



Public Notice

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

Applicant: Mitigation Management, LLC

Permit Application No.: SWF-2009-00142

Date: December 22, 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. Brent Jasper

Phone Number: (817) 886-1733

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 the Fall-Off Creek Mitigation Bank (FOCMB), a stream and wetland mitigation bank located near Gatesville, Coryell County, Texas.

APPLICANT: Mitigation Management, LLC.
c/o J. Mike Bird
2557 State Hwy 7 East
Center, Texas 75935

APPLICATION NUMBER: SWF-2009-00142

DATE ISSUED: December 22, 2009

LOCATION: The proposed FOCMB (approximately 1,100 acres) is part of a larger tract of land (approximately 2,087.5 acres) located approximately fifteen miles southeast of the city of Gatesville, Coryell County, Texas within the intersection of FM 107 and State Highway 236 (Figure 1). The approximate Universal Transverse Mercator coordinates for the proposed bank are: 640332.40 East and 3469085.57 North (Zone 14) on the Leon Junction 7.5-minute U.S. Geological Survey quadrangle map. The proposed bank is located within the Cross Timbers Ecoregion (Griffith et al. 2004) and the Little River Basin (HUC: 120702) (Figure 2).

PROJECT DESCRIPTION: The proposed bank is located on the Leon River above Lake Belton, a U.S. Army Corps of Engineers (USACE) operated reservoir established in 1954. Prior to 1953, the segment of the Leon River located within the proposed bank was ditched and routed away from the original channel, presumably to reduce the flooding potential of the property for agricultural purposes (Figures 4 and 5). The channelized reach of the Leon River is approximately 1.2 miles in length. The length of the historic channel cut off by the current channel is approximately 4 miles. Fall-Off Creek and several other unnamed intermittent and ephemeral streams are located within the proposed bank, along which springs and waterfalls are found.

Current and historic aerial photographs from 1953 to 2009 reveal that the property historically was managed for row-crop agriculture from the 1960's through the 1970's, and possibly into the 1980's. The 1953 historical aerial photograph reveals a cleared tract extending to the banks of the historic Leon River channel, and the recently established diversion ditch which now forms the current Leon River channel. Row-crop agriculture is apparent in the 1966 photograph on the northern portion of the property, as are levees (constructed after 1953) to the east of the historic channel and along the diversion ditch. Land uses and management in the southern area of the

property appear to remain largely unchanged from 1953 to present day. An approximately 250-acre pasture within the Leon River floodplain is currently used for row-crops, and utilizes a center-pivot irrigation system that draws water from the Leon River. Following the 1980's, the property was managed as a cattle grazing operation which also continues to the present. The ranch actively practices brush management control by removing cedar (*Ashe Juniper*, *Juniperus asheii*). In addition to the existing cattle grazing operation and row-crop agriculture, a commercial pecan operation is also active on the property.

The floodplain of the historic Leon River channel, located within the bank boundary, is primarily composed of Frio silty clay, 0-1 percent slopes, occasionally flooded (Figure 6). This is a well drained, moderately permeable, clay soil located on floodplains of major streams. It has a high available water capacity, slow runoff and is flooded every 3 to 10 years for a duration of less than one day. Bosque clay loam (0-1 percent slopes, occasionally flooded) is found mostly within the footprint of the historic Leon River channel. This is also a well drained, clay soil with moderate permeability and a high available water capacity. Both Frio and Bosque soils are listed as hydric soils by the U.S. Department of Agriculture Natural Resource Conservation Service Hydric Soils List for Coryell County, Texas. Other, non-hydric soils located within the bank boundary include Doss-Real Complex (1-8 percent slopes), Real-Rock Outcrop Complex (12-40 percent slopes), and Eckrant-Rock Outcrop Complex (1-5 percent slopes), and are generally confined to the southern portion of the tract.

In 1998, the entire Leon River below Lake Proctor was listed as "impaired" on the State of Texas Clean Water Act Section 303(d) List due to bacteria concentrations which exceeded the state's water quality standards. A Watershed Protection Plan is currently in place and is being facilitated by the Brazos River Authority with federal funding from §319(h) of the Clean Water Act granted by the Texas Soil and Water Conservation Board. The Texas Commission on Environmental Quality (TCEQ) has also commenced developing total maximum daily load requirements for a segment of the Leon River below Proctor Lake. Thus, a goal of the proposed bank would be to accomplish watershed goals and objectives identified by state and federal agencies.

A resource review and preliminary field reconnaissance identified approximately 643 acres of leveed, non-jurisdictional, agricultural lands within the 1,100 proposed project site (Figure 7). The proposed bank site also includes approximately 10 miles of non-wetland waters of the U.S. in the form of perennial, intermittent, and ephemeral streams. No wetlands have been identified within the proposed bank site at this time; however, a formal jurisdictional determination would be conducted.

The Sponsor proposes a conceptual mitigation work plan targeting restoration of stream flow to the historic Leon River channel (Figure 8). This would be accomplished by redirecting stream flow from the existing Leon River ditch (approximately 1.2 miles) to the historic channel (approximately 4 miles). The agricultural lands would be reconnected to the Leon River floodplain, and restored to a mosaic of wetland and non-wetland bottomland hardwood/herbaceous communities. This would be accomplished by conducting a series of agricultural levee breaches and planting locally-adapted,

native, desirable riparian species. Additional riparian vegetation restoration/enhancement activities, (such as supplemental plantings of desirable riparian species, selective removal of undesirable species, removal of livestock, and fencing) would be conducted throughout riparian areas associated with the rivers and streams occurring within the proposed bank.

