average of 300 feet. Wetlands will also be re-established.	175
8	Riparian Corridor Re-establishment area in the eastern portion of Area 3. Restoration activities will extend the current average buffer width of 100 feet to an average of 300 feet and will re-establish wetlands in this area.	200
9	Riparian Corridor Enhancement of the existing corridor of the unnamed perennial stream north of Area 3, with the exception of the shared corridor with Sni-A-Bar Creek. Restoration activities will enhance the existing riparian corridor, which extends from the stream bank to an average of 50 feet, and will re-establish wetlands within the existing corridor and restore in-stream features such as riffles, runs, pools, and glides.	50



10	Riparian Corridor Re-establishment area south of the unnamed perennial stream north of Area 3. Restoration activities will extend the current average buffer width of 50 feet to an average of 300 feet and will re-establish wetlands in this area.	250
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Image 1. Stream Net Benefit Areas

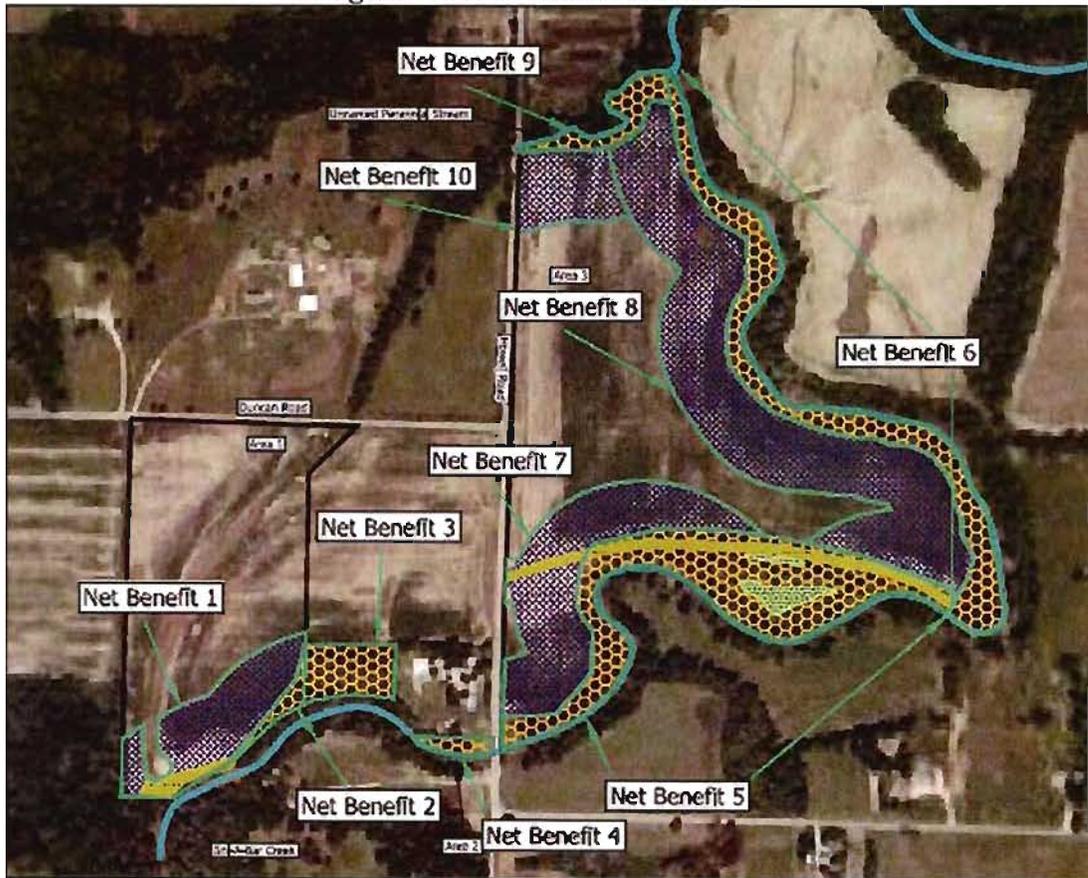


Table 9. Stream Mitigation Bank Credit Assessment Worksheet

Stream Type	Ephemeral 0.1	Intermittent 0.6	Perennial			
			<15' 0.8	15'-30' 1.0	30'-50' 1.2	>50' 1.4
Priority Area	Tertiary 0.1	Secondary 0.4	Primary 0.8			
Net Benefit [Riparian (for each side of stream)]	Additional Improvements (select values from Table 1 times 1.2 multiplier)		Riparian Creation, Enhancement, Restoration, and Preservation Factors (select values from Table 1) (MBW = Minimum Buffer Width = 25' + 2' / 1% slope)			
System Protection Credit	Condition : MBW restored or protected on both streambanks To calculate: (Net Benefit Stream Side A + Net Benefit Stream Side B) / 2					
Net Benefit (Stream)	Moderate 1.0	Good 2.0		Excellent 3.5		
Monitoring/Contingency (for each side of stream)	Level I 0.075	Level II 0.3		Level III 0.5		
Control /Site Protection	Corps approved site protection without third party grantee 0.075		Corps approved site protection recorded with third party grantee, or transfer of title to a conservancy 0.3			

Factors		Net Benefit 1	Net Benefit 2	Net Benefit 3	Net Benefit 4	Net Benefit 5	Net Benefit 6
Stream Type		1.2	1.2	1.2	1.2	1.2	1.2
Priority Area		0.4	0.4	0.4	0.4	0.4	0.4
Net Benefit (Riparian)	Stream Side A	1.32	0.5	1.02	0.48	1.08	0.72
	Stream Side B	--	--	--	--	--	--
System Protection Credit Condition Met (Buffer on both sides)		--	--	--	--	--	--
Net Benefit (Stream)		3.5	1.0	1.0	1.0	3.5	1.0
Monitoring/Contingency	Stream Side A	0.3	0.3	0.3	0.3	0.3	0.3
	Stream Side B	--	--	--	--	--	--
Control /Site Protection	Stream Side A	0.3	0.3	0.3	0.3	0.3	0.3
	Stream Side B	--	--	--	--	--	--
Sum Factors (M)=		7.02	3.7	4.22	3.68	6.78	3.92
Linear Feet of Stream Buffer (LF)= (don't count each bank separately)		666	341	333	304	2,287	2,931
Total Credits (C) = M X LF		4,675.32	1,261.7	1,405.26	1,118.72	15,505.86	11,489.52

Total Credits Generated = See next page

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Factors		Net Benefit 7	Net Benefit 8	Net Benefit 9	Net Benefit 10		
Stream Type		1.2	1.2	0.8	0.8		
Priority Area		0.4	0.4	0.4	0.4		
Net Benefit (Riparian)	Stream Side A	1.2	1.44	0.48	2.4		
	Stream Side B	--	--	--	--		
System Protection Credit Condition Met (Buffer on both sides)		--	--	--	--		
Net Benefit (Stream)		--	--	2.0	--		
Monitoring/Contingency	Stream Side A	0.3	0.3	0.3	0.3		
	Stream Side B	--	--	--	--		
Control /Site Protection	Stream Side A	0.3	0.3	0.3	0.3		
	Stream Side B	--	--	--	--		
Sum Factors (M)=		3.4	3.64	4.28	4.2		
Linear Feet of Stream Buffer (LF)= (don't count each bank separately)		1,454	3,325	758	352		
Total Credits (C) =M X LF		4,943.6	12,103	3,244.24	1,478.4		

Total Credits Generated = 57,225.62

F. Schedule of Credit Availability: Upon submittal of all appropriate documentation by the Sponsor, and subsequent approval by the Corps, in consultation with the other members of the IRT, it is agreed that credits will become available for use by the Sponsor or for transfer to a third party in accordance with the following schedule:

1. 10% of the total number of anticipated credits shall be available for debiting immediately after all of the following are completed: (1) the final signature is recorded on this Mitigation Banking Instrument, (2) the Sponsor's purchase of restoration services, and (3) the Sponsor's demonstration of a conservation easement for the Bank site.
2. An additional 15% of the total number of anticipated credits shall be available for debiting immediately for those areas where construction and planting have been completed and for which an as-built report has been submitted by the Sponsor to the IRT through the Corps.
3. An additional 25% of the total number of anticipated credits for areas intended for wetland re-establishment or rehabilitation shall be available for debiting following successful demonstration of vegetative success criteria as described in Section IV.D. Areas proposed for Riparian Corridor Re-establishment will receive all of the remaining proposed credits when vegetative success is achieved.

4. The remaining total anticipated credits for wetland areas where the as-built report has been submitted shall be made available for withdrawal when hydrologic success criteria has been met, as well as when all other success criteria, as described in Section IV.D, are satisfied, based on monitoring reports approved by the Corps, in consultation with the IRT.

G. Provisions for Uses of the Bank: Hunting, fishing, and trapping may be compatible uses when conducted in accordance with state and federal regulations and approved by the Corps, in consultation with the IRT. This includes the leasing of such rights to others. However, compatibility of temporary blinds or stands for hunting purposes will be reviewed and may be approved by the Corps, in consultation with IRT. The Sponsor and/or Lessee will make all reasonable and practicable efforts to prevent unauthorized and incompatible uses of the Bank site.

Unless outlined in the Bank Development Plan or approved in writing by the Corps, in consultation with the IRT, the Sponsor, or the Lessee shall NOT:

1. Grant new or additional easements, right of way, or any other property interest in or to the project areas for pipelines, utility lines, transportation projects, *etc.*;
2. Construct trails or roads except for maintenance and educational purposes, which are contingent upon Corps review and approval in consultation with the IRT;
3. Use or allow the use of permanent hunting blinds, motorcycles, off-road vehicles, swamp buggies, motor boats, or other motorized vehicles unless for maintenance activities approved by the Corps, in consultation with the IRT;
4. Cut, harvest, or otherwise alter the successional growth of timber unless outlined in the Bank Development Plan or approved by the Corps, in consultation with the IRT;
5. Burn, hay, graze, cultivate, or plant crops unless outlined in the Bank Development Plan or this Mitigation Banking Instrument as a management tool or approved by the Corps, in consultation with the IRT; or
6. Use or authorize the use of areas within the Bank for any purpose that interferes with the individual Bank's goals and objectives. This includes modifying the hydrology or vegetation to create a different type of wetland. The natural succession of one wetland type into another will not be interpreted as a violation of this provision.

V. MAINTENANCE AND MONITORING OF THE BANK

A. Maintenance Provisions: The Sponsor agrees to perform all necessary work to maintain the Bank consistent with the maintenance criteria established in this



Mitigation Banking Instrument and described in the Bank Development Plan, including, but not limited to, the replanting of vegetation that does not meet the success criteria described in Section IV.D, the removal of invasive species as described in Section IV.D, mowing of wetland areas as appropriate, accumulating and clumping woody debris to create small mammal habitat, and the use of prescribed burning. Maintenance of the Bank property will continue for approximately fifteen years after the commencement of restoration activities or five years after all credits had been released, whichever is sooner, at which point the ecosystems on the property will be self-sustaining and self-regulating. Deviation from the approved Bank Development Plan is subject to review and written approval by the Corps, in consultation with the IRT.

B. Monitoring Provisions: The Sponsor agrees to perform all necessary work to monitor the Bank to demonstrate compliance with the success criteria established in this Mitigation Banking Instrument.

Permanent sampling plots will be placed along transects as specified in Section E of the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual regarding Comprehensive Determinations. Permanent photo points will also be established across the site.

Two of the three wetland parameters (hydrology and vegetation) will be monitored at the compensatory mitigation bank for a period of at least five years. Hydrologic monitoring will occur at the permanent sampling plots from March through June at a frequency sufficient to show the presence of wetland hydrology for at least 11 consecutive days at the vast majority of sampling plots. This sampling will occur for at least the first three years after the site grading and excavation is complete. After the first three years, the frequency of hydrologic monitoring may be reduced to monitoring twice a year at the discretion of the Corps, in consultation with the IRT. The site will be monitored for invasive species and animal damage during these visits. Since the methods used to determine the presence or absence of wetland hydrology in the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual are the definitive standard, they will be used to monitor the Bank's hydrology to determine if wetland hydrology has been established as a result of restoration activities. The methods described in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual provide a snapshot view of wetland conditions at one moment in time, but by assessing data taken repeatedly, this monitoring method will provide information on wetland conditions along a timeline, specifically the frequency and duration of wetland hydrology. Vegetation will be surveyed yearly, or more often at the discretion of the Sponsor, in order to determine if vegetative success criteria are being met. The methods used shall match those described in Section E of the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual regarding Comprehensive Determinations. Woody vegetation shall be sampled within a thirty foot radius from the center of the sampling plot. Vegetation will be identified and wetland indicator status will be determined.

C. Reports: The Sponsor shall submit to the Corps, for distribution to the other members of the IRT, a report describing the conditions of Bank and relating those conditions to the success criteria. Reports will be submitted annually, at or near the end of the growing season. Reports will contain the following:

1. A U.S. Geological Survey map showing location of the Bank,
2. A detailed narrative summarizing the condition of the Bank and all regular maintenance activities,
3. Appropriate aerial maps showing location of sampling plots, permanent photo points, location of transects, *etc.*
4. Results of the use of the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual to evaluate conditions at the sampling points. These results will include data sheets, or the hydrologic portions of the data sheets for hydrologic monitoring, taken throughout the year, as well as a short narrative.
5. Results of vegetation survey including visual estimates of the percentage of overall cover and the percentage of cover for each vegetation layer, species composition, species diversity, the percentage of invasive vegetation in each vegetation layer, total percent of hydrophytic and upland species in each vegetation layer, survival rate of planted vegetation, an estimate of natural revegetation, and plant vigor as measured by evidence of reproduction.
6. Results of other surveys such as bird, macroinvertebrate, fish surveys, *etc.*, as deemed appropriate by the Sponsor.

D. Accounting Procedure: The Sponsor shall submit a statement to the Corps each time credits are debited or additional credits are approved. If requested, the Corps will distribute the statement to other members of the IRT. The Sponsor shall submit an annual ledger to the Corps for distribution to all members of the IRT showing all transactions at the Bank for the previous year.

