

# Prospectus for Beech River Wetland Mitigation Bank

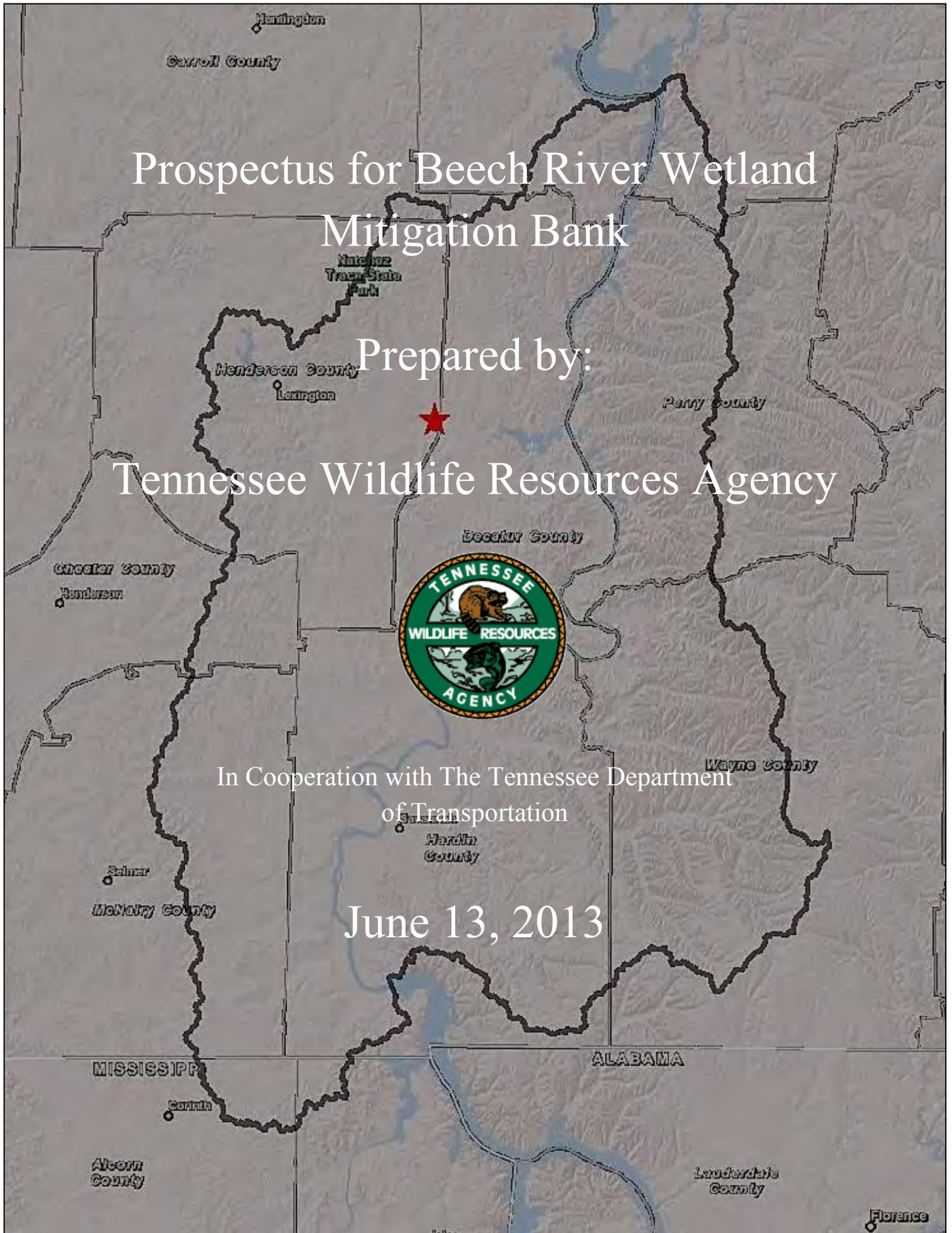
Prepared by:

Tennessee Wildlife Resources Agency



In Cooperation with The Tennessee Department  
of Transportation

June 13, 2013



## TABLE OF CONTENTS

<b>1. Introduction</b> .....	1
1.1 Need for the Wetland Mitigation Bank.....	1
<b>2. Proposed Geographic Service Area (GSA)</b> .....	2
<b>3. Site Description / Historical Land Use</b> .....	2
<b>4. Bank Development Plan</b> .....	3
4.1 Goals and Objectives.....	3
4.2 Qualifications of Sponsor.....	4
4.3 Establishment and Operation.....	6
<b>5. Crediting and Debiting Procedure</b> .....	8
5.1 Generation of Credits.....	8
5.2 Credit Releases.....	9
<b>6. Long-Term Management</b> .....	10

## LIST OF TABLES

<b>Table 1</b> .....	9
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## LIST OF APPENDICES

**Appendix A – Figures**

**Appendix B – Photo Summary**

**Appendix C – NRCS Data and Historical Aerials**

**Appendix D – Corps Jurisdictional Determination Letter**

**Appendix E – Draft Landuse Restrictions**

## **1. Introduction**

The Tennessee Wildlife Resources Agency (TWRA) in consultation with the Interagency Review Team (IRT) consisting of the U.S. Army Corps of Engineers (USACE), the Environmental protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), the Tennessee Wildlife Resources Agency (TWRA), the Tennessee Department of Environment and Conservation (TDEC) and the Federal Highway Administration (FHWA) plans to develop a 76.2-acre single user wetland mitigation bank in Henderson County, Tennessee for the Tennessee Department of Transportation (TDOT) to service the Western Tennessee Valley (Beech) Watershed. The site plan will be developed by TWRA (SPONSOR) with the support of TDOT biologists. Upon completion of the bank, TWRA will continue to assume jurisdiction over the entire 76.2 acres and will be responsible for its long-term management and protection. Completion of the bank is when all wetland mitigation credits have been exhausted and all performance standards, outlined in the mitigation banking instrument (MBI), have been met.

The purpose of the Beech River Wetland Mitigation Bank (BANK) is to establish available wetland mitigation credits to provide compensatory mitigation for unavoidable impacts to wetlands due to future TDOT projects in the BANK's geographic service area (GSA) discussed in Section 2.

This Prospectus has been prepared following guidelines set forth in "Compensatory Mitigation for the Losses of Aquatic Resources" (33 CFR Parts 325 and 332, effective June 6, 2008). Use of credits from the BANK to offset wetland impacts authorized by Department of the Army permits must be in compliance with the Clean Water Act and implementing regulations, including but not limited to the 404(b)(1) Guidelines; the National Environmental Policy Act; and all other applicable Federal and State legislation, rules and regulations.

### **1.1 Need for the Bank**

TDOT anticipates the need for a significant quantity of wetland mitigation credits to offset unavoidable impacts associated with several proposed road widening and bridge construction projects within the Beech River Watershed. Two projects consist of the widening of State Route (SR) 15 in McNairy and Hardin Counties. The BANK will offer high quality wetland mitigation

in a timely manner and will allow TDOT to meet the mitigation priorities of the implementing rules of the Clean Water Act (33 CFR Part 325 and 40 CFR Part 332), which give priority to mitigation banking over the in lieu fee and permittee-responsible wetland mitigation options for compensating for unavoidable impacts to waters of the United States.

Federal regulations recognize that mitigation banks are environmentally preferable options to other mitigation because they usually involve consolidating compensatory mitigation projects and resources to target more ecologically significant functions, provide financial planning and scientific expertise, reduce temporal losses of function, and reduce uncertainty over project success (33 CFR Part 332). Such will be the case with the development of the Beech River Wetland Mitigation Bank Site.

## **2. Proposed Geographic Service Area (GSA)**

The Geographic Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to streams and/or wetlands or other aquatic resources. In general, the GSA for the BANK will include the entire Lower Tennessee Valley/ Beech (06040001) USGS 8-Digit Hydrologic Unit Code (HUC) watershed and the portion of the Kentucky Lake watershed (06040005) west of the Tennessee River (Figure 2A). Use of the BANK to compensate for impacts outside of the GSA may be authorized by the IRT. Considerations will include the extent of ecologically similar areas, the expected amount and type of mitigation required in an area (demand) compared with the aquatic resources and amount of credits that are expected from the BANK, the availability of private mitigation banks in the area, population and growth information, and ongoing watershed management programs.

## **3. Site Description / Historical Land Use**

The site is located predominantly in Henderson County, approximately 1.5 miles southeast of Darden, Tennessee (Appendix A, Figure 1). A small portion of the eastern part of the proposed project area is also situated within Decatur County. The 76.2-acre tract lies in a rural area of prior converted cropland and hydric soils within the Lower Tennessee (Beech) watershed (Appendix A, Figures 2, 3 and 4) and is part of a much larger 224-acre parcel owned by TWRA. The parcel includes a combination of emergent, scrub shrub, and forested riparian wetlands

located within the floodplain of the Beech River (Appendix A, Figure 4). The 76.2-acre site has been in crop production for the last century and most recently has been leased by local farmers from TWRA for agricultural uses (See Appendix B, Photo Summary). A brief summary of the site's history is described below.

From aerial photography and information provided by TWRA and local landowners in the Darden, TN area, we know that the site was farmed several decades prior to 1995. The Proposed Beech River Wetland Mitigation Bank site was first acquired by TWRA in July 1995 from Nelson Reeves. At the time of the site transaction in 1995, Mr. Reeves had a corn crop on the farm which he had harvested that fall. The following crop year (1996-1997) the farm was leased back to Nelson Reeves by TWRA to farm. As part of the TWRA lease contract requirements, Mr. Reeves was to leave 20% of the crop in the field for wildlife and plant a 45-acre soybean/millet dove field. This field was harvested for hay and then used for a dove field. The next crop year (1997-1998) the farm was once again leased back to Mr. Reeves to farm. The TWRA lease contract required Mr. Reeves leave 20% of the crop in the fields for wildlife use and leave 5 acres of sunflowers and 10 acres of corn/milo in areas standing in the fields as designated by TWRA. In 1999 no one leased the fields. However, the next 10 years (2000-2010), two farming leases were awarded for 5 years, each to Tim Carrington of Beason Tennessee. The contracts required Mr. Carrington to leave crops (ecorn, soybeans, milo, millet, or sunflowers) standing in the field for wildlife. This 10 year period saw flooding of the area at some point during the crop year (8 years of the 10 year crop lease) by the Beech River. Siltation of the Beech River and then adjoining creeks and ditches over the years caused prolonged flooding of the fields and destruction of the crops planted by Mr. Carrington. In 2009 Mr. Carrington asked to be let out of the lease, which was approved by TWRA. Between 2009 and 2012, TWRA planted the site in wheat and maintained the site for dove hunting permits.