The proposed primary service area would include like-kind habitat and out-of-kind habitat types wholly encompassed within the USACE Fort Worth District boundary within the intersection of the Little HUC (120702), the Middle Brazos-Bosque HUC (120602) and the Cross Timbers Ecoregion, the intersection of the Little HUC (120702) and the Edwards Plateau and Texas Blackland Prairies Ecoregions, and the intersection of the Middle Brazos-Clear Fork HUC (120601) and the Cross Timbers Ecoregion. This would include Palo Pinto, Erath, Somervell, Bosque, Hamilton, and Coryell Counties in their entirety and portions of Bell, Brown, Burnet, Callahan, Comanche, Eastland, Falls, Hill, Hood, Jack, Johnson, Lampassas, McLennan, Milam, Mills, Parker, Shackelford, Stephens, Williamson, and Young Counties (Figure 3).

The proposed secondary service area would include like-kind habitat and out-of-kind habitat types wholly encompassed within the USACE Fort Worth District boundary within the intersection of the Middle Brazos-Bosque HUC (120602) and the Texas Blackland Prairies, the intersection of the Lower Brazos HUC (120701) and the Texas Blackland Prairie and East Central Texas Plains Ecoregions, the intersection of the Middle Colorado-Concho HUC (120901) and the Cross Timbers Ecoregion, the intersection of the Middle Colorado-Llano HUC (120902) and the Cross Timbers Ecoregion, the intersection of the Middle Brazos-Clear Fork HUC (120601) and the Central Great Plains Ecoregion, the intersection of the Brazos Headwaters HUC (120500) and the Central Great Plains Ecoregion, the intersection of the Middle Brazos-Bosque HUC (120602) and the Central Great Plains Ecoregion, and the intersection of the Upper Trinity HUC (120301) and the Cross Timbers Ecoregion. This would include Wise, Robertson, Brazos, Burlison, Jones, and Throckmorton Counties in their entirety, and portions of Archer, Bastrop, Baylor, Bell, Brown, Callahan, Clay, Coleman, Comanche, Cooke, Denton, Eastland, Falls, Fisher, Freestone, Grayson, Grimes, Haskell, Hill, Hood, Jack, Johnson, King, Knox, Lampasas, Lee, Leon, Limestone, Madison, McCulloch, McLennan, Milam, Mills, Montague, Nolan, Parker, San Saba, Scurry, Shackelford, Stephens, Stonewall, Tarrant, Taylor, Washington, Williamson, and Young Counties (Figure 3).

A mitigation banking instrument (MBI) would be developed in accordance with the Compensatory Mitigation for Losses of Aquatic Resources (CMLR), (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19594-19705). 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 standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship. The USACE, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service (USFWS), TCEQ, Railroad Commission of Texas, and Texas Parks and Wildlife

Department comprise the Interagency Review Team (IRT), and 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 USFWS's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project site is located in Coryell County where the golden cheked warbler (*Dendroica chrysoparia*), and the black-capped vireo (*Vireo atricapilla*) are federally listed as endangered species. The bald eagle (*Haliaeetus leucocephalus*) is also known to occur in Coryell County. Although the eagle has been delisted, it will be monitored for a period of five years. Our initial review indicates that the proposed work would have no effect on any federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The area of the proposed mitigation bank has not been formally surveyed for the presence of historic and prehistoric cultural resources. The area would undergo surface modifications and stream channelization as part of the planned mitigation bank. Based on archeological information from Lake Belton, south of the proposed project on the Leon River, a large number of prehistoric and historic sites may occur in the project area. Some of these sites may be deeply buried. Survey for the presence of sites would be necessary prior to ground-disturbing activities. Any identified sites - including sites discovered during construction - would have to be assessed for eligibility to the National Register of Historic Places (NRHP). Sites identified as NRHP eligible would require treatment, avoidance, or protection.

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.

