



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

# Public Notice

Applicant: Wetlands Conservation Partners, LTD

Permit Application No.: SWF-2006-00100

Date: October 2, 2009

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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 an approximately 1,259-acre wetland mitigation bank, to be known as the Mud Creek Mitigation Bank (MCMB) located approximately three miles south of Reklaw, Cherokee County, Texas.

**APPLICANT:** Mr. Thomas Durisoe  
Wetlands Conservation Partners, LTD  
PO Box 339  
Fayetteville, Texas 78940

**APPLICATION NUMBER:** SWF-2006-00100

**DATE ISSUED:** October 2, 2009

**LOCATION:** The proposed MCMB is located on approximately 1,259 acres within a larger 1,776-acre tract of land located approximately three (3) miles south of the town of Reklaw in Cherokee County, Texas (Figure 1). The proposed mitigation bank site is located approximately at Universal Transverse Mercator coordinates 311921.68 East and 3522491.13 North (Zone 15) on the Reklaw 7.5-minute United States Geological Survey quadrangle map in the Neches River Basin (Hydrologic Unit Code (HUC)120200) in the South Central Plains Ecoregion (Figure 2).

**PROJECT DESCRIPTION:** Preliminary site investigations determined that the approximately 1,259-acre tract of land is comprised of approximately 485 acres of bottomland hardwood wetland and approximately 774 acres of herbaceous wetland (Figures 6 and 7). The onsite-wetlands have three primary sources of hydrology: precipitation, Mud Creek and the Angelina River which are perennial waters with substantial contributing watersheds. The bottomland wetlands and herbaceous wetlands are frequently flooded and experience prolonged inundation by floodwaters during flood events. Sufficient hydrology for wetland determinations is established by its location at the junction of these two waters. The property is located in the Upper Angelina Watershed, U.S. Geologic Service (USGS) Unit 12020004. According to the USGS, the contributing watershed for flows to this station is 1,276 square miles. Considering the proximity to the gauge location, the approximate contributing watershed to the banking lands would be near that sum of square miles. The area receives an average annual precipitation of approximately 45 inches.

The vegetative species composition of this area is dominated by mature bottomland mixed woods with a high-density overstory typically comprised of large pure stands of either overcup oak (*Quercus lyrata*) or water tupelo (*Nyssa aquatica*). Small and isolated pure stands of scrub/shrub water elm (*Planeria aquatica*) occur within saturated depressional areas interspersed within the tupelo-dominated stands. In areas where pure stands of individual species are absent, the overstory

is generally comprised of overcup oak, willow oak (*Quercus phellos*), water oak (*Quercus nigra*), sweetgum (*Liquidambar styraciflua*) and red maple (*Acer rubrum*). The midstory scrub/shrub canopy layer, where present, is comprised primarily of American hornbeam (*Carpinus caroliniana*) and juvenile overstory species. Little or no herbaceous understory vegetation is present except for occurrences of dwarf palmetto (*Sabal minor*).

The early successional lands occur in portions of the property having undergone more recent clearcut harvesting of merchantable timber. Insufficient time has passed following the harvesting of the timber and subsequent burning of the residual slash materials for the establishment of vegetative cover other than what has naturally regenerated from root and stump sprouting.

The wetland meadow habitat has undergone routine mowing and mechanical maintenance during dry periods to maintain an herbaceous meadow habitat interspersed with a few isolated mature sweetgums and water oaks. Native grasses and forbs comprise most of the habitat with rushes (*Juncus spp.*) and sedges (*Cares spp.*) occurring immediately adjacent to the network of drainage channels.

The Natural Resource Conservation Service, "Soil Survey of Cherokee County, Texas" 1959 lists two soil series as occurring within the sections of the subject property proposed for inclusion within the MCMB: Bibb Series and Iuka Series (Figure 5). These soils are poorly drained acid alluvial soils that occupy nearly level floodplains and are frequently under water for long periods in the cool season.