E. Contingency Plans / Remedial Actions: If the Corps, in consultation with the IRT, determines that the Bank, or a specific portion of the Bank, fails to achieve the success criteria specified in Section IV.D of this Mitigation Banking Instrument, the Corps shall give written notice to the Sponsor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Bank resulting from any use or activity inconsistent with the purpose of this Mitigation Banking Instrument, the Sponsor shall be required to restore the affected portion of the Bank to its prior condition in accordance with a plan approved by Corps. If the Corps determines that the Bank is operating at a deficit, the Sponsor will be notified that debiting of credits from the Bank should immediately cease. The Sponsor shall either (a) cure the violation within 60 days after receipt of notice thereof from the Corps, or under circumstances where the violation cannot reasonably be cured within a 60 day period, begin to curing such violation within the 60 day period and diligently pursue such cure to completion or (b) dispute such finding and invoke mediation provisions. If the Sponsor invokes mediation provisions, the Sponsor shall cease (or forebear from taking) the disputed activity until such dispute is resolved. In the event the Sponsor fails to implement



remedial actions necessary to address a failure in meeting the success criteria or for a credit deficit within 60 calendar days and does not invoke mediation, the Corps will notify the Sponsor that debiting from the Bank is indefinitely suspended and will authorize the Midwest Mitigation Oversight Association to draw on the contingency funds to implement the necessary remedial actions.

At the request of the Sponsor, the Corps, in consultation with the IRT, will perform a final compliance visit to determine whether all success criteria have been satisfied. Any remaining contingency funds will be released to the Sponsor upon satisfaction of the success criteria.

F. Long-Term Management: There are no short-term or long-term plans to transfer title of the property to another party. It is the intention of the Sponsor to maintain the property in perpetuity as highly functioning habitat in accordance with the terms of the long-term management plan and conservation easement. The previously described conservation easement shall stay with the property in the instance that the title to the property is transferred to another party.

VI. RESPONSIBILITIES OF THE IRT

A. Oversight: The agencies represented on the IRT agree to provide appropriate oversight in carrying out provisions of this Mitigation Banking Instrument.

B. Review and Comments: The agencies represented on the IRT agree to review and provide comments on all project plans, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank in a timely manner. Comments on the monitoring reports and credit review reports will be provided to the Sponsor within 45 calendar days from the date of complete submittal, except for good cause.

C. Reports: The agencies represented on the IRT agree to review and confirm reports on evaluation of success criteria prior to approving credits within each phase of the Bank restoration. The Corps, in consultation with the IRT, will release the appropriate number of credits to the Sponsor within 60 days after receiving a request from the Sponsor, if the Corps, in consultation with the IRT, confirms the Sponsor's reports regarding the achievement of success criteria.

D. Compliance Inspections: The IRT shall conduct compliance inspections as necessary, as determined by the Corps in consultation with the IRT. The purpose of these inspections will be to verify whether all success criteria have been met, to release credits to the Bank, and/or to recommend remedial actions (if any), until the terms and conditions of this Mitigation Banking Instrument and Bank Development Plan have been determined to be fully satisfied or until all credits have been sold, whichever is later. The IRT will provide the Sponsor a minimum of 24 hours notice before any compliance inspection or other visit to the Bank site.

VII. OTHER PROVISIONS

A. Force Majeure: In the event that a natural disaster destroys all or part of the Bank, all debiting from the Bank shall cease immediately. Such natural disasters include floods, tornados, fires, earthquakes, droughts, disease, regional pest infestation, *etc.*, which the Corps, in consultation with the IRT, determines is beyond the control of the Sponsor to prevent or mitigate. The Sponsor shall not be responsible for restoring acreage for credits which were sold prior to any such natural disaster. However, the Sponsor shall be responsible for restoring acreage for which credits have been released to the Sponsor if those credits are unsold at the time of the natural disaster. If the damage is so severe that the Sponsor and the Corps, in consultation with the IRT, determine that project success is unattainable, then the Sponsor will not be obligated to restore any portion of the Bank.

If the Sponsor restores areas affected by the natural disaster and satisfies the success criteria described in Section IV.D, the Corps, in consultation with the IRT, shall grant the Sponsor the resulting credits as described in Section IV.F.

B. Dispute Resolution: Resolution of disputes about application of this Mitigation Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 F.R. 58605 *et seq.*, November 28, 1995).

C. Validity, Modification, and Termination of the Mitigation Banking Instrument: This Mitigation Banking Instrument will become valid on the date of the last signatory's signature. This Mitigation Banking Instrument may be amended or modified with the written approval of all signatory parties. Any of the IRT members may terminate their participation upon written notification to all signatory parties. Participation of the IRT members will terminate 30 days after written notification.

D. Specific Language of the Mitigation Banking Instrument Shall Be Controlling: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Mitigation Banking Instrument by reference, and that are not legally binding, the specific language within the Mitigation Banking Instrument shall be controlling.

VIII. EXECUTION AND AGENCY CONCURRENCE

The Kansas City District, Corps of Engineers, along with the members of the Interagency Review Team, have participated with the bank sponsor (Swallow Tail, LLC) in the development of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank and this banking instrument.

I have determined that the final banking instrument is complete and that the establishment of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank will provide appropriate compensation for impacts to wetlands and streams associated with unavoidable impacts to these resources that result from activities authorized by the Kansas City District's issuance of Department of the Army Permits.



Date: 9/20/09

Roger A. Wilson, Jr.
Colonel, Corps of Engineers
District Commander

TERRA TECHNOLOGIES

IRT CONCURRENCE:

The Environmental Protection Agency, along with the members of the Interagency Review Team, has participated with the bank sponsor (Swallow Tail, LLC) in the development of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank and this banking instrument.

I concur that the final banking instrument is complete and that the establishment of the Sni-A-Bar Wetland and Stream Mitigation Bank will provide appropriate compensation for impacts to wetlands and streams associated with unavoidable impacts to these resources that result from activities authorized by the Kansas City District's issuance of Department of the Army Permits.



Date: 8/19/08

William A. Spratlin, Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII



IRT CONCURRENCE:

The U.S. Fish and Wildlife Service, along with the members of the Interagency Review Team, has participated with the bank sponsor (Swallow Tail, LLC) in the development of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank and this banking instrument.

I concur that the final banking instrument is complete and that the establishment of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank will provide appropriate compensation for impacts to wetlands and streams associated with unavoidable impacts to these resources that result from activities authorized by the Kansas City District's issuance of Department of the Army Permits.



Date: 8/16/09

Charles M. Scott
Field Supervisor,
U.S. Fish and Wildlife Service

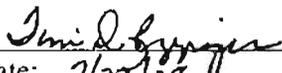
TERRA TECHNOLOGIES

TERRA TECHNOLOGIES

IRT CONCURRENCE:

The Missouri Department of Conservation, along with the members of the Interagency Review Team, has participated with the bank sponsor (Swallow Tail, LLC) in the development of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank and this banking instrument.

I concur that the final banking instrument is complete and that the establishment of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank will provide appropriate compensation for impacts to wetlands and streams associated with unavoidable impacts to these resources that result from activities authorized by the Kansas City District's issuance of Department of the Army Permits.


Date: 7/22/09
Tim Ripperger
Assistant Director
Missouri Department of Conservation

09 JUL 29 AM 9:45



IRT CONCURRENCE:

The Missouri Department of Natural Resources, along with the members of the Interagency Review Team, has participated with the bank sponsor (Swallow Tail, LLC) in the development of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank and this banking instrument.

I concur that the final banking instrument is complete and that the establishment of the Sni-A-Bar Creek Wetland and Stream Mitigation Bank will provide appropriate compensation for impacts to wetlands and streams associated with unavoidable impacts to these resources that result from activities authorized by the Kansas City District's issuance of Department of the Army Permits.



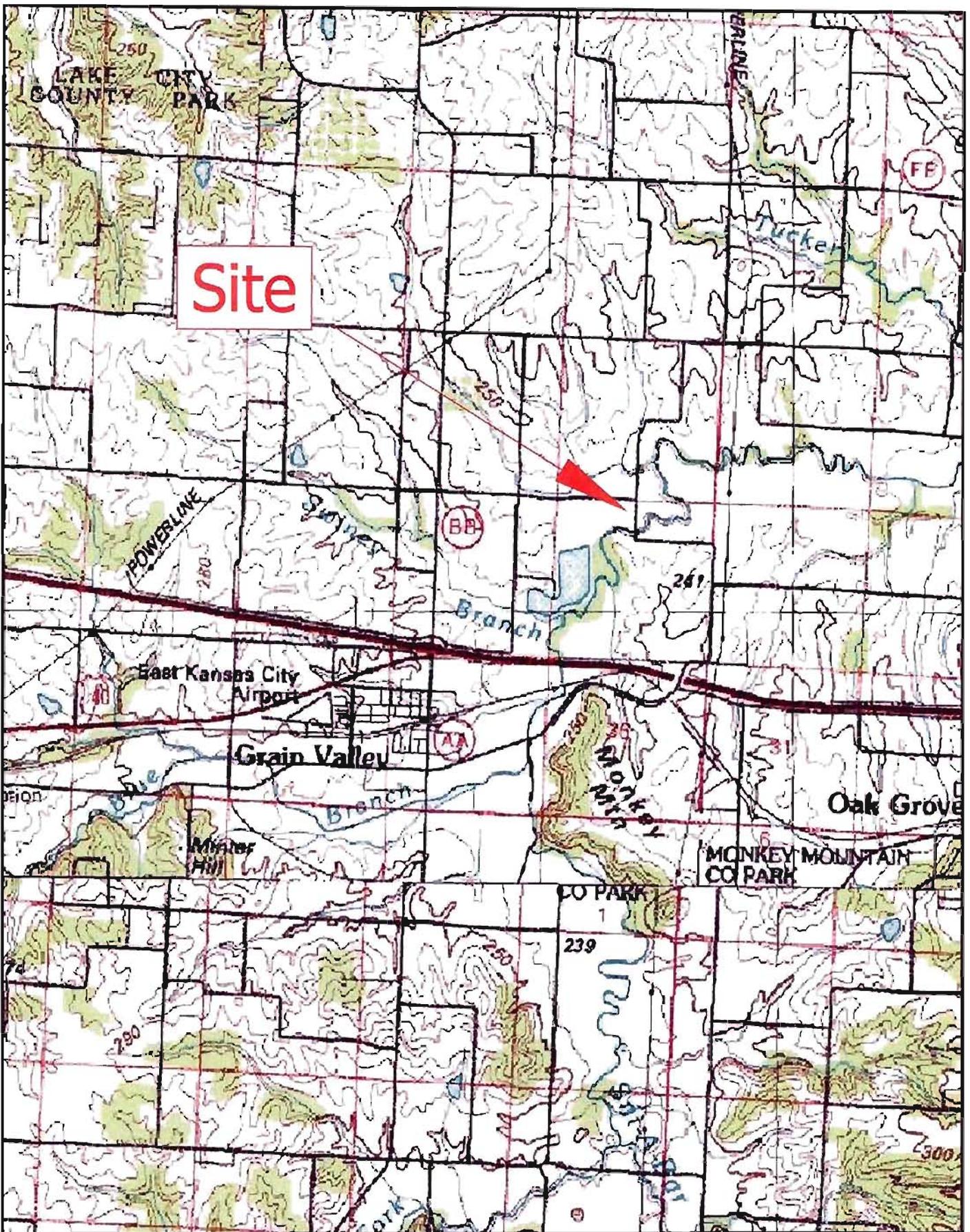
Date: 8/10/09

Dan Schuette
Director, Division of Environmental Quality
Missouri Department of Natural Resources

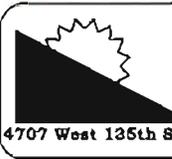
TERRA TECHNOLOGIES

APPENDIX A

FIGURES



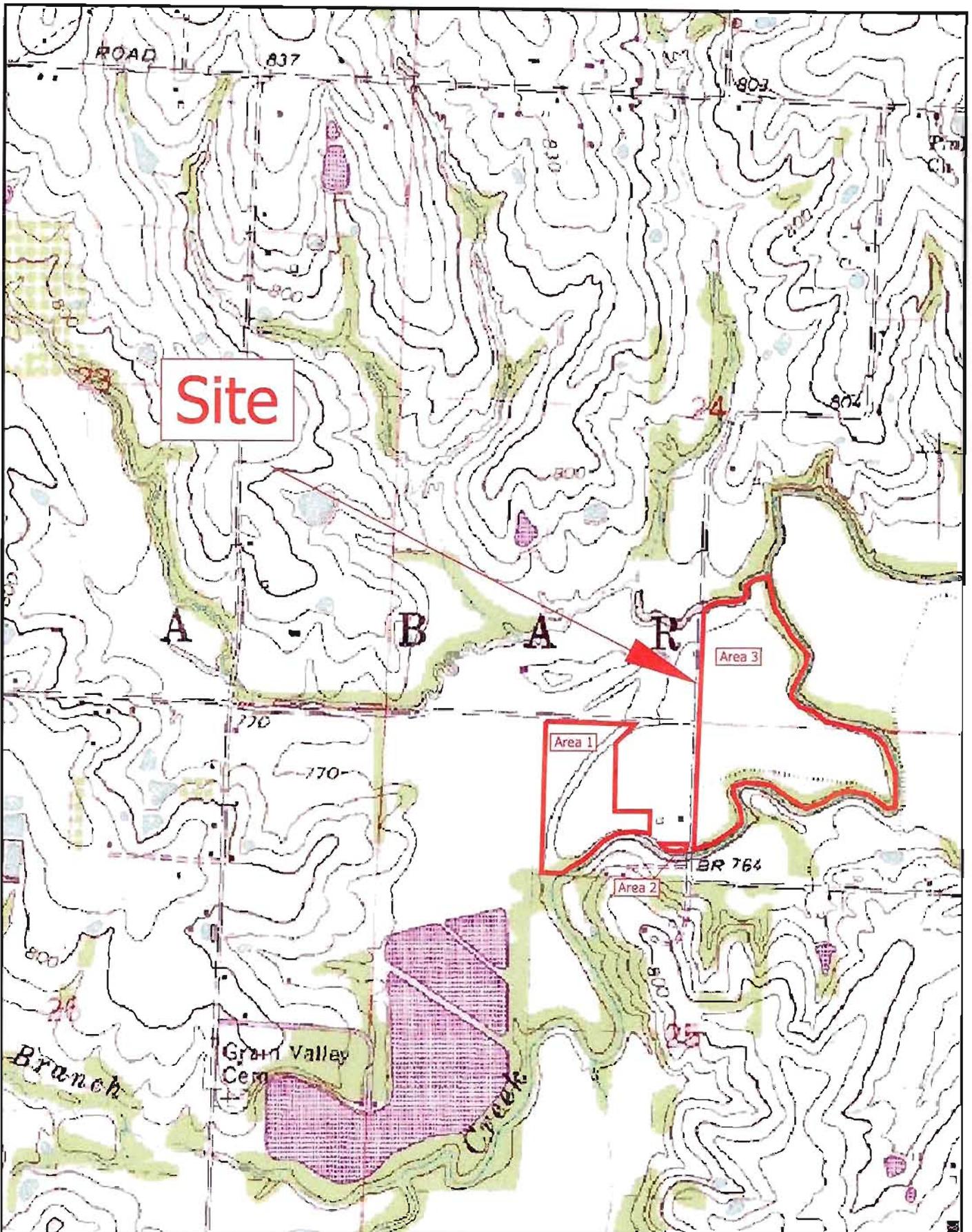
Revisions		
No.	Description	Date
1	New Boundary	08/07