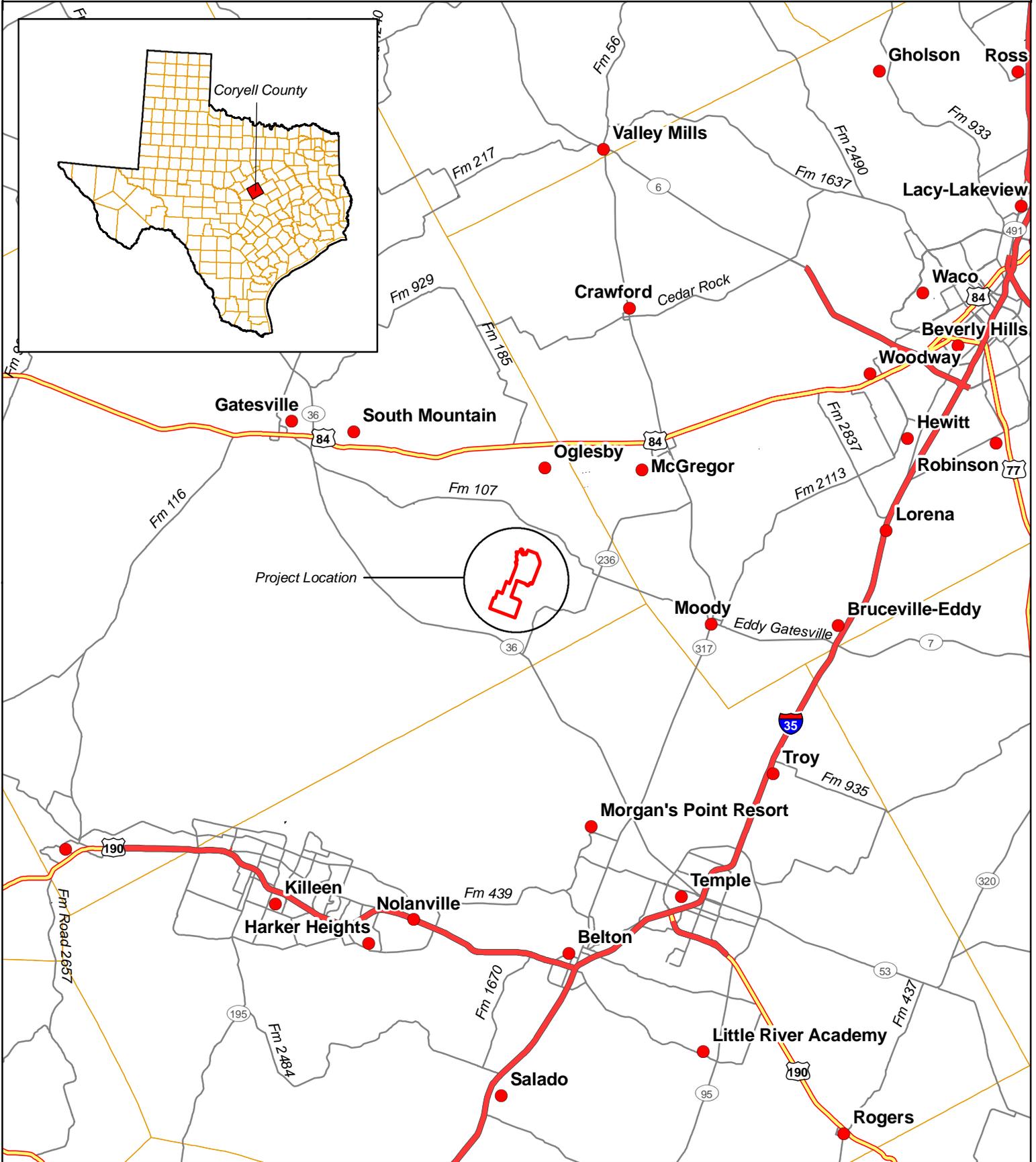
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer

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.

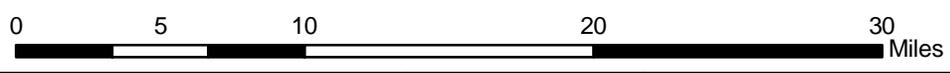
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before January 22, 2010, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Brent Jasper; 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) 886-1733. 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

Figure 1 of 8
Location Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



Project Location



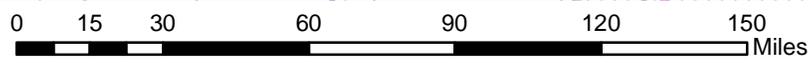
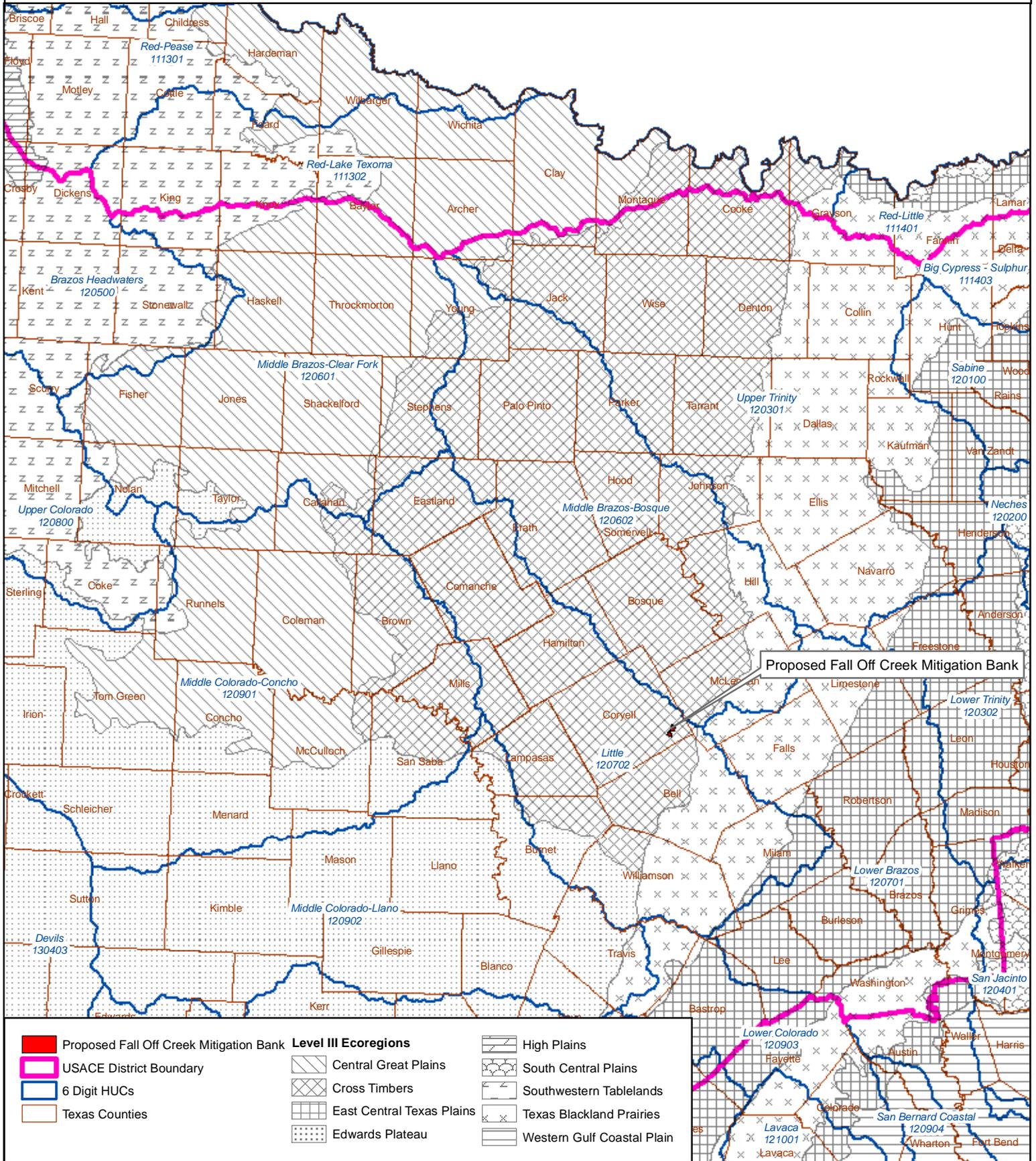
SWF-2009-00142

