

Public Notice

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

Applicant: Bear Creek Mitigation Bank, LLC

Permit Application No.: SWF-2006-00506

Date: September 10, 2009

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Mr. Mike Happold

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PUBLIC NOTICE

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

SUBJECT: This public notice is being issued to provide interested parties an opportunity to comment on a proposal to create an approximately 232-acre wetland mitigation bank to be known as the Bear Creek Mitigation Bank (BCMB) within the city of Irving, Dallas County, Texas.

APPLICANT: Bear Creek Mitigation Bank, LLC
8901 Governors Row
Dallas, TX 75247

APPLICATION NUMBER: SWF-2006-00506

DATE ISSUED: September 10, 2009

LOCATION: The proposed BCMB is located on an approximately 232-acre parcel of land along the east side of Belt Line Road, approximately 2,500 feet north of Hunter Ferrell Road within Irving, Texas (**Figure 1**). The proposed project is located approximately at UTM coordinates 688384.49 East and 3630047.01 North (Zone 14) on the Irving, TX 7.5-minute USGS quadrangle map (**Figure 2**). The proposed project is located within the Upper Trinity River Drainage Basin (HUC 120301) in the Texas Blackland Prairies Ecoregion (**Figure 3**).

PROJECT DESCRIPTION: The proposed BCMB site consists of 232 acres of land located within the Bear Creek floodplain in Dallas County, Texas, which has been owned by the Applicant for many years. The project area has historically been used for agricultural and mining purposes. Sand and gravel mining was historically prevalent in this area of the metroplex and has significantly modified the floodplain and riparian areas in the vicinity of, as well as a small portion of, the project area, south of Bear Creek. Previous site activities have established upland grass pastures and created various open water ponds or stock tanks for livestock. Based on historic aerial photographs, between 1942 and 1958, the area south of Bear Creek was gravel mined. Dry Creek was channelized along Beltline Road, however the remainder of the stream's channel meandered across the project area. The channelization of Bear Creek along Beltline Road had begun. By 1972, Dry Creek had been impounded to form the large pond on the north end of the project area. The channelization of Bear Creek was complete, however the creek may have still flowed through its old meanders. By 1984, Bear Creek, which previously meandered across the northern portion of the project area, was channelized to parallel Beltline Road on the west side of the project area, and then turned straight east across the southern portion of the project area.

North of Bear Creek, the project area is primarily open pasture with scattered trees; south of Bear Creek, the project area consists of fallow fields. A narrow riparian corridor located on either side of Bear Creek from the stream banks to the tops of the levees consists of mostly scrub/shrub species

with a few scattered trees. Herbaceous wetlands and ponds are located scattered throughout the project area, primarily located along the former stream meanders of Bear Creek and Dry Creek. Three utility easements, totaling 11.30 acres, cross the project area.

The majority of the soils within the project site are described by the U.S. Department of Agriculture (USDA), Soil Survey of Dallas County, Texas as Frio silty clay, frequently flooded (37) and Arents, loamy, hilly (3). Historically, Frio soils are described as supporting a savannah vegetation type and Arent soils are associated with gravel mining activities.

The proposed BCMB is currently comprised of approximately 1.64 acres of emergent wetlands, 3.21 acres of open water ponds, 0.04 acres of ephemeral streams, 0.74 acres of intermittent streams, 5.74 acres of perennial streams, and 220.30 acres of non-wetland habitat (148 acres of upland pasture, 50 acres of fallow fields, 11 acres of riparian corridor, and 11.30 acres of utility easements) (**Figure 4**). The vegetation, hydrology, and soils for the proposed BCMB site, including identification of waters of the United States, are described in detail in “Jurisdictional Determination of Waters of the United States Report for Bear Creek Mitigation Bank” dated May 2006.

