Public Notice

Applicant: Mitigation Management, LLC

Permit Application No.: SWF-2009-00369

Date: December 22, 2009

US Army Corps of Engineers
Fort Worth District

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 Scoober Creek Mitigation Bank (SCMB), a stream and wetland mitigation bank located southwest of the city of Henderson, Rusk County, Texas.

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

APPLICATION NUMBER: SWF-2009-00369

DATE ISSUED: December 22, 2009

LOCATION: The proposed SCMB (approximately 421.2 acres) is part of a larger tract of land (approximately 435 acres) located approximately 10 miles southwest of Henderson, Rusk County, Texas (Figure 1). The approximate Universal Transverse Mercator coordinates for the proposed project are 3542081.16 North and 324007.71 East (Zone 15) on the Gum Springs, Berry Hill Creek, New Salem, and Laneville 7.5 minute U.S. Geological Survey quadrangle maps. The proposed bank is located within the South Central Plains Ecoregion (Griffith et al 2004) and the Angelina River watershed within the Neches River basin (HUC 120200).

PROJECT DESCRIPTION: Rusk County is comprised of 932 square miles of sloping hills and narrow valleys in the Sabine Uplift geological formation situated between the Sabine and Angelina Rivers. The county has evidence of human habitation for several thousand years and therefore land cover types have a long history of some degree of artificial modification. Currently, prime farmland in the county is estimated at 11 to 20 percent of the county acreage. Timber and poultry production are also important land uses throughout the county. The locale in the vicinity of the proposed bank is not influenced as heavily by oil and gas production as more northerly portions of the county. Stream courses are abundant due to the abundant rainfall that averages 45 inches annually.

The proposed bank has been cleared and used for agricultural production for many decades (Figure 4). Currently, the tract is used for livestock production in a cow-calf operation. Remnant forested riparian zones remain along Scoober Creek, Sawmill Branch, the Angelina River, and some portions of minor drains. However, most of the acreage between Scoober Creek and the Angelina River is currently maintained as cleared pasture for livestock grazing. Scoober Creek, as well as some of the minor drains located within the proposed bank have been channelized, and have adjacent spoil levees remaining from past excavations (Figure 5). A number of drainage ditches have been constructed to facilitate drainage of flood waters. A

review of historic aerial photography reveals that these wetland and stream modifications were in place prior to 1955. The general configuration of land clearing has been in place on the property for a long period. Similarly, ditching and drainage projects seem to coincide with the land clearing patterns. Given the land use history of the locale, this condition of clearing and drainage likely has persisted for over a century.

The majority of the acreage within the proposed bank is mapped as Laneville, frequently flooded (0-1 percent slopes), and the Mattex-Owentown Complex, frequently flooded (0-1 percent slopes) soil series (Figure 6). Both soil types are listed on the U.S. Department of Agriculture Natural Resources Conservation Service Hydric Soils List for Rusk County, Texas. Historically, these soils are described as supporting bottomland hardwood forests. Additional hydric soils composing a small amount of acreage within the bank boundary are the Sawlit-Sawtown Complex (0-2 percent slopes of stream terraces), Tenaha (0-2 percent slopes of stream terraces), and Ulto series (1-3 percent slopes). Other soils mapped within the project site acreage are Bernaldo, Maben, and Redsprings. These are soils of the surrounding non-wetland areas, and comprise a small percentage of the proposed bank.

Based upon a resource review and preliminary field reconnaissance, the proposed SCMB appears to be predominantly jurisdictional wetlands and waters of the U.S. Numerous, small, non-wetland inclusions, in the form of slightly elevated ridges or hummocks, are located throughout the proposed bank. A preliminary estimate of the extent of wetlands and waters of the U.S. (including non-wetland inclusions) within the proposed bank are: emergent communities 187.3 acres; young forested/scrub-shrub communities 154.4 acres; and 17,043 linear feet of perennial, intermittent and ephemeral streams (Figure 7).

Most of the terrain within the proposed bank is of low relief associated with the flood plains of Scoober Creek, Sawmill Branch, and the Angelina River. Scoober Creek, Sawmill Branch, and additional minor tributaries join the Angelina River near the southern property boundary within the proposed bank. The Angelina River serves as the eastern property boundary, and then runs through the southern tip of the proposed bank. This convergence of stream courses contributes significantly to the hydrology of the wetlands located within the proposed bank.

The Sponsor proposes a conceptual mitigation work plan to restore/enhance historic floodplain hydrology to the SCMB by plugging drainage ditches/canals, breaching spoil levees, and restoring stream flow to the relic Scoober Creek channel as well as additional channelized tributaries within the bank boundary. Native bottomland hardwood vegetation restoration would be conducted within the emergent communities. Enhancement of species composition within the forested/scrub-shrub communities would be conducted by reducing non-desirable, non-native, tree/shrub species, and replanting with desirable bottomland hardwood species (Figure 8).