Management of the habitat restoration through species management and stabilization of the floodplains of these two perennial waters would result in an increase (lift) of the functional values of all wetland components for the area.

The proposed Primary Service Area (Figure 3) for the proposed MCMB is the intersection of the Neches River Basin (HUC 120100) in the East Central and South Central Plains Ecoregions within the boundaries of the USACE Fort Worth and Galveston Districts. This service area would include all of Angelina, Cherokee, Hardin, Tyler and Nacogdoches counties; and portions of Anderson, Henderson, Houston, Panola, Rusk, Sabine, San Augustine, Shelby, Smith, Polk, Trinity, Orange, Jasper, and Van Zandt counties. The proposed secondary service area for the proposed MCMB is the eastern half of the Trinity River Basin and western half of the Sabine River Basin in the South Central Plains and Western Gulf Coastal Plain Ecoregions within the boundaries of the USACE Fort Worth and Galveston Districts. The secondary service area would include portions of Trinity, Polk, Liberty, Walker, Jasper, Gregg, Rusk, Sabine, Shelby, Smith, and Newton counties.

The bank would provide in-kind and out-of-kind mitigation credits to permittees at a 1:1 functional ratio for those permitted affects within the primary watershed. Credits purchased to mitigate for impacts in the secondary watershed and, in exceptional cases, outside of the secondary watershed may be allowed at a higher functional ratio on a case-by-case basis as approved by the USACE. The Sponsor shall protect the property by providing a conservation easement to a third party land trust conservator. Upon approval the Sponsor would cease any land uses not consistent with the purpose of wetland mitigation banking; survey and develop a legal description of the banking lands

and incorporate this description into the conservation easement for review and approval by the USACE. The conservation easement would be recorded with the Cherokee County Clerk, and a copy of the recorded easement forwarded to the USACE.

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 standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and 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 Cherokee County where the Louisiana Black Bear (*Ursus americanus luteolus*) and the red-cockaded woodpecker (*Picoides borealis*) are federally listed as a threatened species. In addition, the bald eagle (*Haliaeetus leucocephalus*) is listed as Federally Delisted Taxon that is being monitored. 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 USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. The area of the proposed mitigation bank has not been formally surveyed for the presence of historic and prehistoric sites. However, areas of high probability for the presence of historic and prehistoric sites are present within the permit area. Additional work to identify these sites may be necessary.