The Bank Sponsor has developed a mitigation work plan for the BCMB. The mitigation work plan includes the restoration of portions of the Bear Creek channel to its historical alignment, removing the existing Bear Creek agricultural levees, creating additional emergent and forested wetland areas, and enhancing existing emergent wetland areas (**Figure 5**). Proposed management activities for the project area would focus on the restoration and improvement of aquatic functions that were degraded or lost when the land was modified for agricultural, gravel mining, and flood control purposes. The restoration and creation of stream channels would provide greater frequency of overbank flow to the project area. The removal of cattle and the introduction of woody plant species would increase wetland “roughness,” as well as species and vegetative structural diversity surrounding the open water features. The addition of tree and shrub plantings would enhance ecological functions such as the removal of imported elements and compounds; nutrient cycling; and cover and suitable habitat for wildlife. The creation of wetlands through the construction of small berms would increase dynamic surface water storage, and wetlands created through excavation would increase both dynamic and long-term surface water storage. The increase in the amount of wetlands within the project area would provide an increase in the ability to provide enhanced aquatic functions. Additionally the Sponsor intends to educate and inform the public through the use of the project area and provide educational opportunities through the creation of an onsite learning center, nature trails, interpretive signs and stations, and observation points. Detailed plans showing baseline and proposed conditions are included in the Revised Mitigation Bank Prospectus, Bear Creek Mitigation Bank, Irving, Texas. The objective of the mitigation work plan is to provide for the replacement of the chemical, physical, and biological functions of waters of the United States that are lost or degraded as a result of USACE-authorized impacts in the USACE Fort Worth District through the development of native, self-sustaining habitat types historically characteristic of the area.

The Bank Sponsor proposes a primary service area and a secondary service area (**Figure 6**). The primary service area of the proposed BCMB would encompass the Upper Trinity River hydrologic unit (HUC 120301) within the Texas Blackland Prairie. The secondary service area of the BCMB

would encompass the Upper Trinity River hydrologic unit within the East Central Texas Plains, and the Central Oklahoma/Texas Plain Ecoregions; the Sabine (HUC 120100), the Middle Brazos-Bosque (120602), and the Lower Brazos (120701) hydrologic units within the Texas Blackland Prairie Ecoregion; and the Lower Trinity River hydrologic unit (HUC 120302) within the East Central Texas Plains Ecoregion. The primary service area for the BCMB includes all of Ellis and Dallas counties and portions of Collin, Denton, Fannin, Grayson, Henderson, Hill, Johnson, Kaufman, Limestone, Navarro, Rockwall, Tarrant, and Van Zandt counties. The secondary service area for the BCMB includes all of Wise County and portions of Anderson, Archer, Bell, Clay, Collin, Cooke, Denton, Falls, Freestone, Grimes, Henderson, Hill, Houston, Hunt, Jack, Johnson, Kaufman, Leon, Limestone, Madison, McLennan, Milam, Montague, Navarro, Parker, Robertson, Rockwall, Tarrant, Van Zandt, Williamson, and Young counties. In exceptional cases, the USACE, after coordination with the IRT, may allow use of the BCMB outside these service areas on a case-by-case basis.

A mitigation banking instrument (MBI) would be developed in accordance with Compensatory Mitigation for Losses of Aquatic Resources (Federal Register, Thursday, April 10, 2008, Vol. 73., No. 70, pp. 19670-19705). The MBI would detail the legal and physical characteristics of the bank and how the bank would be established and operated. Subjects addressed in detail in the MBI would include development of the site, service area, credit determination, financial assurances, scope of agreement, purpose and goals of the bank, baseline conditions, performance protection, and transfer of bank ownership or sponsorship. The U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department, who comprise the Interagency Review Team (IRT), would be involved in developing the MBI and may be signatories to the final document.

Implementation of the proposed mitigation work would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears that the proposed bank may be authorized by Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in Dallas County where the black-capped vireo (*Vireo atricapilla*), golden-cheeked warbler (*Dendroica chrysoparia*), least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), and whooping crane (*Grus americana*) may occur. The black-capped vireo, golden-cheeked warbler, least tern, and whooping crane are federally-listed as endangered species. The piping plover is listed as a threatened species. Our initial review indicates that the proposed work would have no effects on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The Bear Creek drainage has a number of recorded prehistoric and historic sites associated with it. These sites range from early 20th century habitations to deeply buried prehistoric sites. The area of the proposed mitigation bank

has not been formally surveyed for the presence of prehistoric or historic sites. Ground-disturbing activity associated with the development of the mitigation bank may impact currently unrecorded sites that are potentially eligible for inclusion in the National Register of Historic Places.