The proposed primary service area for the proposed bank includes like-kind and out-of-kind habitat types within the intersection of the Neches River basin (HUC 120200) and the South Central Plains Ecoregion wholly encompassed within the boundaries of the USACE Fort Worth District. This includes Cherokee, Nacogdoches, and Angelina Counties in their entirety and

portions of Van Zandt, Smith, Henderson, Anderson, Rusk, Shelby, San Augustine, Sabine, and Houston Counties (Figure 3).

The proposed secondary service area includes like-kind and out-of-kind habitat types within the intersection of the Sabine River basin (HUC 120100) and the Lower Trinity River basin (HUC 120302) and the South Central Plains Ecoregion wholly encompassed within the boundaries of the USACE Fort Worth District. This includes Panola County in its entirety and portions of Wood, Smith, Upshur, Gregg, Rusk, Harrison, Shelby, San Augustine, Sabine, Houston, Anderson, and Henderson Counties. It also includes portions of Van Zandt, Smith, and Henderson Counties located within the intersection of the Neches River basin (HUC 120200) and the East Central Texas Plains Ecoregion (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), Texas Commission on Environmental Quality, 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 bank 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 bank site is located in Rusk County where the Louisiana Black Bear (*Ursus americanus luteolus)* is federally listed as a threatened species. The bald eagle *(Haliaeetus leucocephalus)* is also known to occur in Rusk County. Although the bald eagle has been delisted; its status remains in a period of monitoring until five years after delisting. Our initial review indicates that the proposed work would have no effects 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 nearby Mud Creek and other projects in East Texas, the area has a high probability for the occurrence of prehistoric and historic sites. Some of these sites may be deeply buried, requiring machine testing to identify. Other

prehistoric sites may be related to the Caddo Tribe of Oklahoma. 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.

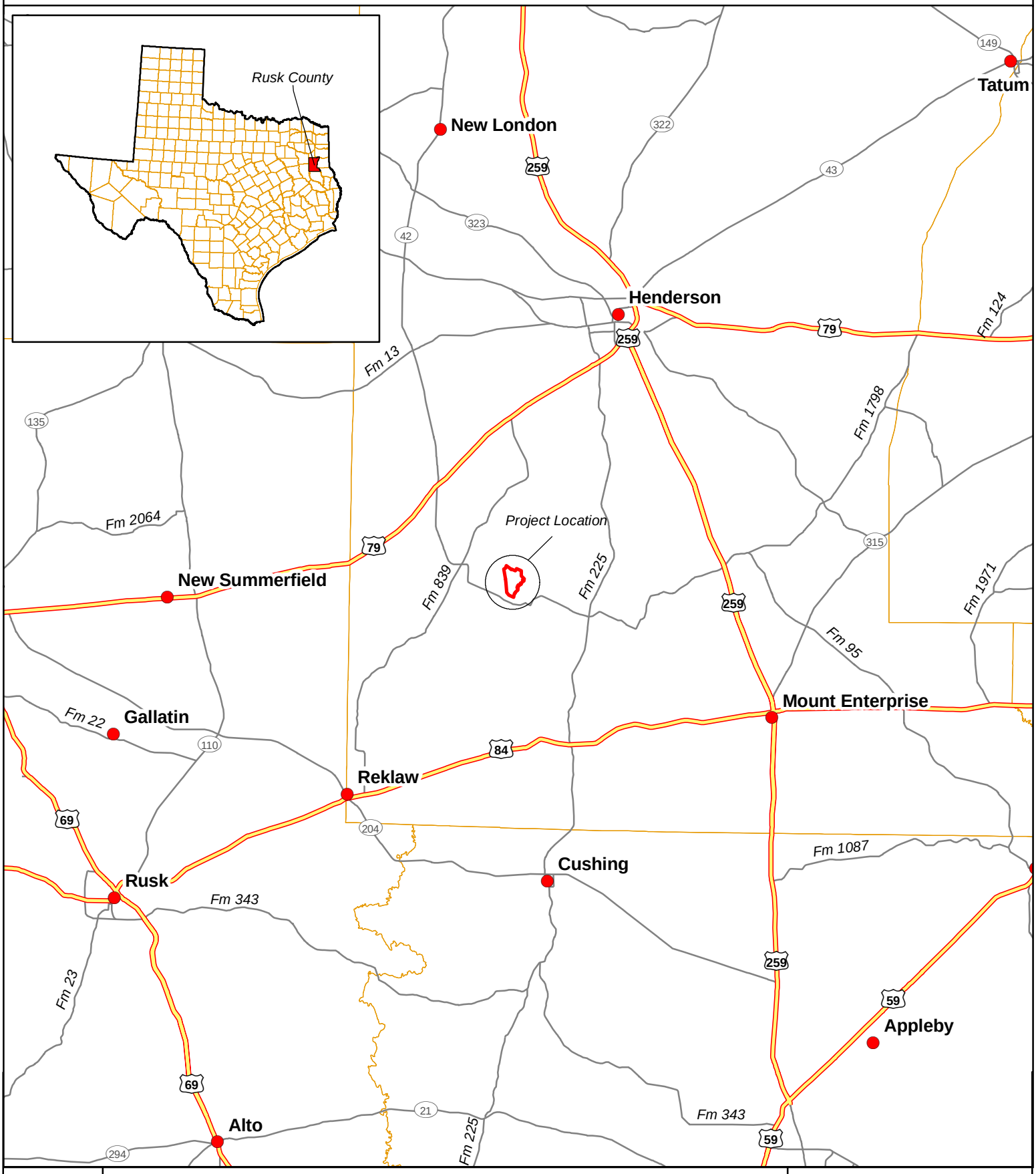
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, 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 Scoober Creek Mitigation Bank in Rusk County, Texas