Terra Technologies
 4707 West 135th Street, Suite 280 Leawood, KS 66224

Sni-A-Bar Creek
 Wetland & Stream
 Mitigation Bank
 Jackson County
 Missouri

Site Location Map
 USGS Topo
 Longitude: -94.1723
 Latitude: 39.0358
 DRAWING DATE
 FIG 1 AUG 2007



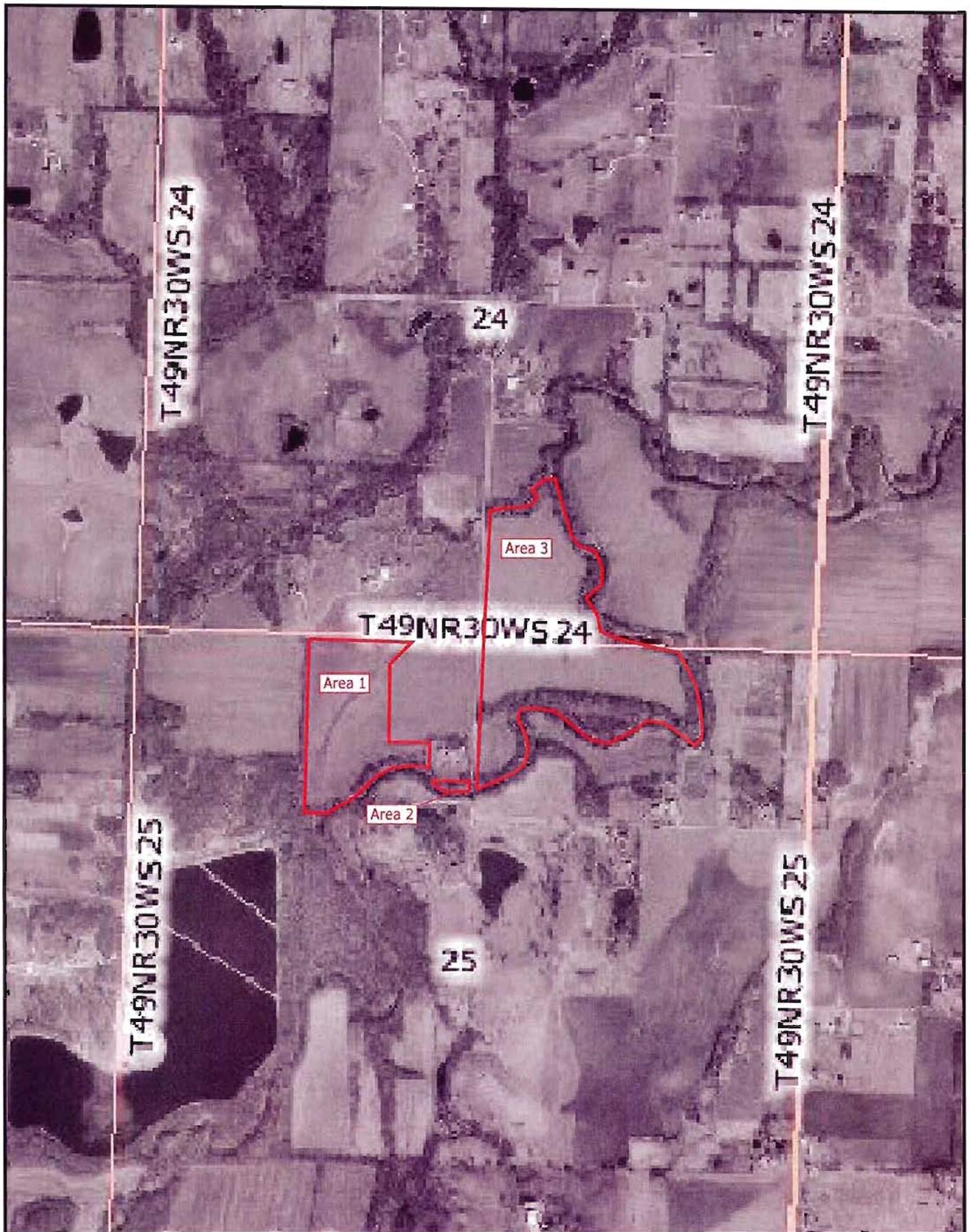
Revisions		
No.	Description	Date
1	New Boundary	08/07



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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Site Location Map
USGS Topo
Longitude: -94.1723
Latitude: 39.0358
DRAWING DATE
FIG 2 AUG 2007



Revisions		
No.	Description	Date
1	New Boundary	08/07

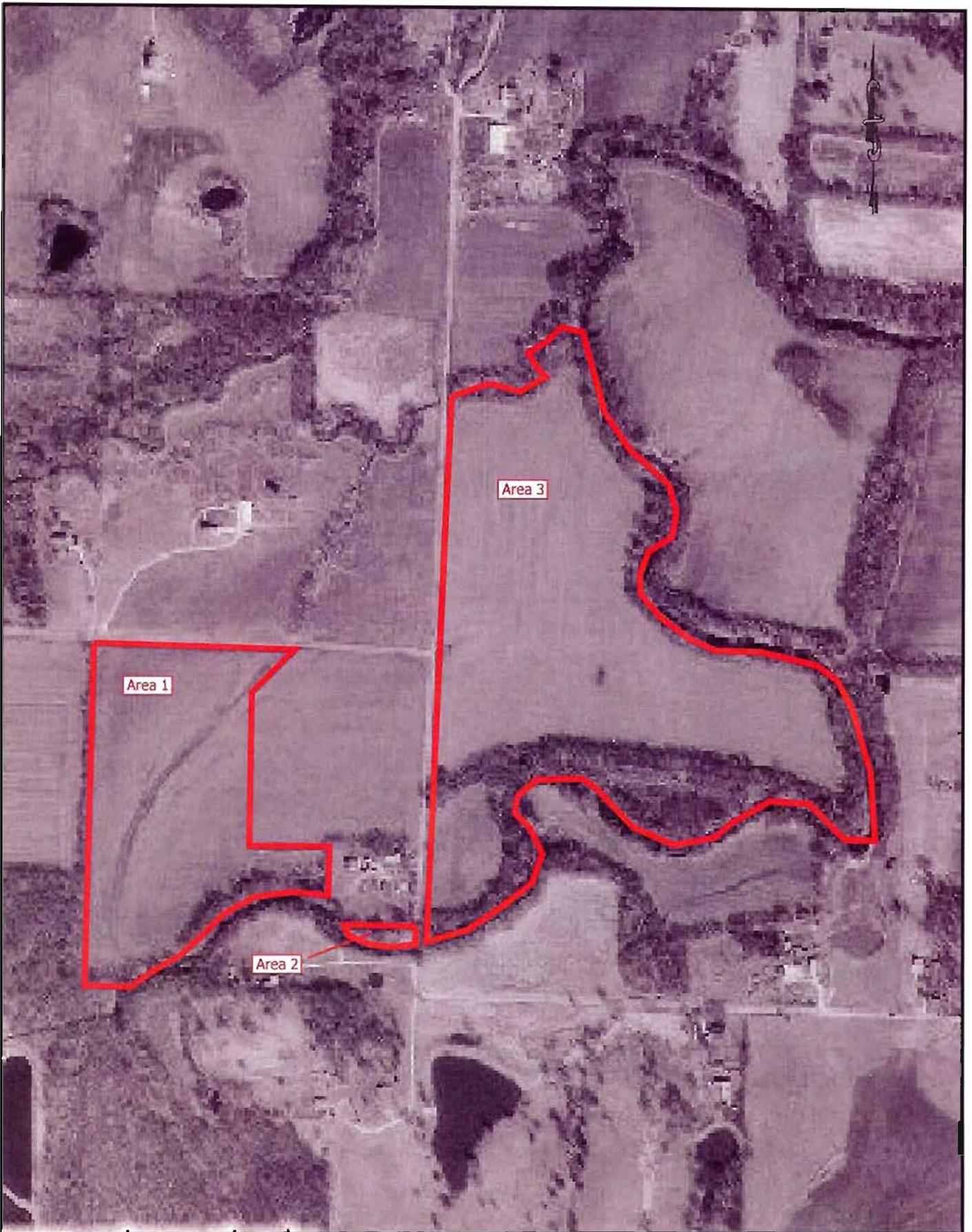


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Aerial Photograph
with Section,
Township, and Range

DRAWING DATE
FIG 3 AUG 2007



Revisions		
No.	Description	Date
1	New Boundary	08/07

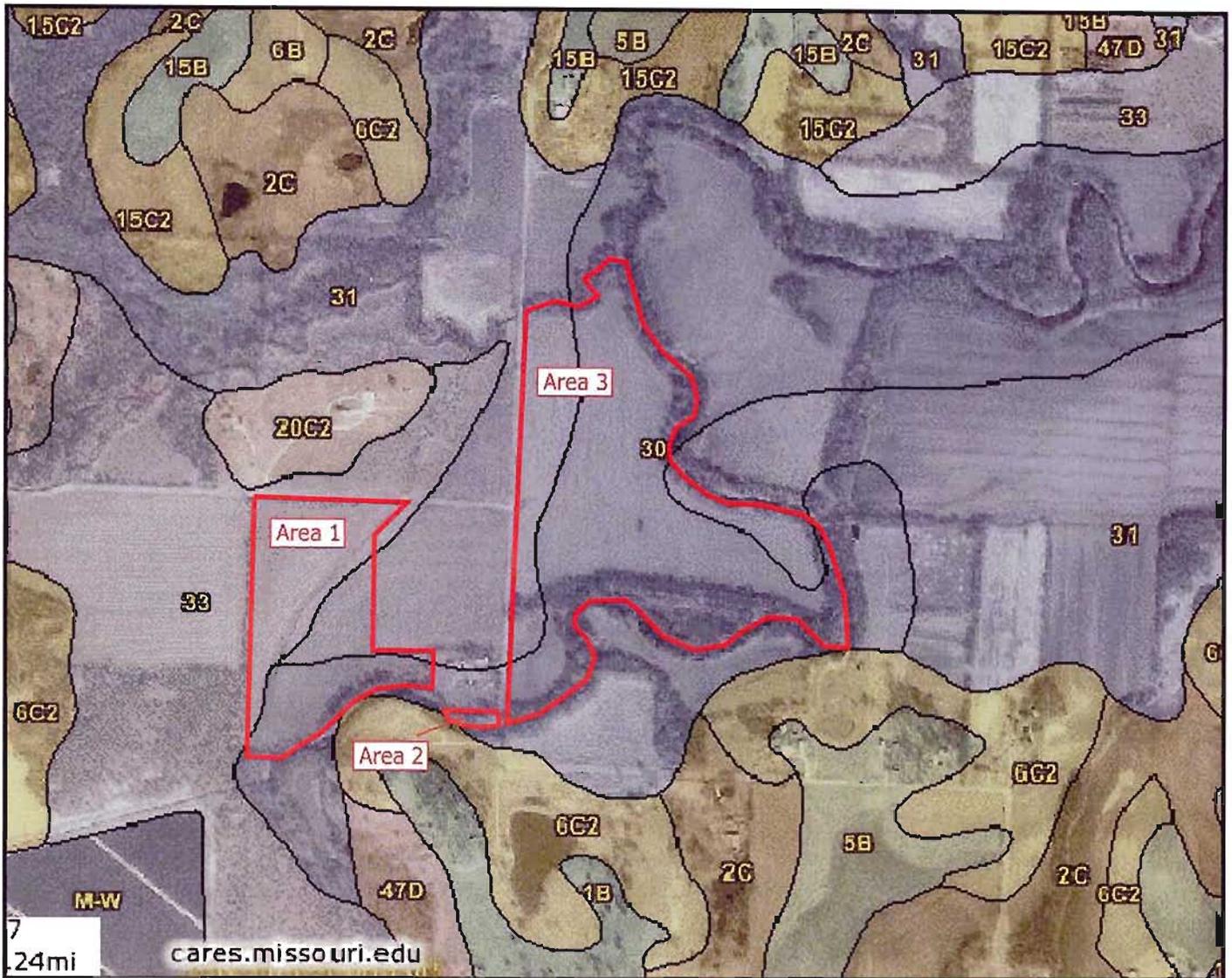


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Aerial Photograph
with Approximate
Bank Boundary