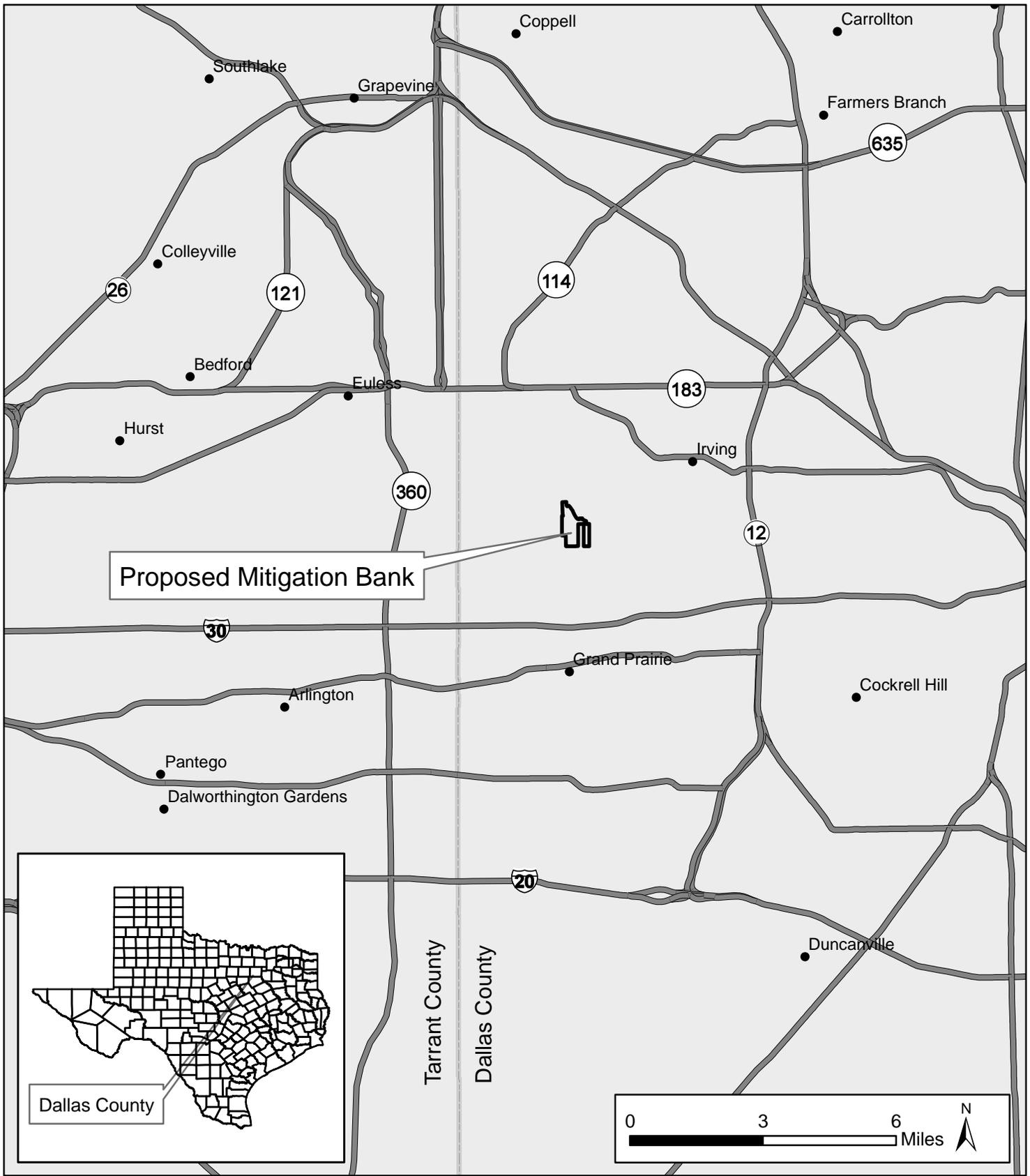
FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before October 10, 2009, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to ; Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1670. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS



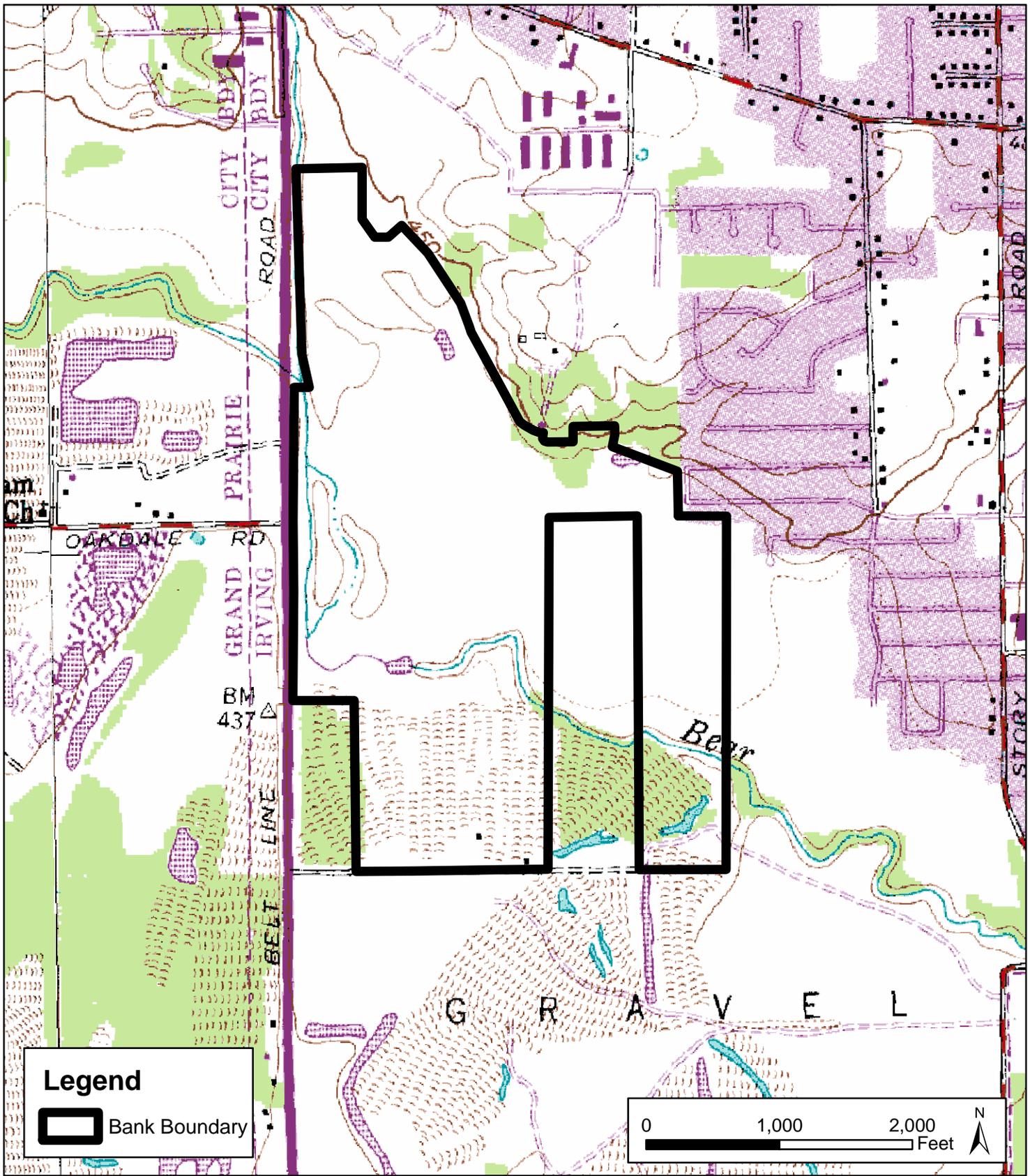
Project Location Map
 Bear Creek Mitigation Bank
 Dallas County, Texas