Drawn By: Matt Neuman
 Date: December 3, 2009

Vector data are for representation only and should not be used for legal description



Figure 2 of 8
Level III Ecoregions and Six Digit HUC Boundaries
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



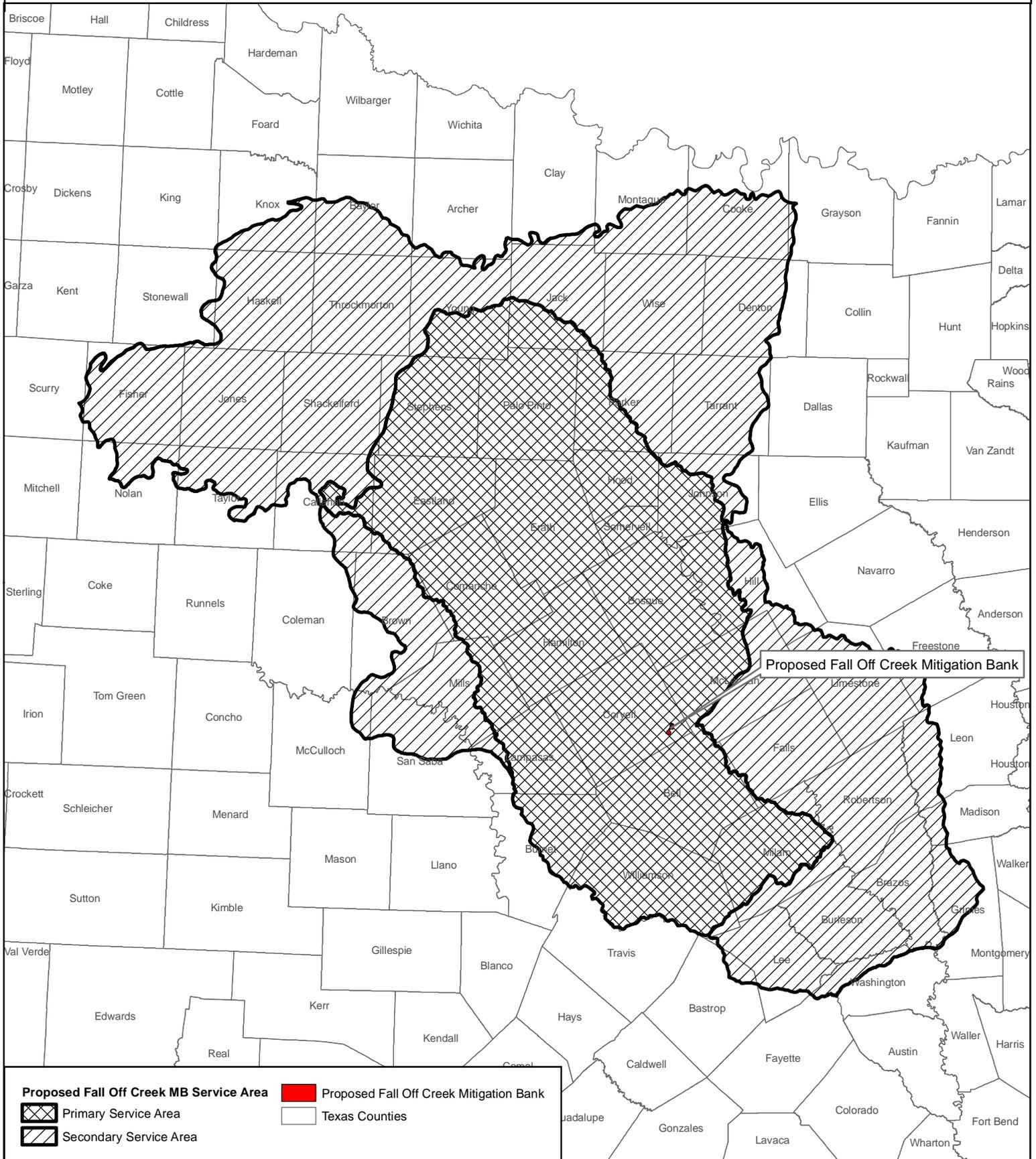
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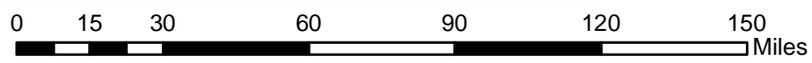


Figure 3 of 8 Service Area Map Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



Proposed Fall Off Creek Mitigation Bank

Proposed Fall Off Creek MB Service Area
 Primary Service Area
 Secondary Service Area
 Proposed Fall Off Creek Mitigation Bank
 Texas Counties