The Proposed Beech River Wetland Bank Site has always been open with the Statewide Hunting Seasons and bag limits. The area is currently used for Big Game, Small Game, and Waterfowl hunting (since it frequently floods during the waterfowl season) along with Trapping. There has always been a constant struggle with beavers to keep ditches open when the river, creeks, and ditches were not silted in and water could be drained from the site. Although the site appears to

be progressing back towards wetter conditions over the past couple of years due to less site maintenance and farming activities, the site is still being actively drained by a network of several ditches and swales (Appendix B Photos 1, 2, and 6). Please refer to Appendix C for historical aerial photographs.

#### **4. Bank Development Plan**

##### **4.1 Goals and Objectives**

TWRA proposes to develop a wetland mitigation bank by restoring approximately 60 acres of prior converted cropland and to highly functional, seasonally saturated bottomland hardwood forest at a 1:1 ratio within the proposed 76.2-acre site. In addition to proposed wetland restoration areas, approximately 16.2 acres of mixed emergent herbaceous, scrub shrub and some forested wetlands will be “enhanced” at a 6:1 ratio generating approximately 2.7 mitigation credits. Restoration and enhancement activities combined would generate approximately 62.7 wetland mitigation credits which would be used as compensatory mitigation for future TDOT wetland impacts within the Beech River watershed. The development of the BANK will replace the benefits, services, and values lost due to future impacts thereby satisfying the objective of the Clean Water Act and supporting the “no net loss” goal for wetland acreage and function.

The objective of the proposed BANK is to restore the chemical, physical, and biological functions of the prior converted site. Successful restoration and preservation of existing wetlands will improve the values associated with water quality, water supply, flood control, erosion control, wildlife support, and recreation of the Beech River and its watershed.

##### **4.2 Qualifications of Sponsor**

The primary mission of the Tennessee Wildlife Resources Agency is to preserve, conserve, manage, protect, and enhance the fish and wildlife of the state and their habitats for the use, benefit, and enjoyment of the citizens of Tennessee and its visitors. The Agency fosters the safe use of the state’s waters through a program of law enforcement, education, and access.

TWRA was established in 1949 and now consists of more than 600 professionals dedicated to preservation and conservation of Tennessee's lands. TWRA has four regional offices strategically located to serve the western, middle, plateau, and eastern portions of the state. TWRA biologists and foresters manage the state's rich diversity of woods and waters and game and nongame wildlife. TWRA specialists also conduct wildlife and aquatic education workshops; protect the state's vital wetlands; monitor water quality; and preserve the state's disappearing wildlife species. Finally, TWRA professionals create accurate, updated maps of Agency-managed properties through a state-of-the-art computer imaging system.

In addition to qualifications of the sponsor (TWRA), TDOT will assist TWRA with the development of the Beech River Wetland Mitigation Bank site. TDOT's Environmental Division's Natural Resources Office is comprised of two sections: Ecology Section and Environmental Permits Section. The Ecology Section is responsible for meeting the Department's wetland and stream mitigation needs in order to appropriately permit projects.

Mr. Mike Williams is the Ecology Section's Wetland Mitigation Supervisor and currently oversees eight (8) different wetland mitigation sites/banks located throughout the state. Mr. William's in-house staff and on-call ecology consultants are comprised of a multidisciplinary group of professionals that bring together all necessary expertise to create outstanding wetland mitigation projects.

To execute wetland mitigation banks/projects, TDOT uses some of its own staff and assembles a team of project-specific (on-call) consultants/contractors to perform design, surveying, archaeological investigations, construction services, and monitoring activities. Each of these contractors has substantial experience in wetland, stream, and buffer restoration in Tennessee and a substantial full-time professional staff presence in Tennessee. TDOT staff members have worked with several of its on-call consultants and contractors previously on numerous wetland mitigation projects. TDOT will contract with experienced mitigation providers to assist TWRA with the development of the Beech River Wetland Mitigation Bank.

Following construction, TWRA will use its own staff to operate and manage the BANK, including the maintenance of site-specific ledgers and annual reporting requirements. TWRA has over 50 years of experience managing multiple financial accounts involving land conservation management. Its accounting staff will work closely with TDOT and TWRA's regional wildlife management supervisor to establish accounting procedures for the BANK.

The proposed administrative manager for the Beech River Wetland Mitigation Bank will be Robb Todd. The administrative manager will be responsible for all record keeping, credit tracking, and other administrative issues.

#### **4.3 Establishment and Operation**

TWRA will develop and operate the BANK pursuant to 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources. The BANK will be established through a mitigation banking instrument (MBI) pursuant to the federal rules. The MBI will include the following: a description of the GSA, accounting procedures, default and closure provisions, reporting protocols, mitigation plan(s), and a credit release schedule. TWRA will use a combination of restoration and enhancement of wetlands to generate mitigation credits for use as a single user bank in the GSA.

Following review of this prospectus, TWRA will submit a draft MBI to the Interagency Review Team (IRT) for an initial evaluation, which will include the following information:

- a) Objectives
- b) Site selection rationale
- c) Site protection instrument
- d) Baseline information
- e) Determination of credits
- f) Mitigation work plan
- g) Maintenance plan
- h) Performance Standards
- i) Monitoring requirements

- j) Long-term management plan
- k) Adaptive management plan
- l) Financial Assurances
- m) Credit Calculation

After receiving comments from the IRT on the draft MBI and credits to be generated, TWRA will develop a final MBI for the review and approval of the IRT. Upon approval of the MBI, credits will be released from the BANK consistent with the schedule of credit availability outlined in the MBI. TWRA will be responsible for accounting for credits and debits pursuant to the procedures outlined in the MBI. The eligibility of a TDOT project seeking to use credits from the BANK will be determined by the applicable regulatory and resource agencies on a project-by-project basis.

TWRA will operate the Bank until banking activity is voluntarily terminated after written notice by TWRA to the IRT and the approval of the IRT.

TWRA will submit to USACE on an annual basis, for distribution to each member of the IRT, the following reports: (i) a ledger report showing the beginning and ending balance of available credits and permitted TDOT impacts by resource type and (ii) the monitoring report for the BANK, which is prepared pursuant to the specific mitigation plan outlined in the MBI. TWRA will identify and implement appropriate remedial action for the Beech River Wetland Mitigation Bank in coordination with the IRT in the event the site fails to achieve the success criteria specified in the final MBI.

TWRA intends to establish itself as a qualified bank sponsor within the Lower Tennessee (Beech) Watershed for Corps and TDEC authorizations in Tennessee. TWRA will work with other state natural resource agencies to assure their requirements are being met. An Interagency Review Team (IRT) will advise the Corps on the establishment and management of the BANK, while the Corps (Nashville District) and TDEC will serve as Co-Chairs of the IRT. The IRT will be composed of representatives invited by the Corps from other federal and state resource

agencies that would have a substantive interest in the establishment and management of the BANK being sponsored by TWRA.

## **5. Crediting and Debiting Procedure**

### **5.1. Generation of Credits**

Federal and state guidance establishes mitigation credit ratios based on wetland functions and values expected to be gained by the proposed treatment. Restoration of hydrologic functions and vegetation on hydric soils is typically credited at a 1:1 ratio. Enhancement of wetlands in recent Wetland Mitigation Banks and permittee mitigation projects have been credited at a 6:1 ratio when planting trees and improving site hydrology; such would be the case with this site. Using this guidance, a total of 62.7 wetland credits would be generated through the successful restoration and enhancement activities proposed for the Beech River Wetland Mitigation Bank site.

The number of wetland credits available from this BANK will reflect the difference between pre- and post-project site conditions as determined by the Nashville USACE District Mitigation and TDEC. Generation of credits will be based on state and federal guidelines, including any minimum ratio requirements in accordance with Part 332, Compensatory Mitigation for Losses of Aquatic Resources.

All types of unavoidable wetland impacts, including forested, emergent, and open water may be mitigated at the BANK. The use of credits to mitigate wetland impacts dissimilar to the wetland types existing at the BANK may be allowed on a case-by-case basis after coordination with IRT. Decisions regarding out-of-kind wetland mitigation will consider the availability and practicability of in-kind mitigation as well as the existing condition and landscape function of the impacted wetlands and the BANK's wetlands.

Credits for out-of-kind mitigation will be denoted as such in all reports. One acre of re-established (restored) wetlands at the BANK will generate one credit. Credits are debited when a

permit is issued allowing the use of the BANK's credits as compensatory mitigation. An acre of impact to be mitigated will debit credits at a given ratio. For example, if a one acre impact is mitigated at the BANK at a 2:1 ratio, 2 credits would be debited from the total number of available credits.

## 5.2 Credit Releases

Credits generated through development of the BANK will be used exclusively by TDOT to offset wetland impacts as authorized by a Section 401/404 permit within the BANK's service area. Use of, as well as the number and type, credits for activities authorized by Corps permits will be at the discretion of the Corps District Engineer. Upon purchase of wetland mitigation credits by TDOT, the TWRA becomes responsible for the wetland mitigation requirements of the permit. Credits debited from the BANK may be used to holistically satisfy the environmental requirements of multiple agencies if it is for the same project activity and the agencies have approved purchase of credits to fulfill mitigation requirements. The amount of compensatory mitigation required may vary between agencies based on regulatory authority and mitigation ratio requirements.

In consideration of the ecological suitability of the site, low-risk restoration approach, and perpetual protection, the TWRA requests the IRT approval of a pre-credit release of 50% of the total credits expected at the site upon signature of the MBI and filing of restrictive covenants, completion of tree planting, and completion of hydrological modifications as reflected in the following schedule the following schedule.