Project Number: 23923

Issued: 04/2009

Figure 1

USACE No. 200600506



USGS 7.5 Minute Topographic Map, Irving

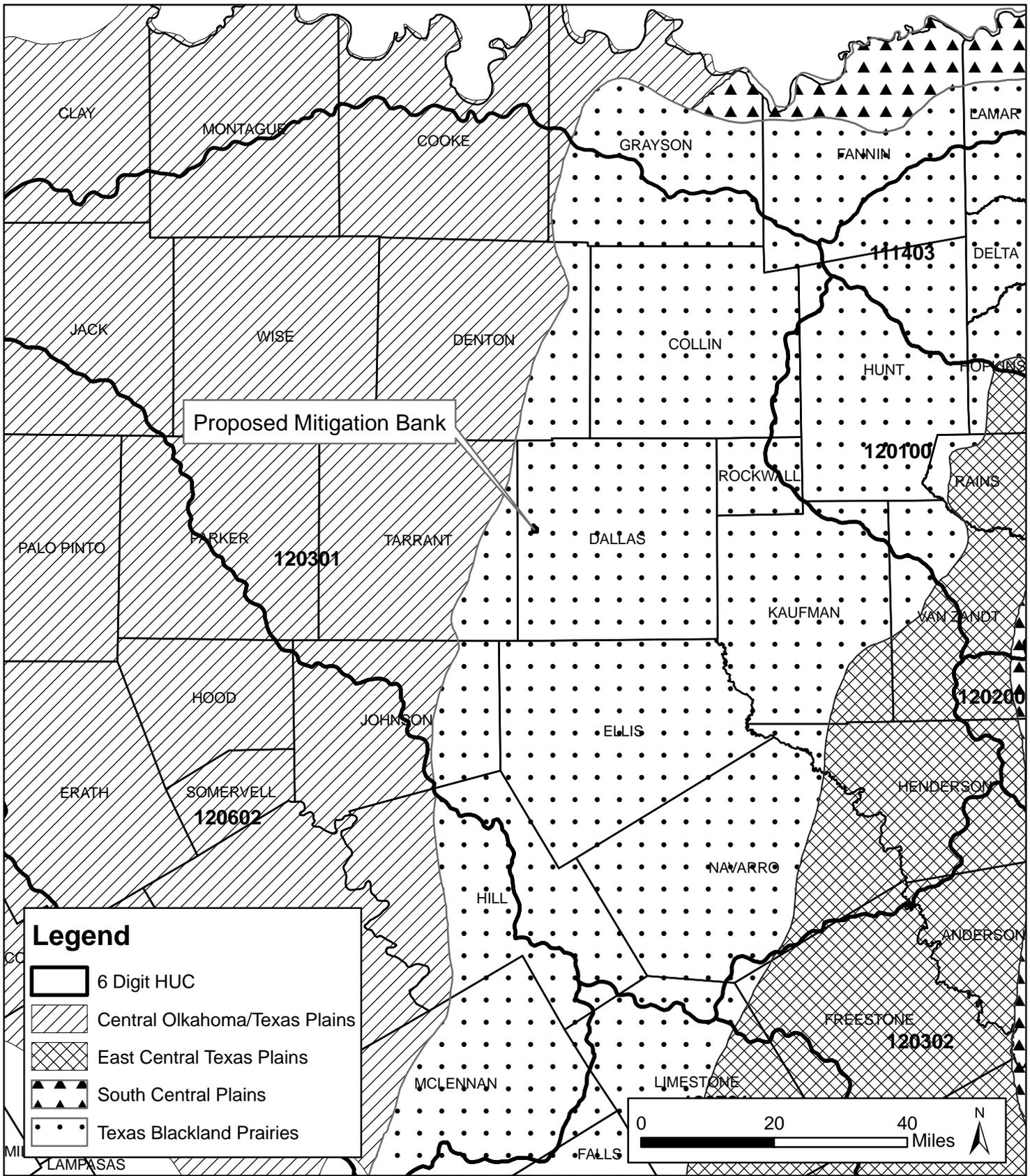
Bear Creek Mitigation Bank
Dallas County, Texas