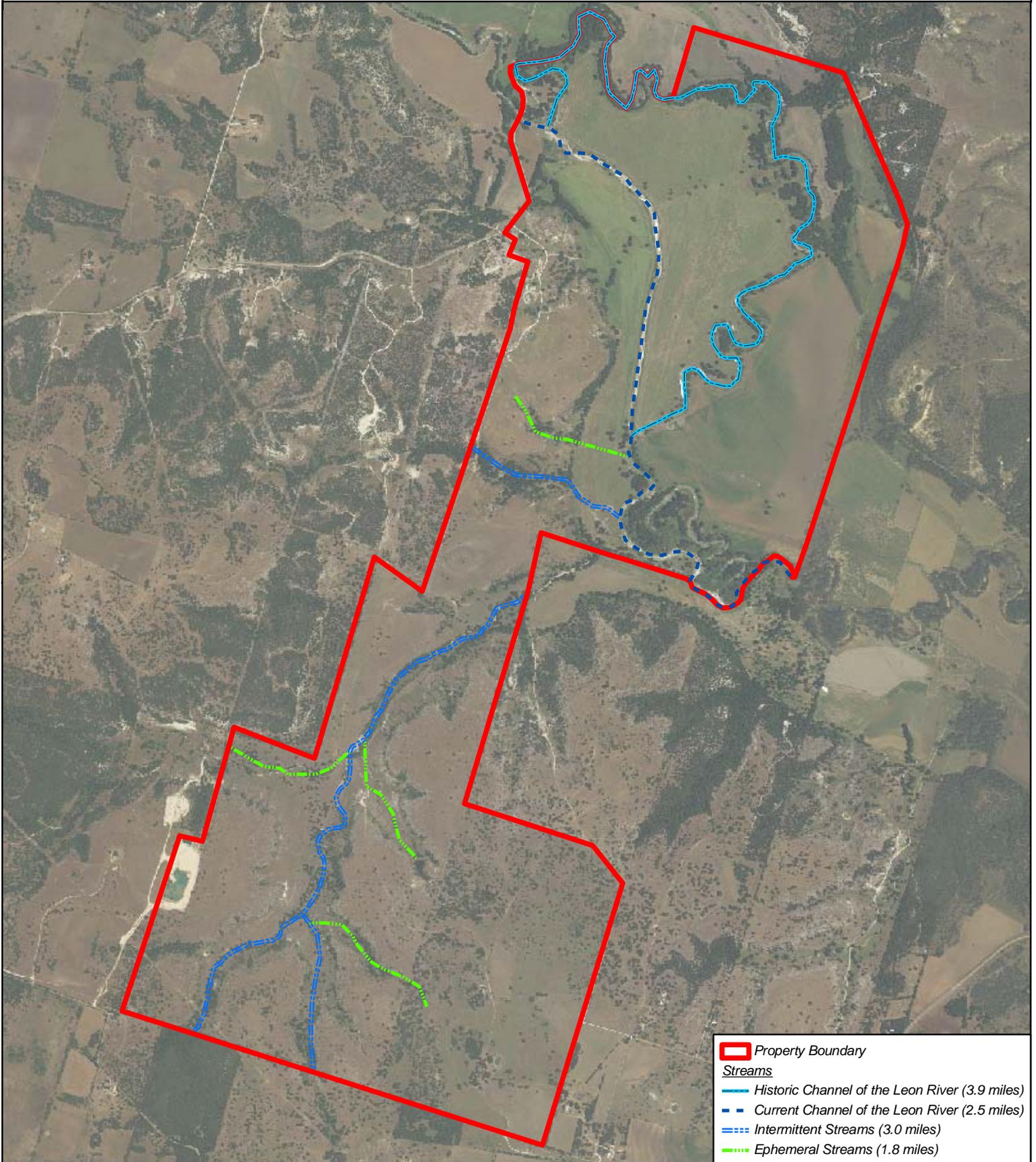
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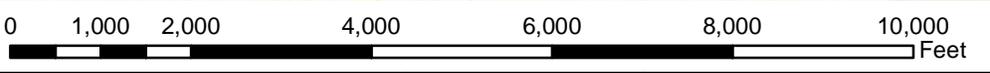


Figure 4 of 8
Aerial Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



Property Boundary
Streams

- Historic Channel of the Leon River (3.9 miles)
- - Current Channel of the Leon River (2.5 miles)
- · · Intermittent Streams (3.0 miles)
- · - Ephemeral Streams (1.8 miles)