<b>TABLE 1 CREDIT RELEASE SCHEDULE</b>		
<b>Percent Release</b>	<b>Release Schedule</b>	<b>Credits Released</b>
20%	Upon signature of MBI and filing of restrictive covenants	12.5
15%	At Completion of tree planting	9.41
15%	At Completion of hydrological modifications	9.41

<b>TABLE 1 (CONTINUED)</b>		
<b>CREDIT RELEASE SCHEDULE</b>		
0%	1 <sup>st</sup> Annual Monitoring Report	0
10%	2 <sup>nd</sup> Annual Monitoring Report	6.27
10%	3 <sup>rd</sup> Annual Monitoring Report	6.27
0%	4 <sup>th</sup> Annual Monitoring Report	0
15%	5 <sup>th</sup> Annual Monitoring Report	9.41
15%	7 <sup>th</sup> Annual Monitoring Report	9.41
	<b>Total</b>	<b>62.7</b>

## **6. Long-term Management**

The BANK will meet the appropriate ownership and stewardship requirements to insure its long-term protection. A final conservation easement or equivalent protection mechanism shall be submitted to the Corps and the IRT for review and approval prior to the final release of mitigation project credits. At the end of the monitoring period, upon satisfaction of the performance standards, TWRA will request that the Corps issue a written “Site Closure Certification”.

The final conservation easement or equivalent protection mechanism will place land use restrictions (deed restrictions), on the property. The deed restrictions, adapted from the Corps Nashville District and TDEC’s Notice of Land Use Restrictions, will run with and bind the property in perpetuity, preserve all natural areas, and prohibit all use of the property inconsistent with the MBI (Appendix E). The restrictions will include, but are not limited to: future development, agricultural or silvicultural practices detrimental to the health of the restored wetland as well as any alteration to or manipulation intended to disrupt or otherwise impound or prolong the restored hydrologic regime of the restored wetland. Only non-invasive, low-impact public recreational purposes such as hiking, wildlife viewing, hunting, or educational uses such as ecological research or outdoor classrooms will be allowed.

TWRA will take all actions necessary to enforce the terms, conditions and restrictions of the conservation easement or equivalent protection mechanism. TWRA will deliver a title opinion acceptable to the IRT covering the mitigation bank site. The mitigation bank site will be free and clear of any encumbrances that would conflict with its use as mitigation, including, but not limited to, any liens that have priority over the recorded preservation mechanism.

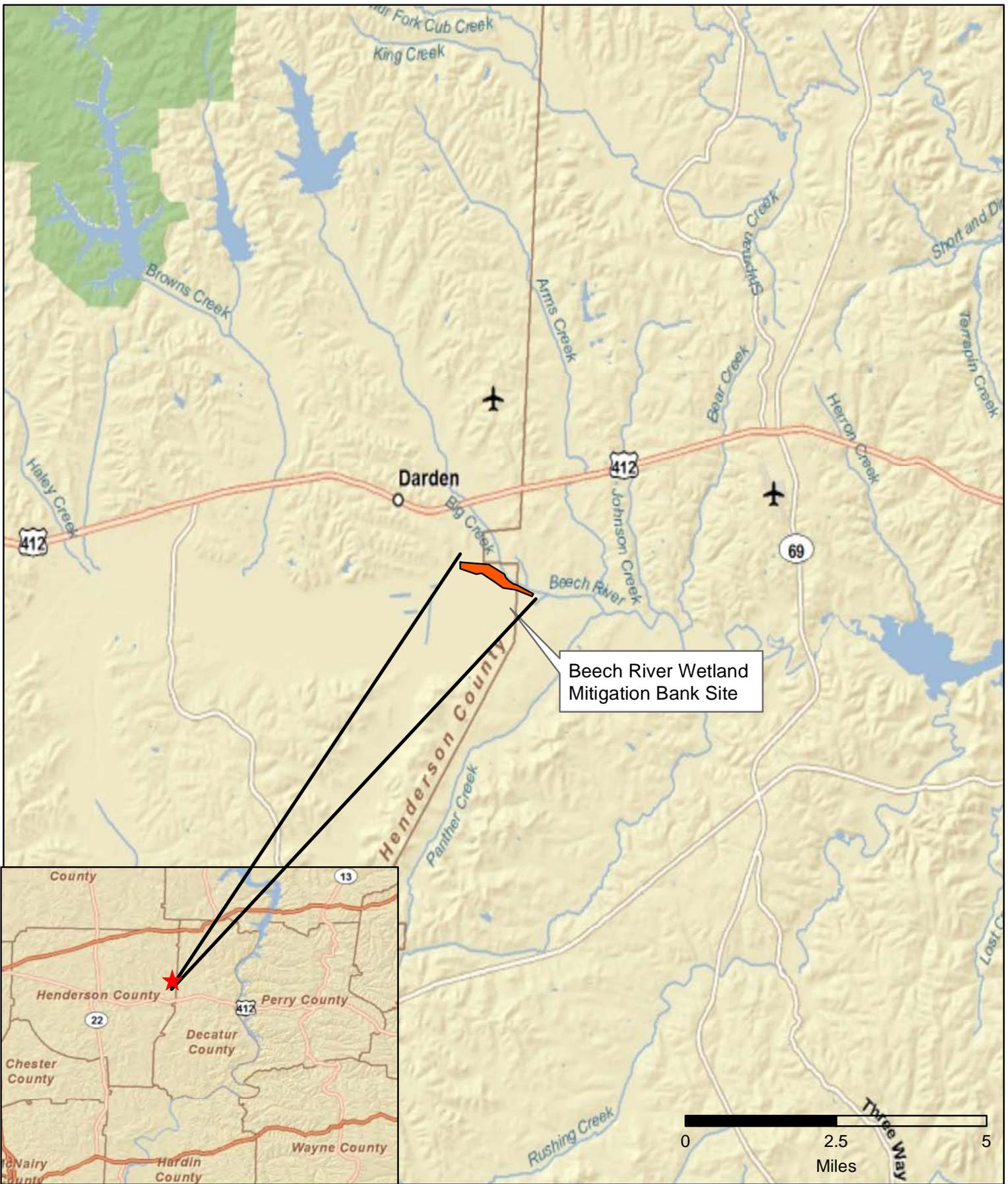
The Long-Term Management Plan will include those elements necessary to provide long-term protection for the site. The Long-Term Management Plan will include the following provisions:

- Periodic patrols of the mitigation site for signs of trespass and vandalism. Maintenance will include reasonable actions to deter trespass (i.e., mark property boundaries and post "No trespass" signs).
- Occasional inspection of the mitigation site to identify and locate invasive species. Any invasive plant species discovered on the site and occupying more than 5% cover of the total site's area or any area of  $\frac{1}{4}$  acre in size or larger must be controlled. In the event the regulatory agencies determine that the watershed or drainage basin within which the site is located becomes infested with these species in the future, so that its effective control on the site is either no longer practicable or unreasonably expensive, the agencies may consider appropriate changes to the Long-Term Plan.

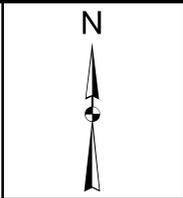
In the event that any of the above problems are observed and jeopardize the integrity of the natural wetland system, TWRA will notify appropriate regulatory agencies (i.e. USACE and TDEC).

# Appendix A

## Figures



Beech River Wetland Mitigation Bank Site



Beech River Wetland Mitigation Site  
 Henderson and Decatur Counties, TN  
 Western Tennessee Valley (Beech) Watershed

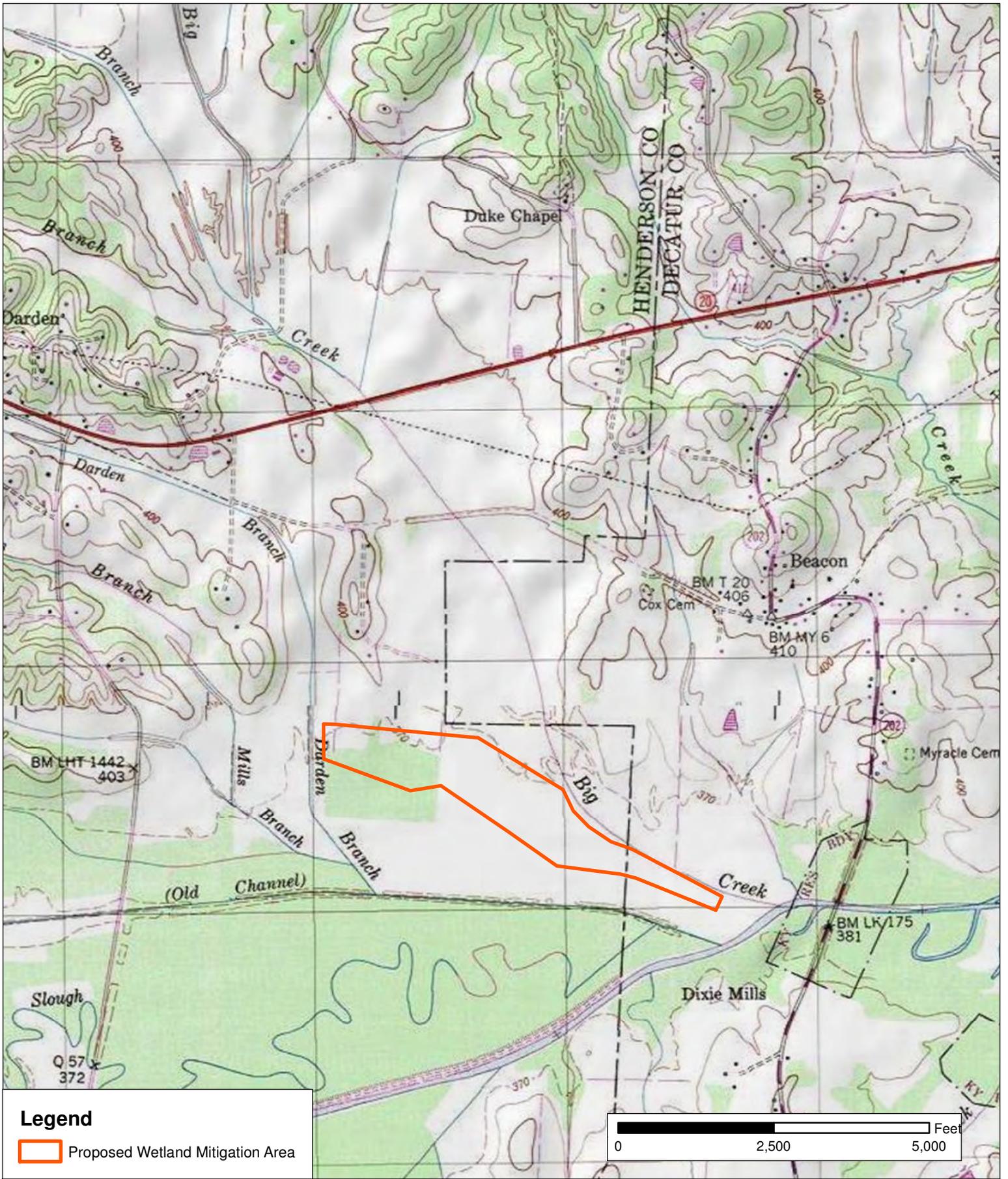
Figure 1  
 Site Vicinity



Beech River Wetland Mitigation Site  
 Henderson and Decatur Counties, TN  
 Western Tennessee Valley (Beech) Watershed