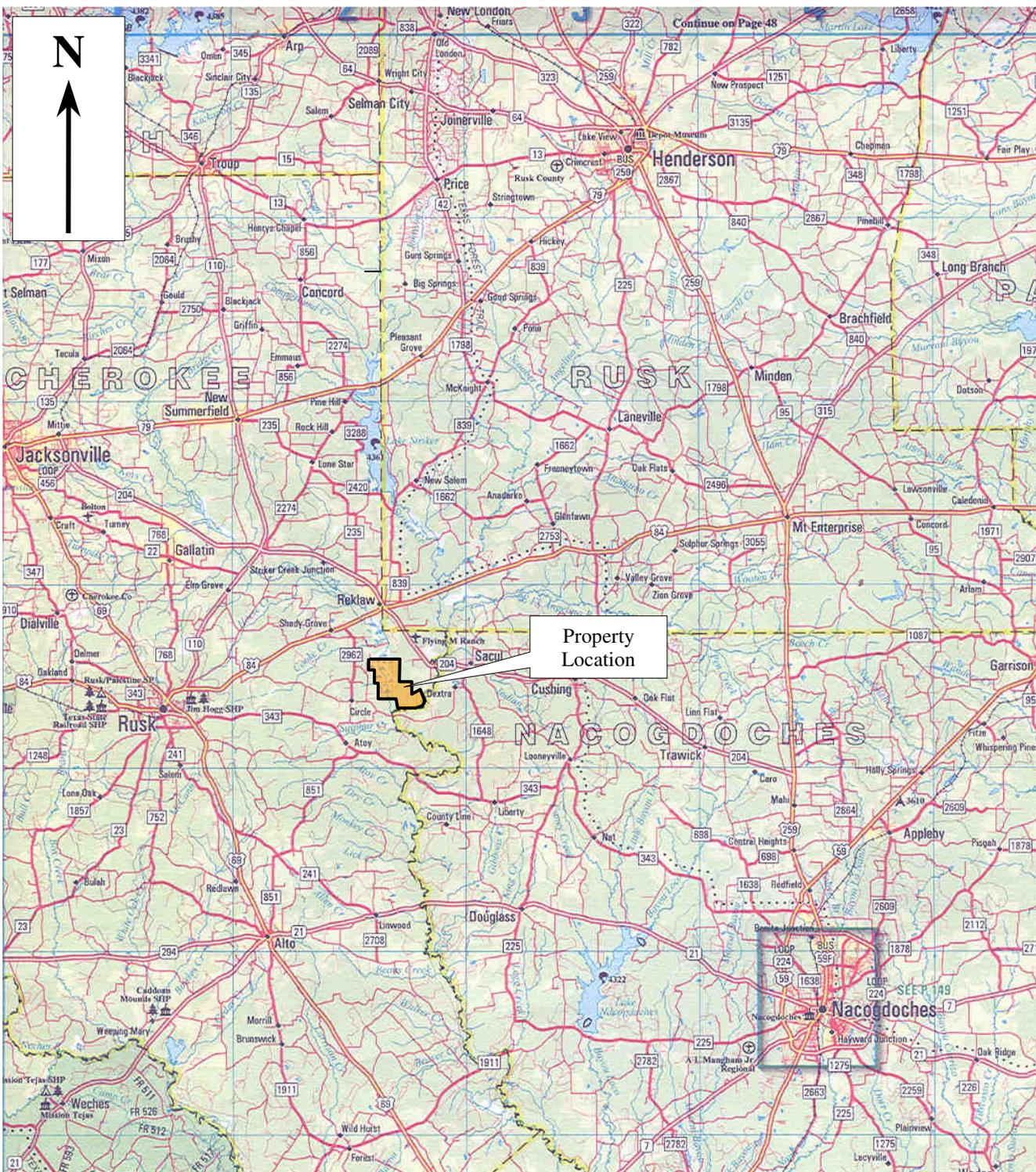
**FLOODPLAIN MANAGEMENT:** The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review 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 November 2, 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 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



USACE Project No. SWF-2006-00100



prepared by:

**Gremminger & Associates, Inc.**  
 226 South Live Oak St.  
 Bellville, Texas  
 (979) 865-4440

Gremminger and Associates, Inc.  
 environmental planning and permitting consultants

