

Three Forks of Beargrass Creek Ecosystem Restoration Appendix G Cultural Resources



ANDY BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL
THE STATE HISTORIC PRESERVATION OFFICE**

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CRAIG A. POTTS
EXECUTIVE DIRECTOR &
STATE HISTORIC
PRESERVATION OFFICER

August 20, 2021

United States Army Corps of Engineers
ATTN: Ms. Jennifer Guffey
P.O. Box 59
Louisville, KY 40201-0059

Re: PROGRAMATIC AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, AND THE KENTUCKY HERITAGE COUNCIL, REGARDING THE THREE FORKS OF BEARGRASS CREEK ECOSYSTEM RESTORATION FEASIBILITY STUDY IN JEFFERSON COUNTY, KENTUCKY

Dear Ms. Guffey:

Enclosed please find the signed Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study Programmatic Agreement (PA) which has been reviewed by my staff and which structures the consultation process for a federal Undertaking involving ecosystem restoration measures in fourteen study areas along three branches of the Beargrass Creek Watershed: the South Fork, Middle Fork, and Muddy Fork located within Jefferson County; and along Three Forks of the Beargrass Creek in Jefferson County, Kentucky. We understand that the PA is necessary because the Corps will not be able to complete its Section 106 consultation regarding the final identification of historic properties for the Undertaking prior to the completion of the environmental document for compliance with the National Environmental Policy Act (NEPA), making execution of this PA for the Undertaking appropriate by mutual understanding of the consulting parties.

We concur that the terms of the PA are appropriate and look forward to continuing consultation. Should you have any questions, please contact Jennifer Ryall of my staff at Jennifer.Ryall@ky.gov or Chris Gunn of my staff at Chris.Gunn@ky.gov.

Sincerely,



Craig A. Potts,

Executive Director and State Historic Preservation Officer

CP: jr, cg, KHC#62628

**PROGRAMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS,
AND
THE KENTUCKY HERITAGE COUNCIL,
REGARDING
THE THREE FORKS OF BEARGRASS CREEK ECOSYSTEM RESTORATION
FEASIBILITY STUDY
IN JEFFERSON COUNTY, KENTUCKY**

WHEREAS, the U.S. Army Corps of Engineers, herein referred to as the “Corps,” and the non-federal sponsor plan to implement ecosystem restoration measures along Three Forks of the Beargrass Creek in Jefferson County, Kentucky, under authority contained in a resolution adopted on May 5, 1987 by the Committee on Environment and Public Works of the United States Senate; and

WHEREAS, the Undertaking is composed of the implementation of ecosystem restoration measures in fourteen study areas along three branches of the Beargrass Creek Watershed: the South Fork, Middle Fork, and Muddy Fork located within Jefferson County; and

WHEREAS, the measures, which consist of native plantings, invasive species removal, wetland restoration, streambank restoration and in-stream restoration, along with associated construction activities that have yet to be determined, are herein referred to as the “Undertaking”; and

WHEREAS, the Corps, in consultation with the Kentucky State Historic Preservation Officer (KY-SHPO) pursuant to 36 CFR Part 800, the regulations implementing Title 54 of the United States Code, Section 306108 (54 U.S.C. § 306108), has preliminarily identified the Area of Potential Effects (APE) for the Undertaking as the proposed contractor work limits, access roads, and laydown areas, as well as any areas where the Undertaking will alter existing topography or vegetation in view of a historic resource (see Attachment 1). The APE is based on the Undertaking as proposed at time of execution of this Programmatic Agreement (PA) and may be further refined as a result of additional consultation and as plans for the Undertaking are further developed; and

WHEREAS, a review of existing information on historic properties identified twenty-one National Register of Historic Places (NRHP) listed properties located within a half mile buffer of the APE: NRHP properties along the South Fork are: Eclipse Woolen Mill, Hadley Mary Alicia House, Hope Worsted Mills, Howard Getty’s House, Klotz Confectionary Company, Leslie Abbott House, L&N Steam Locomotive No.152 Nelson Distillery Warehouse, Paget House and Heigold House Facade, Schneikert Valentine House, St. Francis of Rome School, St. Therese Roman Catholic Church, School, and Rectory, Steam Engine Company No.4 and No. 10, Wirth, Lang and Company - The Louisville Leather Company Tanner Building.

NRHP Properties along the Middle Fork are: Brown Theodore House, Cave Hill Cemetery, Cave Hill National Cemetery, Commodore Apartment Building, Olmsted Park System, Peterson-Dumesnil House. One archaeological site (15Jf668) has been recommended eligible for the NRHP, while nine unevaluated archaeological sites for the listing to the NRHP [15JF22, 15JF27, 15JF28, 15JF30, 15JF553, 15JF592, 15JF645, 15JF734, and 15JF820] are within the APE. Under the PA, the Corps will continue to complete identification and evaluation efforts for any other currently unidentified historic properties within the APE; and

WHEREAS, the Corps will not be able to complete consultation regarding the final identification of historic properties for the Undertaking prior to the completion of the environmental document for compliance with the National Environmental Policy Act (NEPA), making execution of this PA for the Undertaking appropriate by mutual understanding of the consulting parties; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(1) the Corps has consulted with the KY-SHPO on the proposed Undertaking and has determined that review and consultation pertaining to additional design development will be carried out during the design phase but before the implementation phase of the Undertaking in order for the Corps to fully assess the effects to historic properties, including those identified through additional survey; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(2) the Corps has initiated consultation with the Shawnee Tribe, Cherokee Nation, Eastern Band of Cherokee, United Keetoowah Band of Indians in Oklahoma, Eastern Shawnee Tribe of Oklahoma, Absentee-Shawnee Tribe of Oklahoma, the Delaware Nation, and the Osage Nation because there may be religious or culturally significant properties within the APE; and

WHEREAS, the Corps has initiated consultation with the Cherokee Nation and Delaware Nation regarding the effects of the Undertaking on historic properties and has invited the Cherokee Nation and Delaware Nation to be a Consulting Party to this PA; and

WHEREAS, the Corps will consult with the Louisville Metropolitan Sewer District, Preservation Kentucky, Olmsted Parks Conservancy, Beargrass Creek Alliance, Kentucky Waterways Alliance, Metro Louisville District 2 Council Member Barbara Shanklin, Metro Louisville District 4 Council Member Jecorey Arthur, Metro Louisville District 8 Cassie Armstrong, Metro Louisville District 26 Council Member Brent Ackerson, Metro Louisville District 18 Council Member Marilyn Parker, Metro Louisville District 9 Council Member Bill Hollander, Metro Louisville District 7 Council Member Paula McCraney, City of St. Matthews and the Neighborhood Associations of Butchertown, Irish Hill, Cherokee Triangle, Cherokee Seneca, Audubon, Indian Hills, Crescent Hill, Clifton, and the Highlands; regarding the effects of the Undertaking on historic properties and has invited them as Consulting Parties; and

WHEREAS, in accordance with 36 CFR § 800.2(d), public involvement and an appropriate level of public notification for the Undertaking has been coordinated with the

concurrent scoping, public review and comment, public meetings, and technical reviews as required under NEPA and its implementing regulations; and

WHEREAS, the Corps has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R § 800.6(a)(1)(iii)(letter dating March 10, 2021); and

NOW, THEREFORE, the Corps and the KY-SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties.

STIPULATIONS

The Corps shall ensure that the following measures are carried out:

I. CONSULTATION

- A. The Corps will continue to consult with KY-SHPO and Consulting Parties to identify and assess the Undertaking's effects on historic properties. The Corps shall ensure that 30 calendar days for review and comment is provided to KY-SHPO and all Consulting Parties for completion of the steps specified in 36 C.F.R § 800.4-6 before construction plans are finalized. This includes consultation to refine the APE, identify historic properties, evaluate eligibility, assess effects, and resolve any adverse effects.
- B. The Corps shall continue to consult with KY-SHPO and Consulting Parties during construction of the Undertaking, especially if cultural resources or historic properties are encountered. Other Consulting Parties, in addition to those listed above, may be identified during consultations.

II. REFINE AREAS OF POTENTIAL EFFECTS (APE)

The Corps has established the preliminary APE for the Undertaking minimally includes the proposed contractor work limits, access roads, and laydown areas and the area of visual effects resulting from the Undertaking's activities including alternation of topography and vegetation. The Corps will refine the APE during the design phase of the Undertaking and propose what level of effort (LOE) will be needed to identify historic properties within the APE. The Corps will consult with the KY-SHPO and Consulting Parties on the revised APE by providing updated maps and project activity descriptions, and reviewers will have 30 days to review and comment.

III. IDENTIFICATION AND TREATMENT OF ABOVE-GROUND AND ARCHAEOLOGICAL RESOURCES ELIGIBLE FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES

After concurrence on the APE and LOE, the Corps shall carry out investigations to identify and evaluate historic properties within the APE and to assess and, as required, resolve adverse effects.

- A. Professional Standards: The Corps shall require that all investigation be supervised by Preservation Professionals meeting the Professional Qualification Standards as set forth in *Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44740).
- B. Identification of Historic Properties: Identification of historic properties and assessment of effects shall follow 36 C.F.R. 800.4 and 36 C.F.R. 800.5 and shall be performed in accordance with *Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44740); and the Kentucky Heritage Council's (KHC) *Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports* (Sanders 2017)(KHC Specifications).
- C. The Corps will submit for review one electronic copy of any archaeological and cultural historic reports produced during identification efforts to KY-SHPO and Tribes for review and comment. Reports shall include documentation for properties of religious and cultural significance to the Tribes, recommendations on the historic significance and integrity of identified cultural resources, NRHP evaluations of identified cultural resources, and a determination of effect, including any conditions imposed, for the specific Undertaking under review. Any archaeological or cultural historic survey reports will follow reporting guidelines outlined in the KHC Specifications. State site inventory forms will also be submitted alongside the reports. The Corps shall provide KY-SHPO and Tribes with 30 days, from receipt of each report, to review and provide comments. Once concurrence has been achieved the Corps will submit sperate reports of the archaeological and cultural historic surveys, Once concurrence has been achieved for both the results of the archaeological and cultural historic reports, three (3) hard bound and digital copies of the final archaeological report and one (1) hard and digital copy of the cultural historic report as well as any associated KHC survey forms will be submitted to the KY-SHPO.
- D. Information concerning the identification and evaluation of historic properties, including field methods, NRHP evaluations, effects assessments, and overall results from the reports will be provided to Consulting Parties for comment. This information may take the form of the cultural resource reports (described above in Stipulation III.C.) if they are determined through consultation with the Signatories of this PA not to contain confidential information as outlined in Stipulation IV. Consulting Parties will have 30 days upon receipt of the information for comment. Based on the responses received from Consulting Parties and Signatories to this PA, the Corps may revise and resubmit reports and/or consultation information revised to include the requested information to the KY-SHPO, Concurring Parties, and Consulting Parties for an additional 30-day review period.
- E. If the NRHP eligibility of sites identified within the APE cannot be established after the initial survey effort, the Corps will consult with KY-SHPO and Tribes to determine an

appropriate course of action, which may include avoidance or additional archaeological assessment sufficient to determine NRHP eligibility.

- F. Resolution of Adverse Effects: If, through consultation with the KY-SHPO, Concurring Parties, and Consulting Parties, it is determined that the Undertaking will have an adverse effect on a historic property, the Corps shall follow the process described in 36 C.F.R. § 800.6 to resolve adverse effects on historic properties. The Corps will consider any views concerning effects provided by KY-SHPO Concurring Parties, and Consulting Parties from either program. The Corps shall continue consultation to resolve adverse effects and may accept additional Consulting Parties into discussions at any point during consultation. The Corps shall notify the ACHP, pursuant to 36 C.F.R. § 800.6(a)(1), using its electronic 106 notification system.

IV. PROTECTION OF CONFIDENTIAL INFORMATION

To the extent consistent with NHPA Section 304 (Title 54 of the United States Code, Section 300310), the Archaeological Resources Protection Act (ARPA) Section 9(a), and other applicable federal and state laws, cultural resource data from this Undertaking will be treated as confidential by all Signatories of this PA and is not to be released to any person, organization or agency not a party to this PA. Confidentiality concerns for properties that may have traditional religious and cultural significance to the Tribes will be respected and will remain confidential to the fullest extent permitted by law. The Corps may require data sharing agreements with any Consulting Party to this PA who is interested in obtaining specific confidential information.

V. DISCOVERY OF HUMAN REMAINS

- A. Procedures for addressing the treatment of human remains and grave goods shall be guided by the Advisory Council on Historic Preservation's (ACHP) "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects" (adopted by the ACHP on February 23, 2007), and other applicable Federal, State, and Local laws. If human remains are found during Project activities, construction activities within 20 meters of the remains shall be halted and the County Coroner, local law enforcement, and the Corps archaeologist contacted. If the remains are determined to be of archaeological context, the Corps archaeologist shall be notified. The Corps archaeologist shall in turn notify the KY-SHPO, all signatories to the PA, and Tribes with ancestral ties to the APE as necessary. If associated burial items, sacred items, or items of cultural patrimony are discovered, work shall cease immediately within a 200-foot radius of the discovery and the Corps archaeologist shall be notified.
- B. If the discovery is of prehistoric Native American Origin, the Corps shall provide written notification and documentation to the KY-SHPO, all federally recognized Tribes with ancestral ties to the location of the discovery, and other parties deemed appropriate by the Corps who have requested such notifications. The

Corps shall consult with these parties to discuss avoidance, minimization of disturbance, or protocols for disinterment.

VI. POST-REVIEW DISCOVERIES

In accordance with 36 C.F.R § 800.13(a)(1), the following provisions govern the actions to be taken if unanticipated cultural resources are encountered during Undertaking activities that may be historically significant, or unanticipated effects on historic properties occur:

- A. All work within the immediate vicinity (200 feet) will cease and reasonable efforts to protect the site will be implemented. Work within this area will not begin until Corps approval.
- B. The Corps shall notify the KY-SHPO Concurring Parties, and Consulting Parties within 48 hours of the discovery. Within five (5) business days of notification, the Corps will provide these parties with necessary documentation, the Corps official's assessment of the NRHP eligibility of the property, and proposed actions to resolve any adverse effects. The KY-SHPO Concurring Parties, and Consulting Parties shall respond within five (5) business days of receiving the Corps assessment and documentation with their comments.
- C. USACE will consult with KY-SHPO, Tribes, and Consulting Parties to seek concurrence on ways to avoid, minimize, or mitigate adverse effects to eligible historic properties. USACE will ensure that the appropriate actions are carried out and documented with a Memorandum of Agreement (MOA).
- D. If concurrence cannot be reached between the Corps and the Signatories of this PA on the appropriate course of action to address adverse effects to a post-review discovery, then the Corps shall initiate the dispute resolution process set forth in Stipulation IX below.