DRAWING	DATE
FIG 4	AUG 2007



SSURGO II Soil Map

- Colo Sity Clay Loam, Occasionally Flooded (31)
 - Higginsville Sil Loam, 5 to 9 Percent Slopes (2C)
 - Kennelbeck Sil Loam, Occasionally Flooded (30)
 - Macksburg Sil Loam, 2 to 5 Percent Slopes (5B)
 - Mandeville Sil Loam, 5 to 14 Percent Slopes (47D)
 - Mc Girk Sil Loam, 5 to 9 Percent Slopes, Eroded (20C2)
 - Menfro Sil Loam, 2 to 5 Percent Slopes (15B)
 - Menfro Sil Loam, 5 to 9 Percent Slopes, Eroded (15C2)
 - Miscellaneous Water (M-W)
 - Sharpsburg Sil Loam, 2 to 5 Percent Slopes (6B)
 - Sharpsburg Sil Loam, 5 to 9 Percent Slopes, Eroded (6C2)
 - Sibley Sil Loam, 2 to 5 Percent Slopes (1B)
 - Zook Sity Clay Loam, Occasionally Flooded (33)
- 1994-2000 Aerial Photos (DOQQs)

Revisions		
No.	Description	Date
1	New Boundary	08/07

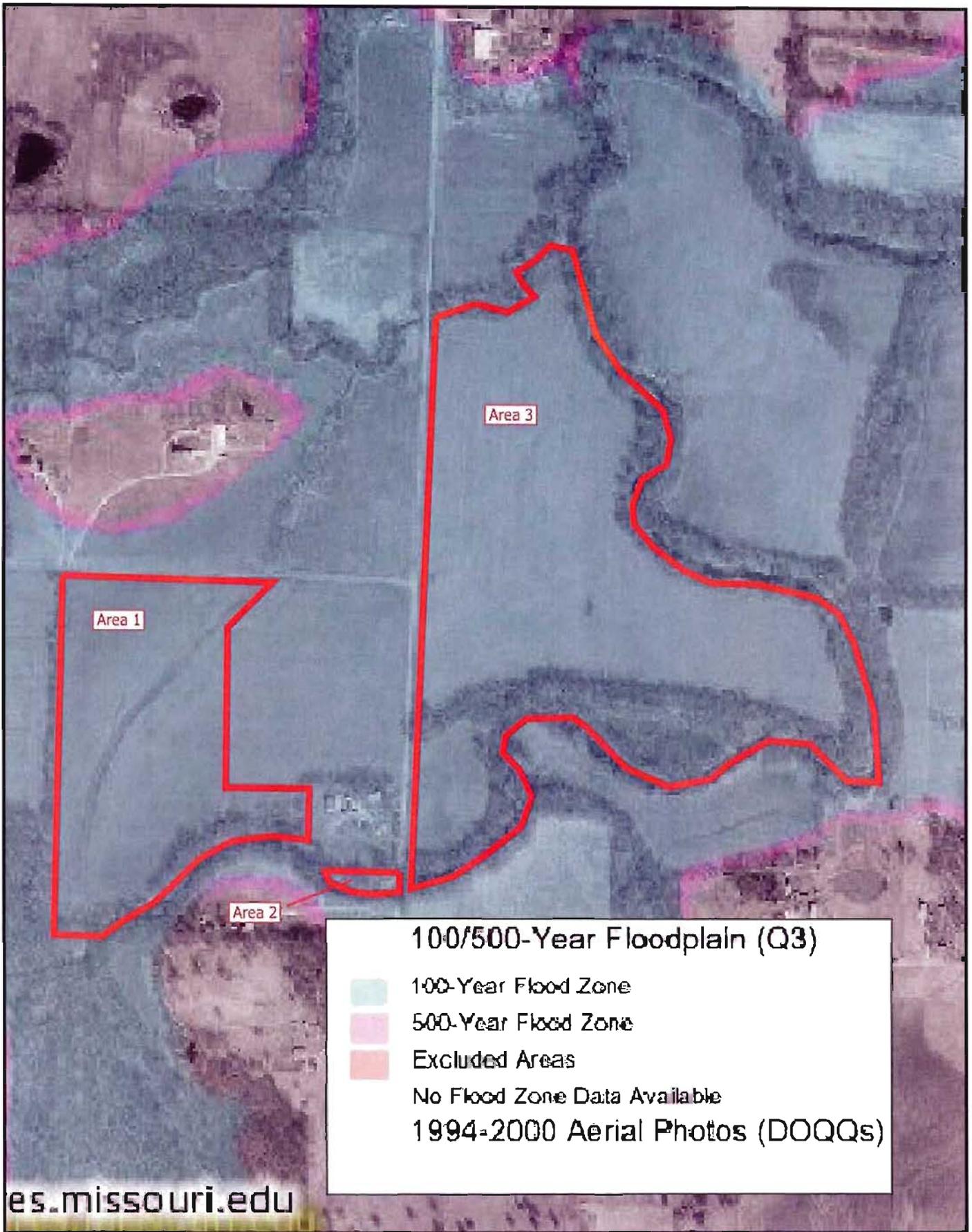


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Soils Map
with Approximate
Bank Boundary

DRAWING	DATE
FIG 5	AUG 2007



es.missouri.edu

Revisions		
No.	Description	Date
1	New Boundary	08/07

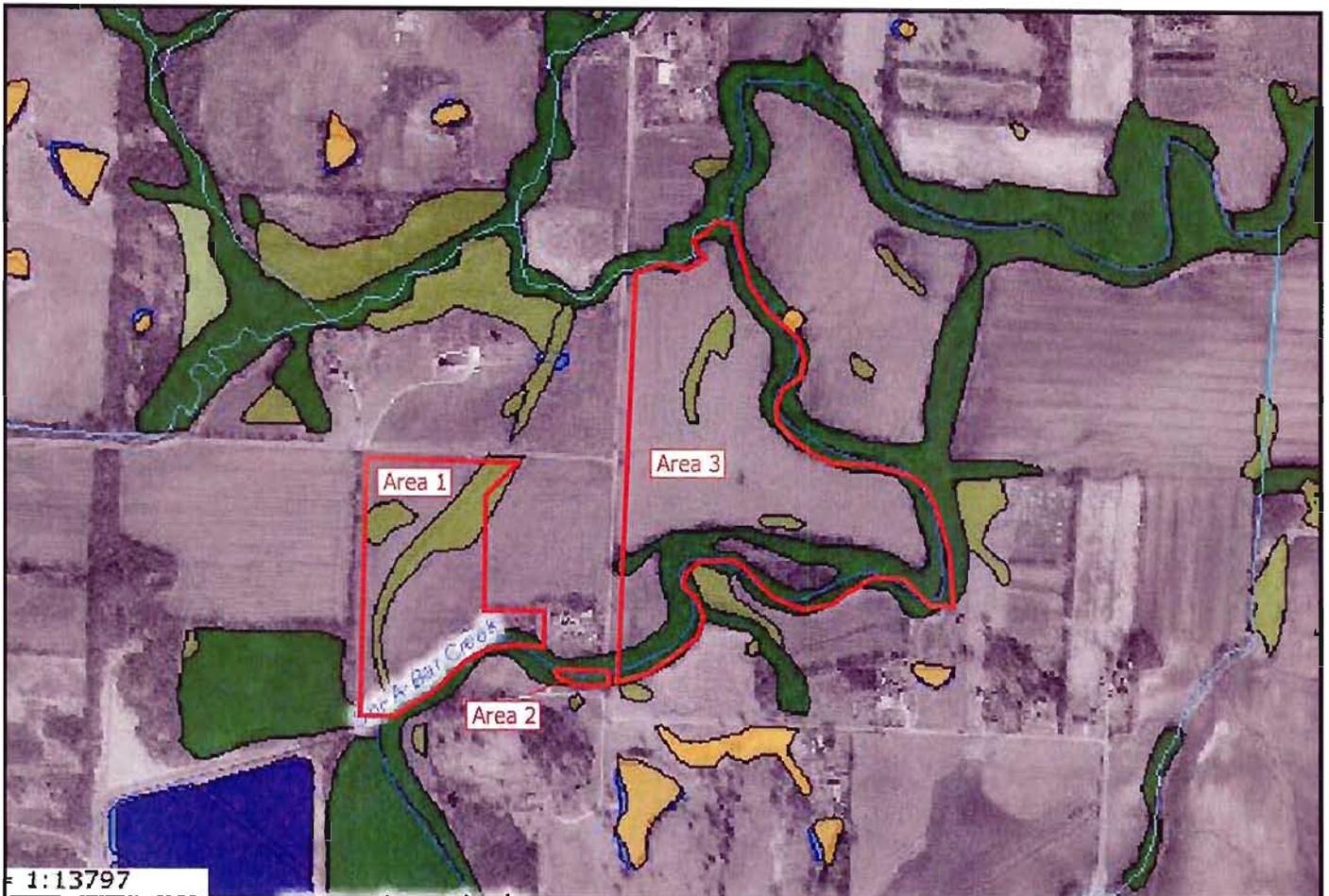


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Floodplain Map
with Approximate
Bank Boundary

DRAWING	DATE
FIG 6	AUG 2007



1:13797

1:24,000 Rivers and Streams

- Perennial Stream/River
- Intermittent Stream/River
- Artificial Path (Approx. Centerline)
- Undifferentiated Stream/River
- Canal or Ditch
- Other Hydrologic Feature

National Wetlands Inventory

- Inland Aquatic Bed
- Inland Forested Wetland
- Inland Herbaceous Wetland
- Inland Shrub Swamp
- Lower Perennial River
- Upper Perennial River
- Intermittent River
- Lake (Shallow)
- Lake (Deep)
- Pond
- Pond (Drawdown)
- Other Vegetated Wetland

1:24,000 Water Bodies

- Lake or Pond
- Lake or Pond (Intermittent)
- Reservoir
- Stream or River
- Swamp or Marsh
- Canal or Ditch
- Other Water Body

1994-2000 Aerial Photos (DOQQs)