SWF-2009-00369

Drawn By: Matt Neuman
Date: September 17, 2009

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

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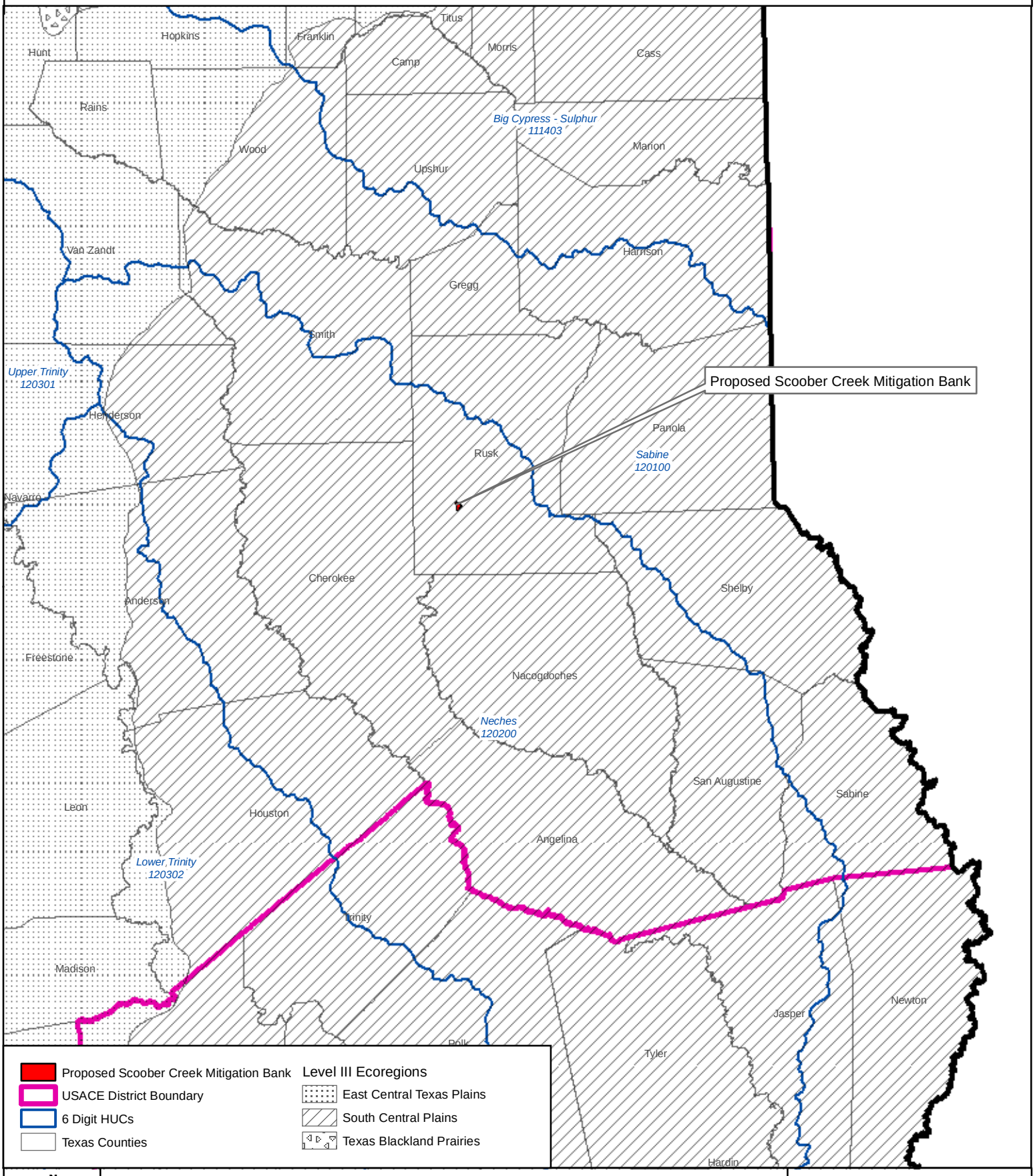
Figure 2 of 8
Level III Ecoregions and Six Digit HUC Boundaries
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



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Drawn By: Matt Neuman
Date: September 16, 2009

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Figure 3 of 8
Service Area Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas

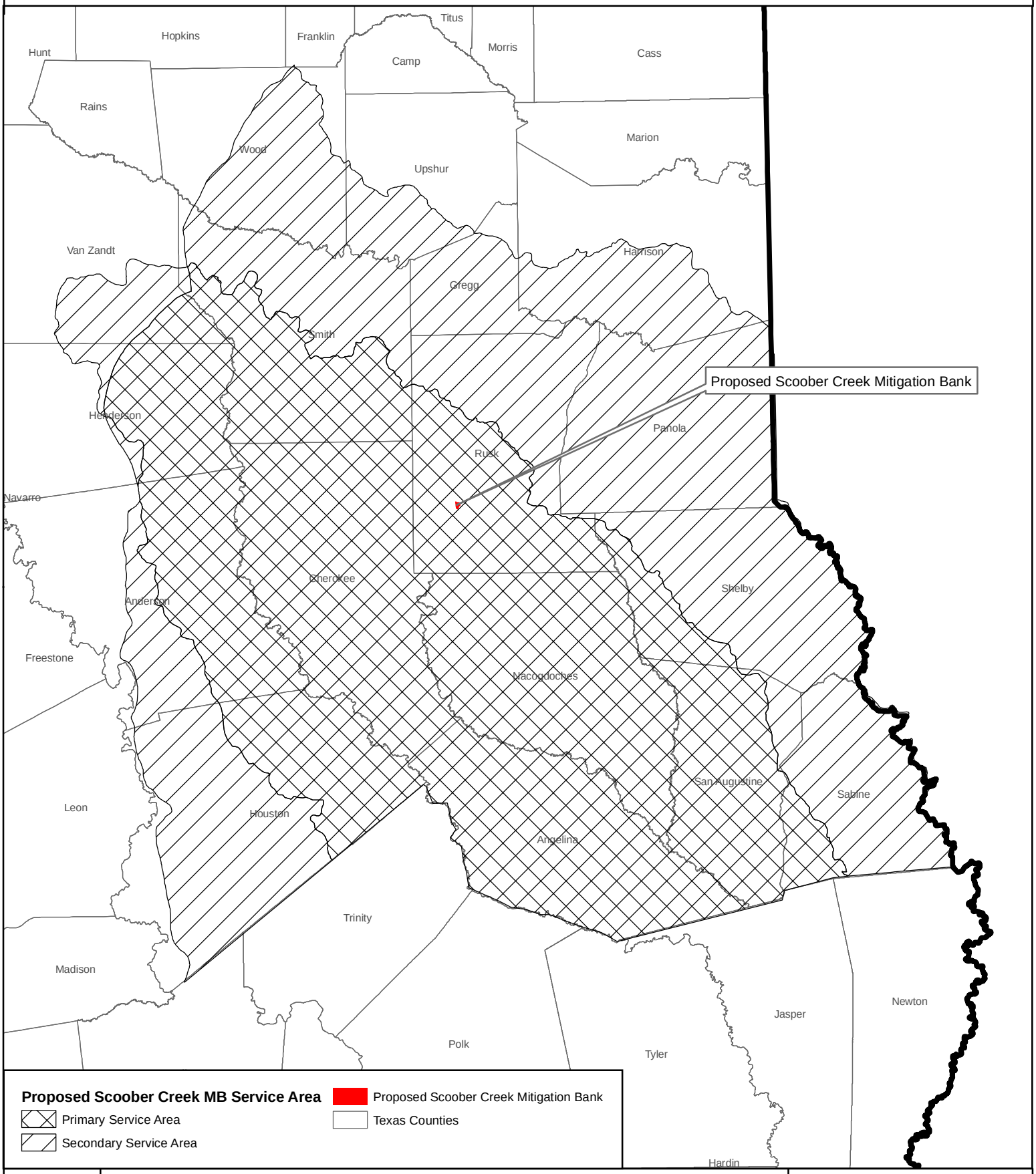

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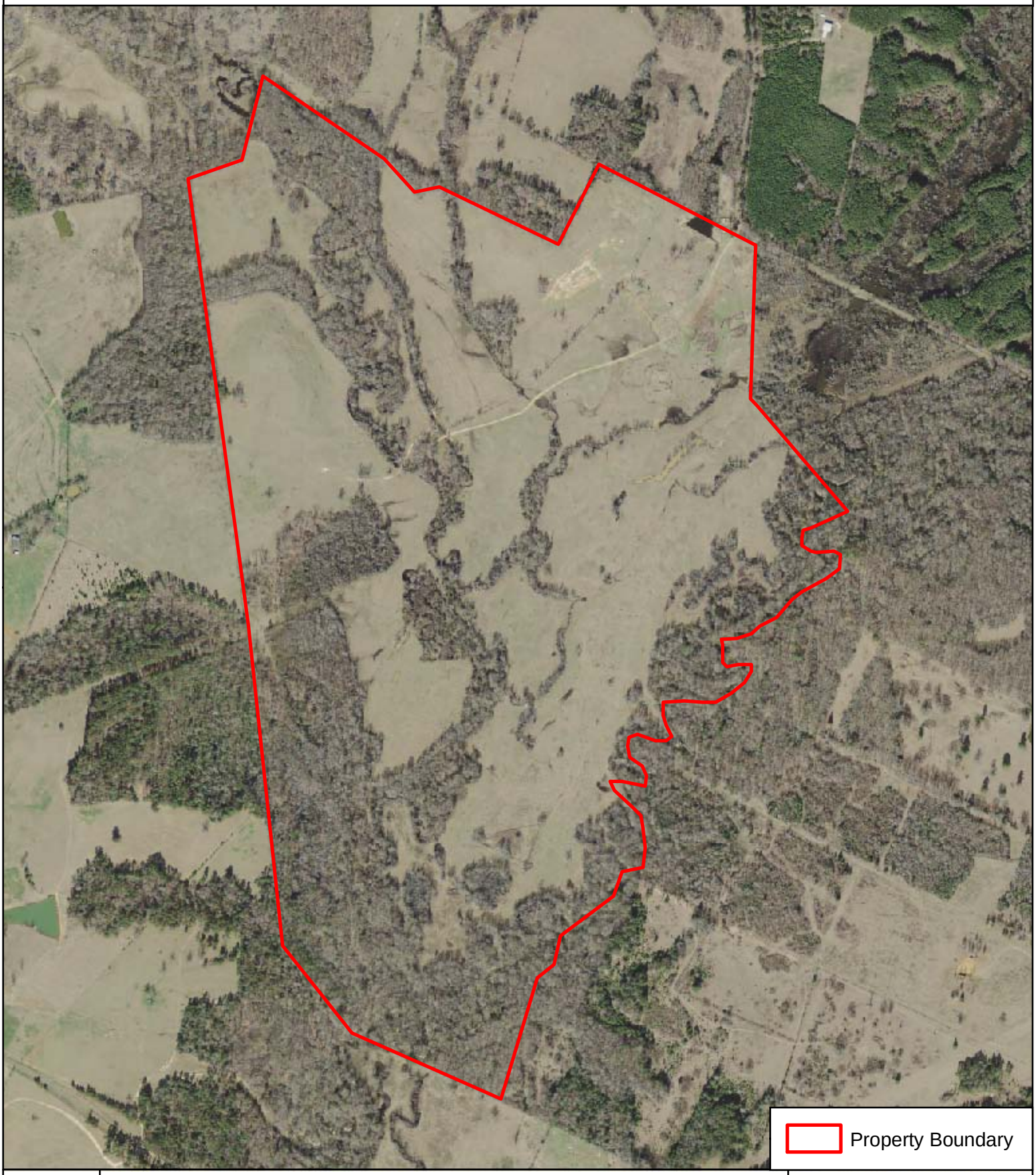
Figure 4 of 8
Aerial Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