VII. DURATION

This PA will expire if its terms are not carried out within five (5) years from the date of its execution or after the completion of the Undertaking and the PA's terms, whichever comes first. Prior to such time, the Corps may consult with the Signatories, Concurring Parties, and Consulting Parties to reconsider the terms of the PA and amend it in accordance with Stipulation X below.

VIII. STATUS REPORTING

Following the execution of this PA and until it expires or is terminated, the Corps shall provide all parties to this PA a status update detailing work undertaken pursuant to its terms at the end of each federal fiscal year. Such yearly updates shall include any scheduling changes proposed, any problems encountered, and a summary of disputes or objections on which the Corps has already consulted, and the Corps' efforts to carry out the terms of this PA. The update shall be in

memorandum format and will be distributed to the Signatories and Consulting Parties through electronic mail.

IX. DISPUTE RESOLUTION

- A. Should any Signatory or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:
1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, Signatories, and Concurring Parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that considers any timely comments regarding the dispute from the Signatories and Concurring Parties to the PA and provide them and the ACHP with a copy of such written response.
 3. The Corps' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- B. If the ACHP or KY-SHPO is contacted by a Consulting Party or by a member of the public to discuss a concern or objection about the implementation of this PA, the contacted entity will notify the Corps within seven (7) business days of being contacted. If the Corps is contacted by a Consulting Party or by a member of the public to discuss a concern or objection about the implementation of this PA, the Corps will notify the Consulting Parties within seven (7) business days of being contacted. The Corp and Consulting Parties will discuss the concern or objection in order to develop an appropriate response.

X. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all the Signatories is filed with the ACHP.

XI. TERMINATION

If any Signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation X above. If within thirty (30) days (or another time period agreed to by all

Signatories) an amendment cannot be reached, any Signatory may terminate the PA upon written notification to the other Signatories.

Once the PA is terminated, and prior to work continuing on the Undertaking, the Corps must either (a) execute a MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Corps shall notify the Signatories as to the course of action it will pursue.

XII. ANTI-DEFICIENCY PROVISIONS

The Corps' obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Corp's ability to implement the stipulations of this agreement, the Corps shall consult in accordance with the amendment and termination procedures found at Stipulations X and XI of this agreement.

XIII. EXECUTION

Due to currently existing coronavirus health and life safety concerns the Signatories and all parties named herein have agreed to execute this PA using handwritten signatures or by the use of electronic means. In addition, the Signatories and all parties named herein have agreed that the execution of this PA using legally binding counterparts is and shall be considered effective legal execution of same.

Execution of this PA by the Corps and the KY-SHPO and implementation of its terms evidence that the Corps has considered the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment and fulfilled its responsibilities under Title 54 of the United States Code, Section 306108.

**PROGRAMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE KENTUCKY HERITAGE COUNCIL,
REGARDING
THE THREE FORKS OF BEARGRASS CREEK ECOSYSTEM RESTORATION
FEASIBILITY STUDY
IN JEFFERSON COUNTY, KENTUCKY**

Signed by hand written signature or electronically:

**SIGNATORY: UNITED STATES
DEPARTMENT OF THE ARMY, UNITED
STATES ARMY ENGINEER DISTRICT,
LOUISVILLE**

Eric D. Crispino
BY: _____
Eric D. Crispino
Colonel, U.S. Army
District Commander


Digitally signed by Eric D.
Crispino
Date: 2021.08.16 17:10:07
-04'00'

DATE IF SIGNED BY HAND WRITTEN SIGNATURE:
_____, 2021

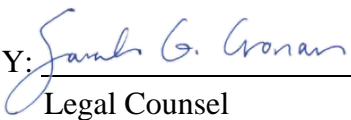
**PROGRAMATIC AGREEMENT
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FEASIBILITY STUDY
IN JEFFERSON COUNTY, KENTUCKY**

Signed by hand written signature or electronically:

**SIGNATORY: KENTUCKY HERITAGE
COUNCIL**

BY:  _____
Craig A. Potts, Director, Kentucky Heritage Council and
Kentucky State Historic Preservation Officer

DATE IF SIGNED BY HAND WRITTEN SIGNATURE:
_____ August, 23, 2021

BY:  _____
Legal Counsel
Tourism, Arts, and Heritage Cabinet

DATE IF SIGNED BY HAND WRITTEN SIGNATURE:
____ 09/08/2021 _____, 2021

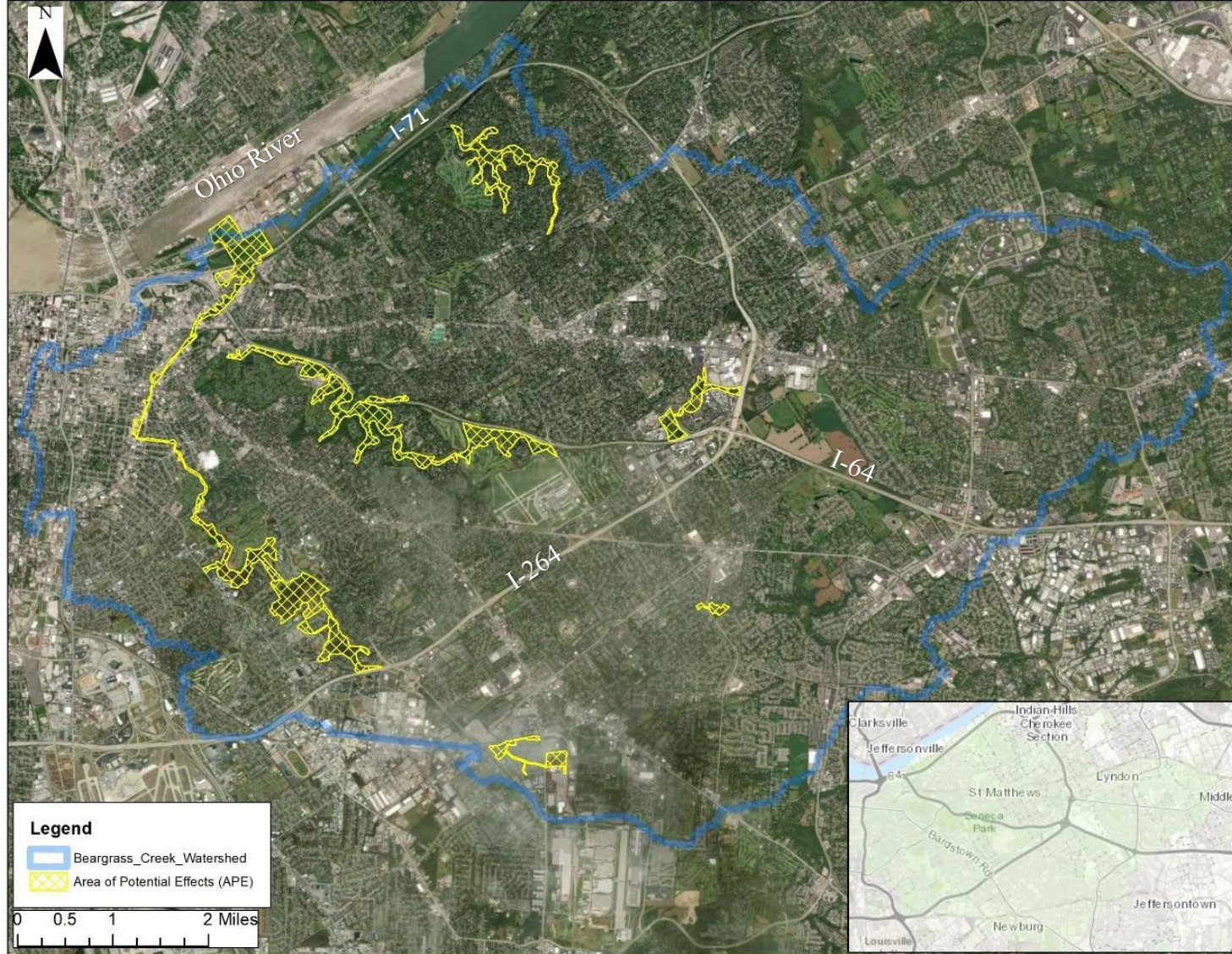
Signed by hand written signature or electronically:

Attachments

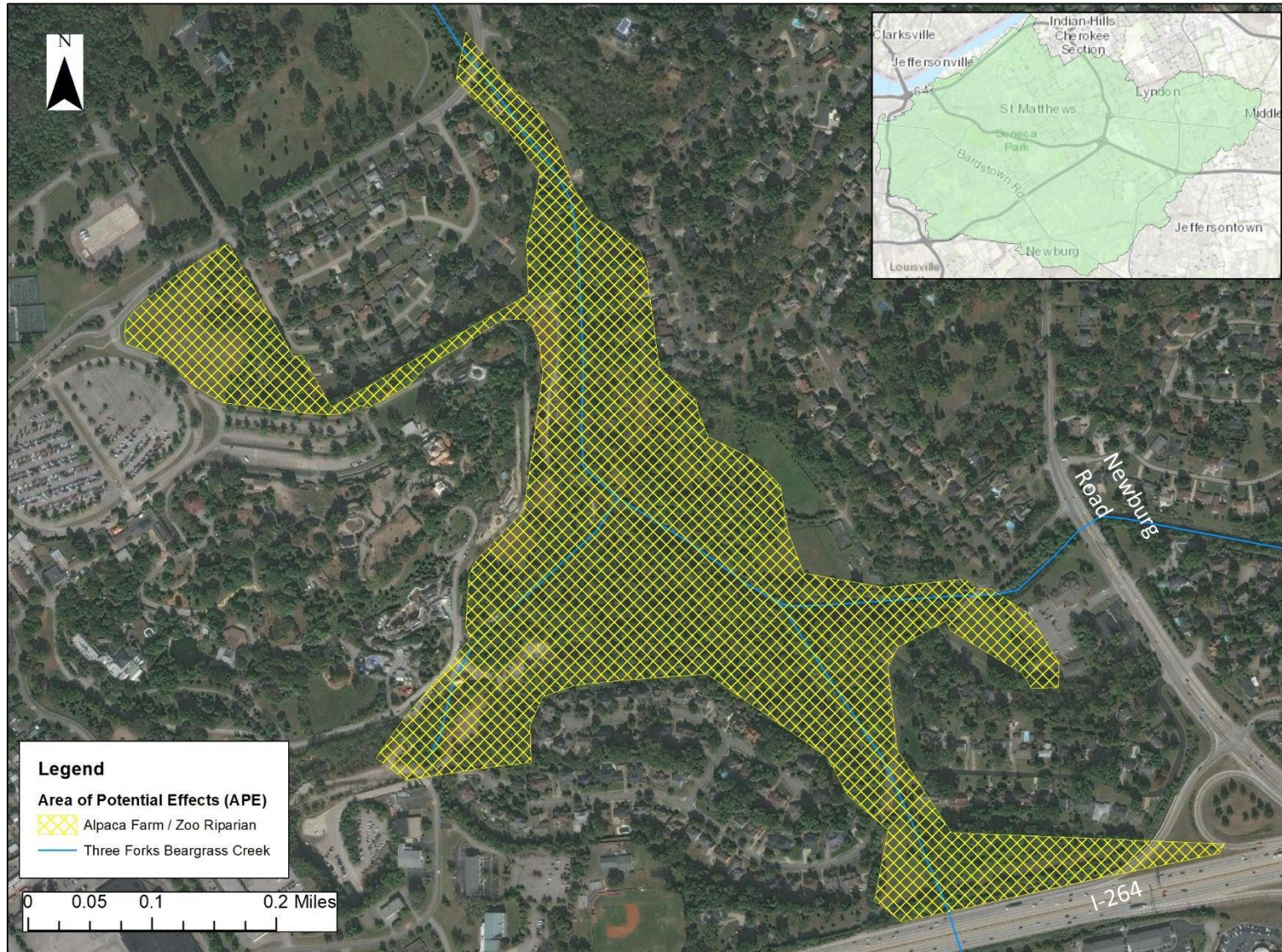
Attachment 1: Undertaking and the Preliminary Area of Potential Effects (APE) as Determined by the Corps.