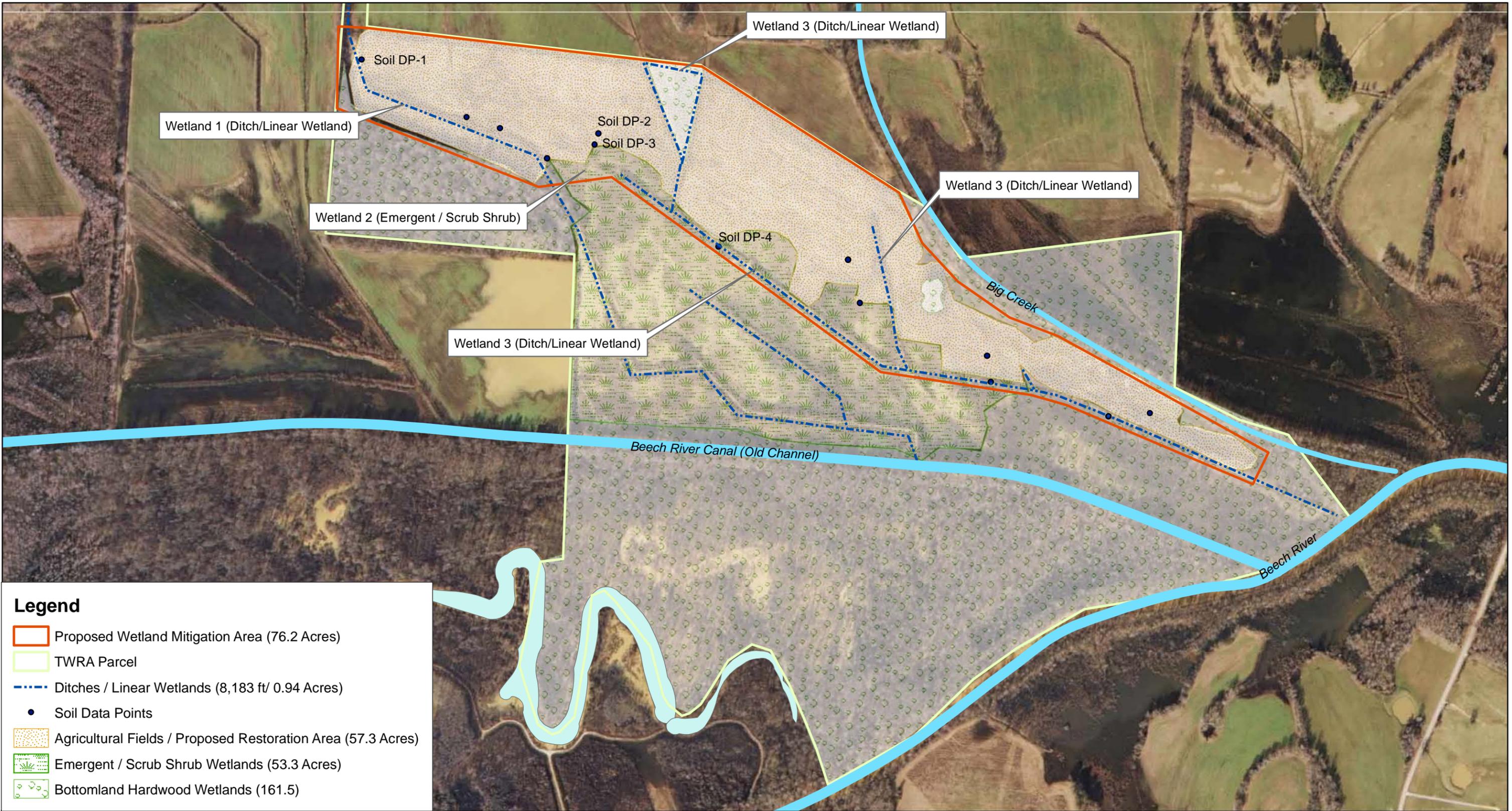
Figure 2  
 8-Digit HUC  
 Watershed Map





Beech River Wetland Mitigation Site  
 Henderson and Decatur Counties, TN  
 Western Tennessee Valley (Beech) Watershed

Figure 3  
 USGS Topo Map



**Legend**

- Proposed Wetland Mitigation Area (76.2 Acres)
- TWRA Parcel
- Ditches / Linear Wetlands (8,183 ft/ 0.94 Acres)
- Soil Data Points
- Agricultural Fields / Proposed Restoration Area (57.3 Acres)
- Emergent / Scrub Shrub Wetlands (53.3 Acres)
- Bottomland Hardwood Wetlands (161.5)

		 <b>CIVIL &amp; ENVIRONMENTAL CONSULTANTS, INC.</b> 405 Duke Drive, Suite 270 Franklin, TN 37067 615-333-7797	2009 Aerial Jurisdictional Determination Map Proposed Beech River Wetland Mitigation Bank Henderson and Decatur Counties, TN
DWN. BY: JRB	CHK. BY:		<b>Figure 4</b>
DATE: 10/17/2011		Columbus, OH * Cincinnati, OH * Indianapolis, IN * Chicago, IL * St. Louis, MO * Pittsburg, PA * Detroit, MI * Phoenix, AZ	



**Legend**

- Soils
- Proposed Wetland Mitigation Area (76.2 Acres)
- TWRA Parcel
- Ditches / Linear Wetlands (8,183 ft/ 0.94 Acres)
- Soil Data Points

N

0 500 1,000  
Feet

DWN. BY: JRB    CHK. BY:

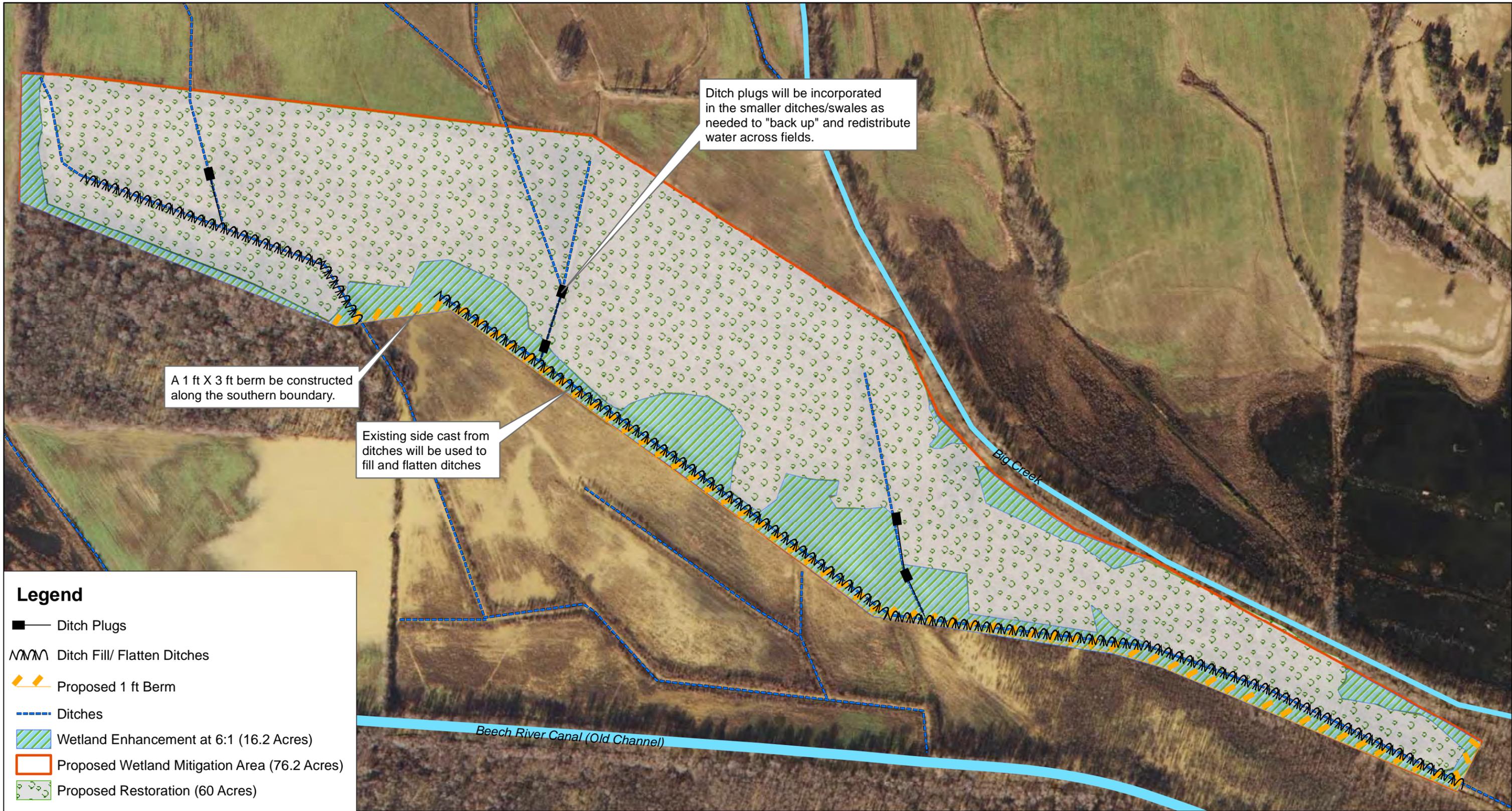
DATE: 10/17/2011

**CIVIL & ENVIRONMENTAL CONSULTANTS, INC.**  
 405 Duke Drive, Suite 270  
 Franklin, TN 37067  
 615-333-7797

Columbus, OH \* Cincinnati, OH \* Indianapolis, IN \* Chicago, IL \* St. Louis, MO \* Pittsburg, PA \* Detroit, MI \* Phoenix, AZ