Project Number: 23923

Issued: 04/2009

Figure 2

USACE No. 200600506



Six Digit Hydrologic Unit Codes (HUC) and Level 3 Ecoregions

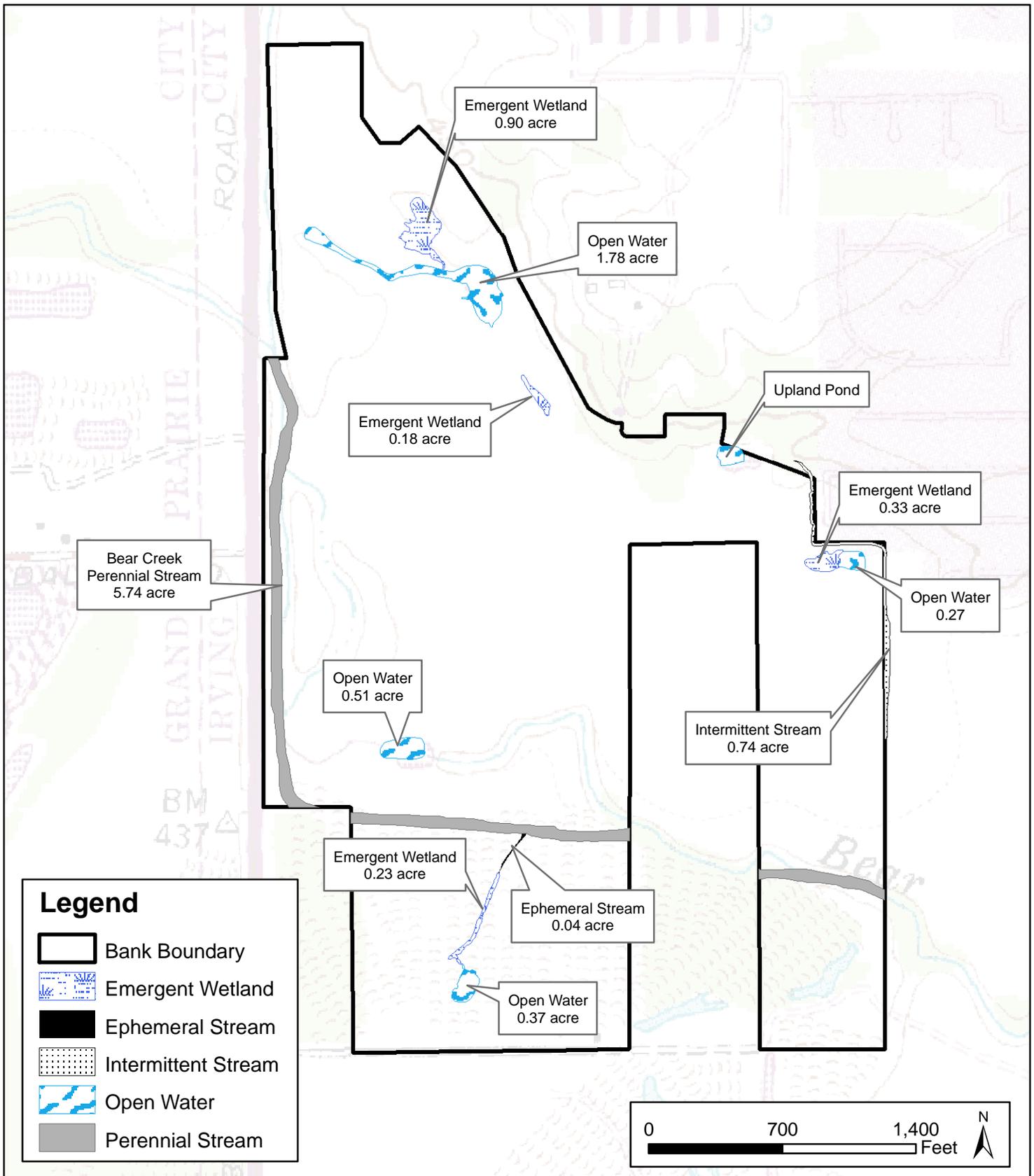
Bear Creek Mitigation Bank
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Figure 3