Attachment 2: Points of Contact for Each Agency

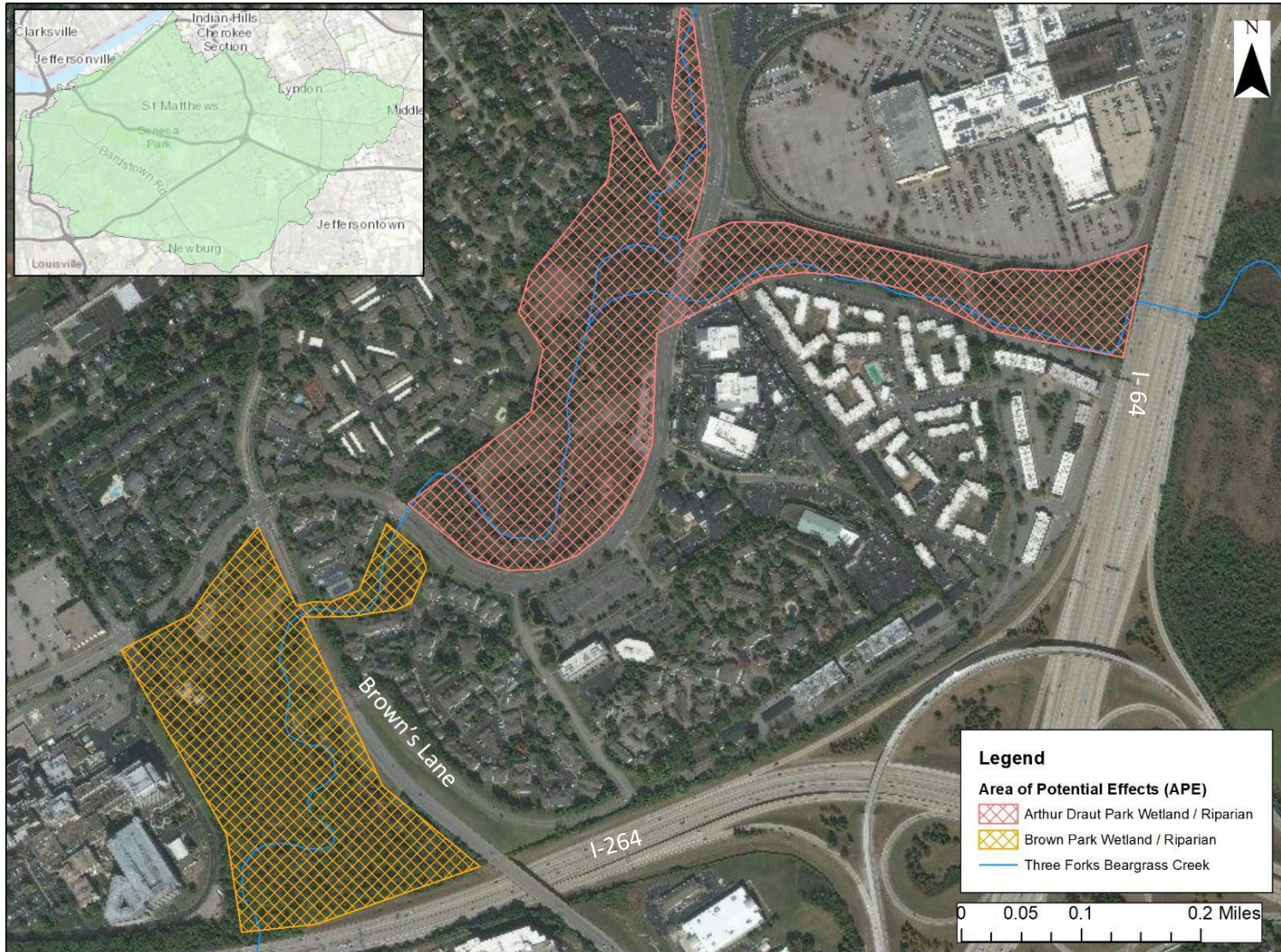
Attachment 1:
Undertaking and the Preliminary Area of Potential Effects as Determined by the Corps



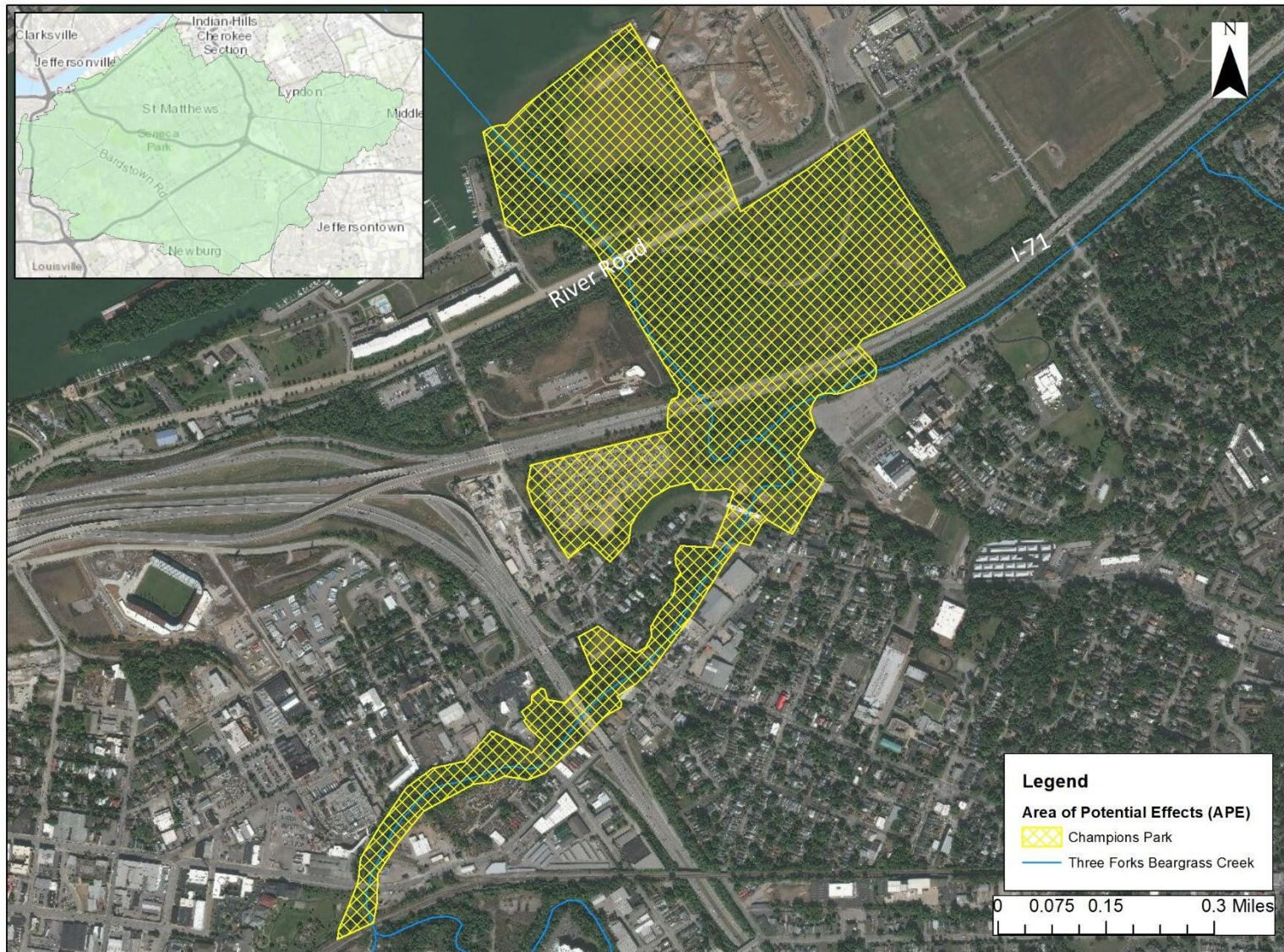
Location of the APE within the Three Forks of Beargrass Creek that make up the Undertaking (highlighted in yellow)



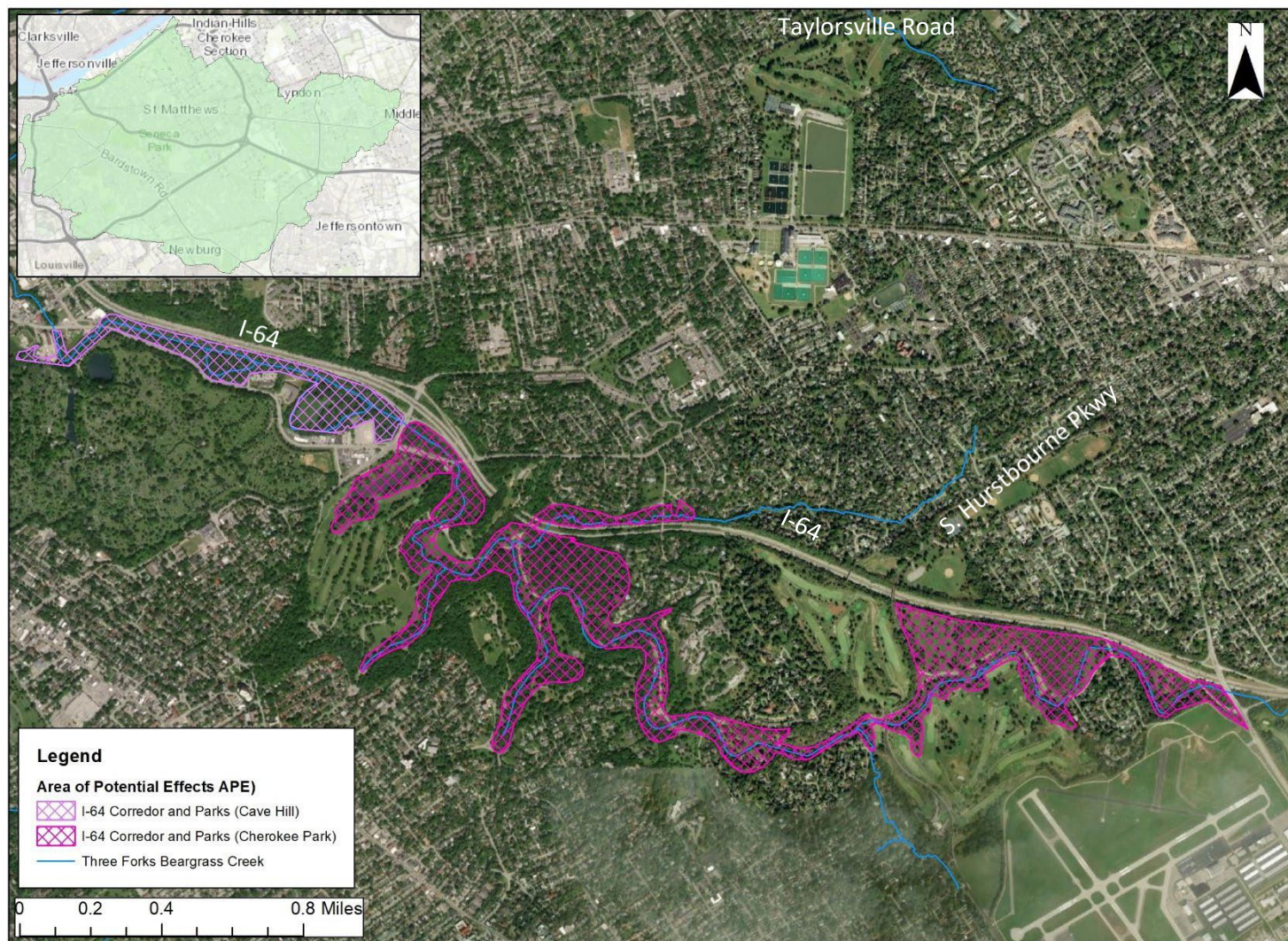
Alpaca Farm / Zoo Riparian Study Area (APE)



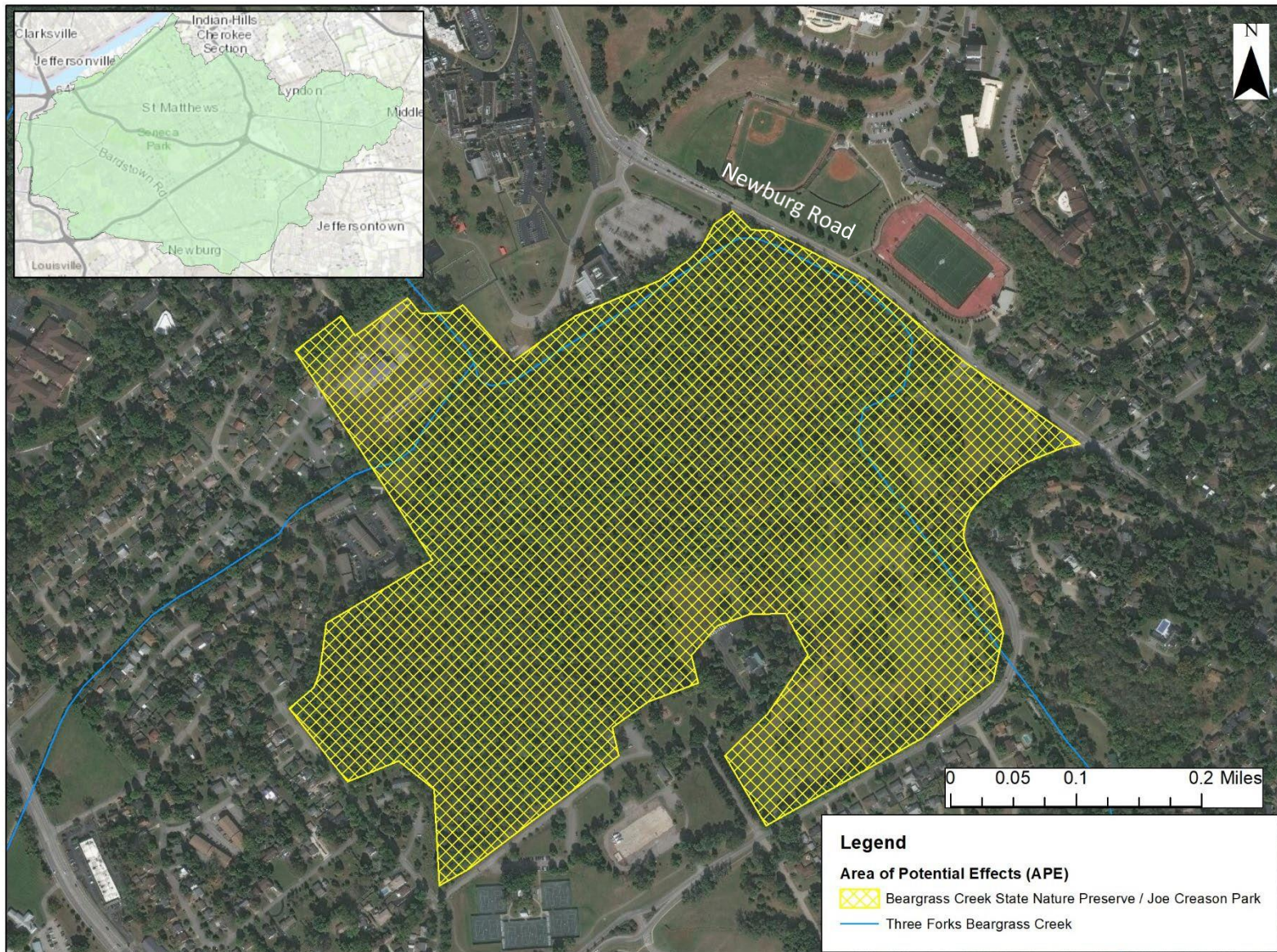
Arthur Draut Park Wetland / Riparian and Brown Park Wetland / Riparian Study Areas (APE)