Imagery: 2009 NAIP CCM
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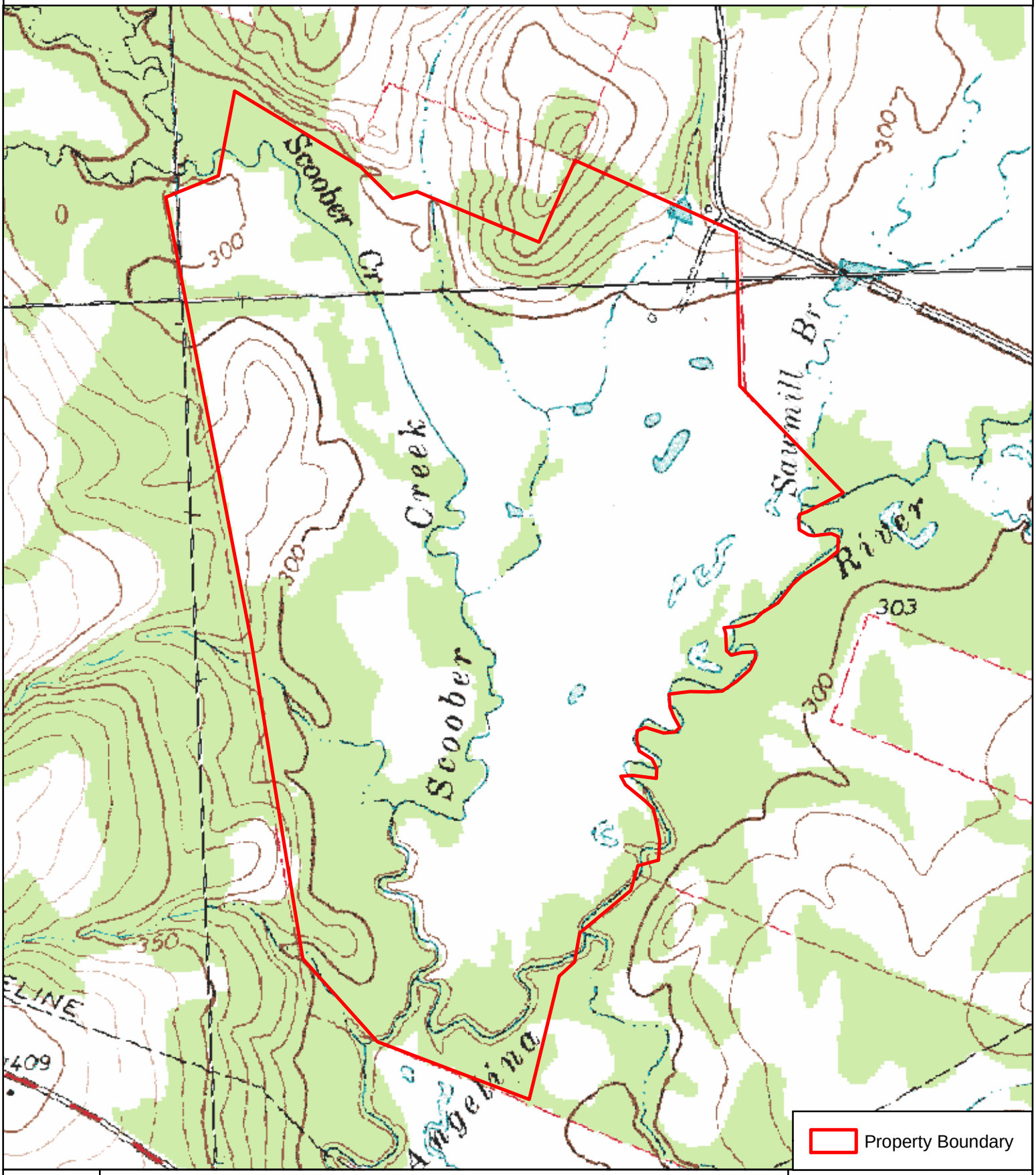
Figure 5 of 8
Topographic Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