Revisions		
No.	Description	Date
1	New Boundary	08/07

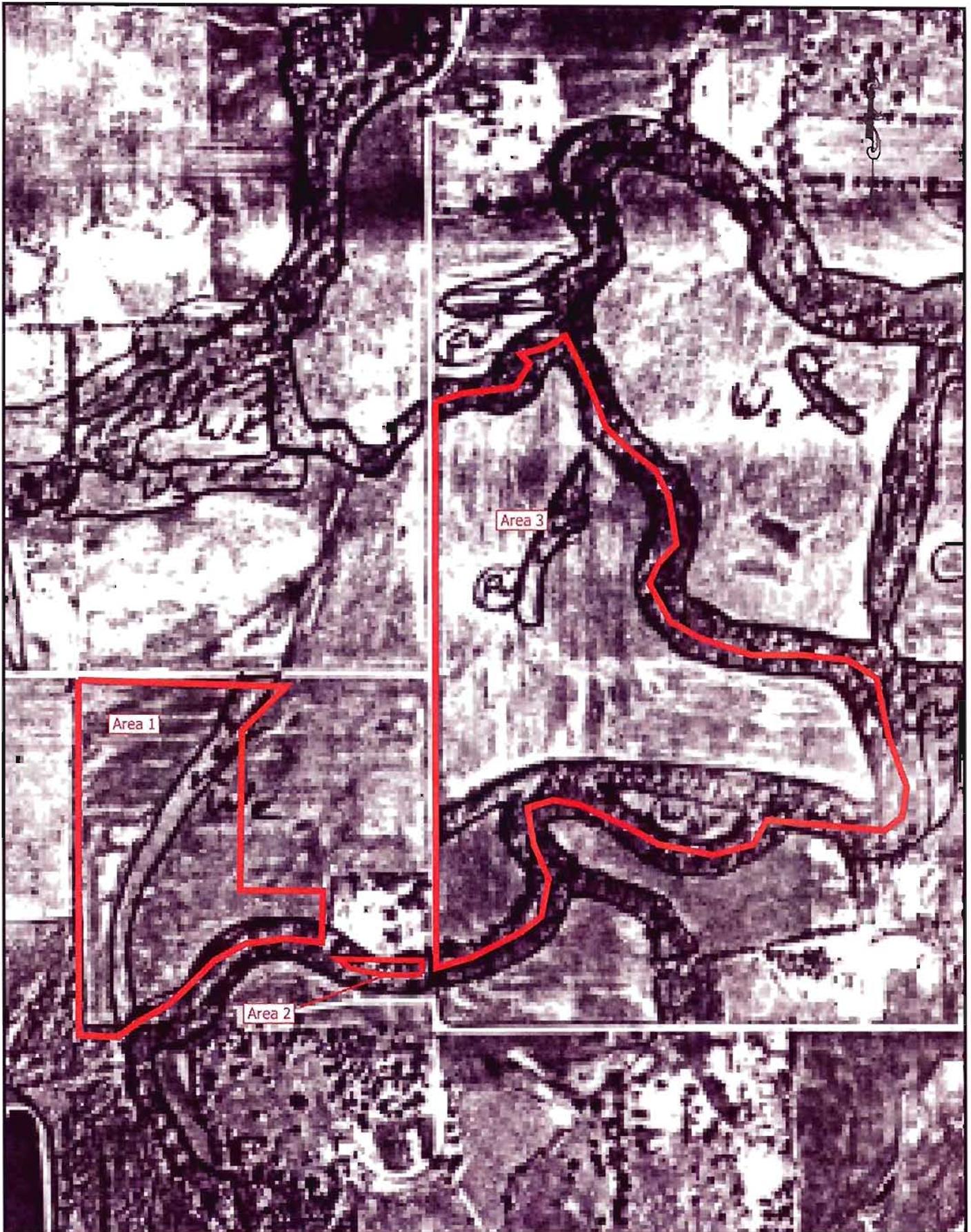


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

NWI & Streams
with Approximate
Bank Boundary

DRAWING DATE
FIG 7 AUG 2007



Revisions		
No.	Description	Date
1	New Boundary	08/07

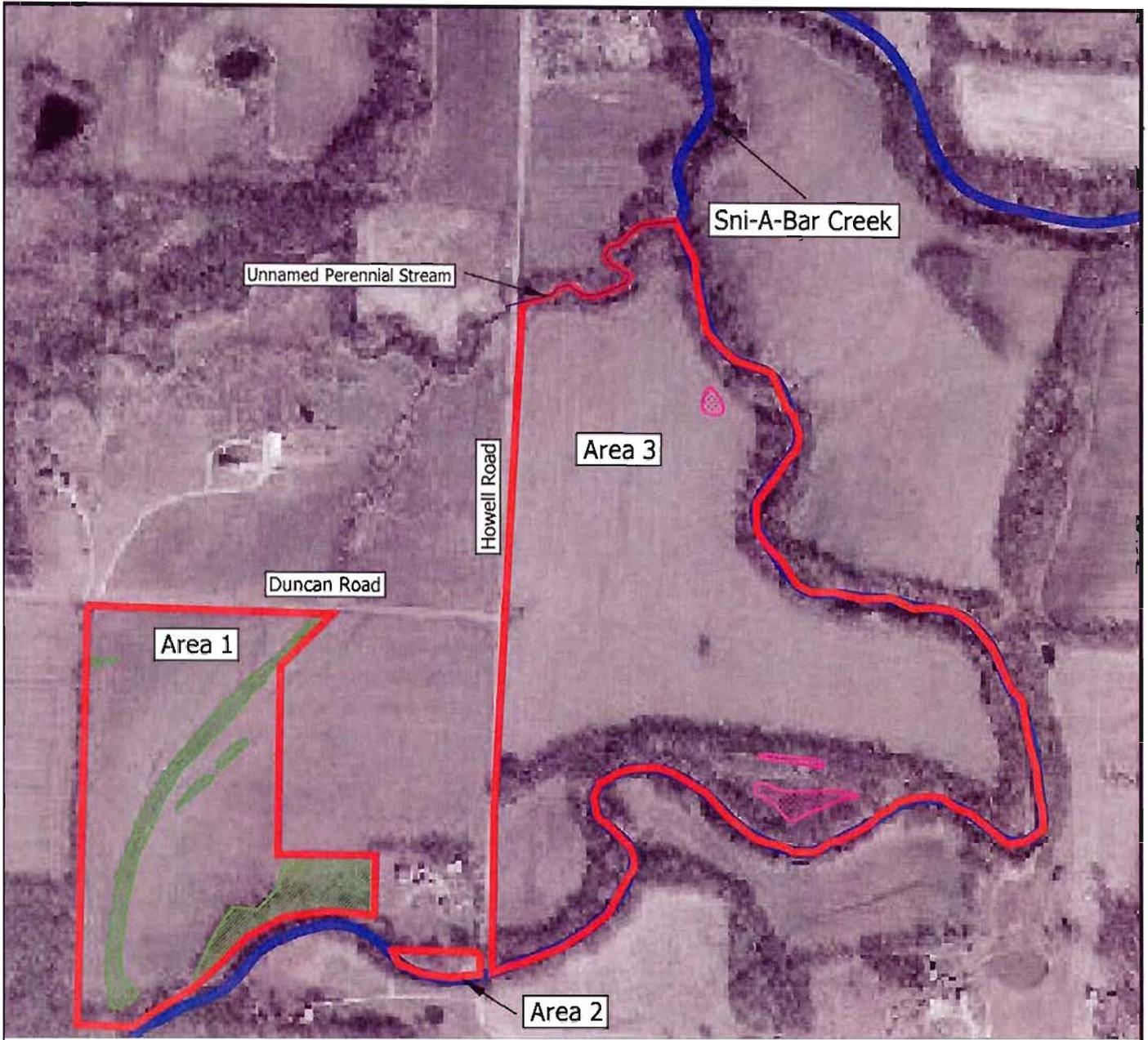


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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

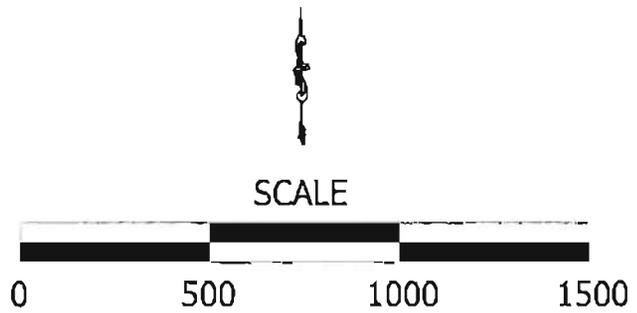
NRCS Farmed
Wetlands Map

DRAWING	DATE
FIG 8	AUG 2007



-  Existing Wetlands
(Location & Extent Approved By USACE Approved Jurisdictional Determination)
-  Existing Wetlands
(Location & Extent Approved By USACE Preliminary Jurisdictional Determination)

TOTAL WETLAND AREA = 4.09 ACRES



Revisions		
No.	Description	Date
1	New Boundary	08/07



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Sni-A-Bar Creek
Wetland & Stream
Mitigation Bank
Jackson County
Missouri

Jurisdictional
Assessment
Figure

DRAWING DATE
FIG 9 | AUG 2007

APPENDIX B

PHOTO DOCUMENTATION



SCALE



Revisions		
No.	Description	Date
1	New Boundary	08/07

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Sni-A-Bar Creek
 Wetland & Stream
 Mitigation Bank
 Jackson County
 Missouri

Aerial Photograph with Location of Photo Points	
DRAWING	DATE
1	AUG 2007

PHOTO LOG

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Northwest edge of Area 1 looking south. A ditch that borders the west edge of the field is on the right.	
PHOTO #: 1	

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Northwest edge of Area 1 looking east. Duncan Road is on the left.	
PHOTO #: 2	

PHOTO LOG

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Northwest corner of Area 1 field looking southeast across the field.	
PHOTO #: 3	

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A picture of the small farmed wetland in the northwestern corner of Area 1 looking eastward.	
PHOTO #: 4	

PHOTO LOG

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: View of the drainage swale in Area 1 (Wetland #1) where the swale begins to narrow and trees begin appearing. Note the wetland vegetation in the foreground. Photo faces northeast.	
PHOTO #: 5	

DATE: 06/19/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Wetland vegetation growing in the large drainage swale in Area 1. View faces roughly south.	
PHOTO #: 6	

PHOTO LOG

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: View of partially blocked road culvert at Duncan Road at the northern edge of the drainage swale.	
PHOTO #: 7	

DATE: 06/19/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Wetland vegetation in the southern portion of Wetland #1. View faces south.	
PHOTO #: 8	

PHOTO LOG

DATE: 01/18/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: South-facing view of the virtual monoculture of box elder (<i>Acer negundo</i>) in a portion of the existing riparian corridor of Area 1.	
PHOTO #: 9	

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Sni-A-Bar Creek, facing downstream (northeast) from the Howell Road bridge.	
PHOTO #: 10	

PHOTO LOG

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A photo to the north from the very southern boundary of the southern field in Area 3.	
PHOTO #: 11	

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Photo to the south from the levee that separates the northern and southern fields in Area 3. This levee extends through the forested area in the southern portion of Area 3.	
PHOTO #: 12	

PHOTO LOG

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: Photo to the north from the same location that Photo #12 was taken. This is a view of the northern field in Area 3.	
PHOTO #: 13	

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A view of the area mapped as a small NWI wetland on the southern border of the northern field in Area 3. Despite being mapped as a wetland, no indications of wetland conditions were found. Photo faces east.	
PHOTO #: 14	

PHOTO LOG

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A view of Area 3 from the southeastern corner of the northern field. Photo faces roughly northwest.	
PHOTO #: 15	

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A view of the small farmed wetland in the northeastern portion of the northern field in Area 3 facing east. This farmed wetland is located in a slight depression.	
PHOTO #: 16	

PHOTO LOG

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A drainage channel has been cut through the largest NWI Inland Herbaceous Wetland in the northern field of Area 3. No wetland conditions were observed at this location. Photo faces southwest.	
PHOTO #: 17	

DATE: 08/01/2006	SITE NAME: Sni-A-Bar Creek Wetland & Stream Mitigation Bank
TAKEN BY: SCS	
COMMENTS: A picture of the largest wetland in the southern riparian corridor of Area 3 from its eastern edge facing west. Similar to the other riparian corridor wetland, this wetland is located in a slight depression and mostly lacks an herbaceous layer. The location of this photo included a large amount of twigs and branches that is absent from the rest of the wetland, which indicates drainage patterns.	
PHOTO #: 18	

APPENDIX C
BANK DEVELOPMENT PLAN



-  Broad-leaved Forested Wetland Re-establishment
20.71 Acres
-  Persistent Emergent Wetland Re-establishment
6.80 Acres
-  Existing Wetland Rehabilitation
1.76 Acres
-  Existing Wetland Preservation
0.49 Acres
-  Riparian Corridor Re-establishment
24.68 Acres
-  Riparian Corridor Enhancement
15.29 Acres
-  Third Party Mitigation (Not Part of Bank)
USACE Permit Numbers: 200400739 & 200600024
-  Existing Levee

TOTAL AREA = 69.73 ACRES



SCALE

<p>DATE: 02/02/07 DRAWN BY: [Name] CHECKED BY: [Name] REVISION: 11/2/09 AS BUILT 9/24/07 11/2/09 AS BUILT</p>	<p>As-Built Figure Sni-A-Bar Creek Wetland & Stream Mitigation Bank Swallow Tail, LLC</p>	 <p>Terra Technologies</p>	<p>4707 West 135th Street Suite 280 Leawood, KS 66224 (913) 251-1000</p>
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APPENDIX D
CREDITING AND DEBITING PROCEDURES

APPENDIX D

Crediting and Debiting Procedures

Crediting

At such time that the IRT approves this Mitigation Banking Instrument and as restoration activities on the Bank site reach the success criteria described in Section IV.D, the Sponsor shall submit as-built report documentation describing the progress on the site to the IRT, through the Corps, at the time that each stage is met. At that point the Corps may choose to inspect the site to verify that the Bank has achieved the stated stage of success/completion with a minimum 24 hour notice to the Sponsor. After the Corps, in consultation with the IRT, acknowledges the achievement of the specified success criteria (after a site visit, or without a site visit if so desired by the IRT), then the amount of credits proscribed in Sections IV.E and IV.F will be released to the Sponsor.

Because the restoration of the Bank property will take place in two phases (Phase 1 encompassing Area 1 and Phase 2 encompassing Areas 2 & 3), the number of wetland credits granted at each stage of credit release will be determined by the total number of possible credits available in the Bank multiplied by the percentage of total credits released by the achievement of a specific stage multiplied by the percentage of the total Bank area that achieves said successful stage. For example, if Phase 1 is graded and planted, then 48% of the Bank areas intended for wetland re-establishment and rehabilitation would have achieved the stage of finished grading and initial planting. Reaching this stage would result in the release of 15% of the total wetland credits resulting from re-establishment and rehabilitation, and since there are a proposed total of 29.27 wetland credits available in the Bank from wetland re-establishment and rehabilitation activities, a total of 2.11 wetland credits shall be granted ($29.27 \times 0.15 \times 0.48 = 2.11$). A similar methodology will be used for the granting of stream credits.

The proposed number of total wetland credits available is described in the table below, which is reproduced from Section IV.E of the Draft Mitigation Banking Instrument.

Restoration Activity	Area	Credit Ratio (Credits:Acres)	Resulting Credits
Broad-Leaved Forested Wetland Re-establishment	20.90 Acres	1:1	20.90
Persistent Emergent Wetland Re-establishment	6.61 Acres	1:1	6.61
Existing Wetland Rehabilitation	1.76 Acres	1:1	1.76
Existing Wetland Preservation	0.49 Acres	1:10	0.05
TOTAL WETLAND CREDITS:			29.32

TERRA TECHNOLOGIES



TERRA TECHNOLOGIES

Debiting

The Sponsor is responsible for conducting all activity related to selling credits to third parties. The cost of the mitigation credits will be determined by the Sponsor. After credits are made available by the Corps, in consultation with the IRT, the Sponsor will be free to sell the approved number of credits. However, the Sponsor shall not sell more credits than are made available by the IRT or contingency measures will be taken, as described in Section V.E of the Mitigation Banking Instrument.

Accounting

The Sponsor shall maintain a ledger of all crediting and debiting activity regarding the Bank. Each time an approved debit/credit transaction occurs, the Sponsor shall submit a statement to the IRT, through the Corps. In addition, the Sponsor shall submit an annual ledger, describing all crediting and debiting activity of the previous year. This annual report will be due by the end of January and will encompass the previous calendar year. The Sponsor shall submit this annual report to the Corps for distribution to each member of the IRT.



APPENDIX E

CONTINGENCY MEASURES: LETTER OF CREDIT

APPENDIX E

Contingency Measures – Letter of Credit

The following page is an approved letter of credit that will be released to the Midwest Mitigation Oversight Association and will direct work on the Bank in the event that the Corps, in consultation with the IRT, has decided that the Sponsor is out of compliance with the performance standards contained in Section IV.D of the Mitigation Banking Instrument and is unable to rectify any failings. Before this letter of credit can be invoked, the course of action described in Section V.E must be followed

TERRA TECHNOLOGIES



APPENDIX F
REAL ESTATE PROVISIONS

APPENDIX F

Conservation Easement

As part of the process of establishing, using, and maintaining the Bank, the Sponsor agrees to irrevocably possess a conservation easement on all Bank lands in order to ensure that the Bank will remain in its undeveloped state in perpetuity.

The following are the signed conservation easement for Areas 1 & 2 and the draft conservation easement for Area 3 which, if found satisfactory by the Corps, in consultation with the IRT, will be recorded immediately following approval of the Final Mitigation Banking Instrument by the IRT. Proof of a conservation easement will be provided by the Sponsor to the Corps promptly after the approval is granted.



1. Title of Document: Conservation Easement
2. Date of Document: June 19, 2009
3. Grantor: Swallow Tail, L.L.C., a Missouri limited liability company
4. Grantees: Midwest Mitigation Oversight Association, Inc., a Missouri non-profit corporation and its successors in interest
5. Statutory Mailing Address: Cleaveland, Macoubrie & Cox LLC
c/o Midwest Mitigation Oversight Association
P.O. Box 467 515 Washington
Chillicothe, MO 64601
6. Property Descriptions: See Exhibit "A" set forth below.
7. Reference Books and Pages: None

CONSERVATION EASEMENT

THIS **CONSERVATION EASEMENT** (“Conservation Easement”) is entered into as of the 22nd day of December, 2008 by and between **SWALLOW TAIL, L.L.C.**, a Missouri limited liability company (“Grantor”) and **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a Missouri non-profit corporation and its successors in interest (“Grantee”). The address of the Grantor is 24820 Miller Road, Harrisonville, Missouri 64701.