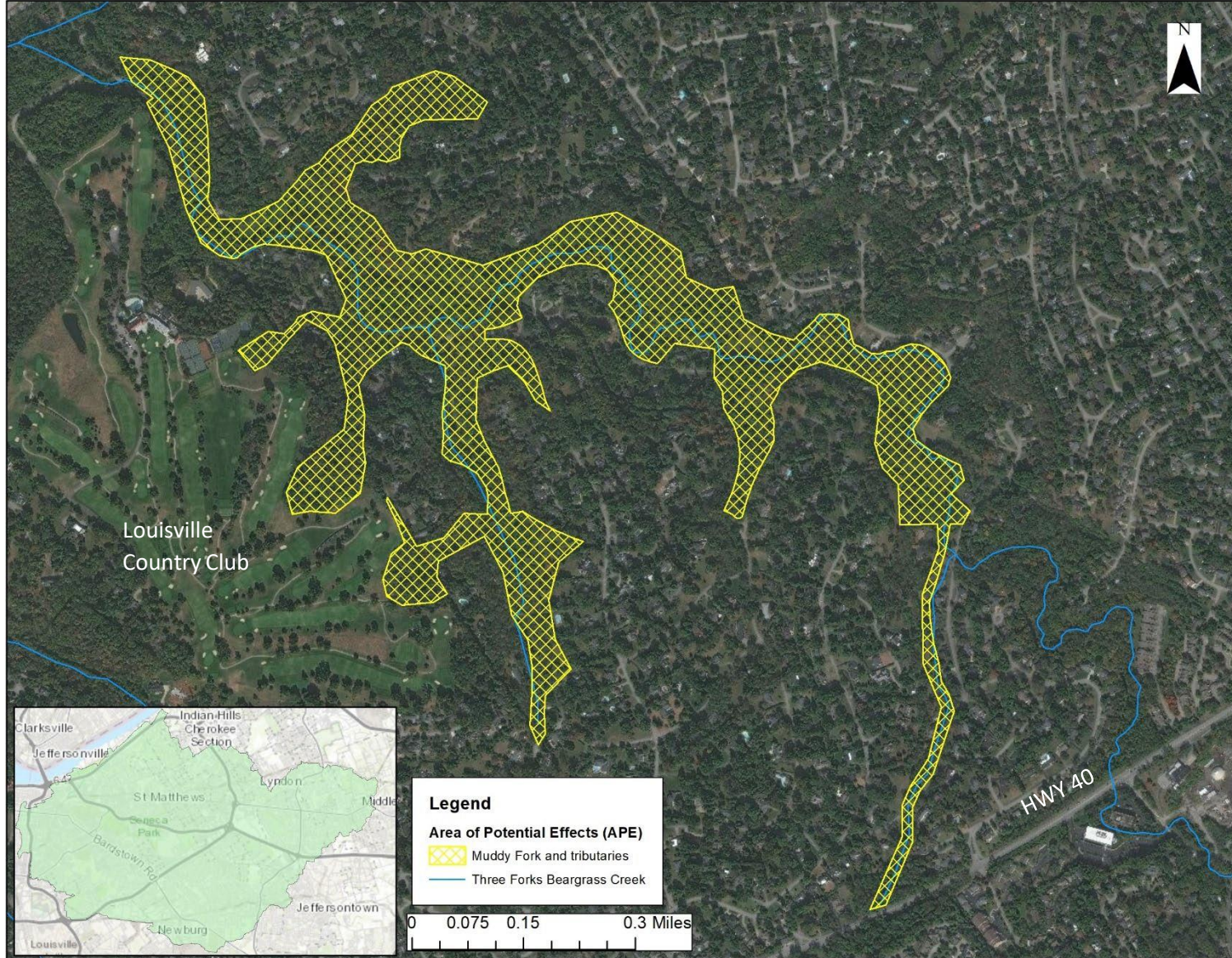
Champions Park Study Area (APE)



I-64 Corridor and Parks (Cave Hill and Cherokee Park) Study Area (APE)



Beargrass Creek Nature Preserve / Joe Creason Study Area (APE)



Muddy Fork and Tributaries Study Area (APE)



Concrete Channel and Eastern Creason Connector Study Area (APE)



South Fork / Newburg Road Riparian Study Area (APE)



MSD Basin Study Area (APE)

Attachment 2:
Points of Contact

U.S. Army Corps of Engineers

Dan Vogler
Chief, Planning Section
United States Army Corps of Engineers
Louisville District
600 Dr. Martin Luther King Jr Place
Louisville, KY 40202
Desk: (502) 315-6829
Email: dan.vogler@usace.army.mil

Kentucky Heritage Council

Nicolas Laracuate
Program Administrator, Site Protection and Archaeology
The Barstow House
410 High Street
Frankfort, KY 40601
Desk: (502) 892-3614
Email: nicolas.laracuate@ky.gov

Advisory Council on Historic Preservation

Reid Nelson, Acting Executive Director
Federal Property Management Section
401 F Street NW, Suite 308
Washington, DC 20001
Desk: 202-517-0222
Email: rnelson@achp.gov



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Mr. Craig Potts
Executive Director and State Historic
Preservation Officer
410 High Street
Frankfort, Kentucky 40601

Dear Mr. Potts:

The U.S. Army Corps of Engineers, Louisville District (Corps) is in the planning phase of the Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky (referred to as the Undertaking). We invite your agency to consult on this Undertaking under Section 106 of the National Historic Preservation Act (as amended), and assist us in the identification and evaluation of historic properties that could be affected by the proposed Undertaking.

The Undertaking will focus on aquatic ecosystem restoration within the three forks of Beargrass Creek: Muddy Fork, Middle Fork, and South Fork (Figures 1). The objective of this Feasibility Study is to reestablish the quality and connectivity of both riverine and riparian habitats on the three forks of Beargrass Creek. At this time, the extent of the Area of Potential Effects (APE) has not been established, as planning efforts are in-progress to identify specific sites for detailed evaluation of restoration opportunities. The Corps expects to have an APE defined by the end of October 2020 and will be requesting cultural resources and historic property identification assistance from your office once the APE has been established.

A preliminary review of records and reports available online through the National Park Service and the Kentucky Office of the State Archaeology has identified numerous archaeological sites and historic structures, including the National Register of Historic Places (NRHP)-listed Olmstead Park System, within the proposed project limits of the Undertaking.

At this time, we are developing a consulting party's list for the Undertaking (see attachment 1). If you know of other consulting parties or members of the public who wish to participate in this process, please let us know. If you have any questions or comments, please contact Ms. Jennifer Guffey, archaeologist and tribal liaison by telephone at 502-315-7468, or by email at jennifer.m.guffey@usace.army.mil. Please provide a response by 30 days upon receipt of this letter.

Sincerely,

Dan Vogler, P.G.
Chief, Planning Section

Enclosures

1. Consulting Parties List
2. Figure 1

Attachment 1

Consulting Parties List:

Dr. Andrea Hunter, Tribal Historic Preservation Officer
Osage Nation
Email: ahunter@osagetribe.org

Devon Frazier, Tribal Historic Preservation Officer
Absentee Shawnee Tribe of Oklahoma
[Email: 106NAGPRA@astribe.com](mailto:106NAGPRA@astribe.com)

Brett Barnes, Tribal Historic Preservation Officer
Eastern Shawnee Tribe of Oklahoma
Email: bbarnes@estoo.net

Tonya Tipton, Tribal Historic Preservation Officer
Shawnee Tribe of Oklahoma
Email: tonya@shawnee-tribe.com

Elizabeth Toombs, Tribal Historic Preservation Officer
Cherokee Nation
Email: elizabeth-toombs@cherokee.org

Whitney Warrior, Tribal Historic Preservation Officer
United Keetoowah Band of Indians
[Email: wwarrior@ukb-nsn.gov](mailto:wwarrior@ukb-nsn.gov)

Stephen J. Yerka, Tribal Historic Preservation Officer
Eastern Band of Cherokee Indians
Email: syerka@nc-cherokee.com

Erin Thompson-Paden, Historic Preservation Director
Delaware Nation
Email: ethompson@delawarenation-nsn.gov

Cynthia Johnson Elmore
Louisville Metro Historic Preservation Officer
Email: Cynthia.Johnson@louisvilleky.gov

David Wicks
Ohio River Recreational Trail Email: dwicks1@gmail.com

Major Waltman
Olmsted Parks Conservancy
Email: major.waltman@olmstedparks.org

Betsy Hatfield
Preservation Kentucky
Email: betsy@preservationkentucky.org

Butchertown Neighborhood Association
Email: butchertownsec@gmail.com

Wolffie Miller, Project Manager
Metropolitan Sewer District
Email: wolffie.miller@louisvillemsd.org

Filson Historical Society
research@filsonhistorical.org

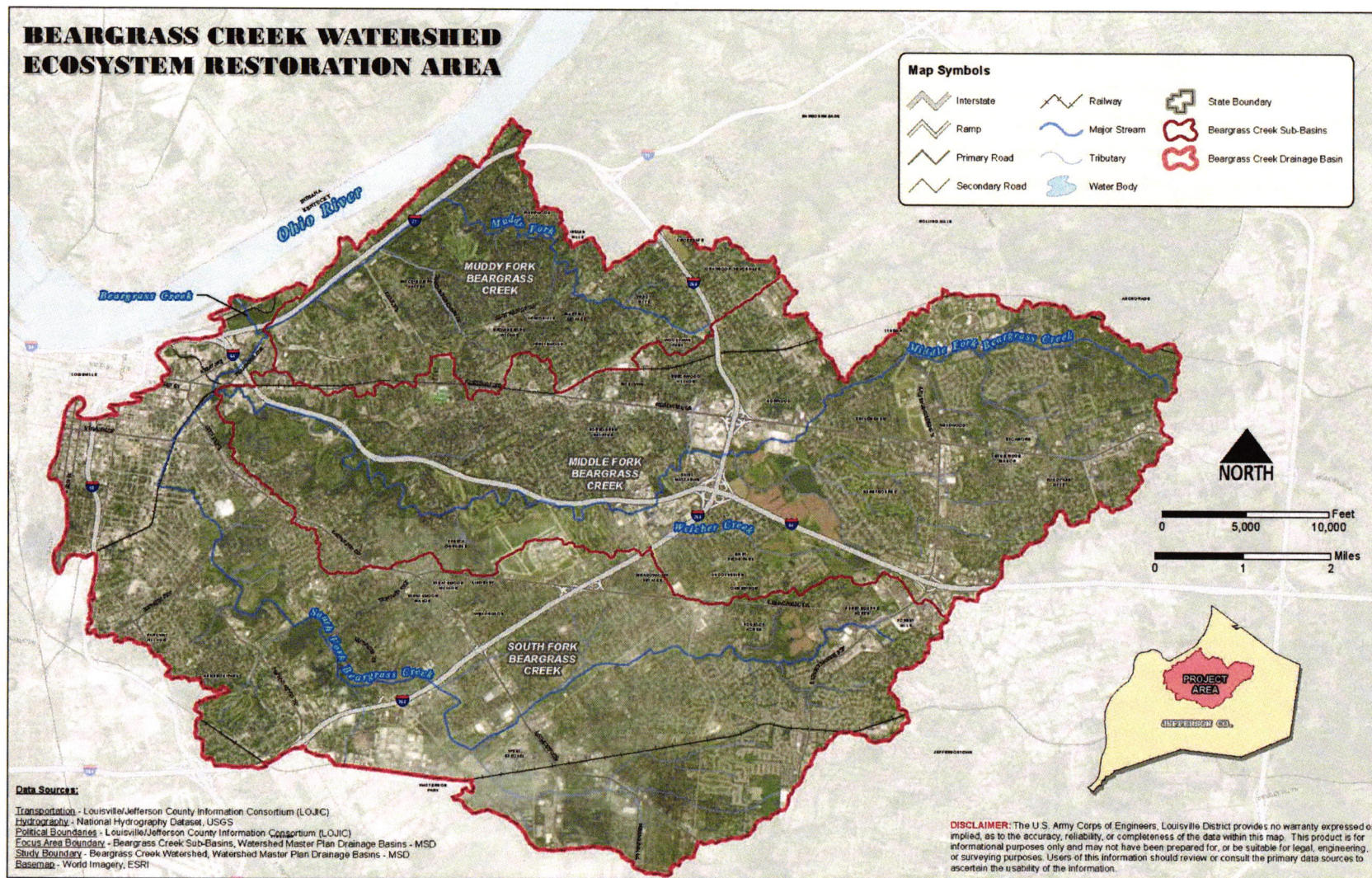


Figure 1: Location of Study Area in Beargrass Creek



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Edwina Butler-Wolfe, Governor
Absentee-Shawnee Tribe of Oklahoma
2025 S. Gordon Cooper Drive
Shawnee, OK 74801-9381

Honorable Governor Edwina Butler-Wolfe:

The U.S. Army Corps of Engineers, Louisville District (Corps) is in the planning phase of the Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky (referred to as the Undertaking). We invite your agency to consult on this Undertaking under Section 106 of the National Historic Preservation Act (as amended), and assist us in the identification and evaluation of historic properties that could be affected by the proposed Undertaking.