N
W E
S

0 400 800 1,600 2,400 3,200 4,000 Feet

Base Map: USGS Quadrangle - Gum Springs, Berry Hill Creek, New Salem, Laneville
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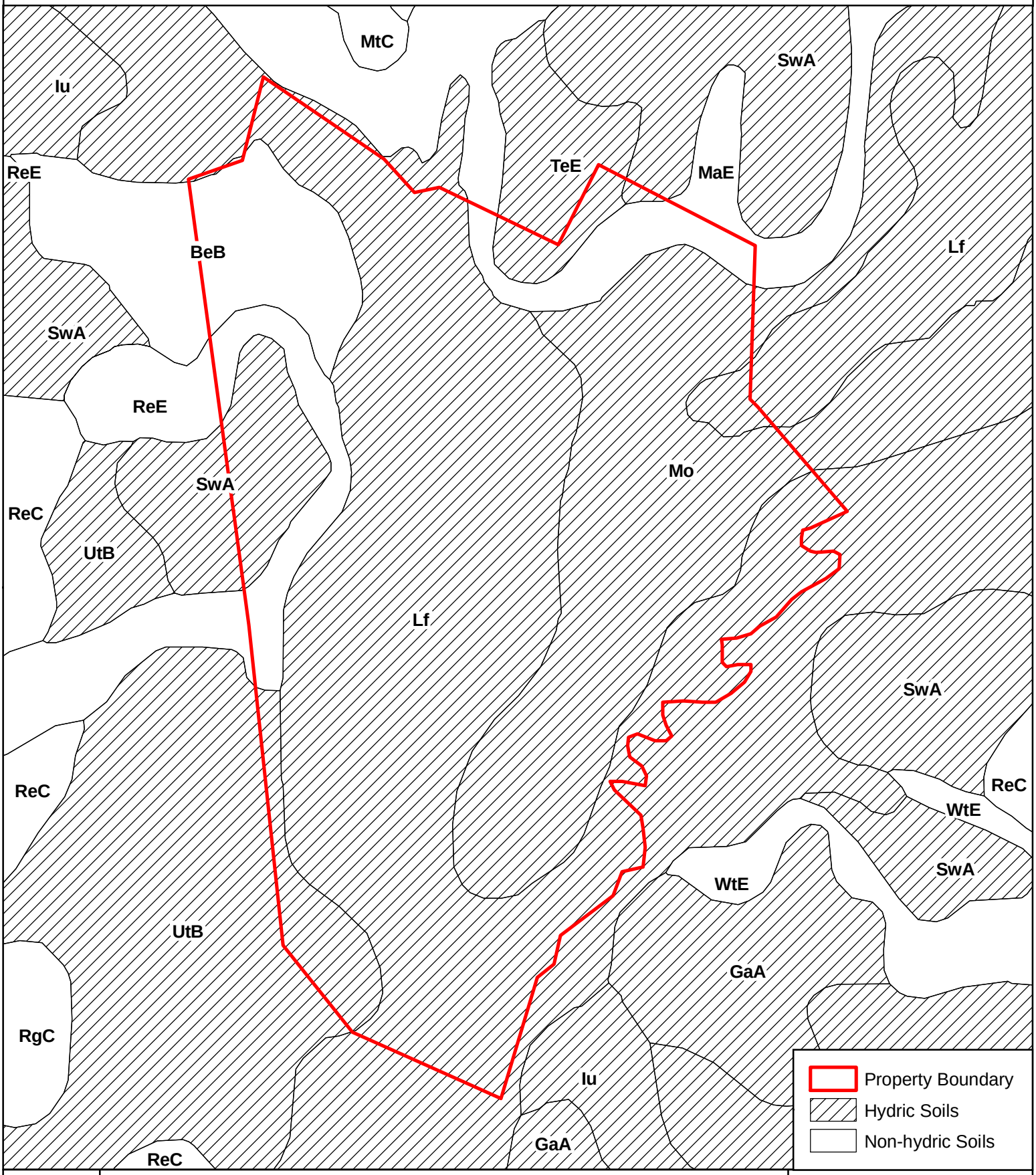
Figure 6 of 8
Soils Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