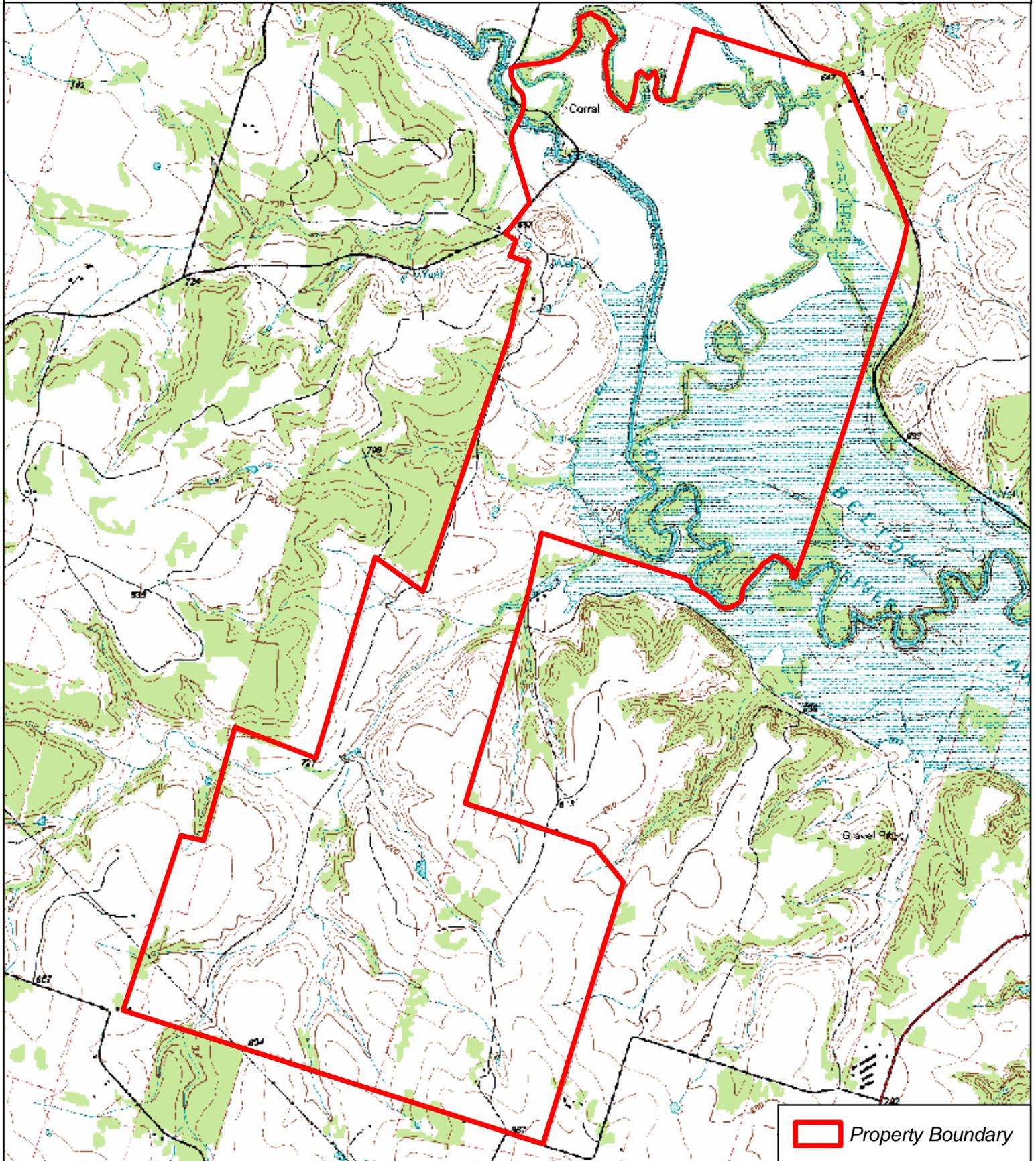
Imagery: 2008 NAIP CCM
SWF-2009-00142

Drawn By: Matt Neuman
Date: December 3, 2009

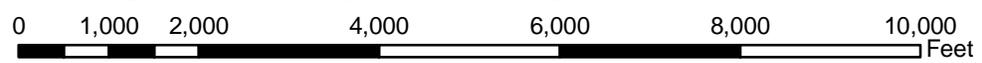
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Figure 5 of 8
Topographic Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



 Property Boundary



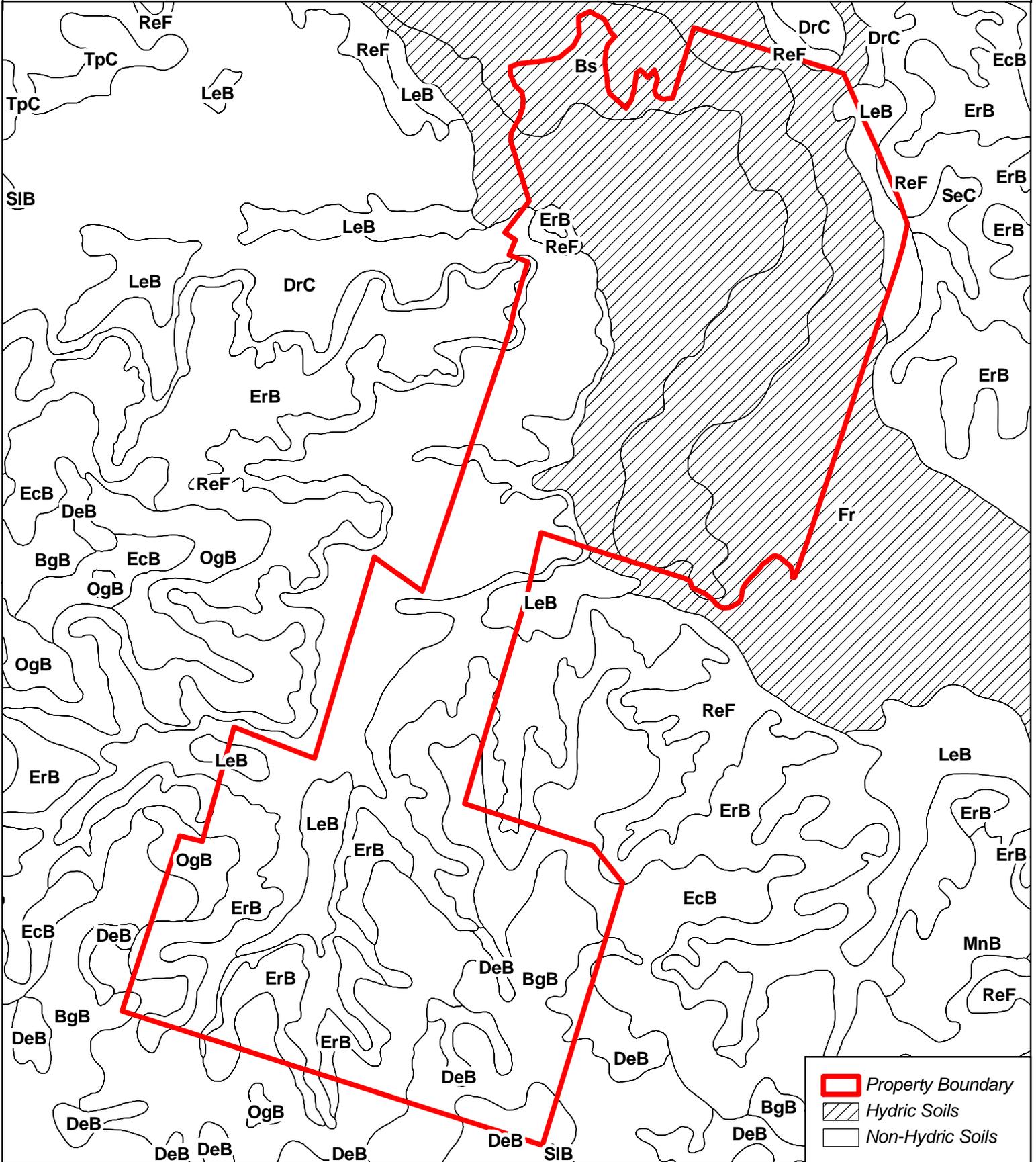
Base Map: USGS Quadrangle - Leon Junction
SWF-2009-00142