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Sincerely,

Dan Vogler, P.G.
Chief, Planning Section

Enclosures
1. Figure 1

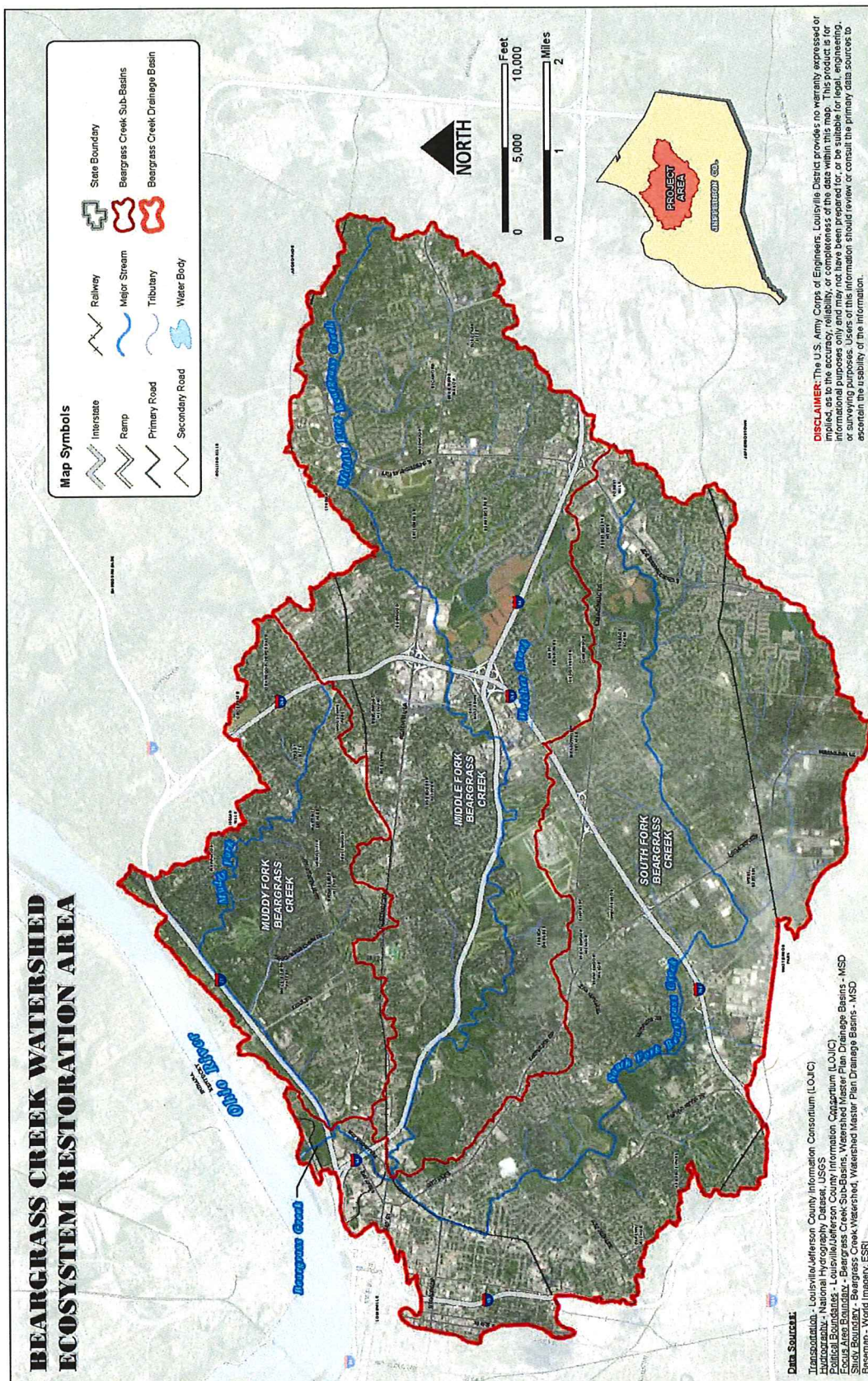


Figure 1: Location of Study Area in Beargrass Creek



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Bill John Baker, Principal Chief
Cherokee Nations
P.O. Box 948
Tahlequah, OK 74465

Honorable Principal Chief Bill John Baker:


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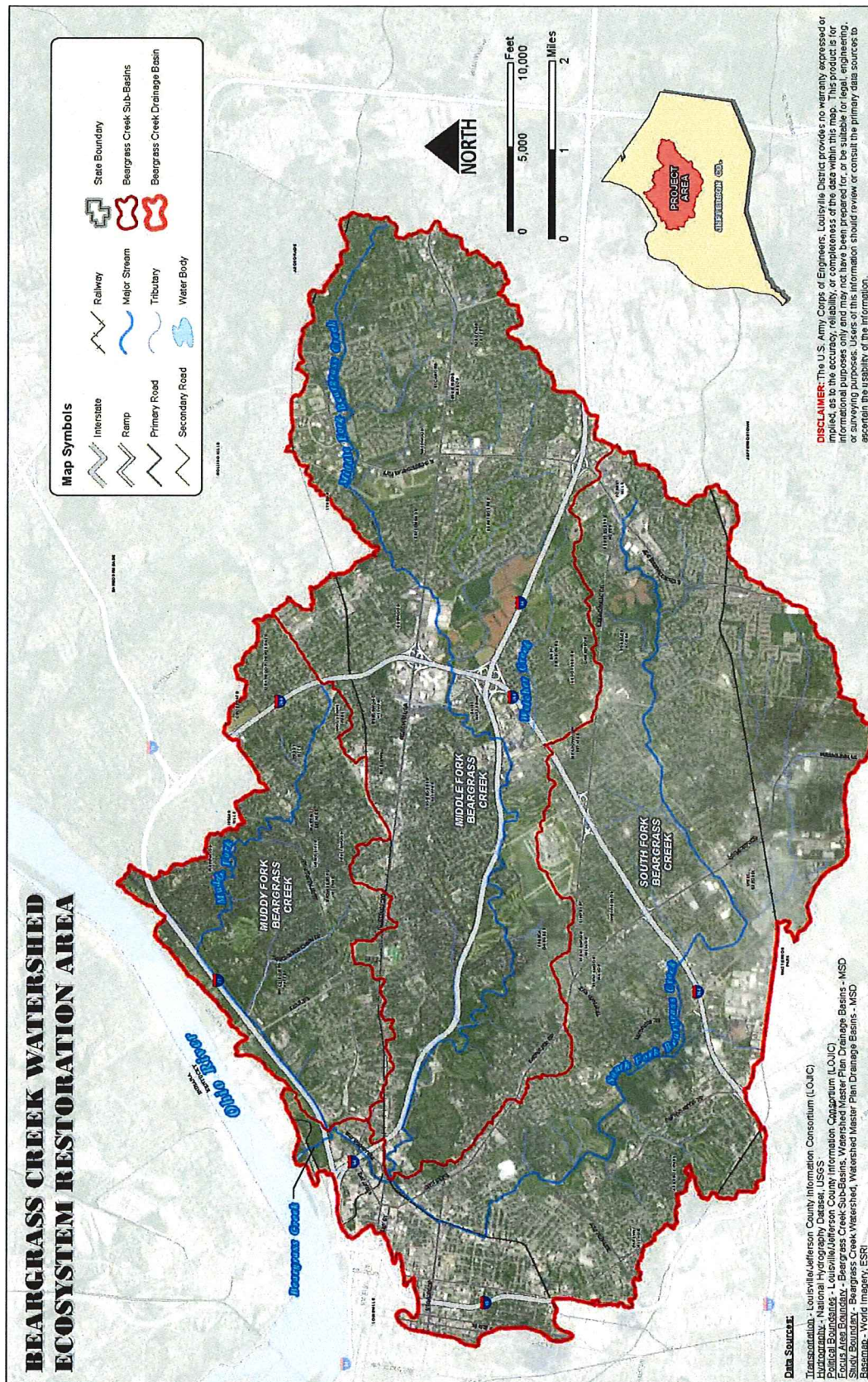


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600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Glenna Wallace, Chief
Eastern Shawnee Tribe
P.O. Box 350
Seneca, MO 64865

Honorable Chief Glenna Wallace:

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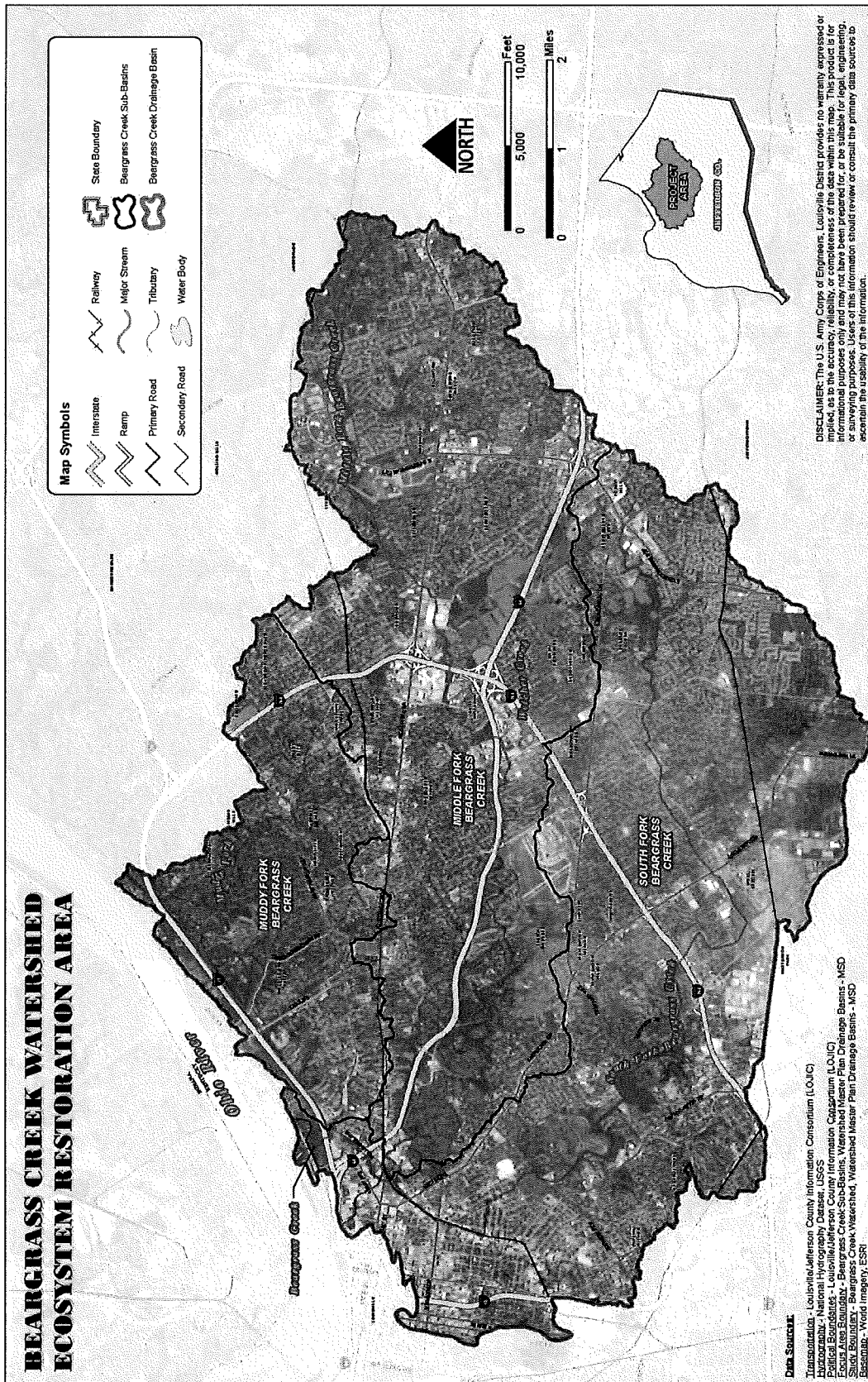


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Richard Sneed, Principal Chief
Eastern Band of Cherokee Nations
P.O. Box 1927
Cherokee, NC 28719

Honorable Principal Chief Richard Sneed:

The U.S. Army Corps of Engineers, Louisville District (Corps) is in the planning phase of the Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky (referred to as the Undertaking). We invite your agency to consult on this Undertaking under Section 106 of the National Historic Preservation Act (as amended), and assist us in the identification and evaluation of historic properties that could be affected by the proposed Undertaking.

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Chief, Planning Section

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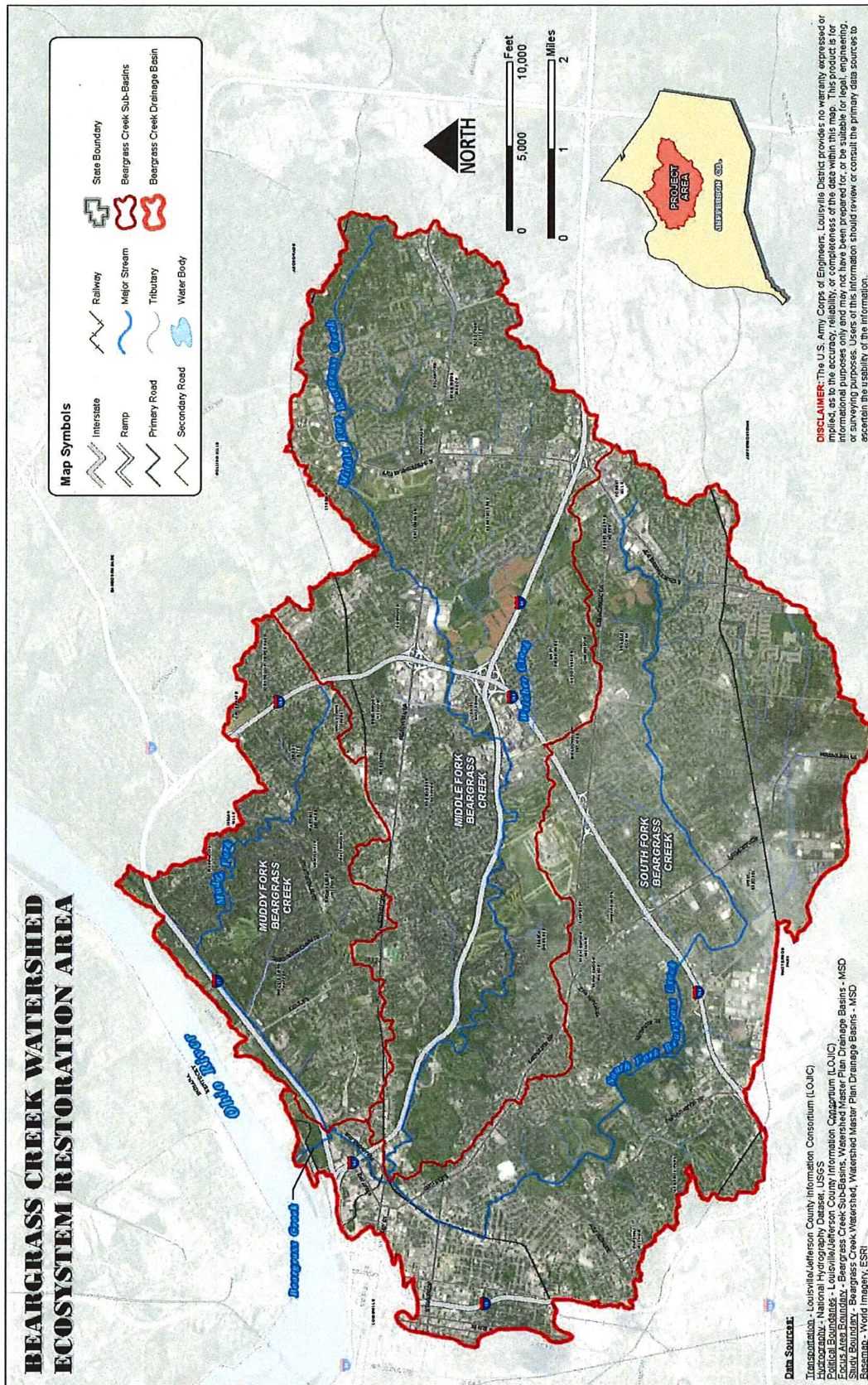


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Geoffery Standing Bear, Principal Chief
Osage Nation
627 Grandview Avenue
Pawhuska, OK 74056

Honorable Principal Chief Geoffery Standing Bear:


The U.S. Army Corps of Engineers, Louisville District (Corps) is in the planning phase of the Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky (referred to as the Undertaking). We invite your agency to consult on this Undertaking under Section 106 of the National Historic Preservation Act (as amended), and assist us in the identification and evaluation of historic properties that could be affected by the proposed Undertaking.