RECITALS:

A. Grantor is the sole owner in fee simple of approximately 37.26 acres of real property located in Jackson County, Missouri and described in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Protected Property”).

B. The Protected Property is the subject of an agreement (“Mitigation Plan Instruments”) among Grantor and certain governmental agencies creating the Sni-a-Bar Creek Wetland Mitigation Bank (Permit number 2006-1703), and associated mitigation for Permit numbers 2004-0739 and 2006-0024, and, at the time of this Conservation Easement, the Protected Property will satisfy the objectives of each Mitigation Plan Instruments to restore and maintain wetlands and other waters of the U.S. into perpetuity, and will preserve a valuable watershed drainage area that feeds into the Missouri River.

C. The Protected Property consists of land formerly used primarily for agriculture that has been restored to native wetland, prairie, and forest habitat to provide native plant and wildlife species habitat and refuge and that protect the wildlife, watersheds and green space environments that are all of local importance to Grantor, Grantee, the people of Jackson County and the people of the State of Missouri.

D. The primary purpose of this Conservation Easement is to restrict the use of, protect and provide for oversight of the Protected Property. Grantor and Grantee intend that the conservation values of the Protected Property shall be preserved and maintained by permitting only those land uses on the Protected Property that do not impair or interfere with the restored native wetland, prairie, and forest habitat, the native wildlife, and the watershed functions and values and by prohibiting use of the Protected Property for agricultural production, farming, and timber production existing at the time of this Conservation Easement (“Permitted Uses” and “Restricted Uses”).

E. The specific conservation values of the Protected Property are documented in an inventory of relevant features of the Protected Property, attached hereto as Exhibit “B” which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Conservation Easement and the Mitigation Plan Instruments;

F. Grantee is a non-profit association created to hold interests in and protect the conservation values and integrity of the Protected Property and similar properties in perpetuity for the benefit of the current generation and the generations to come.

NOW, THEREFORE, Grantor hereby grants and conveys to Grantee the conservation easement rights set forth herein and Grantee accepts such conveyance and agrees to perform all of the obligations associated with the Protected Property that are contemplated hereby. Grantor and Grantee further agree that the Protected Property shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the terms hereinafter set forth, all of which shall attach to and run with the Protected Property and shall inure to the benefit of and be a burden upon all future owners, lessee or other occupants or users of the Protected Property.

1. **PURPOSE.** The terms, conditions and obligations of this Conservation Easement shall encumber the Protected Property and shall govern the development, maintenance, operation and use of the Protected Property. Any Person owning any right, title or interest in or having any other right to use or occupy all or any part of the Protected Property, shall be deemed to have agreed to be bound by all of the conditions, covenants, easements, restrictions, rights, obligations, appurtenances, and privileges contained in this Conservation Easement and the Mitigation Plan Instruments. It is the purpose of this Conservation Easement and the Mitigation Plan Instruments (a) to assure that the Protected Property will be retained forever predominantly in its natural, scenic, historic, and open space condition and (b) to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property.

2. **ENFORCEMENT.** The Grantee shall have the sole initial right to enforce, by proceedings at law or equity, all provisions of this Conservation Easement. The failure to enforce any provision of this Conservation Easement at any time or for any period of time shall not be deemed a waiver of the right to do so thereafter. Whenever any enforcement action is deemed appropriate by the Grantee, such action may be pursued (by legal action or otherwise) (i) in the name of the Grantee or (ii) in the name of some other Person designated by the Grantee to pursue such action on its behalf. Enforcement actions may seek compliance with the provisions of this Conservation Easement or any other document contemplated hereby and/or the granting any other appropriate relief, including money damages.

3. **OBLIGATIONS OF GRANTEE.** To accomplish the purpose of this Conservation Easement and the Mitigation Plan Instruments, Grantee or Grantee's designee shall provide all services required pursuant hereto and the Mitigation Plan Instruments in connection with the Protected Property including, but not limited to, the following:

(a) **Preservation.** Preserve and protect the conservation values of the Protected Property.

(b) **Prevention.** Prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments.

(c) **Restoration.** Restore any areas or features of the Protected Property in accordance with the provisions of the Mitigation Plan Instruments.

(d) **Monitoring.** Enter upon the Protected Property at reasonable times in order to insure Grantor's compliance with the terms of this Conservation Easement.

4. **PROHIBITED USES.** Grantor and Grantee intend that this Conservation Easement will confine the use of the Protected Property to Permitted Uses, including, without limitation, those involving wildlife habitat, ecological research, recreation and public education, as are consistent with the purpose of this Conservation Easement and the Mitigation Plan Instruments. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) **Structures.** There shall be no construction or placing of any permanent structure on the Protected Property unless agreed to by the parties to the Mitigation Plan Instruments. The term "structure" includes, nonexclusively, any house, garage, barn, recreational courts or playing fields, landing strip, mobile home, swimming pool, asphalt, concrete pavement, antenna, storage tank, tower, or lights. The term structure does not include temporary hunting blinds, wildlife habitat installations or hydrologic control structures.

(b) **Mining.** There shall be no hard rock, sand, gravel, or soil mining on the Protected Property.

(c) **Soil and Water.** There shall be no use or activity that causes or is likely to cause significant soil degradation or significant depletion or pollution of any surface or subsurface waters.

(d) **Watershed and Wetlands.** There shall be no draining, filling, dredging, diking or other alteration of any wetland areas in any of the designated floodplain areas of the Protected Property except as may be necessary for the maintenance of the wetland, prairie, and forested conditions on the Protected Property.

(e) **Topography.** There shall be no ditching, draining, diking, filling, excavating, sod, sand, gravel, rock, or other materials, or any change in the topography of the Protected Property in any manner except as may be necessary for the creation or maintenance of the wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers and maintenance of existing access roads on the Protected Property. This provision shall not be used in any way to limit or preclude the construction of erosion control terraces, catch basins or waterways that are necessary to meet or exceed conservation control requirements for the protection of the topsoil on the Protected Property.

(f) **Plowing.** There shall be no tilling or plowing of the Protected Property unless agreed to by the parties to the Mitigation Plan Instruments.

(g) **Dumping.** There shall be no dumping of trash, garbage, hazardous or toxic substances on the Protected Property.

(h) **Roads.** There shall be no building of new roads or establishment of other rights-of-way on the Protected Property. This does not preclude the creation of nature,

hiking or riding trails on the Protected Property if approved by the U.S. Army Corps of Engineers.

(i) Timber Harvest. There shall be no timber harvest from the Protected Property unless deemed necessary for the maintenance of the desired wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers.

(j) Grazing. The Protected Property shall not be grazed by livestock unless deemed necessary for the maintenance of the desired wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers.

(k) Commercial Activities. Commercial activities shall not be permitted on the Protected Property either by Grantor, Grantee or their respective agents, personal representatives, heirs, successors and/or assigns. Hiking, riding and trail systems on the land are permitted and receipt of payment by the Grantor for hiking or riding on the Protected Property's non-tillable ground is not deemed to be a commercial activity. Hunting and fishing shall be permitted and receipt of payment by the Grantor for hunting on the Protected Property is not deemed to be a commercial activity.

(l) Animal Confinement. There shall be no commercial confinement of livestock, swine or poultry on the Protected Property.

(m) Utilities. Installation of new utilities is prohibited, except that the Grantor and/or Grantee may install such new utilities and maintain such existing utilities as may be necessary for permitted uses of the Protected Property or adjacent property as long as such installation is not inconsistent with the purposes of this Conservation Easement or the Mitigation Plan Instruments and is done in such a manner as to minimize to the greatest extent possible any impact on soils. Grantor may grant local utilities easement access to extend service lines along or across the Protected Property so long as such easements are subordinate to this Conservation Easement. Any existing utilities may be replaced or repaired at their current location.

(n) Water Rights. Grantor shall retain all water rights necessary for present or future permitted agricultural production on the Protected Property and shall not transfer, encumber, lease, sell, or otherwise separate such quantity of water rights from title to the Protected Property.

5. **GRANTOR'S RESERVED RIGHTS**. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Ecosystem Restoration Activities. Grantor may undertake any activities with the purpose of establishing and maintaining the desired wetland, prairie, and

forested land uses on the Protected Property, as described in the Mitigation Plan Instruments. This shall include, but is not limited to, mowing undesirable vegetation, prescribed burns, and the removal of invasive species.

(b) Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property provided that such conveyance is subject to this Conservation Easement and written notice is provided to the Grantee.

(c) Timber. Cutting of trees and woody shrubs may be accomplished to maintain the desired wetland, prairie, and forested character of the Protected Property, to maintain fences and to prevent invasion of woody plants on the site. Trees cut for authorized purposes may be utilized for personal use as firewood or for habitat enhancement.

(d) Fences. Grantor shall be responsible for complying with Missouri fence laws. Grantor may construct, repair, replace, maintain, improve or remove any additional fencing as the Grantor deems necessary to secure the Protected Property.

(e) Signs. Grantor may place interpretive signs and “no hunting or trespassing without written permission” or similar signs on the Protected Property.

(f) Educational Use. Grantor may make the Protected Property accessible to the public to enjoy the ecological, open space, aesthetic and conservation benefits of this Conservation Easement and to learn about the benefits of conservation efforts in general.

(g) Vehicles. Motorized vehicles may be operated on the Protected Property to perform restoration and maintenance of the desired wetland, prairie and forested land uses, to transport educational groups with special needs, to maintain the Protected Property, and to remove trees and shrubs in order to maintain the character of the Protected Property and to provide, if necessary, vehicle access to adjacent parcels. Use of permitted vehicles should, however, be in a manner that will minimize impact on native vegetation in the areas on the Protected Property which is not in agricultural production activities.

(h) Rights to Enjoyment. Grantor retains the right to the enjoyment of the Protected Property consistent with the terms of this Conservation Easement and the Mitigation Plan Instruments.

6. **NOTICE AND APPROVAL**. Grantor agrees to notify the Grantee prior to undertaking any activity not specified in Section 5 that may have a material adverse impact on the conservation values of the Protected Property. Also, Grantor agrees to notify the Grantee prior to undertaking any activity covered by paragraph 5(b). Whenever notice is required hereunder, Grantor shall notify the Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment whether to approve the activity based on its consistency with the purpose of this Conservation Easement.

7. **VIOLATIONS AND CURE PERIOD.** If the Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee. Grantor shall either (a) cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, begin to curing such violation within the thirty (30) day period and diligently pursue such cure to completion or (b) dispute such finding and invoke the mediation provisions hereof. If Grantor invokes the mediation provisions hereof, Grantor shall cease (or forebear from taking) the disputed activity until such dispute is resolved.

8. **MEDIATION.** If a dispute arises between the Grantor, Grantee or U.S. Army Corps of Engineers concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, any such party may refer the dispute to mediation by request made in writing to the other parties. Upon such a request by the Grantee or U.S. Army Corps of Engineers, Grantor agrees that, pending resolution of the dispute, Grantor shall not proceed with the planned activity. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, each appoint a person to act as a mediator. Those persons shall select an additional person, and that person shall mediate the dispute subject to the following guidelines:

(a) **Purpose.** The purpose of any mediation will be to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation shall not result in any express or de facto modification or amendment of the terms, conditions, or restriction of this Conservation Easement.

(b) **Participation.** The mediator may meet with the parties and their counsel jointly or individually. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request

or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute:

9. **REMEDIES.** In the event that any dispute arising out of this Conservation Easement is not timely cured or resolved by way of the aforementioned mediation process (or Grantor refuses to forebear from a disputed activity), the Grantee may seek a resolution of such dispute (or failure to forebear) through any remedy available at law or in equity. The parties' rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement.

10. **INJUNCTIVE RELIEF.** Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Grantee shall be entitled to pursue injunctive relief, both prohibitive and mandatory, in addition to any other relief to which the Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. If the Grantee is required to bring an action to enjoin any violation, by temporary or permanent injunction, such relief may be sought *ex parte*, if necessary, and without need for a bond. Any mandatory injunction may require the restoration of the Protected Property to the condition that existed prior to any violation.

11. **NO WAIVER.** Forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

12. **ACTS BEYOND GRANTOR'S CONTROL.** Nothing contained in this Conservation Easement or the Mitigation Plan Instruments shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If practicable, before (or, if not, as soon after as possible) taking any emergency action in connection with the Protected Property, Grantor shall notify the Grantee by the best means practical.

13. **NO PUBLIC DEDICATION OR ACCESS.** THIS DECLARATION IS NOT A PUBLIC DEDICATION, AND NO RIGHT OF ACCESS BY THE GENERAL PUBLIC TO ANY PORTION OF THE PROTECTED PROPERTY IS CONVEYED OR CONTEMPLATED BY THIS DECLARATION.

14. **COSTS, LIABILITIES, TAXES, AND INSPECTION FEES.** Grantor shall be responsible for all expenses associated with the Protected Property and compliance with the terms of this Conservation Easement including, but not limited to, the following:

(a) **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

(b) **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.

(c) **Inspection Fee.** Grantor will pay to the Grantee an annual payment of Two Hundred Dollars (\$200.00) (or such other amount as may be mutually agreed upon from time to time) in consideration of the Grantee's inspection, monitoring and reporting in connection with the Protected Property.

15. **ENVIRONMENTAL COMPLIANCE.** Grantor shall be responsible for compliance with all environmental laws and regulations in connection with the Protected Property, and in connection therewith, agrees as follows:

(a) **Representation and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(i) No substance defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property;

(ii) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property;

(iii) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

(iv) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and

(v) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceeding, investigations, notices, claims, demands, or orders.

(b) Removal and Remediation. If, at any time, there occurs, or has occurred, a release, threatened release, or presence in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and/or removal and remediation, including any cleanup that may be required.

(c) Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of any environmental act.

(d) "Environmental Act" Defined. As used in this Conservation Easement, the term "environmental act" includes, but is not limited to, the Comprehensive Response, Compensation and Liability Act (CERCLA), the Resource, Conservation and Recovery Act (RCRA), or successor statutes to either, their state or local counterparts or any federal, state, or local enactment or regulation relating to the clean up, disposal or control of waste, or any other federal, state or local enactment or regulation relating to the protection of the environment, or the protection of natural resources such as air, water or soil or relating to the protection of human health and welfare. The term also includes any rule of common law, including but not limited to nuisance, relating to any of the above.