2009 Aerial  
 Henderson and Decatur County Soil Surveys  
 Proposed Beech River Wetland Mitigation Bank  
 Henderson and Decatur Counties, TN

Figure 5



**Legend**

- — Ditch Plugs
- 〰 Ditch Fill/ Flatten Ditches
- ▨ Proposed 1 ft Berm
- - - Ditches
- ▨ Wetland Enhancement at 6:1 (16.2 Acres)
- ▭ Proposed Wetland Mitigation Area (76.2 Acres)
- ▨ Proposed Restoration (60 Acres)

N

DWN. BY: JRB

CHK. BY:

DATE: 11/16/2011

0 500 1,000  
Feet

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

405 Duke Drive, Suite 270  
Franklin, TN 37067  
615-333-7797

Columbus, OH \* Cincinnati, OH \* Indianapolis, IN \* Chicago, IL \* St. Louis, MO \* Pittsburg, PA \* Detroit, MI \* Phoenix, AZ

2009 Aerial  
Proposed Conditions  
Proposed Beech River Wetland Mitigation Bank  
Henderson and Decatur Counties, TN

Figure 6

Appendix B  
Photo Summary



**Photo: 1**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:** DP-1  
**Description:**  
View of Linear Wetland 1 (Ditch) which currently drains the western most part of the site.



**Photo: 2**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:**  
**Description:**  
View of Linear Wetland 1 (Ditch) which currently drains the western most part of the site. Manmade “ditched” area revealed trees, shrubs, and a herbaceous layer throughout the bed of the channel in most areas of the site; therefore onsite ditches were classified as linear wetlands.



**Photo: 3 (field photo 7)**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:** DP-2  
**Description:**  
Typical view of proposed wetland restoration area near DP-2.



**Photo: 4** (field photo 8)  
**By:** Mike Williams, TDOT  
**Date:** 9-12-11  
**Field Data Point No:** DP-2  
**Description:**  
Typical view of proposed wetland restoration area near DP-2



**Photo: 5** (field photo 9)  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:** DP-3  
**Description:**  
Area between Wetland 2 and proposed wetland restoration area. Vegetation, hydrology, and soils marked a distinction between restoration and emergent/scrub shrub wetland (enhancement) areas.



**Photo: 6** (field photo 10)  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Transect:** T-1  
**Field Data Point No:** DP-4  
**Description:**  
Linear Wetland 3 consists of a much greater network of connected ditches (see Figure 4 attached).



**Photo: 7**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:**  
**Description:** Typical view of proposed wetland restoration area located at easternmost portion of the site.



**Photo: 8**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:**  
**Description:** Typical view of proposed wetland restoration area located at easternmost portion of the site.



**Photo: 9**  
**By:** Mike Williams, TDOT  
**Date:** 10-12-10  
**Field Data Point No:**  
**Description:** Typical view of proposed wetland restoration area located at easternmost portion of the site.

## Appendix C

### NRCS Data and Historical Aerials

# FSN 4471 T-5089



*There are no A2S maps  
Prior to wetland? Don't know*  
Prepared by FSA

Date: 1997

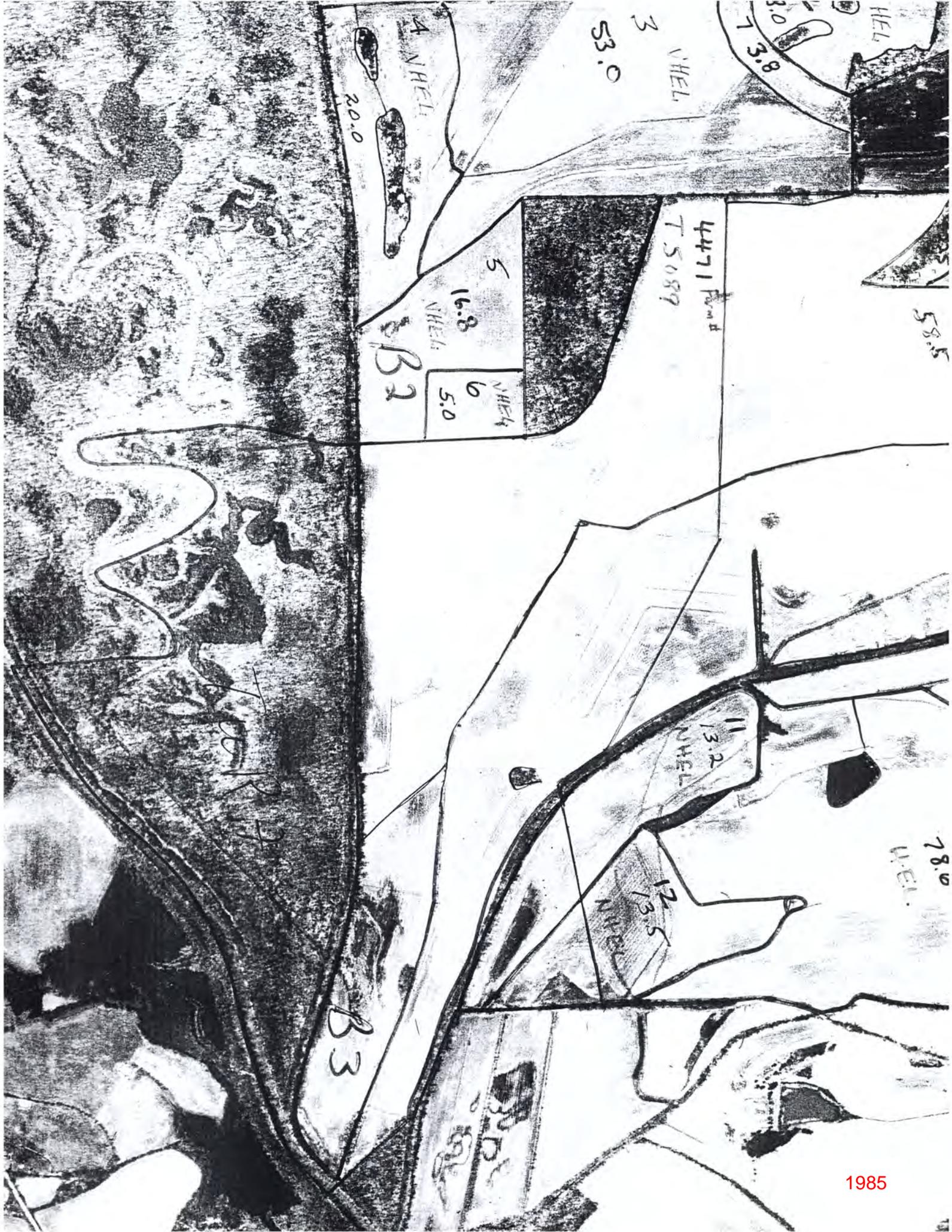
## Legend

GIS\_TN.SDE.Wet\_P\_tn077

### Wetland Determination Identifiers

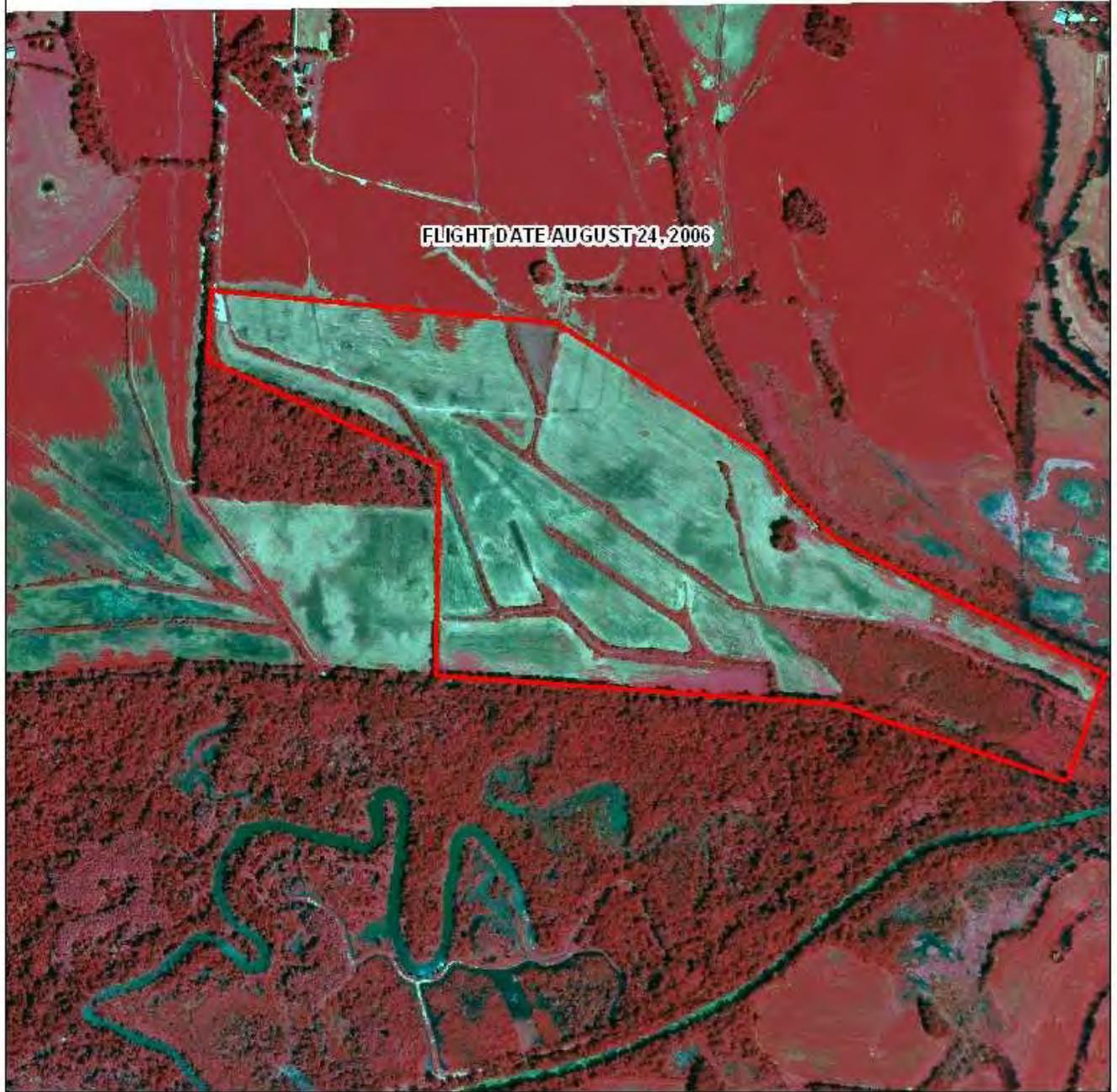
- Restricted Use
- ▽ Limited Restrictions
- Exempt from Conservation Compliance Provisions