Drawn By: Matt Neuman
Date: December 3, 2009

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Figure 6 of 8
Soils Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



-  Property Boundary
-  Hydric Soils
-  Non-Hydric Soils



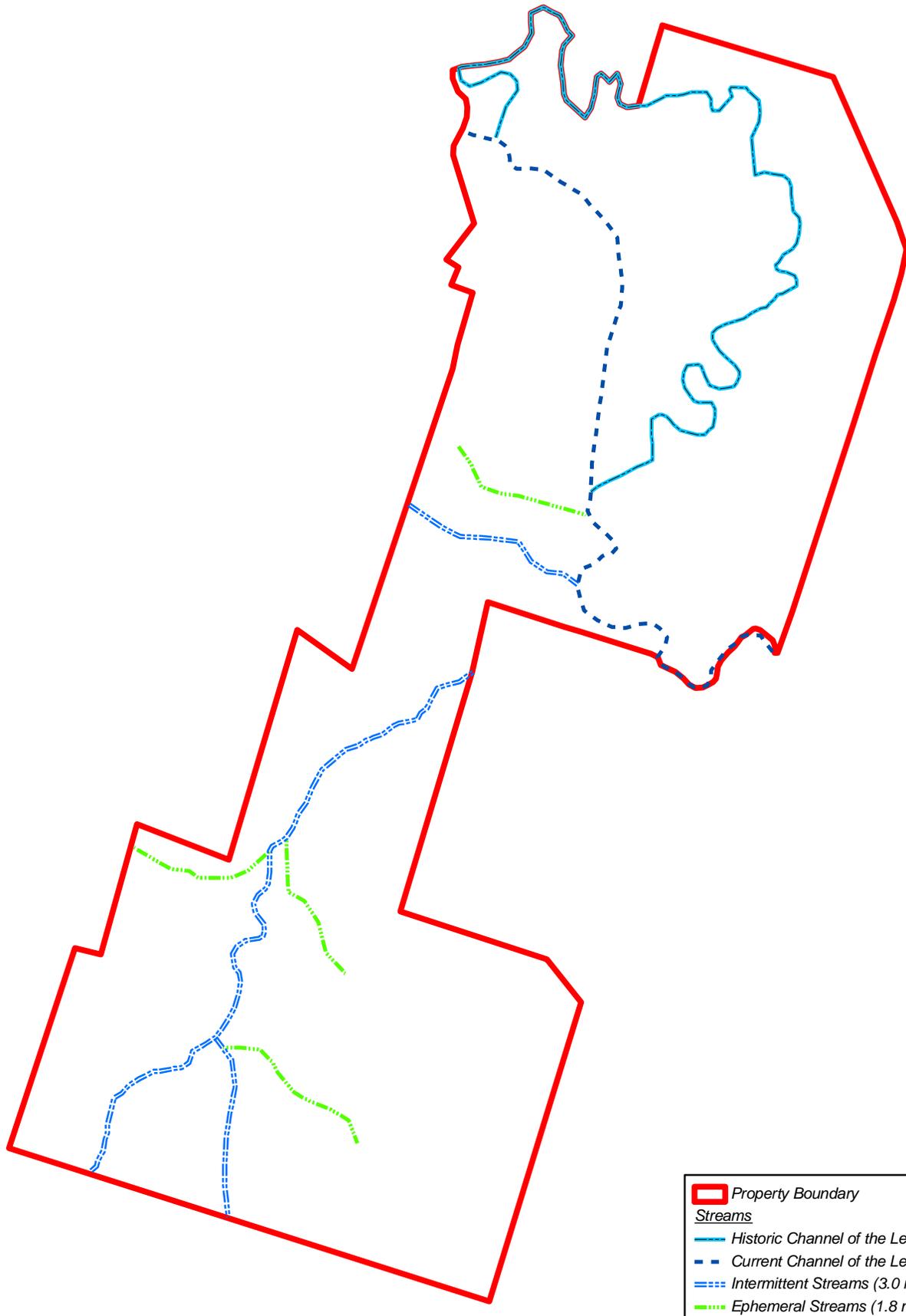
Soil Data: Natural Resources Conservation Service
 SWF-2009-00142