Soil Data: Natural Resources Conservation Service
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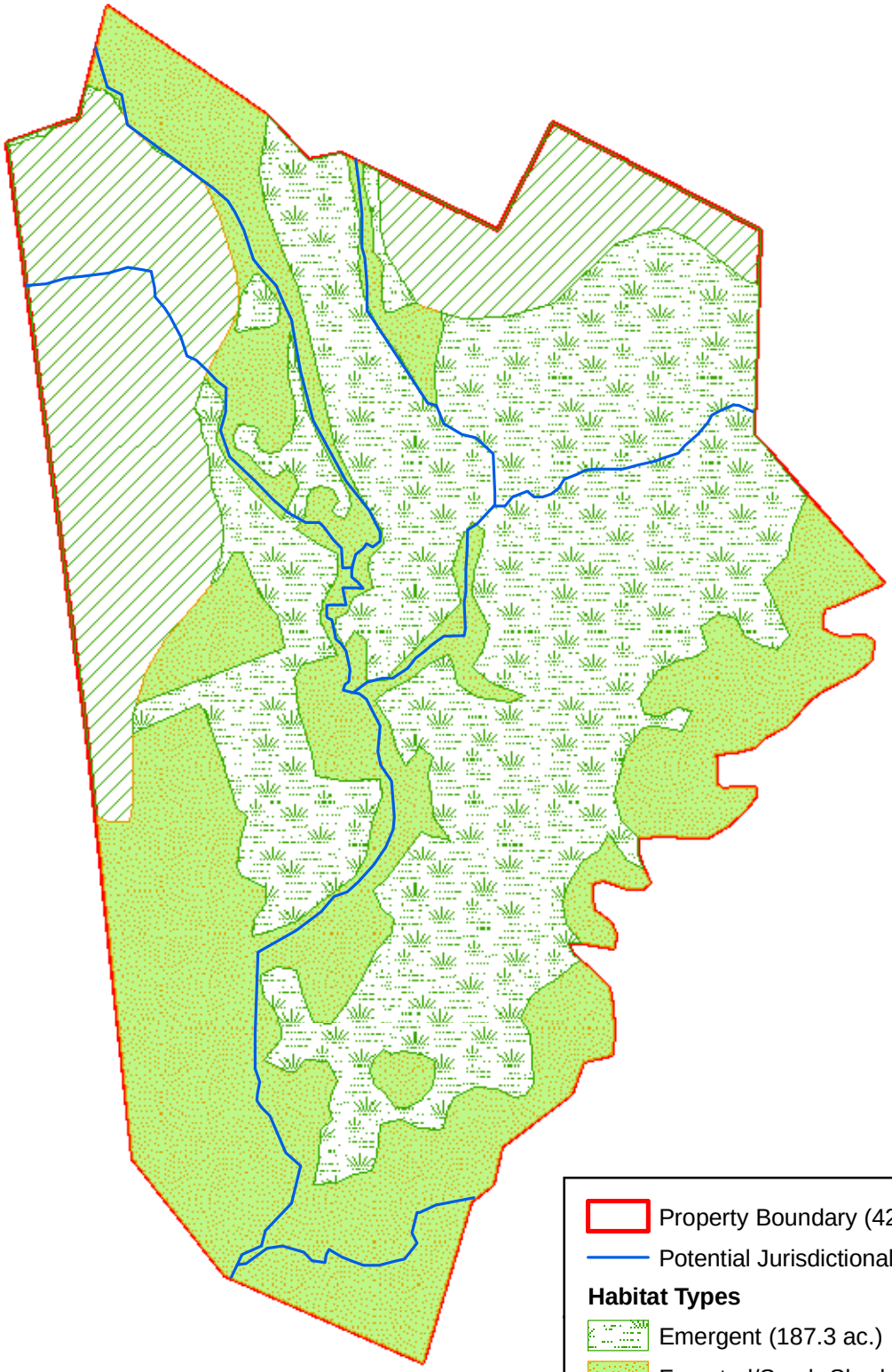
Figure 7 of 8
Initial Wetland Evaluation Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



Property Boundary (421.2 ac.)
Potential Jurisdictional Streams (17,043 ft)

Habitat Types

Emergent (187.3 ac.)
Forested/Scrub-Shrub (154.4 ac.)
Non-Wetland (79.5 ac.)