16. **ALTERATION OR REVOCATION:** This Conservation Easement may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Jackson County, MISSOURI. No action shall be taken, however, without advance written approval thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Jackson County, MISSOURI, within 30 days thereafter.

17. **CONDEMNATION.** If all or any part of the Protected Property is threatened to be taken by the exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, in a manner that would terminate this Conservation Easement, in whole or in part, the Grantee and U.S. Army Corps of Engineers shall be notified immediately upon receipt of such notice by the Grantor.

18. **ASSIGNMENT.** Grantor shall be free to assign or otherwise transfer all or part of any interest it may have from time to time in and to the Protected Property. At any given time, the holder of the fee interest in the Protected Property shall be the "Grantor" hereunder. Grantor shall also be free to assign, outsource or otherwise transfer all or part of its rights and obligations under this Conservation Easement to any third party that has the technical expertise and financial ability to carry out the obligations of Grantor hereunder. Grantor shall give the Grantee prior written notice of any intended assignment of any interest in the Protected Property and/or of any rights or obligations under this Conservation Easement.

19. **ESTOPPEL CERTIFICATES.** Upon request by Grantor, the Grantee shall within twenty (20) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of the Grantee's knowledge, that Grantor is in compliance with all obligations of Grantor contained in this Conservation Easement or otherwise evidences the status of this Conservation Easement. Such certification shall be limited to the condition of the Protected Property as of the Grantee's most recent inspection; provided, however, if Grantor request more current documentation, the Grantee shall conduct an inspection, at Grantor' expense, within thirty (30) days of receipt of Grantor written request therefor.

20. **NOTICES.** Any notice, demand, request, consent, approval, or communication that may or is required to be given pursuant to the terms hereof shall be in writing and either served personally, sent by way of recognized national overnight delivery service or sent by first class mail, postage prepaid. Notices to the Grantor or Grantee shall be addressed as follows:

To Grantor: Swallow Tail, L.L.C.
24820 Miller Road
Harrisonville, MO 64071

To Grantee: Cleaveland, Macoubrie & Cox LLC
c/o Midwest Mitigation Oversight Association
P.O. Box 467 515 Washington
Chillicothe, MO 64601

or to such other address as the Grantor or Grantee from time to time shall designate by written notice to the other. Notice to any other person or entity shall be sent to that person's or entity's Missouri office address.

21. **RECORDATION.** Grantor shall record this Instrument in timely fashion in the official records of the Recorder of Deeds in Jackson County, Missouri, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

22. **GENERAL PROVISIONS.** The following general provisions shall be controlling:

(a) **Term.** Unless otherwise cancelled and terminated, this Conservation Easement and all rights and obligations created hereby shall be perpetual.

(b) **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Missouri.

(c) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed to affect the purpose of this Conservation Easement and to promote the conservation values set forth herein. If any provision in this Instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(d) **Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(e) **Entire Expression of Intent.** This Instrument sets forth the entire expression of intent of the Grantor with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter of this Conservation Easement, all of which are merged herein. No alteration or variation of this Instruments shall be valid or binding unless contained in an amendment that complies with the provision hereof.

(f) **No Forfeiture.** Nothing contained herein is intended to or shall result in a forfeiture or transfer of Grantor's title to the public or any third party in any respect without the affirmative action of Grantor.

(g) **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon Grantor, Grantee and their respective successors and assigns, and shall inure to the benefit of the Protected Property, and shall continue as a servitude running in perpetuity with the Protected Property unless terminated by the Grantor with the prior written consent of the Grantee. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and Grantee and their successors, and assigns.

(h) **Termination of Rights and Obligations.** Decalrant's rights and obligations under this Conservation Easement shall terminate upon transfer of the Grantor's interest in this Conservation Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this Instrument have been inserted solely for convenience of reference and are not a part of these Instruments and shall have no effect upon construction or interpretation.

23. ASSIGNMENT OF RIGHTS: Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC., a Missouri non-profit

By: _____

Name: _____

Title: _____

“GRANTEE”

STATE OF)
) SS.
COUNTY OF)

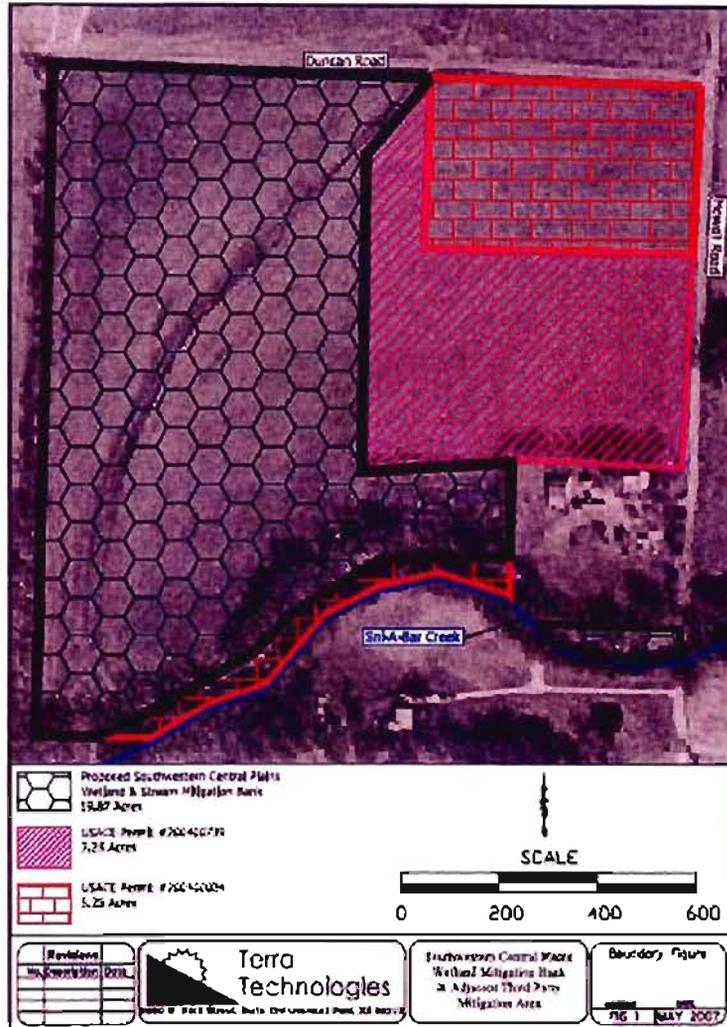
On this 19th day of June, 2009, before me appeared James D. Drake, to me personally known, who being by me duly sworn did say that he is the President of **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a Missouri non-profit corporation, and that said Instruments was signed on behalf of said corporation by authority of its board of directors, and he acknowledged said Instruments to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

Exhibit A
Legal Description of Property



All of the Northeast Quarter of the Northwest Quarter of Section 25, Township 49, Range 30, Jackson County, Missouri, EXCEPT that part in roads, and EXCEPT the following: Beginning at a point on the East line of said Quarter Section 775 feet South of the Northeast corner of the Northwest Quarter of said Section 25; thence described course 320 feet; thence East at right angles to the last described course 330 feet to a point on the East line of said Quarter Section; thence North along said East line 320 feet to the point of beginning and EXCEPT that part lying South and East of Sni-A-Bar Creek, Jackson County, Missouri.

Exhibit "B"
Baseline Documentation of Protected Property

Upon completion of mitigation construction, the following features will be present on the 37.26 acre Mitigation Site;

- 1) Restoration of an existing linear palustrine emergent wetland (0.51 acres) and associated open water (0.95 acres) drainage at the mitigation site;
- 2) Restoration of 0.52 acres of farmed wetlands with the establishment of scrub shrub, emergent, and forested wetlands throughout the mitigation site;
- 3) Establishment of 3.00 acres of emergent wetlands at the mitigation site;
- 4) Establishment of 32.80 acres of scrub shrub/forested wetlands at the mitigation site;
- 5) Preservation of the existing agricultural levy adjacent to Sni-a-Bar Creek;
- 6) Maintenance of steel posts at limits of mitigation site where neighboring property is not separated by a fence, roadway, stream, or drainage way.

The limits and extent of wetland features are shown in the corresponding Mitigation Plan Instrument for the site.

1. Title of Document: Conservation Easement
2. Date of Document: June 18, 2009
3. Grantor: Swallow Tail, L.L.C., a Missouri limited liability company
4. Grantees: Midwest Mitigation Oversight Association, Inc., a Missouri non-profit corporation and its successors in interest
5. Statutory Mailing Address: Cleaveland, Macoubrie & Cox LLC
c/o Midwest Mitigation Oversight Association
P.O. Box 467 515 Washington
Chillicothe, MO 64601
6. Property Descriptions: See Exhibit "A" set forth below.
7. Reference Books and Pages: None

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") is entered into as of the 22nd day of December, 2008 by and between **SWALLOW TAIL, L.L.C.**, a Missouri limited liability company ("Grantor") and **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a Missouri non-profit corporation and its successors in interest ("Grantee"). The address of the Grantor is 24820 Miller Road, Harrisonville, Missouri 64701.

RECITALS:

A. Grantor is the sole owner in fee simple of approximately 50.40 acres of real property located in Jackson County, Missouri and described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Protected Property").

B. The Protected Property is the subject of an agreement ("Mitigation Plan Instruments") among Grantor and certain governmental agencies creating the Sni-a-Bar Creek Wetland Mitigation Bank (Permit number 2006-1703), and, at the time of this Conservation Easement, the Protected Property will satisfy the objectives of each Mitigation Plan Instruments to restore and maintain wetlands and other waters of the U.S. into perpetuity, and will preserve a valuable watershed drainage area that feeds into the Missouri River.

C. The Protected Property consists of land formerly used primarily for agriculture that has been restored to native wetland, prairie, and forest habitat to provide native plant and wildlife species habitat and refuge and that protect the wildlife, watersheds and green space environments that are all of local importance to Grantor, Grantee, the people of Jackson County and the people of the State of Missouri.

D. The primary purpose of this Conservation Easement is to restrict the use of, protect and provide for oversight of the Protected Property. Grantor and Grantee intend that the conservation values of the Protected Property shall be preserved and maintained by permitting only those land uses on the Protected Property that do not impair or interfere with the restored native wetland, prairie, and forest habitat, the native wildlife, and the watershed functions and values and by prohibiting use of the Protected Property for agricultural production, farming, and timber production existing at the time of this Conservation Easement ("Permitted Uses" and "Restricted Uses").

E. The specific conservation values of the Protected Property are documented in an inventory of relevant features of the Protected Property, attached hereto as Exhibit "B" which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Conservation Easement and the Mitigation Plan Instruments;

F. Grantee is a non-profit association created to hold interests in and protect the conservation values and integrity of the Protected Property and similar properties in perpetuity for the benefit of the current generation and the generations to come.

NOW, THEREFORE, Grantor hereby grants and conveys to Grantee the conservation easement rights set forth herein and Grantee accepts such conveyance and agrees to perform all of the obligations associated with the Protected Property that are contemplated hereby. Grantor and Grantee further agree that the Protected Property shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the terms hereinafter set forth, all of which shall attach to and run with the Protected Property and shall inure to the benefit of and be a burden upon all future owners, lessee or other occupants or users of the Protected Property.

1. **PURPOSE**. The terms, conditions and obligations of this Conservation Easement shall encumber the Protected Property and shall govern the development, maintenance, operation and use of the Protected Property. Any Person owning any right, title or interest in or having any other right to use or occupy all or any part of the Protected Property, shall be deemed to have agreed to be bound by all of the conditions, covenants, easements, restrictions, rights, obligations, appurtenances, and privileges contained in this Conservation Easement and the Mitigation Plan Instruments. It is the purpose of this Conservation Easement and the Mitigation Plan Instruments (a) to assure that the Protected Property will be retained forever predominantly in its natural, scenic, historic, and open space condition and (b) to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property.

2. **ENFORCEMENT**. The Grantee shall have the sole initial right to enforce, by proceedings at law or equity, all provisions of this Conservation Easement. The failure to enforce any provision of this Conservation Easement at any time or for any period of time shall not be deemed a waiver of the right to do so thereafter. Whenever any enforcement action is deemed appropriate by the Grantee, such action may be pursued (by legal action or otherwise) (i) in the name of the Grantee or (ii) in the name of some other Person designated by the Grantee to pursue such action on its behalf. Enforcement actions may seek compliance with the provisions of this Conservation Easement or any other document contemplated hereby and/or the granting any other appropriate relief, including money damages.

3. **OBLIGATIONS OF GRANTEE**. To accomplish the purpose of this Conservation Easement and the Mitigation Plan Instruments, Grantee or Grantee's designee shall provide all services required pursuant hereto and the Mitigation Plan Instruments in connection with the Protected Property including, but not limited to, the following:

(a) **Preservation**. Preserve and protect the conservation values of the Protected Property.

(b) **Prevention**. Prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments.

(c) **Restoration**. Restore any areas or features of the Protected Property in accordance with the provisions of the Mitigation Plan Instruments.

(d) **Monitoring**. Enter upon the Protected Property at reasonable times in order to insure Grantor's compliance with the terms of this Conservation Easement.

4. **PROHIBITED USES.** Grantor and Grantee intend that this Conservation Easement will confine the use of the Protected Property to Permitted Uses, including, without limitation, those involving wildlife habitat, ecological research, recreation and public education, as are consistent with the purpose of this Conservation Easement and the Mitigation Plan Instruments. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) **Structures.** There shall be no construction or placing of any permanent structure on the Protected Property unless agreed to by the parties to the Mitigation Plan Instruments. The term "structure" includes, nonexclusively, any house, garage, barn, recreational courts or playing fields, landing strip, mobile home, swimming pool, asphalt, concrete pavement, antenna, storage tank, tower, or lights. The term structure does not include temporary hunting blinds, wildlife habitat installations or hydrologic control structures.

(b) **Mining.** There shall be no hard rock, sand, gravel, or soil mining on the Protected Property.

(c) **Soil and Water.** There shall be no use or activity that causes or is likely to cause significant soil degradation or significant depletion or pollution of any surface or subsurface waters.