Drawn By: Matt Neuman
 Date: December 3, 2009

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Figure 7 of 8
Initial Wetland Evaluation Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas



- Property Boundary
- Streams
- Historic Channel of the Leon River (3.9 miles)
- Current Channel of the Leon River (2.5 miles)
- Intermittent Streams (3.0 miles)
- Ephemeral Streams (1.8 miles)



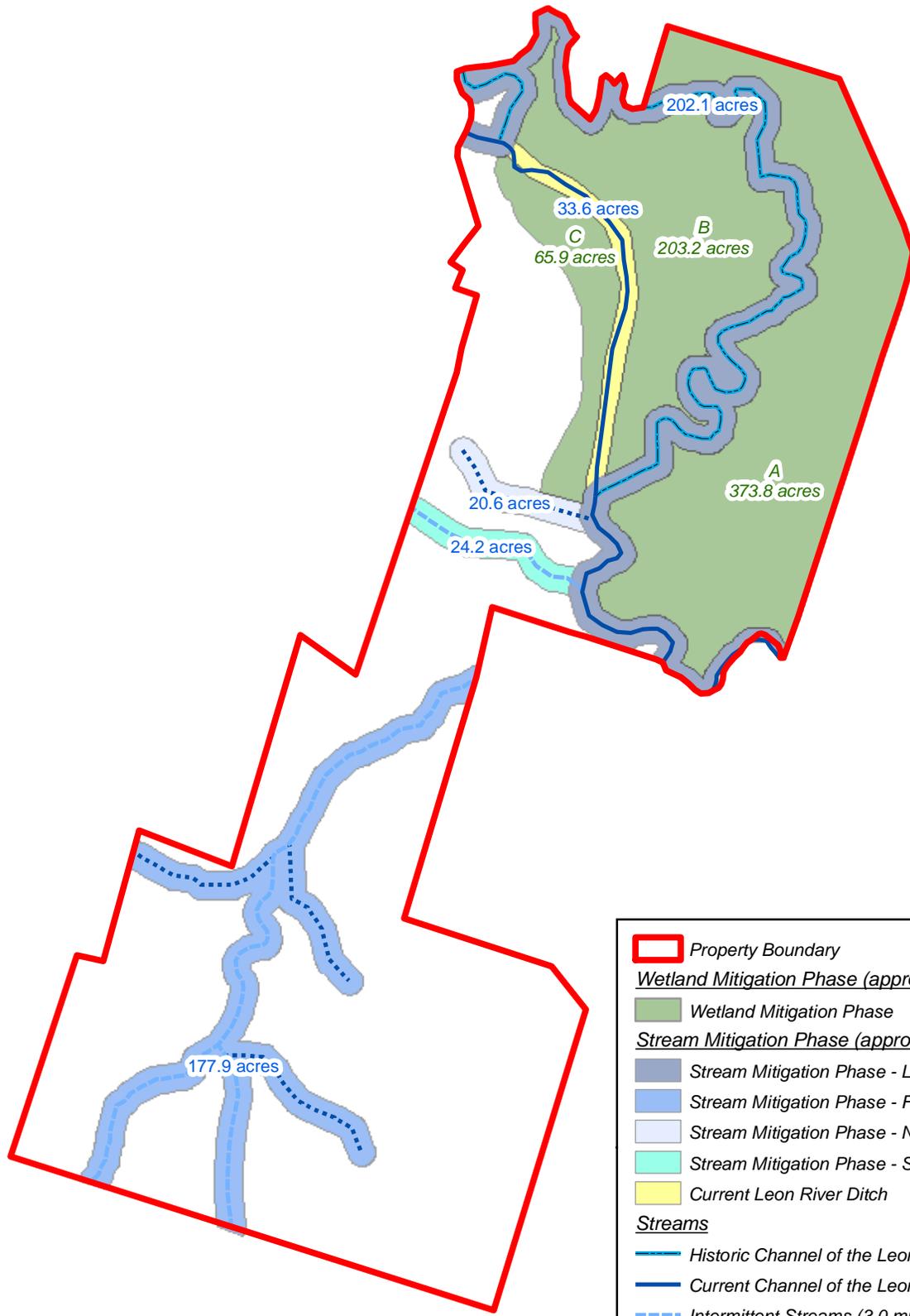
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Figure 8 of 8
Conceptual Mitigation Work Plan Map
Proposed Fall Off Creek Mitigation Bank in Coryell County, Texas

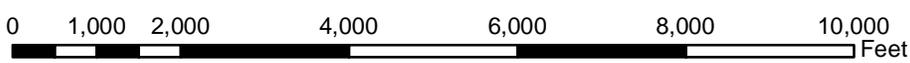


Property Boundary
 Property Boundary

Wetland Mitigation Phase (approx. 643 acres)
 Wetland Mitigation Phase

Stream Mitigation Phase (approx. 458 acres)
 Stream Mitigation Phase - Leon River
 Stream Mitigation Phase - Fall Off Creek
 Stream Mitigation Phase - North Minor Segment
 Stream Mitigation Phase - South Minor Segment
 Current Leon River Ditch

Streams
 Historic Channel of the Leon River (3.9 miles)
 Current Channel of the Leon River (2.4 miles)
 Intermittent Streams (3.0 miles)
 Ephemeral Streams (1.8 miles)



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