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Dan Vogler, P.G.
Chief, Planning Section

Enclosures
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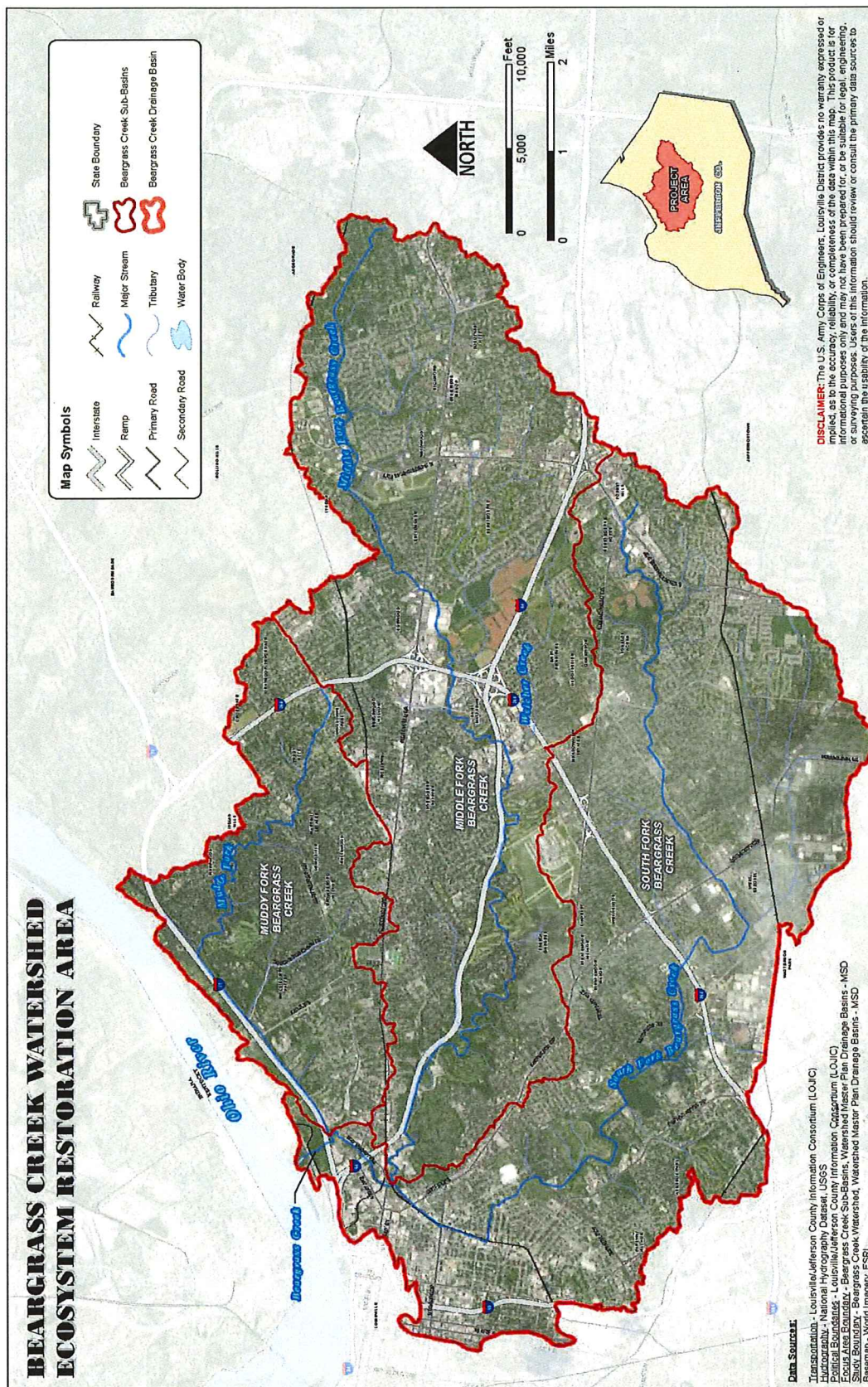


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U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Ron Sparkman, Chief
Shawnee Tribe
P.O. Box 189, 29S Highway 69A
Miami, OK 74355

Honorable Chief Ron Sparkman:

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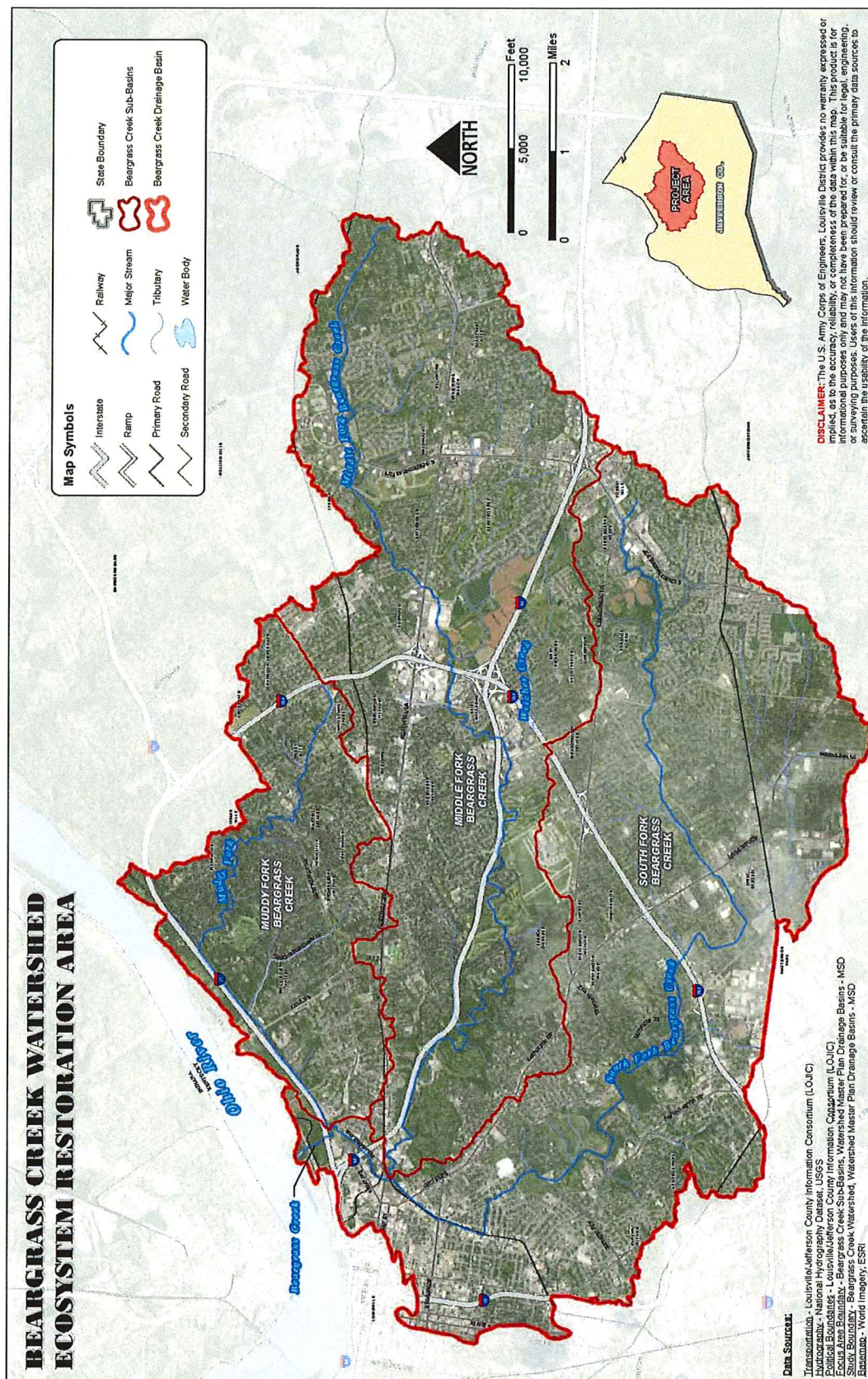


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Honorable Joe Bunch, Chief
United Keetoowah Band of Cherokee
Indians in Oklahoma
P.O. Box 746
Tahlequah, OK 74465

Honorable Chief Joe Bunch:

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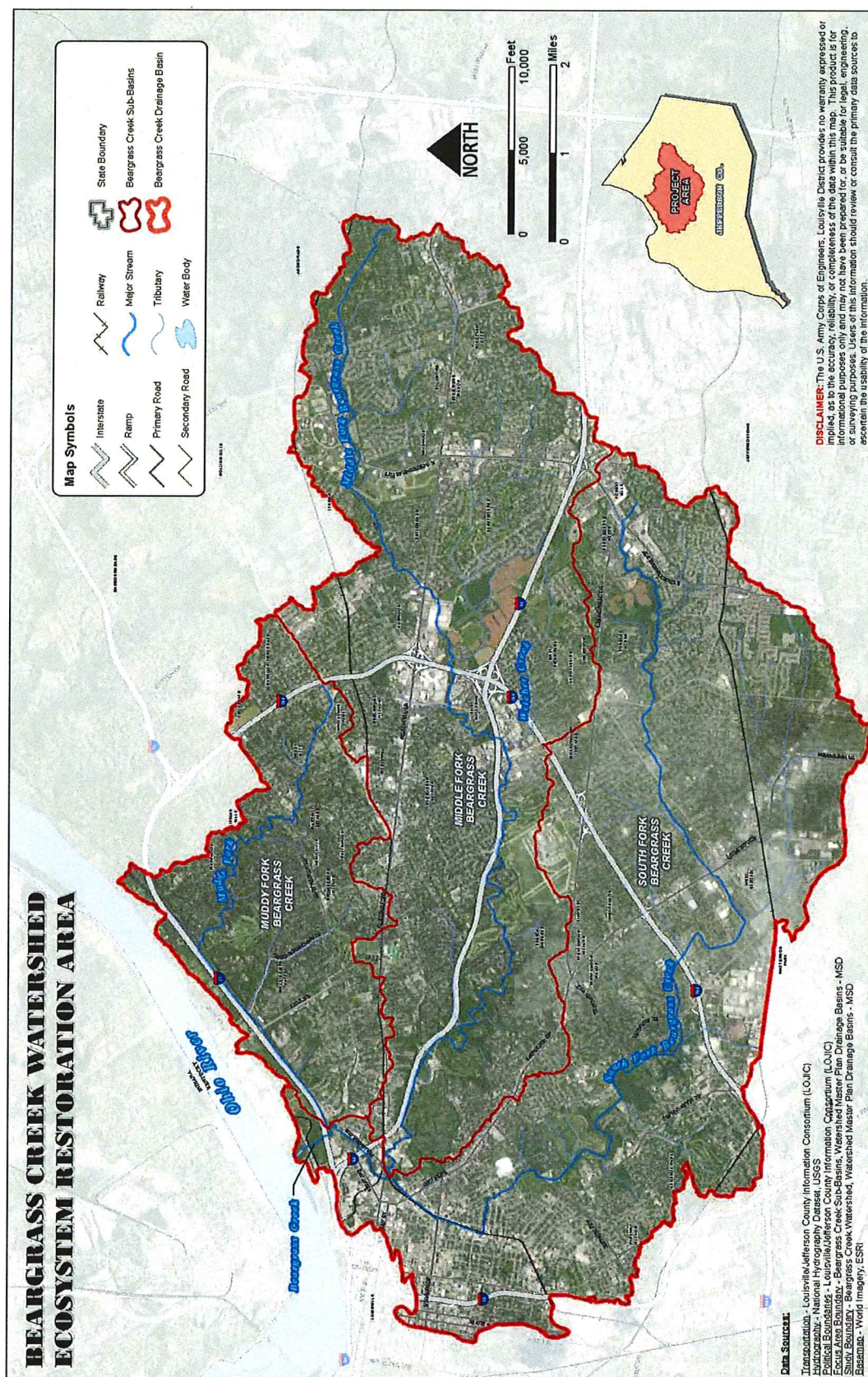


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Ms. Cynthia Johnson Elmore
Historic Preservation Officer
Planning & Design Services
Department of Develop Louisville
444 South Fifth Street, Suite 300
Louisville, Kentucky 40202

Dear Ms. Cynthia Johnson Elmore:

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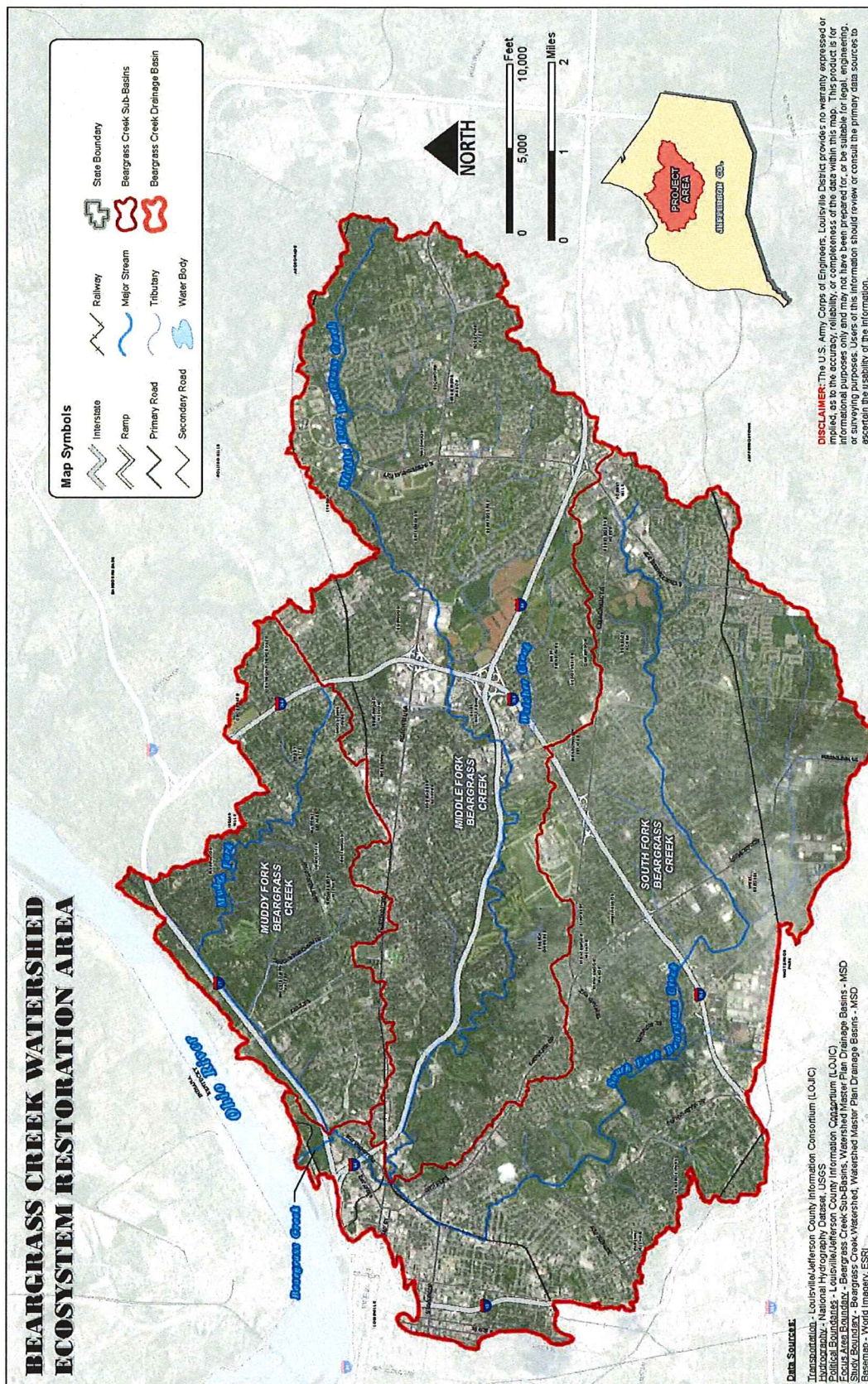


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Ms. Betsy Hatfield
Executive Director
Preservation Kentucky
232 West Main Street, Unit 1
Louisville, Kentucky 40601

Dear Ms. Betsy Hatfield:

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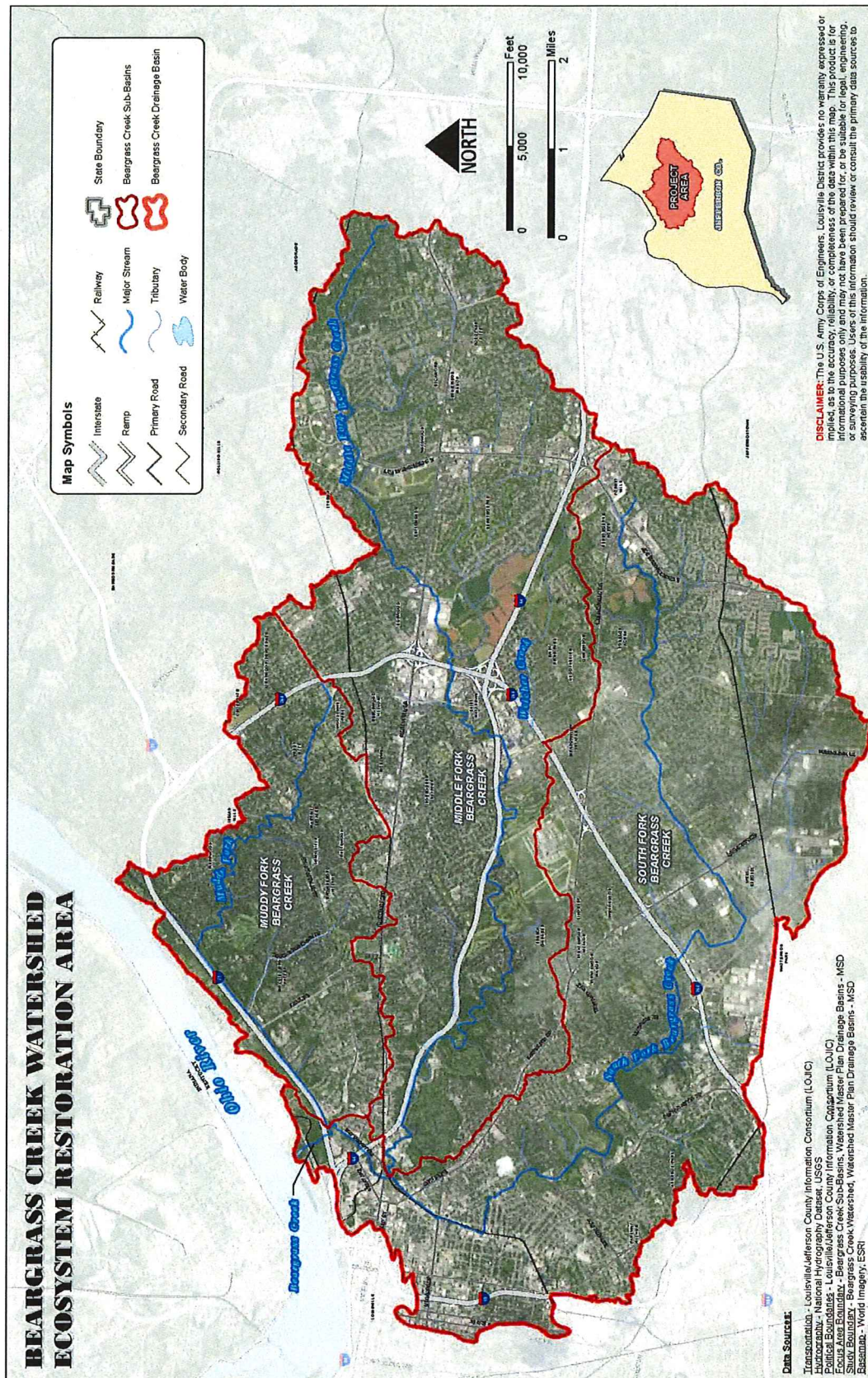


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600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Mr. Major Waltman
Olmsted Parks Conservancy
1299 Trevilian Way
Louisville, Kentucky 40213

Dear Mr. Major Waltman:

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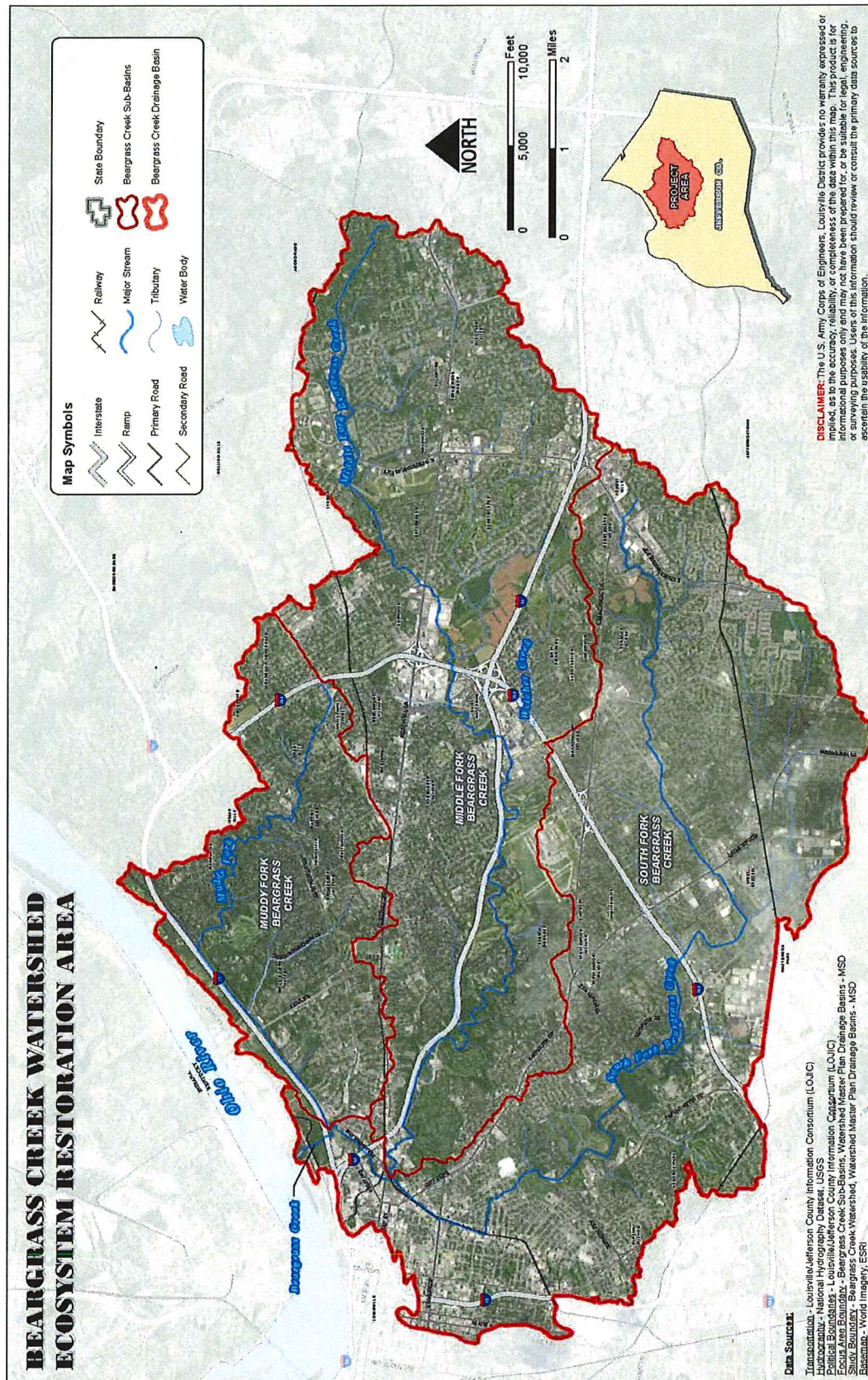


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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

August 17, 2020

Planning, Programs and
Project Management Division
Planning Section

Doctor David Wicks
Ohio River Recreational Trails
1321 River Road
Louisville, Kentucky 40206

Dear Doctor Wicks:


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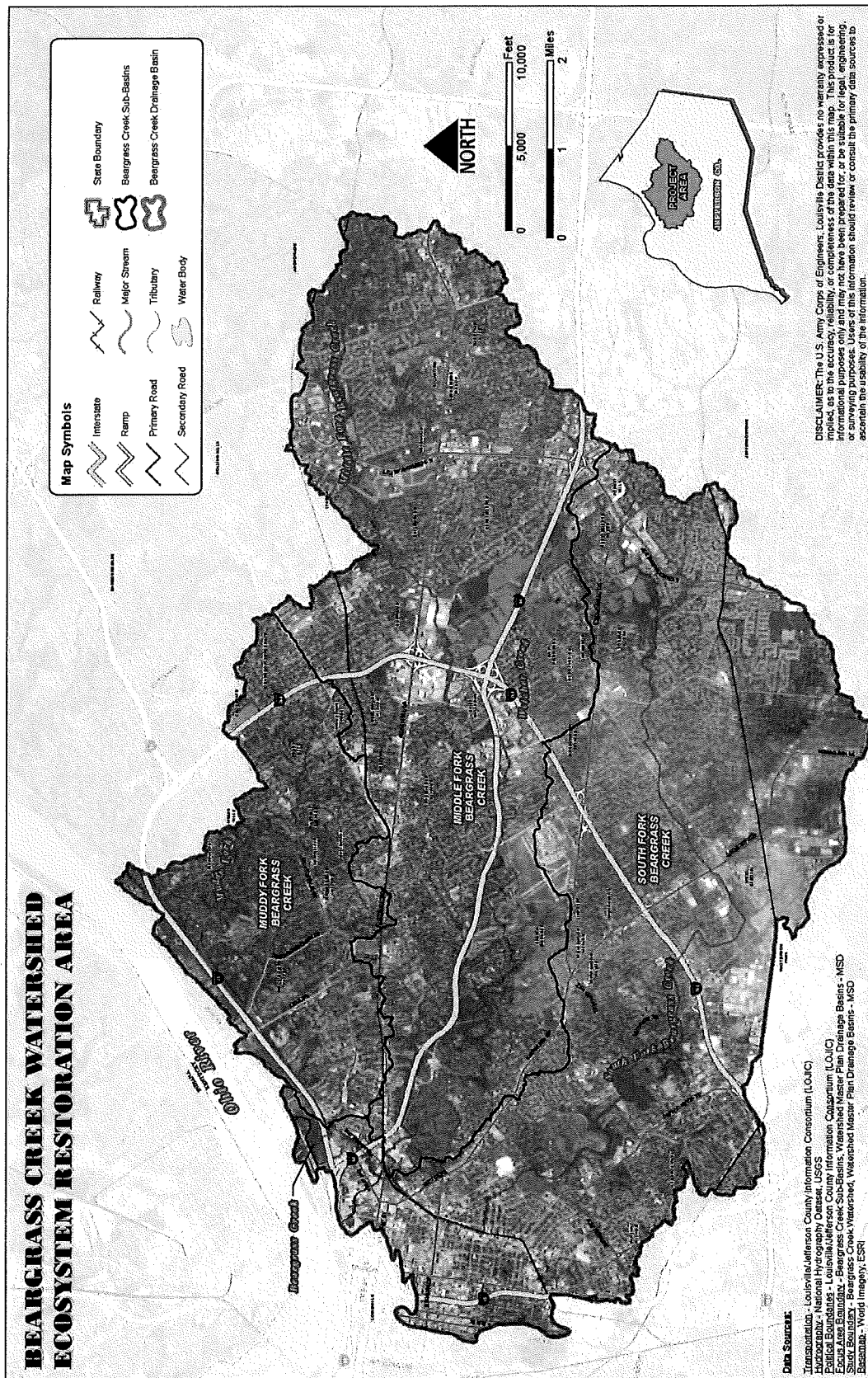


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ANDY BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL
THE STATE HISTORIC PRESERVATION OFFICE**

MICHAEL E. BERRY
SECRETARY

JACQUELINE COLEMAN
LT. GOVERNOR

410 HIGH STREET
FRANKFORT, KENTUCKY 40601
(502) 564-7005
www.heritage.ky.gov

CRAIG A. POTTS
EXECUTIVE DIRECTOR &
STATE HISTORIC
PRESERVATION OFFICER

September 23, 2020

United States Army Corps of Engineers
ATTN: Mr. Dan Vogler
P. O. Box 59
Louisville, KY 40201

Re: Three Forks of Beargrass Ecosystem Restoration Feasibility Study, Louisville, Jefferson County, Kentucky

Dear Mr. Vogler:

Thank you for your letter concerning the above-mentioned project, received August 24, 2020. We understand that the United States Army Corps of Engineers proposes to conduct a feasibility study for ecosystem restoration along the three forks of Beargrass Creek in Jefferson County, Kentucky.