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NR





FLIGHT DATE AUGUST 24, 2006



0 550 1,100 2,200 3,300 Feet



FLIGHT DATE JUNE 10, 2007



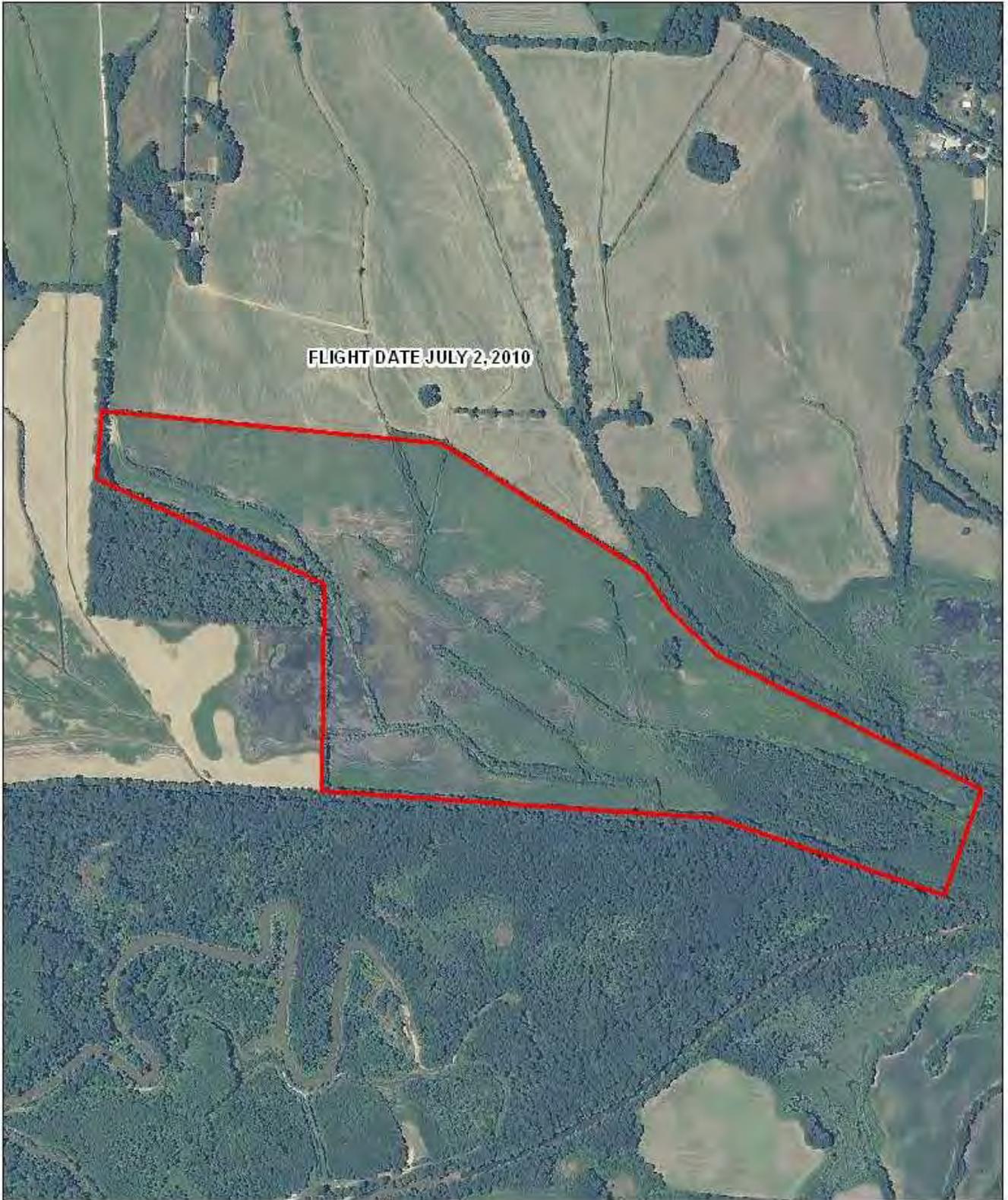
0 500 1,000 2,000 3,000 Feet



FLIGHT DATE JUNE 19, 2008



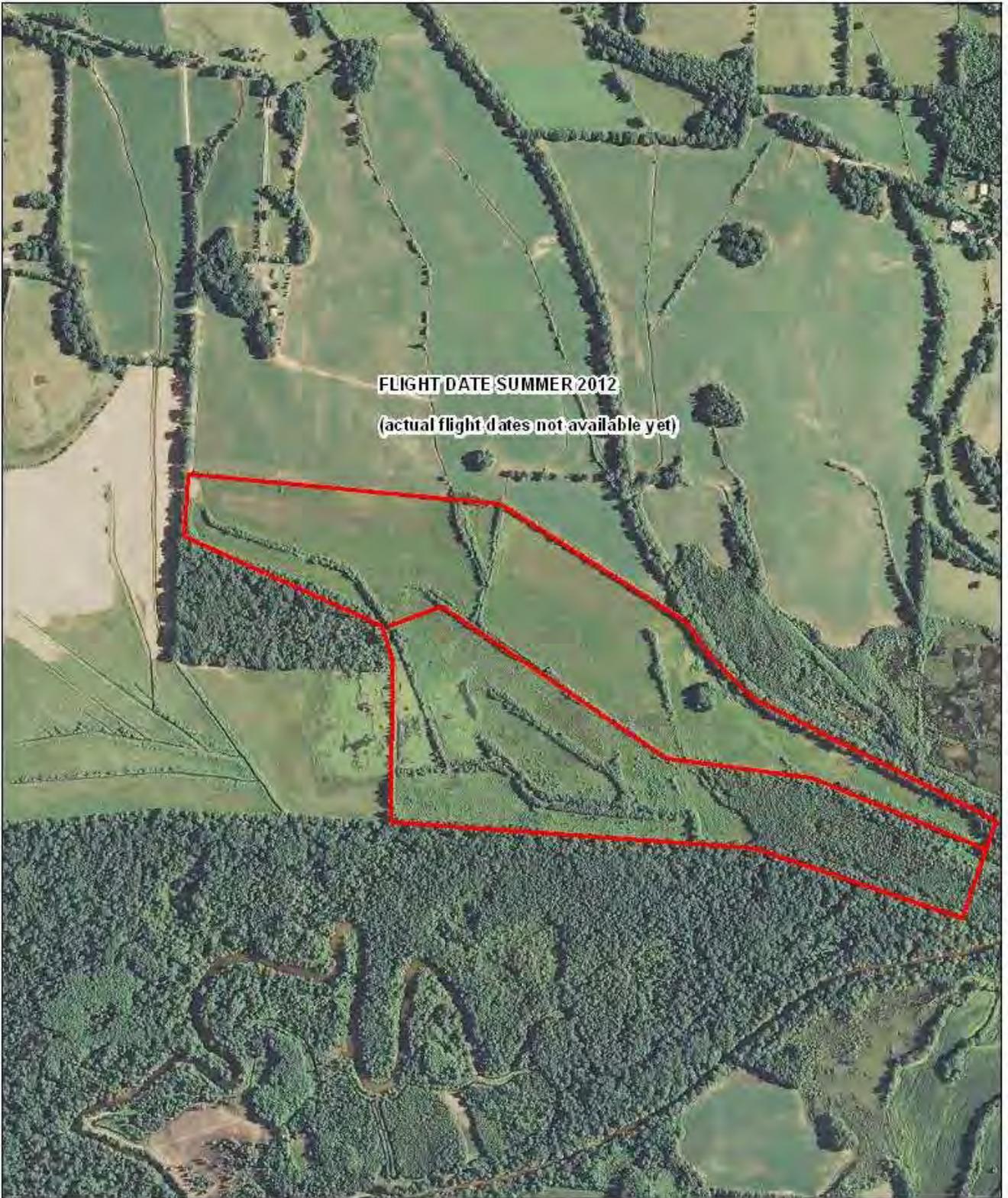
0 500 1,000 2,000 3,000 Feet



FLIGHT DATE JULY 2, 2010



0 500 1,000 2,000 3,000 Feet



FLIGHT DATE SUMMER 2012

(actual flight dates not available yet)



0 550 1,100 2,200 3,300 Feet

## Appendix D

### Corps Jurisdictional Determination Letter



**DEPARTMENT OF THE ARMY**  
NASHVILLE DISTRICT, CORPS OF ENGINEERS  
Regulatory Branch  
3701 Bell Road  
NASHVILLE, TENNESSEE 37214

November 1, 2011

REPLY TO  
ATTENTION OF:

Regulatory Branch

SUBJECT: File No. LRN-2012-00981; Preliminary Jurisdictional Determination for Site of TDOT/TWRA Proposed Beech River Wetland Mitigation Bank, Henderson County, TN

Rhett Baggett  
Civil Environmental Consultants, Inc  
405 Duke Drive  
Franklin, Tennessee 37067

Dear Mr. Baggett:

This is in response to your request for a waters of the United States jurisdictional determination at the proposed wetland mitigation bank site in Henderson County, Tennessee. Please refer to Department of the Army (DA) File No. LRN-2012-00981 in future correspondence and permit application submittals regarding this project.