(d) **Watershed and Wetlands.** There shall be no draining, filling, dredging, diking or other alteration of any wetland areas in any of the designated floodplain areas of the Protected Property except as may be necessary for the maintenance of the wetland, prairie, and forested conditions on the Protected Property.

(e) **Topography.** There shall be no ditching, draining, diking, filling, excavating, sod, sand, gravel, rock, or other materials, or any change in the topography of the Protected Property in any manner except as may be necessary for the creation or maintenance of the wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers and maintenance of existing access roads on the Protected Property. This provision shall not be used in any way to limit or preclude the construction of erosion control terraces, catch basins or waterways that are necessary to meet or exceed conservation control requirements for the protection of the topsoil on the Protected Property.

(f) **Plowing.** There shall be no tilling or plowing of the Protected Property unless agreed to by the parties to the Mitigation Plan Instruments.

(g) **Dumping.** There shall be no dumping of trash, garbage, hazardous or toxic substances on the Protected Property.

(h) **Roads.** There shall be no building of new roads or establishment of other rights-of-way on the Protected Property. This does not preclude the creation of nature,

hiking or riding trails on the Protected Property if approved by the U.S. Army Corps of Engineers.

(i) Timber Harvest. There shall be no timber harvest from the Protected Property unless deemed necessary for the maintenance of the desired wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers.

(j) Grazing. The Protected Property shall not be grazed by livestock unless deemed necessary for the maintenance of the desired wetland, prairie, and forested conditions on the Protected Property, as approved by the U.S. Army Corps of Engineers.

(k) Commercial Activities. Commercial activities shall not be permitted on the Protected Property either by Grantor, Grantee or their respective agents, personal representatives, heirs, successors and/or assigns. Hiking, riding and trail systems on the land are permitted and receipt of payment by the Grantor for hiking or riding on the Protected Property's non-tillable ground is not deemed to be a commercial activity. Hunting and fishing shall be permitted and receipt of payment by the Grantor for hunting on the Protected Property is not deemed to be a commercial activity.

(l) Animal Confinement. There shall be no commercial confinement of livestock, swine or poultry on the Protected Property.

(m) Utilities. Installation of new utilities is prohibited, except that the Grantor and/or Grantee may install such new utilities and maintain such existing utilities as may be necessary for permitted uses of the Protected Property or adjacent property as long as such installation is not inconsistent with the purposes of this Conservation Easement or the Mitigation Plan Instruments and is done in such a manner as to minimize to the greatest extent possible any impact on soils. Grantor may grant local utilities easement access to extend service lines along or across the Protected Property so long as such easements are subordinate to this Conservation Easement. Any existing utilities may be replaced or repaired at their current location.

(n) Water Rights. Grantor shall retain all water rights necessary for present or future permitted agricultural production on the Protected Property and shall not transfer, encumber, lease, sell, or otherwise separate such quantity of water rights from title to the Protected Property.

5. **GRANTOR'S RESERVED RIGHTS**. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement or the Mitigation Plan Instruments. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Ecosystem Restoration Activities. Grantor may undertake any activities with the purpose of establishing and maintaining the desired wetland, prairie, and forested land uses on the Protected Property, as described in the Mitigation Plan Instruments. This shall include, but is not limited to, mowing undesirable vegetation, prescribed burns, and the removal of invasive species.

(b) Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property provided that such conveyance is subject to this Conservation Easement and written notice is provided to the Grantee.

(c) Timber. Cutting of trees and woody shrubs may be accomplished to maintain the desired wetland, prairie, and forested character of the Protected Property, to maintain fences and to prevent invasion of woody plants on the site. Trees cut for authorized purposes may be utilized for personal use as firewood or for habitat enhancement.

(d) Fences. Grantor shall be responsible for complying with Missouri fence laws. Grantor may construct, repair, replace, maintain, improve or remove any additional fencing as the Grantor deems necessary to secure the Protected Property.

(e) Signs. Grantor may place interpretive signs and “no hunting or trespassing without written permission” or similar signs on the Protected Property.

(f) Educational Use. Grantor may make the Protected Property accessible to the public to enjoy the ecological, open space, aesthetic and conservation benefits of this Conservation Easement and to learn about the benefits of conservation efforts in general.

(g) Vehicles. Motorized vehicles may be operated on the Protected Property to perform restoration and maintenance of the desired wetland, prairie and forested land uses, to transport educational groups with special needs, to maintain the Protected Property, and to remove trees and shrubs in order to maintain the character of the Protected Property and to provide, if necessary, vehicle access to adjacent parcels. Use of permitted vehicles should, however, be in a manner that will minimize impact on native vegetation in the areas on the Protected Property which is not in agricultural production activities.

(h) Rights to Enjoyment. Grantor retains the right to the enjoyment of the Protected Property consistent with the terms of this Conservation Easement and the Mitigation Plan Instruments.

6. NOTICE AND APPROVAL. Grantor agrees to notify the Grantee prior to undertaking any activity not specified in Section 5 that may have a material adverse impact on the conservation values of the Protected Property. Also, Grantor agrees to notify the Grantee prior to undertaking any activity covered by paragraph 5(b). Whenever notice is required hereunder, Grantor shall notify the Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature,

scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment whether to approve the activity based on its consistency with the purpose of this Conservation Easement.

7. **VIOLATIONS AND CURE PERIOD.** If the Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee. Grantor shall either (a) cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, begin to curing such violation within the thirty (30) day period and diligently pursue such cure to completion or (b) dispute such finding and invoke the mediation provisions hereof. If Grantor invokes the mediation provisions hereof, Grantor shall cease (or forebear from taking) the disputed activity until such dispute is resolved.

8. **MEDIATION.** If a dispute arises between the Grantor, Grantee or U.S. Army Corps of Engineers concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, any such party may refer the dispute to mediation by request made in writing to the other parties. Upon such a request by the Grantee or U.S. Army Corps of Engineers, Grantor agrees that, pending resolution of the dispute, Grantor shall not proceed with the planned activity. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, each appoint a person to act as a mediator. Those persons shall select an additional person, and that person shall mediate the dispute subject to the following guidelines:

(a) **Purpose.** The purpose of any mediation will be to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation shall not result in any express or de facto modification or amendment of the terms, conditions, or restriction of this Conservation Easement.

(b) **Participation.** The mediator may meet with the parties and their counsel jointly or individually. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute:

9. **REMEDIES.** In the event that any dispute arising out of this Conservation Easement is not timely cured or resolved by way of the aforementioned mediation process (or Grantor refuses to forebear from a disputed activity), the Grantee may seek a resolution of such dispute (or failure to forebear) through any remedy available at law or in equity. The parties' rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement.

10. **INJUNCTIVE RELIEF.** Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Grantee shall be entitled to pursue injunctive relief, both prohibitive and mandatory, in addition to any other relief to which the Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. If the Grantee is required to bring an action to enjoin any violation, by temporary or permanent injunction, such relief may be sought *ex parte*, if necessary, and without need for a bond. Any mandatory injunction may require the restoration of the Protected Property to the condition that existed prior to any violation.

11. **NO WAIVER.** Forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

12. **ACTS BEYOND GRANTOR'S CONTROL.** Nothing contained in this Conservation Easement or the Mitigation Plan Instruments shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If practicable, before (or, if not, as soon after as possible) taking any emergency action in connection with the Protected Property, Grantor shall notify the Grantee by the best means practical.

13. **NO PUBLIC DEDICATION OR ACCESS.** THIS DECLARATION IS NOT A PUBLIC DEDICATION, AND NO RIGHT OF ACCESS BY THE GENERAL PUBLIC TO ANY PORTION OF THE PROTECTED PROPERTY IS CONVEYED OR CONTEMPLATED BY THIS DECLARATION.

14. **COSTS, LIABILITIES, TAXES, AND INSPECTION FEES.** Grantor shall be responsible for all expenses associated with the Protected Property and compliance with the terms of this Conservation Easement including, but not limited to, the following:

(a) **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

(b) **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.

(c) **Inspection Fee.** Grantor will pay to the Grantee an annual payment of Two Hundred Dollars (\$200.00) (or such other amount as may be mutually agreed upon from time to time) in consideration of the Grantee's inspection, monitoring and reporting in connection with the Protected Property.

15. **ENVIRONMENTAL COMPLIANCE.** Grantor shall be responsible for compliance with all environmental laws and regulations in connection with the Protected Property, and in connection therewith, agrees as follows:

(a) **Representation and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(i) No substance defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property;

(ii) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property;

(iii) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

(iv) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and

(v) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceeding, investigations, notices, claims, demands, or orders.

(b) Removal and Remediation. If, at any time, there occurs, or has occurred, a release, threatened release, or presence in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and/or removal and remediation, including any cleanup that may be required.

(c) Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of any environmental act.

(d) "Environmental Act" Defined. As used in this Conservation Easement, the term "environmental act" includes, but is not limited to, the Comprehensive Response, Compensation and Liability Act (CERCLA), the Resource, Conservation and Recovery Act (RCRA), or successor statutes to either, their state or local counterparts or any federal, state, or local enactment or regulation relating to the clean up, disposal or control of waste, or any other federal, state or local enactment or regulation relating to the protection of the environment, or the protection of natural resources such as air, water or soil or relating to the protection of human health and welfare. The term also includes any rule of common law, including but not limited to nuisance, relating to any of the above.

16. ALTERATION OR REVOCATION: This Conservation Easement may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Jackson County, MISSOURI. No action shall be taken, however, without advance written approval thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration,

release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Jackson County, MISSOURI, within 30 days thereafter.

17. **CONDEMNATION**. If all or any part of the Protected Property is threatened to be taken by the exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, in a manner that would terminate this Conservation Easement, in whole or in part, the Grantee and U.S. Army Corps of Engineers shall be notified immediately upon receipt of such notice by the Grantor.

18. **ASSIGNMENT**. Grantor shall be free to assign or otherwise transfer all or part of any interest it may have from time to time in and to the Protected Property. At any given time, the holder of the fee interest in the Protected Property shall be the "Grantor" hereunder. Grantor shall also be free to assign, outsource or otherwise transfer all or part of its rights and obligations under this Conservation Easement to any third party that has the technical expertise and financial ability to carry out the obligations of Grantor hereunder. Grantor shall give the Grantee prior written notice of any intended assignment of any interest in the Protected Property and/or of any rights or obligations under this Conservation Easement.

19. **ESTOPPEL CERTIFICATES**. Upon request by Grantor, the Grantee shall within twenty (20) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of the Grantee's knowledge, that Grantor is in compliance with all obligations of Grantor contained in this Conservation Easement or otherwise evidences the status of this Conservation Easement. Such certification shall be limited to the condition of the Protected Property as of the Grantee's most recent inspection; provided, however, if Grantor request more current documentation, the Grantee shall conduct an inspection, at Grantor' expense, within thirty (30) days of receipt of Grantor written request therefor.

20. **NOTICES**. Any notice, demand, request, consent, approval, or communication that may or is required to be given pursuant to the terms hereof shall be in writing and either served personally, sent by way of recognized national overnight delivery service or sent by first class mail, postage prepaid. Notices to the Grantor or Grantee shall be addressed as follows:

To Grantor: Swallow Tail, L.L.C.
24820 Miller Road
Harrisonville, MO 64071

To Grantee: Cleaveland, Macoubrie & Cox LLC
c/o Midwest Mitigation Oversight Association
P.O. Box 467 515 Washington
Chillicothe, MO 64601

or to such other address as the Grantor or Grantee from time to time shall designate by written notice to the other. Notice to any other person or entity shall be sent to that person's or entity's Missouri office address.

21. **RECORDATION**. Grantor shall record this Instrument in timely fashion in the official records of the Recorder of Deeds in Jackson County, Missouri, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

22. **GENERAL PROVISIONS**. The following general provisions shall be controlling:

- a. **Term**. Unless otherwise cancelled and terminated, this Conservation Easement and all rights and obligations created hereby shall be perpetual.
- b. **Controlling Law**. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Missouri.
- c. **Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed to affect the purpose of this Conservation Easement and to promote the conservation values set forth herein. If any provision in this Instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. **Severability**. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- e. **Entire Expression of Intent**. This Instrument sets forth the entire expression of intent of the Grantor with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter of this Conservation Easement, all of which are merged herein. No alteration or variation of this Instruments shall be valid or binding unless contained in an amendment that complies with the provision hereof.
- f. **No Forfeiture**. Nothing contained herein is intended to or shall result in a forfeiture or transfer of Grantor's title to the public or any third party in any respect without the affirmative action of Grantor.
- g. **Successors**. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon Grantor, Grantee and their respective successors and assigns, and shall inure to the benefit of the Protected Property, and shall continue as a servitude running in perpetuity with the Protected Property unless terminated by the Grantor with the prior written consent of the Grantee. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and Grantee and their successors, and assigns.

- h. Termination of Rights and Obligations. Decalrant's rights and obligations under this Conservation Easement shall terminate upon transfer of the Grantor's interest in this Conservation Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- i. Captions. The captions in this Instrument have been inserted solely for convenience of reference and are not a part of these Instruments and shall have no effect upon construction or interpretation.

23. ASSIGNMENT OF RIGHTS: Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

**MIDWEST MITIGATION OVERSIGHT
ASSOCIATION, INC.**, a Missouri non-profit

By: _____

Name: _____

Title: _____

“GRANTEE”

STATE OF)
) SS.
COUNTY OF)

On this 19th day of June, 2009, before me appeared James D. Drake, to me personally known, who being by me duly sworn did say that he is the President of **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a Missouri non-profit corporation, and that said Instruments was signed on behalf of said corporation by authority of its board of directors, and he acknowledged said Instruments to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

Exhibit "B"
Baseline Documentation of Protected Property

Upon completion of mitigation construction, the following features will be present on the 50.40 acre Mitigation Site;

- 1) Enhancement and preservation of 6,042 linear feet of riparian buffer along all streams at the mitigation site;
- 2) Creation and enhancement of approximately 15 acres of wetlands at the mitigation site;
- 3) Maintenance of steel posts at limits of mitigation site where neighboring property is not separated by a fence, roadway, stream, or drainage way.

The limits and extent of wetland features are shown in the corresponding Mitigation Plan Instrument for the site.