USACE No. 200600506



Wetland Delineation Map

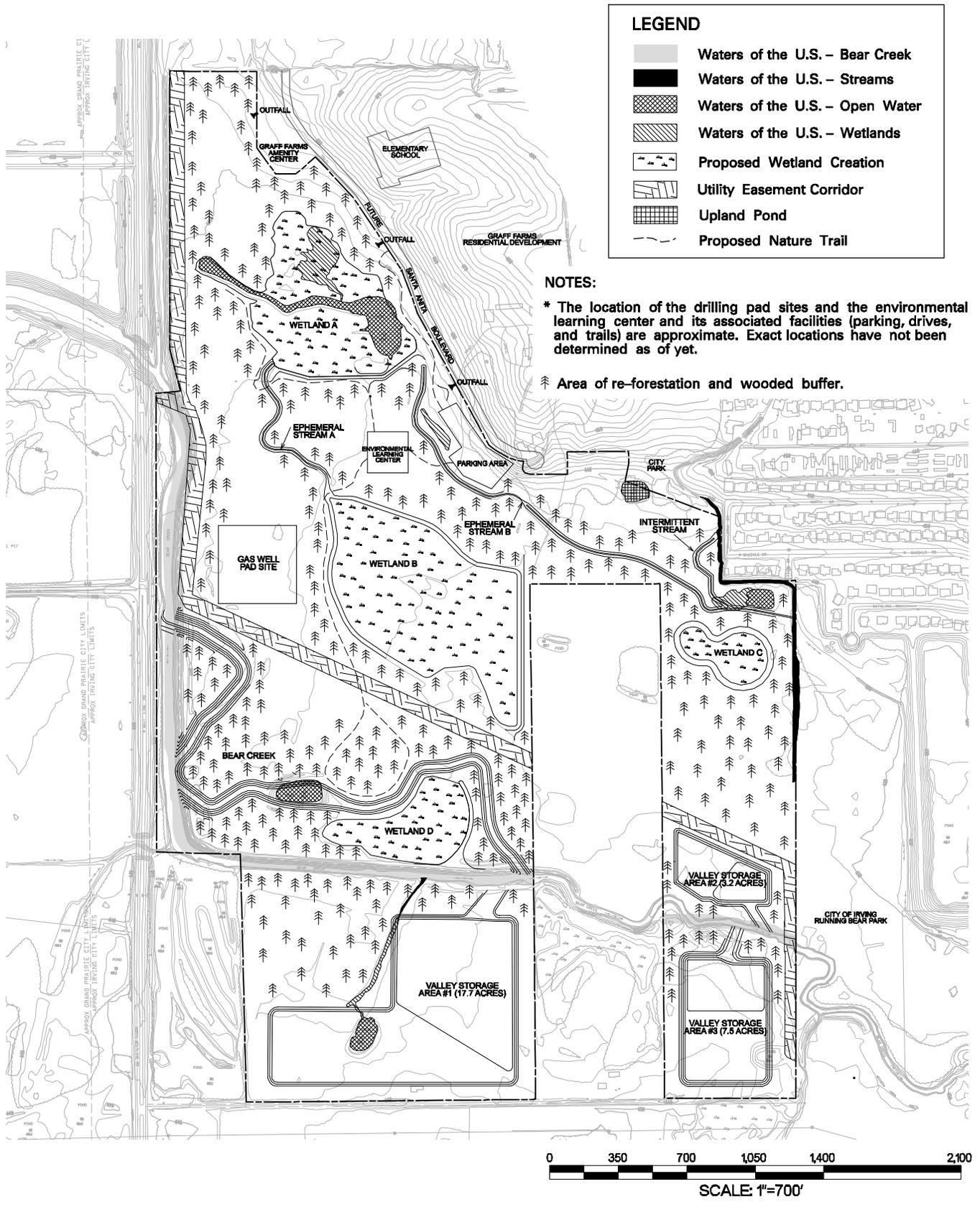
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Dallas County, Texas

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Figure 4

USACE No. 200600506



LEGEND

-  Waters of the U.S. – Bear Creek
-  Waters of the U.S. – Streams
-  Waters of the U.S. – Open Water
-  Waters of the U.S. – Wetlands
-  Proposed Wetland Creation
-  Utility Easement Corridor
-  Upland Pond
-  Proposed Nature Trail

NOTES:

* The location of the drilling pad sites and the environmental learning center and its associated facilities (parking, drives, and trails) are approximate. Exact locations have not been determined as of yet.

🌲 Area of re-forestation and wooded buffer.