Our agency has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The Clean Water Act prohibits the discharge of dredged or fill without a Section 404 permit. The Rivers and Harbors Act requires Section 10 permit for work in navigable waters of the United States. It appears the project area does not include navigable waters of the U.S. and would not be subject to the provisions of Section 10. Under Section 404, the USACE regulates the discharge of dredged and/or fill material into waters of the U.S., including wetlands.

Based upon my September 12, 2011, site visit and the wetland determination report you submitted on October 27, 2011, areas within the proposed project area were found to meet all the required characteristics to be considered waters of the U.S. These stream and wetland areas were also determined to be directly or indirectly connected to Howard Branch Creek and the Beech River Canal which flows into the Beech River which is considered navigable waters of the U.S. at Mile 21.6.

Our preliminary jurisdictional determination is that the wetlands on this site are waters of the U.S. and are subject to Corps of Engineers' regulatory jurisdiction under Section 404 of the Clean Water Act. Enclosed is a map indicating the areas reviewed. If any additional resources which may be considered waters of the U.S. are located during design or construction, these areas should be avoided until a jurisdiction determination can be provided. This determination is valid for a period of five years from the date of this letter. A copy of the Preliminary Jurisdictional Determination Form and a Notification of Administrative Appeal Options that explains available options regarding this determination are enclosed.

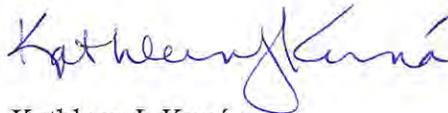
Based upon my on site investigation, areas within the proposed project were found to meet all the required characteristics to be classified as wetlands; i.e., presence of hydric soils, a predominance of hydrophytic vegetation and evidence of sufficient hydrology.

It should be noted that this verification is only for the wetlands shown on the attached maps, and does not authorize any work on the site. Impacts to waters of the United States should be avoided during the design phase whenever practicable. When these resources cannot be avoided, the work should be designed to minimize adverse impacts. A Department of Army (DA) permit pursuant to Section 404 of the Clean Water Act will be required for any work which entails the direct filling or excavation in waters of the United States. A DA permit application should include a survey of all waters of the U.S. on the site, a plan showing any proposed fill or excavation in waters of the U.S., a description of efforts taken to avoid and minimize the proposed fill and a plan to mitigate any unavoidable fill in waters of the U.S.

Our permitting requirements for the project would depend on the specific construction methods and associated stream impacts. Any activity that would not involve substantial stream or wetland alterations or fills may be authorized under our Nationwide Permit (NWP) program. Work or discharges of dredged or fill material into waters and wetlands that do not qualify for authorization under our NWP program would require authorization by a standard DA permit.

Should you have questions or wish to discuss this matter, please contact me at the above address, by telephone at (615) 369-7506 or [kathleen.j.kuna@usace.army.mil](mailto:kathleen.j.kuna@usace.army.mil)

Sincerely,



Kathleen J. Kuna  
Project Manager  
Operations Division

Enclosures

Copy furnished:

TDEC

# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## BACKGROUND INFORMATION

### **NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Rhett Baggett

### **NAME OF CONSULTANT:**

Rhett Baggett

CEC

405 Duke Drive, Suite 270

Franklin, TN 37067

### **FILE NUMBER: 2012-00981**

Site had previously been identified by Mr. Baggett. Site Inspection on 26 September 2011 was for viability of site for wetland restoration for compensatory mitigation and a preliminary jurisdictional determination.

### **PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

State: TN

County: Henderson

City: N/A

Property size: ~76 acres

Coordinates: center of site = N35.621904 W-88.196157

HUC: Western TN Valley (Beech) 06040001

Name of nearest waterbody: Beech River 16.5 RB

Identify (estimate) amount of waters in the review area;

Non-wetland waters: Big Creek

Cowardin Class: Riverine

Stream flow: perennial

Wetlands: 5 separate wetlands ~15.88 acres

Cowardin Class of wetlands: Riverine

Name any water bodies on the site that have been identified as Section 10 waters: NONE

### **REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination:      Date:  
 Field Determination:      Date Sept 11, 2011

### **SUPPORTING DATA – Data reviewed for preliminary JD (check all that apply)**

- Maps, plans, plots, or plat submitted by or on behalf of the applicant/consultant  
 Data sheets prepared/submitted by or on behalf of the applicant/consultant  
     Office concurs with data sheets/delineation report (with corrections)  
     Office does not concur with data sheets/delineation report  
 Data sheets prepared by the Corps

- Corps navigable waters study
- US Geological Survey Hydrologic Atlas:
  - USGS NHD data
  - USGS 8 and 12 digit HUC maps
- US Geological Survey maps(s).  
Scale & Quad name: 7.5 Minute Buena Vista
- USDA Natural Resources Conservation Service Soil Survey
- National Wetlands Inventory(s)
- State/Local wetland inventory map(s)
- FEMA/FIRM maps:
- Photographs:
  - Aerial (name & date)
  - Other (name & date): Taken by: Kuna and Baggett
- Previous determinations: (File # & date of response letter)
- Other information (please specify):

There were ~ 76 acres reviewed. The site is currently owned by TWRA and was previously ditched and drained for agricultural use prior to purchase. TWRA has continued to actively drain the site by maintaining the ditches by clearing and dredging to remove active beaver dams and accumulated debris.

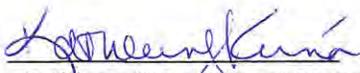
The site inspection revealed that most of the site appears to have active and/or historic hydric soils which support/would have supported wetland vegetation. There are existing wetlands flanking the ditches throughout the property.

The hydrology for the site is a combination of precipitation, soil saturation and backflow and overbank flooding from the original channel of the Beech River. According to the TWRA, the site experiences overbank and/or backflow flooding from the river approximately twice a year. Flooding and ponding is also common from beaver dams.

The predominant vegetation within the fields was fescue with crabgrass, blackberry, goldenrod and cocklebur. In some lower pockets/small depressions there was some iron weed and rush. In the wetter areas (jurisdictional) there was buttonbush, black willow, water oak, river birch, red maple, sweet gum and sycamore (typical hydrophytic vegetation). The predominate vegetation along the ditches was buttonbush.

The pasture areas of the site were determined to be Non-jurisdictional waters (NJD)

It is my determination that the site has been altered from its original state by extensive farming and cattle grazing. There were no natural waterways crossing the site. The ditches and wetlands have a direct nexus to Big Sandy River, a tributary to the Tennessee River.

  
Kathleen Kuna, Project Manager

26 September 2011 \_\_\_\_\_  
Date

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: CEC (Beech River Bank)		File Number: LRN-2012-00981	Date: 1 Nov 2011
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
	APPROVED JURISDICTIONAL DETERMINATION		D
XX	PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at**

[http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

If you only have questions regarding the appeal process you may also contact:

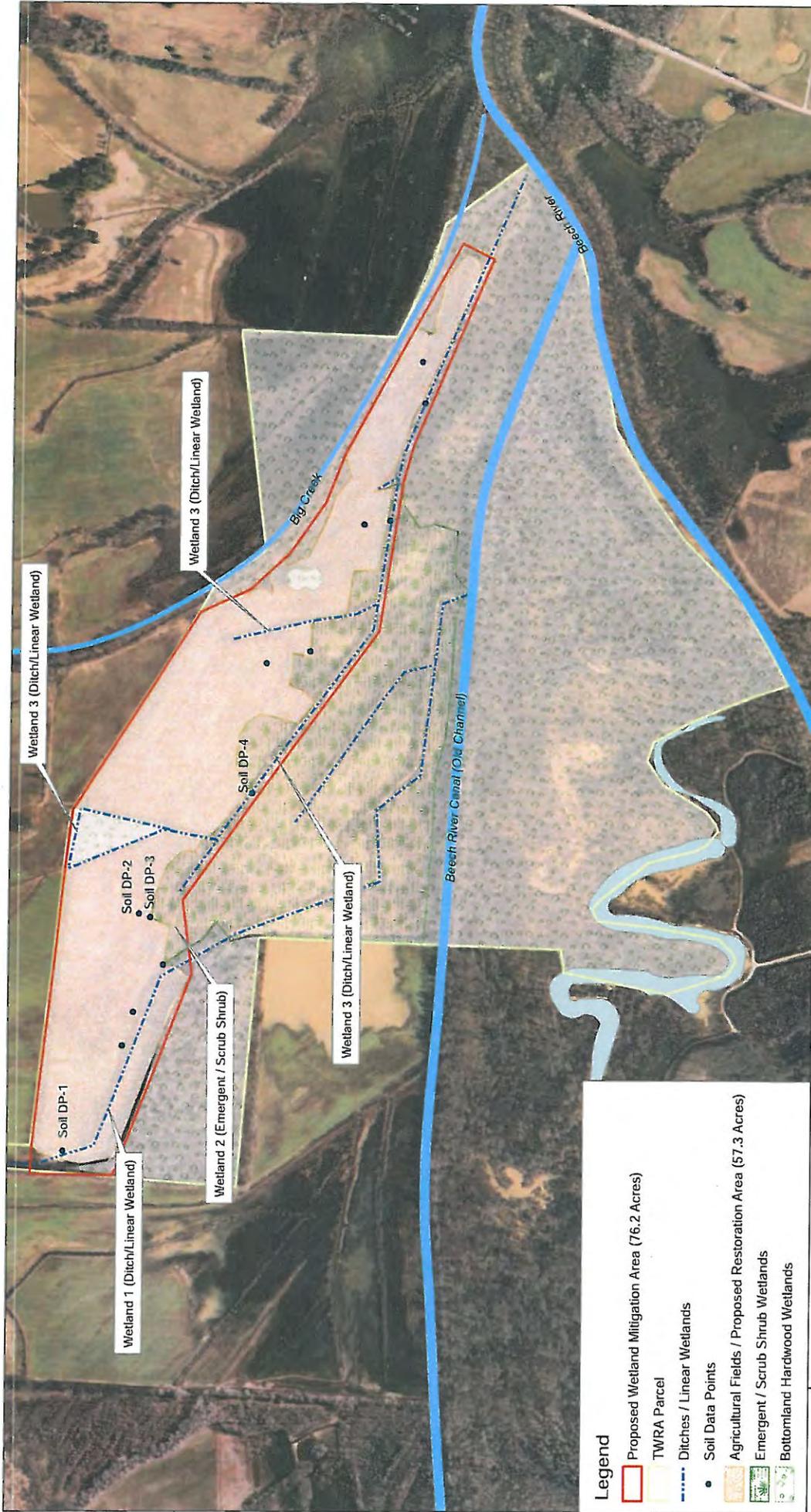
Pauline Thorndike  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10032  
Cincinnati, OH 45202-3222  
TEL (513) 684-6212; FAX (513) 684-2460  
pauline.d.thorndike@usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