We understand that the area of potential effect of the proposed project is anticipated to be developed by October 2020, and that we will continue to conduct consultation on the identification and assessment of effects to historic properties at that point. We look forward to continuing consultation. If the Corps anticipates that a programmatic agreement to defer identification of historic properties will be needed, please advise us as soon as possible.

After review of the potential list of consulting parties, we would recommend that USACE contacts Vital Sites, River Fields, and the councilpersons representing the affected districts. We would also recommend asking the potential consulting parties if they have suggestions for others that might be interested in being consulting parties for this undertaking.

Should you have any questions concerning archaeological resources, feel free to contact Chris Gunn of my staff at (502) 892-3615 or chris.gunn@ky.gov. Questions concerning above-ground resources can be directed to Jennifer Ryall at (502) 892-3619 or jennifer.ryall@ky.gov.

Sincerely,

Craig A. Potts,
Executive Director and
State Historic Preservation Officer

CP:cmg jr KHC # 59532

From: [Betsy Hatfield](#)
To: [Guffey, Jennifer M CIV USARMY CELRL \(US\)](#)
Subject: [Non-DoD Source] Re: Three Forks of Beargrass Creek Study, Jefferson County, Kentucky
Date: Thursday, August 27, 2020 5:38:21 PM
Attachments: [image001.png](#)

Hello Jennifer,

Thank you for your invitation to participate as a consulting party on the Three Forks of Beargrass Ecosystem Restoration Feasibility Study. We are definitely interested in being a consulting party and appreciate your contacting us with the opportunity to participate.

I look forward to learning more about the project.

Thank you!

Betsy Hatfield

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@preservationky <Blockedhttps://facebook.com/preservationky> . Twitter @preservationky
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-----Original Message-----

From: "Guffey, Jennifer M CIV USARMY CELRL (US)" <Jennifer.M.Guffey@usace.army.mil>

Date: Monday, August 24, 2020 at 3:03 PM

To: Betsy Hatfield <betsy@preservationkentucky.org>

Subject: Three Forks of Beargrass Creek Study, Jefferson County, Kentucky

Good afternoon,

My name is Jennifer Guffey and am an archaeologist with the US Army Corps of Engineers, Louisville District. I'm writing your group today to see if your group would interested in serving as a consulting party to the Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky. Please let me know if you have any trouble opening the attachment or have any additional questions.

Thank you for your time and I look forward to your response.

Jennifer

Jennifer Guffey

Archaeologist & Tribal Liaison

Planning Section,

Civil Works, Planning, Programs and Project Mgmt Branch

Louisville District

U.S.Army Corps of Engineers

Office Phone- 502.315.7468

Office Fax- 502.315.6864



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Office of the Chief

Chuck Hoskin Jr.
Principal Chief

Bryan Warner
Deputy Principal Chief

August 4, 2020

Drew Russell
United States Army Corps of Engineers
Louisville District
600 Dr. Martin Luther King, Jr. Place
Louisville, KY 40202

Re: Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study

Mr. Drew Russell:

The Cherokee Nation (Nation) is in receipt of your correspondence about **Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study**, and appreciates the opportunity to provide comment upon this project. Please allow this letter to serve as the Nation's interest in acting as a consulting party to this proposed project.

The Nation maintains databases and records of cultural, historic, and pre-historic resources in this area. Our Historic Preservation Office reviewed this project, cross referenced the project's legal description against our information, and found instances where this project is within close proximity to culturally sensitive resources. These resources, however, are located outside the Area of Potential Effects (APE). Thus, this Office does not object to the project proceeding as long as the following stipulations are observed:

- 1) The Nation requests that the United States Army Corps of Engineers (USACE) re-contact this Office for additional consultation if there are any changes to the scope of or activities within the APE;
- 2) The Nation requests that USACE halt all project activities immediately and re-contact our Offices for further consultation if items of cultural significance are discovered during the course of this project; and
- 3) The Nation requests that USACE conduct appropriate inquiries with other pertinent Tribal and Historic Preservation Offices regarding historic and prehistoric resources not included in the Nation's databases or records.

If you require additional information or have any questions, please contact me at your convenience.
Thank you for your time and attention to this matter.

Wado,

A handwritten signature in blue ink that reads "Elizabeth Toombs". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Toombs" clearly legible.

Elizabeth Toombs, Tribal Historic Preservation Officer
Cherokee Nation Tribal Historic Preservation Office
elizabeth-toombs@cherokee.org
918.453.5389

From: [Waltman, Major](#)
To: [Guffey, Jennifer M CIV USARMY CELRL \(US\)](#)
Subject: [Non-DoD Source] Beargrass Creek Ecosystem Restoration
Date: Friday, August 21, 2020 3:27:04 PM

Jennifer,

Please include me on the consultant parties list for this project. All correspondence can be sent to my email:
major.waltman@olmstedparks.org

FYI: Olmsted does not have an a in the spelling.

Thanks, Major.

Major Waltman

Project Director

Olmsted Parks Conservancy

Office: 502-456-8182

Cell: 502-338-4913

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From: [Guffey, Jennifer M CIV USARMY CELRL \(USA\)](#)
To: [Gunn, Chris \(Heritage Council\)](#); [Ryall, Jennifer \(Heritage Council\)](#)
Subject: RE: Three Forks of Beargrass Creek Study, Jefferson County, Kentucky
Date: Thursday, September 24, 2020 1:18:00 PM

Thanks you Chris for the KHC response and the consulting parties recommendations. I will update the consultation parties list. In addition, the Corps does anticipate developing a Programmatic Agreement deferring identification of historic properties. We looking forward to working with you and Jenn developing the PA for this project.

Sincerely,
Jennifer

Jennifer Guffey
Archaeologist & Tribal Liaison
Planning Section,
Civil Works, Planning, Programs and Project Mgmt Branch
Louisville District
U.S.Army Corps of Engineers
Office Phone- 502.315.7468
Office Fax- 502.315.6864

-----Original Message-----

From: Gunn, Chris (Heritage Council) [<mailto:Chris.Gunn@ky.gov>]
Sent: Thursday, September 24, 2020 8:30 AM
To: Guffey, Jennifer M CIV USARMY CELRL (USA) <Jennifer.M.Guffey@usace.army.mil>; Ryall, Jennifer (Heritage Council) <Jennifer.Ryall@ky.gov>
Subject: [Non-DoD Source] Re: Three Forks of Beargrass Creek Study, Jefferson County, Kentucky

Hello Jennifer,

Please find attached our response for the letter concerning consulting parties for the Beargrass Creek restoration project.

Thank you,
Chris Gunn

Christopher M. Gunn, Ph.D.

Archaeology Review Coordinator

Kentucky Heritage Council

410 High Street

Frankfort, KY 40601

To our constituents, please be advised the KHC Historic Resource Library is now open for consultants wishing to conduct background research and site checks. Consultants can make appointments to visit our office in two time slots a day on Mondays, Wednesdays, and Fridays: 9 a.m. to 12 p.m. and 1 :30 p.m. to 4:30 p.m. We ask that you please refer to this memo for information <Blockedhttps://heritage.ky.gov/Documents/KHCLibraryMemo-COVID%2019.pdf> and follow all protocols outlined there and posted at our facility. Consultants who require this service may also continue to utilize the electronic records review portal at Blockedhttps://secure.kentucky.gov/formservices/Heritage/SiteID <Blockedhttps://secure.kentucky.gov/formservices/Heritage/SiteID> . The rest of the office remains open on a limited basis. Staff continue to telecommute or alternate days in the office and are not available for face-to-face meetings or site visits. We continue to recommend that when possible, environmental review reports, tax credit applications and supporting materials, National Register correspondence, or other documents that require hard-copy submissions be mailed or sent by delivery service to the Kentucky Heritage Council, 410 High Street, Frankfort, KY 40601, so that staff may follow up with you by phone.

Note for Applicants Submitting Projects for Section 106 Review: Our office commits to flexibility for Applicants unable to submit in hard copy due to telework requirements and, per the ACHP's most recent guidance, we appreciate Applicants being flexible with our office's response time frames during a declared national emergency.

If you have an emergency action that requires Section 106 consultation, please include our Site Protection Manager Nick Laracuate nicolas.laracuate@ky.gov <<mailto:nicolas.laracuate@ky.gov>> on your emails to the review staff.

From: Guffey, Jennifer M CIV USARMY CELRL (US) <Jennifer.M.Guffey@usace.army.mil>
Sent: Monday, August 24, 2020 2:41 PM
To: Ryall, Jennifer (Heritage Council) <Jennifer.Ryall@ky.gov>; Gunn, Chris (Heritage Council) <Chris.Gunn@ky.gov>
Subject: Three Forks of Beargrass Creek Study, Jefferson County, Kentucky

****CAUTION**** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov <<mailto:ServiceCorrespondence@ky.gov>> for any assistance.

Jenn and Chris,

The Louisville District Corps of Engineers, Planning Branch, is in the planning phase of Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study in Louisville, Jefferson County, Kentucky. A letter was sent to Mr. Potts and I am submitting the record copy of the letter with enclosures to you via email for your review the information. Please let me know if you have any trouble opening the attachment. I look forward to your comments.

Thank you!

Jennifer Guffey

Archaeologist & Tribal Liaison
Planning Section,
Civil Works, Planning, Programs and Project Mgmt Branch
Louisville District
U.S.Army Corps of Engineers
Office Phone- 502.315.7468
Office Fax- 502.315.6864

From: [Erin Paden](#)
To: [Guffey, Jennifer M CIV USARMY CELRL \(USA\)](#)
Subject: [Non-DoD Source] RE: Three Forks of Beargrass Creek Study-Jefferson County, Kentucky
Date: Tuesday, March 09, 2021 4:21:02 PM

Hello,

Delaware Nation would like to be apart of the PA developed for the Beargrass Creek Ecosystem Restoration.

Thank you,

Erin

Erin Thompson-Paden

Delaware Nation Historic Preservation Director

31064 SH 281

P.O. Box 825

Anadarko, OK 73005

Office: 405-247-2448 ex. 1403

Cell: 480-275-9009

epaden@delawarenation-nsn.gov <<mailto:epaden@delawarenation-nsn.gov>>

From: Guffey, Jennifer M CIV USARMY CELRL (USA) <Jennifer.M.Guffey@usace.army.mil>
Sent: Wednesday, February 24, 2021 9:58 AM
To: Erin Paden <epaden@delawarenation-nsn.gov>
Subject: Three Forks of Beargrass Creek Study-Jefferson County, Kentucky

Ms. Paden,

I'm contacting you to see if the Delaware Nation would like to be a consulting/concurring party for the Beargrass Creek ecosystem restoration study in Jefferson County, Kentucky (project map attached). After additional consultation with the Kentucky State Historic Preservation Office (see attached meeting notes), we have decided that a Programmatic Agreement to delay the identification of historic properties is warranted. I'm writing today to ask if you would like to be a concurring party to the Programmatic Agreement that will be developed for the Undertaking. If so, please respond to this email indicating your preference. I will also be following up this email with a phone call.

Sincerely,

Jennifer

Jennifer Guffey

Archaeologist & Tribal Liaison

Planning Section,

Civil Works, Planning, Programs and Project Mgmt Branch

Louisville District

U.S.Army Corps of Engineers

Office Phone- 502.315.7468

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March 10, 2021

Ms. Jennifer Guffey
Archaeologist
Louisville District
Planning Branch, Environmental Resources Section
U.S. Army Corps of Engineers
600 Dr. Martin Luther King Place
(Mazzoli Bldg) Room 708
Louisville, Kentucky 40202-2230

Ref: *Three Forks of Beargrass Creek Ecosystem Restoration Feasibility Study*
Jefferson County, Kentucky
ACHP Project Number: 016581

Dear Ms. Guffey:

On February 23, 2021, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the potential adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, does not apply to this undertaking. Accordingly, we do not believe our participation in the consultation to resolve adverse effects is needed.

However, if we receive a request for participation from the State Historic Preservation Officer, Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Should the undertaking's circumstances change, consulting parties cannot come to consensus, or you need further advisory assistance to conclude the consultation process, please contact us.

Pursuant to Section 800.6(b)(1)(iv), you will need to file the final Section 106 agreement document (Agreement), developed in consultation with the Kentucky State Historic Preservation Office and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the Agreement and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require our further assistance, please contact Christopher Daniel at (202) 517-0223 or by e-mail at

ADVISORY COUNCIL ON HISTORIC PRESERVATION

cdaniel@achp.gov and reference the ACHP Project Number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Artisha Thompson". The signature is fluid and cursive, with the first name "Artisha" written in a larger, more prominent script than the last name "Thompson".

Artisha Thompson
Historic Preservation Technician
Office of Federal Agency Programs