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 1201 NORTH BOWSER ROAD
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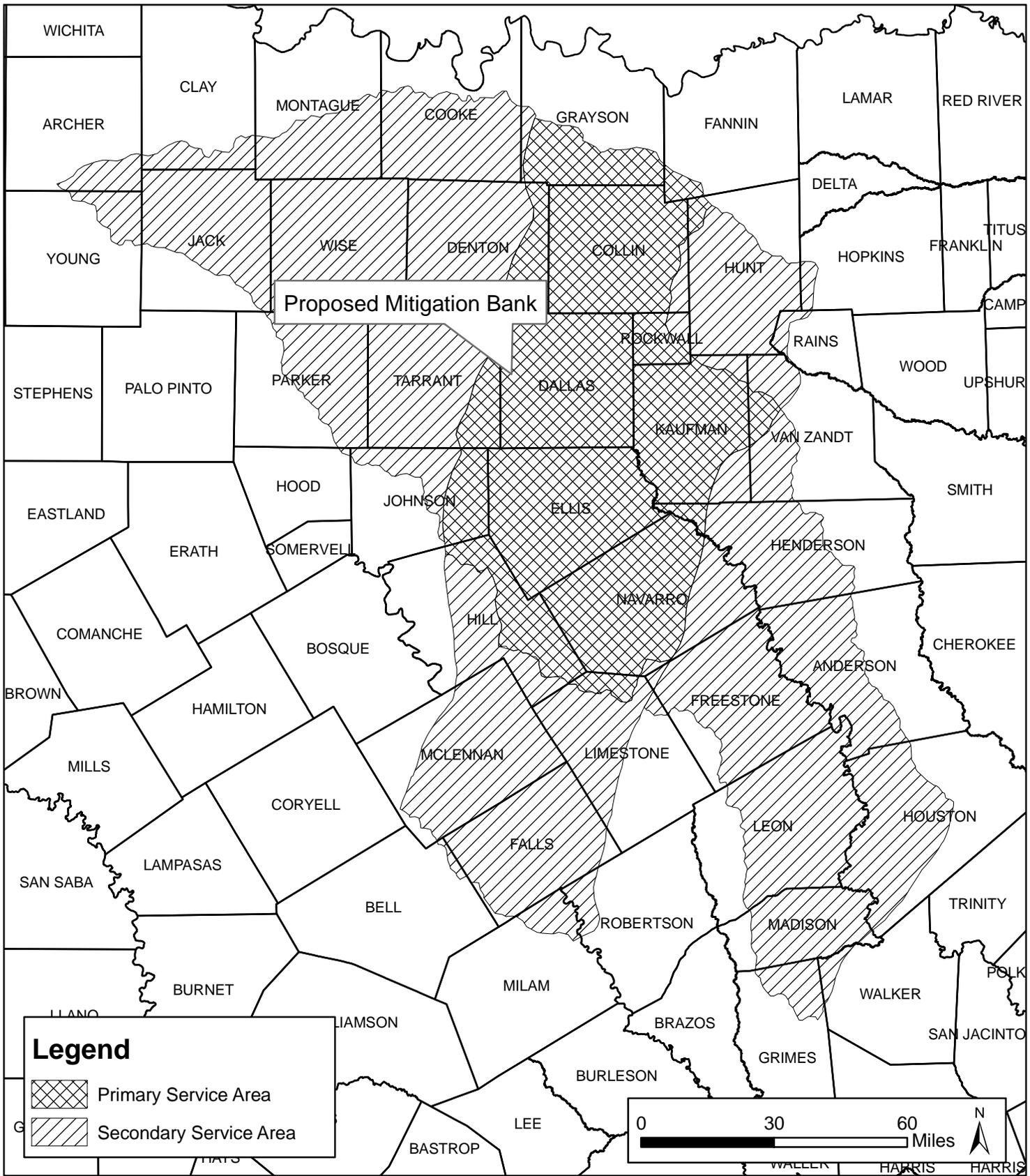
Mitigation Work Plan
 Bear Creek Mitigation Bank
 Dallas County, Texas

Project No.: 23923

Issued: 04/2009

Figure 5

USACE No. 200600506



Proposed Service Area Map

Bear Creek Mitigation Bank
Dallas County, Texas

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Figure 6

USACE No. 200600506