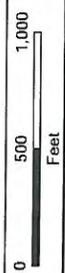
\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:



- Legend**
- Proposed Wetland Mitigation Area (76.2 Acres)
  - TWRA Parcel
  - Ditches / Linear Wetlands
  - Soil Data Points
  - Agricultural Fields / Proposed Restoration Area (57.3 Acres)
  - Emergent / Scrub Shrub Wetlands
  - Bottomland Hardwood Wetlands



DWL BY: JRB  
CHK. BY:  
DATE: 10/17/2011

**C&E**  
CIVIL & ENVIRONMENTAL CONSULTANTS, INC.  
405 Duke Drive, Suite 270  
Franklin, TN 37067  
615-333-7197

Columbus, OH • Cincinnati, OH • Indianapolis, IN • Chicago, IL • St. Louis, MO • Pittsburgh, PA • Detroit, MI • Phoenix, AZ

2009 Aerial  
Jurisdictional Determination Map  
Proposed Beech River Wetland Mitigation Bank  
Henderson and Decatur Counties, TN

Figure 4



## Appendix E

# Memorandum of Agreement and Draft Landuse Restrictions

This instrument was prepared by:

Tennessee Department of Transportation  
Environmental Division  
James K. Polk Building  
Nashville, Tennessee 37243

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

**NOTICE OF LAND USE RESTRICTIONS  
("Beech River Wetland Mitigation Site")**

Notice is hereby given that pursuant to their respective authorities found at Tennessee Code Annotated (T.C.A.) Section 68-212-225 and 33 Code of Federal Regulations (CFR) Section 332.7(a), the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") and the Nashville District Engineer of the United States Corps of Engineers ("USACE") have determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to T.C.A. Section 68-212-225(d) the register of deeds shall record this Notice and index it in the grantor index under the names of the owners of the property.

**WITNESSETH:**

**WHEREAS**, Tennessee Wildlife Resources Agency (Grantor), is the owner of approximately 76.2 acres of real property described in a Deed of record with both the Henderson and Decatur Counties Tennessee Register of Deeds, Books 186 , Page 402 herein after referred to as the "Property"; and,

**WHEREAS**, the Property is shown on a survey drawn by [REDACTED] dated [REDACTED], attached hereto as **Exhibit A** and incorporated herein by reference; and,

**WHEREAS**, the Property possesses natural resources with significant aquatic, ecological and habitat values ("Conservation Values"). These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. These values include Waters of the U.S., as defined in 40 C.F.R § 122.2 (Oct. 1, 2009), including streams, wetlands and the adjacent uplands, and other native vegetation and wildlife. These natural resources are of great importance to both TDEC, the Grantor, and the United States Army Corps of Engineers ("USACE");

**WHEREAS**, the Property has been approved by USACE for use as mitigation pursuant to and as defined in 33 C.F.R. Part 332 (April 10, 2008);

**WHEREAS**, the Property has been identified as being occupied by, or as being potential habitat for species of native plants and wildlife which Grantor desires to establish, preserve, protect, restore and enhance;

**WHEREAS**, on or about [REDACTED], the Commissioner of the Department of Environment and Conservation (TDEC) issued Aquatic Resource Alteration Permit (**ARAP**) Number [REDACTED] to Grantor; and,

ARAP Number \_\_\_\_\_; CWA Number \_\_\_\_\_

**WHEREAS**, on or about \_\_\_\_\_, the Nashville District Engineer of the USACE issued an **Individual Permit (IP) [OR “verified Nationwide Permit (NWP)” or “General Permit (GP)”] Number** \_\_\_\_\_ pursuant to Section 404 of the Clean Water Act (CWA) to Grantor; and,

**WHEREAS**, the referenced ARAP and CWA permits and approval of the Property for use as mitigation under 33 C.F.R. Part 332 require that certain uses of the Property be restricted.

**WHEREAS**, it is the purpose of this Notice to ensure that the Property will be retained forever in an open space condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Notice (i) will assure that the Property will be used for such activities that are consistent with the purposes of this Notice and (ii) shall be implemented consistently with the referenced ARAP and CWA Permits.

**NOW, THEREFORE**, in consideration of the foregoing, Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties:

**Land Use Restrictions:**

- A. **Uses.** There shall be no commercial or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with commercial or industrial activity.
- B. **Vegetation.** There shall be no removal, destruction, cutting, or spraying with biocides of any vegetation, nor any disturbance or change in the natural habitat in any manner, excepting activities (e.g., invasive species eradication and access road upkeep) that are essential to the maintenance of the Property as a protected natural area. There shall be no planting or introduction of any vegetation except as described in the Aquatic Resource Alteration Permit NRS # \_\_\_\_\_, the CWA Permit, or in the proposed Wetland Mitigation Banking Instrument attached hereto as **Exhibit B**.
- C. **Topography.** Except as permitted under the referenced ARAP and CWA Permits or as described in the final mitigation plan, there shall be no filling, excavating, dredging, mining, or drilling, no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, garbage, or of any other material not required for the Property’s maintenance as a protected natural area, and no changing of the topography of the land in any manner, excepting activities (e.g., wetland restoration, restorative streambank grading) that are essential for the management of the Property as a protected natural area.

- D. **Building.** There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, or other structures, excepting notice signs as required by the referenced ARAP or CWA Permits.
- E. **Roads.** Except as permitted under the referenced ARAP and CWA Permits there shall be no building of new roads or any other rights of way, nor widening of existing roads, excepting access routes and trails required for the management of the Property as a natural area.
- F. **Waters.** Except as permitted under the referenced ARAP and CWA Permits or as described in the approved mitigation plan, there shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, or impounding; no changing the grade or elevation, impairing or diverting the flow or circulation of waters, or reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.
- G. **Vehicles.** There shall be no operation of dune buggies, motorcycles, or any recreational all-terrain vehicles, or any other types of motorized vehicles, excepting work vehicles (e.g., tractors, backhoes, work trucks) required to maintain the Property as a protected natural area.
- H. **Non-Native/Exotic Species.** There shall be no introduction of non-native or exotic species to the Property.
- I. **General.** There shall be no use of the Property which may adversely affect the purpose of this Notice.

#### Other Provisions:

- A. **Entrance and Inspection.** Any owner of a portion of the Property and USACE and TDEC shall have the right to enter and inspect the Property and may enforce this Notice of Land Use Restrictions by means of a civil action.
- B. **Enforcement.** The grantor grants USACE and TDEC, as third party beneficiaries hereof, a discretionary right to enforce these restrictive covenants in a judicial action against any person or other entity violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to complete restoration for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by USACE and/or TDEC shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification. Nothing herein shall limit the right of the USACE to modify, suspend, or revoke the referenced CWA Permit. Nothing herein shall be construed to authorize the USACE or TDEC to institute proceedings

against the owner for changes to the Property due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of the grantor so long as the compensatory mitigation is completed and determined by the USACE and TDEC to be successful in accordance with the Mitigation Plan.

- C. **Term.** This Notice of Land Use Restrictions shall run with and bind the Property in perpetuity unless/until this Declaration shall be made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."
- D. **Amendment and Termination.** This Notice of Land Use Restrictions may be waived, amended, modified, or terminated at any time for cause by and upon the agreement of both the Commissioner of TDEC and USACE. No amendment to this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded in the Register's Office for \_\_\_\_\_ County, Tennessee.
- E. **Modifications.** Grantor must provide 60 (sixty) days notice to TDEC and USACE prior to any action being taken that serves to void, modify, amend, or terminate this Notice of Land Use Restrictions.. Any permit application, or request for certification or modification, which may affect the Property made to any government entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of this Land Use Restriction.

The grantor shall provide the USACE and TDEC with written notice of any legal action affecting this Land Use Restriction, including but not limited to foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain. For any action that might result in this Land Use Restriction being voided or modified, such notice shall be provided at least 60 days before such action would be taken.

- E. **Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- F. **Title.** Grantor represents and warrants that Grantor is lawfully seized of the Property, including the mineral rights thereto, that Grantor has a good right to enter into this Notice of Land Use Restrictions, that the title to the Property is clear and unencumbered, and Grantor will forever warrant and defend the title to the Property to TDEC and USACE against the lawful claims and demands of all persons whomsoever, except as listed on **Exhibit C**, attached hereto and hereby incorporated by reference.

Grantor has identified all other parties that hold any interest (e.g. encumbrances) in the Property and has notified such parties of the Grantor's intent to grant this Land Use Restriction.

- G. **Transfer and Assignment.** The Grantor shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property:

NOTICE: This Property is subject to a Land Use Restriction dated [insert date of Declaration], recorded in the [insert County name] County Clerk's Office on [insert date recorded] in Deed Book [insert number], Page [insert number] and enforceable by the U.S. Army Corps of Engineers and Tennessee Department of Environment and Conservation.

The grantor shall provide the USACE and TDEC with written notice of any transfer 60 days prior to such transfer. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Mitigation Property being transferred. Failure to comply with this paragraph does not impair the validity or enforceability of this Land Use Restriction.

- H. **Notification.** Any notice, request for approval, or other communication require by these restrictive covenants shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this paragraph):

To Grantor \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To USACE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To TDEC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed by its duly authorized representative on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Grantor –  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TENNESSEE

Personally appeared before me, the undersigned, a Notary Public having authority within the State aforesaid, \_\_\_\_\_ with whom I am personally acquainted, and who acknowledged that he executed this instrument for the purposes herein contained, and that he is authorized to execute this instrument.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Exhibits should be on separate pages attached to this document.

EXHIBIT A – SURVEY OF PROPERTY

EXHIBIT B – APPROVED WETLAND MITIGATION BANKING  
INSTRUMENT