N
W E
S

0 400 800 1,600 2,400 3,200 4,000 Feet

SWF-2009-00369

Drawn By: Matt Neuman
Date: December 1, 2009

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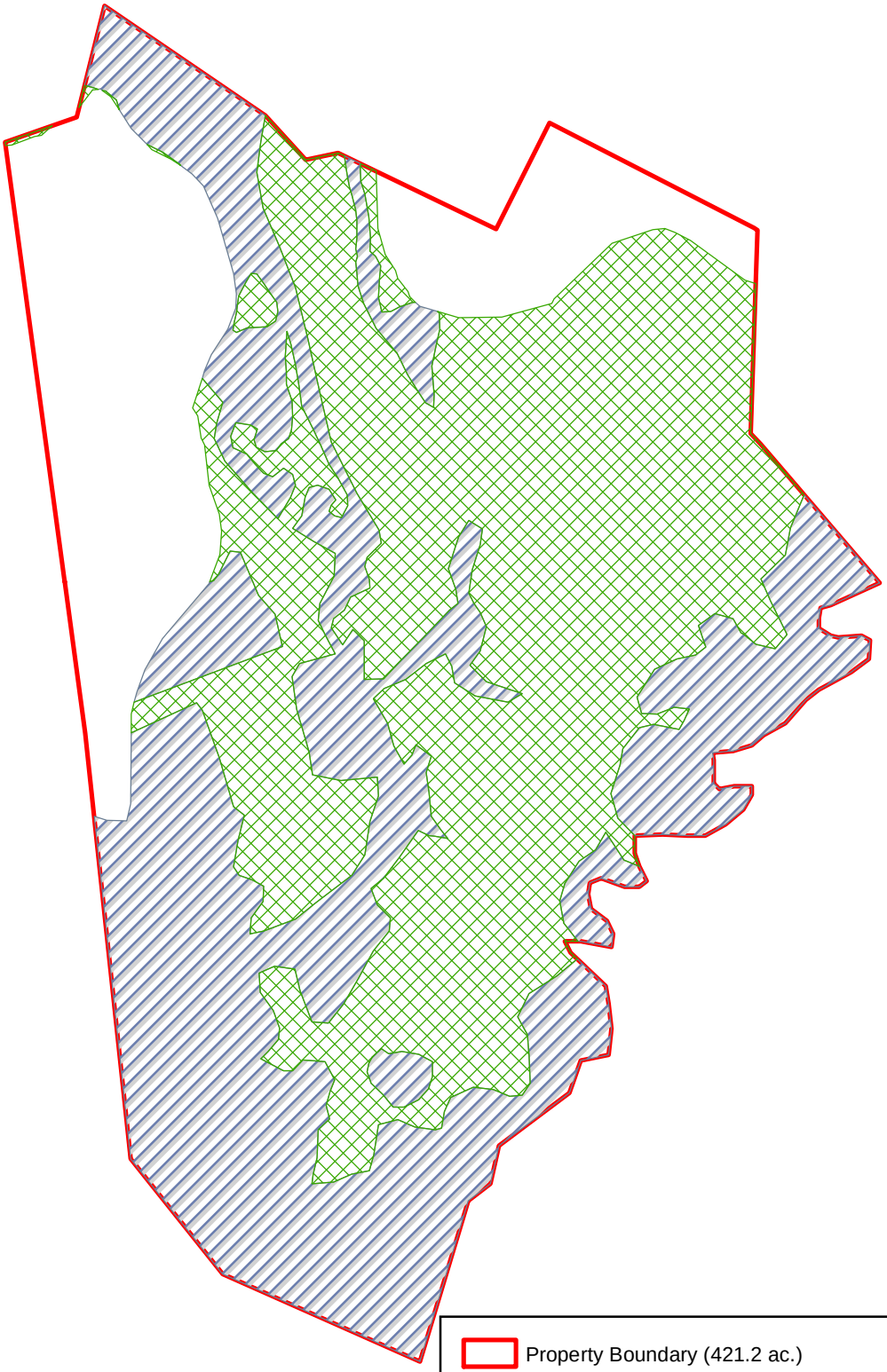
Figure 8 of 8
Conceptual Mitigation Work Plan Map
Proposed Scoober Creek Mitigation Bank in Rusk County, Texas



Property Boundary (421.2 ac.)

Proposed Mitigation Bank

Hydrology Enhancements / Vegetative Restoration (187.3 ac.)

Hydrology and Vegetative Enhancements (154.4 ac.)

N
W E
S

0 400 800 1,600 2,400 3,200 4,000 Feet

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