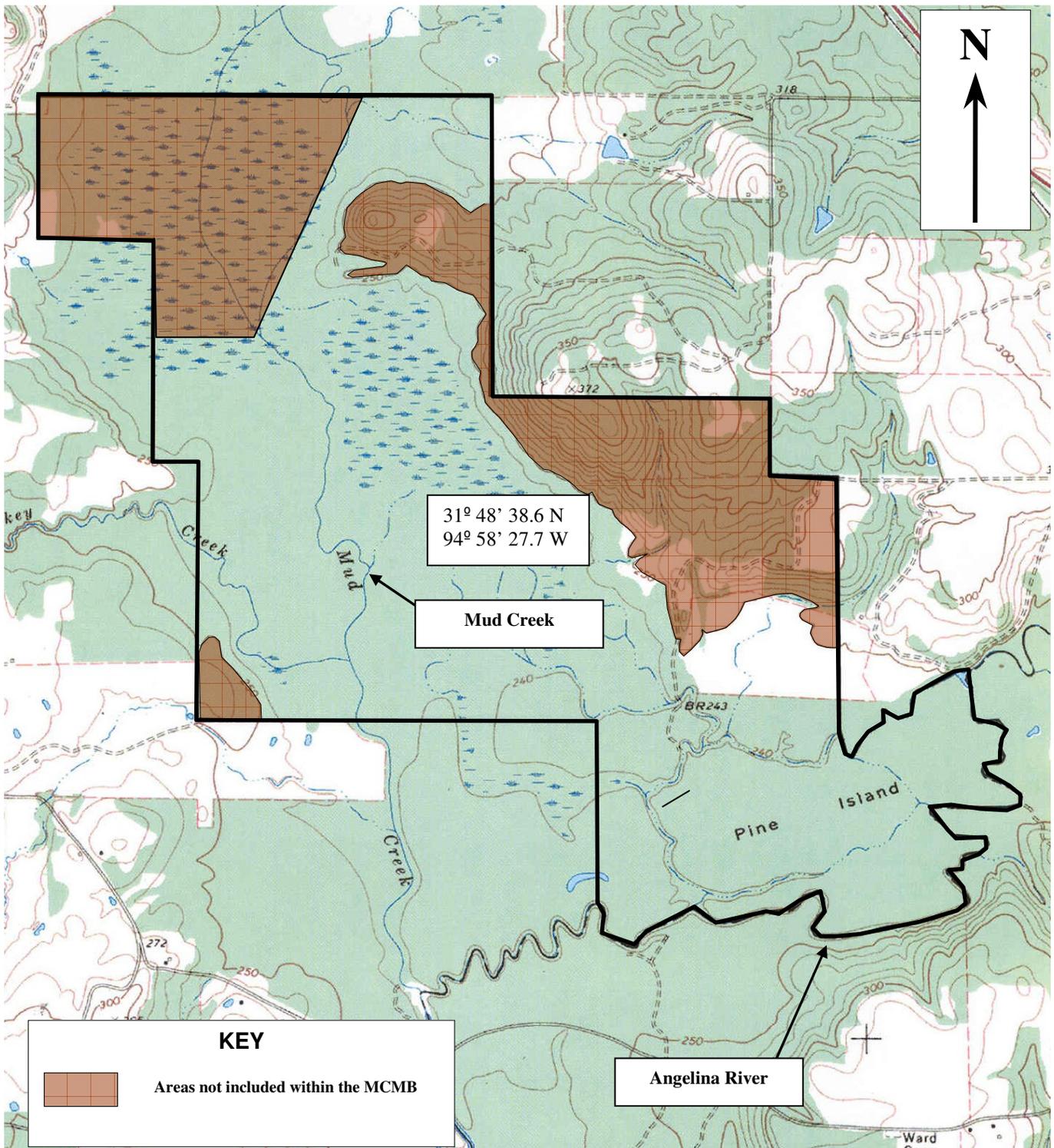
**Proposed Mud Creek Mitigation Bank  
 Cherokee County, Texas  
 State Location Map**

Source: DeLorme Texas Atlas & Gazetteer, 1995

prepared for:

**Thomas Durisoe**

Project No.:	
Location: Cherokee County, Texas	
APPR.:	DATE: 06/24/09
DRAWN BY: EJM	SCALE: 1:400,000
	Figure No.: 1



**USACE Project No. SWF-2006-00100**



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 226 South Live Oak St.  
 Bellville, Texas 77418

Gremminger and Associates, Inc.  
 environmental planning and permitting consultants

**Proposed Mud Creek Mitigation Bank  
 Property Map**

Reference: USGS 7.5-Minute Quadrangle: Reklaw, TX

prepared for:

**Thomas Durisoe**

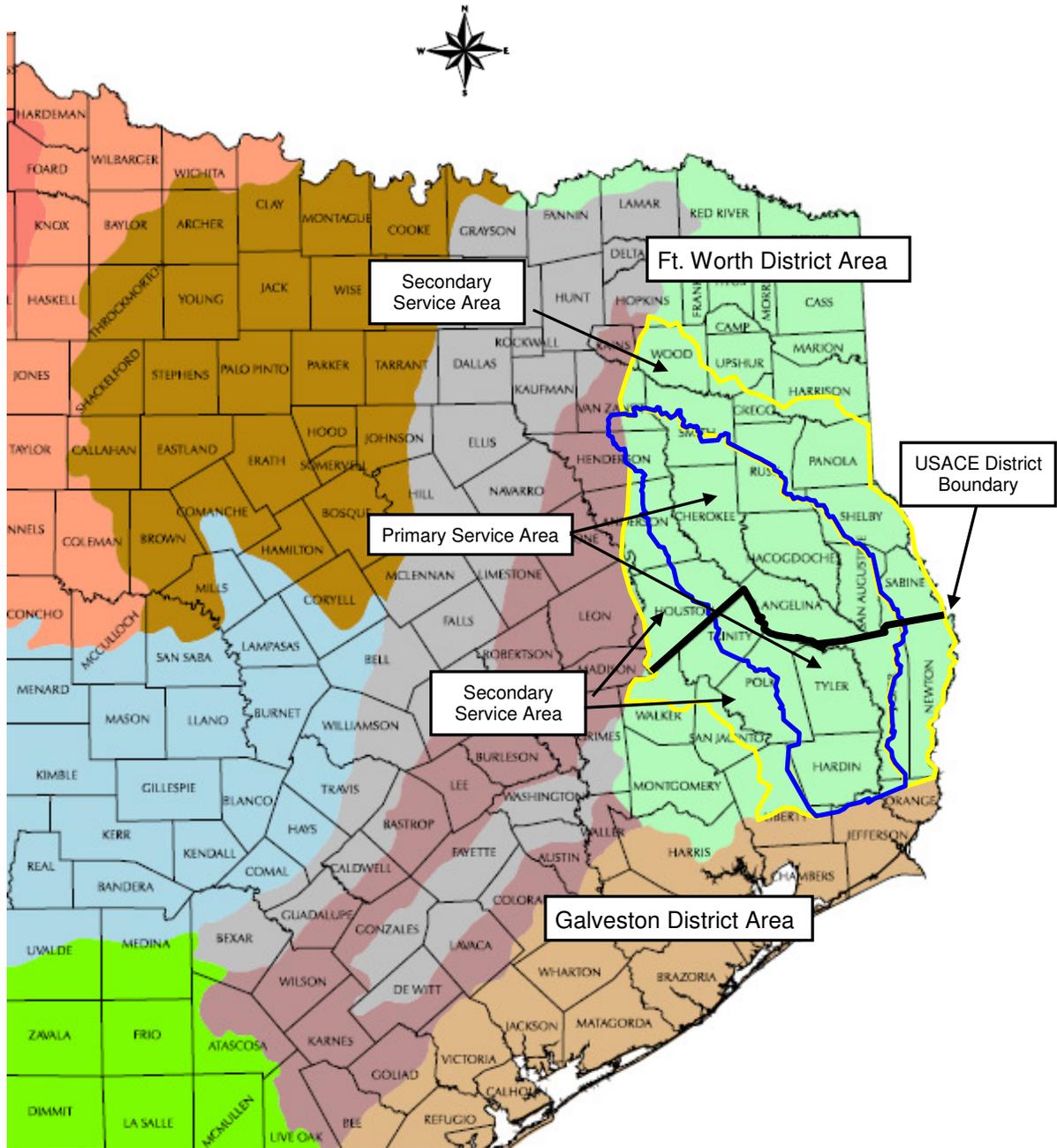
Project No.:

Location: Cherokee County, Texas

APPR.: DATE: 6/24/2009

DRAWN BY: DL SCALE: 1:24,000

Figure No.: 2



**USACE Project No. SWF-2006-00100**



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 Bellville, Texas 77418

environmental planning and permitting consultants

**Proposed Mud Creek Mitigation Bank  
 Cherokee County, Texas  
 Primary and Secondary Service Area**

prepared for:

**Thomas Durisoe**

PROJECT:

LOCATION: Texas

APPR.:

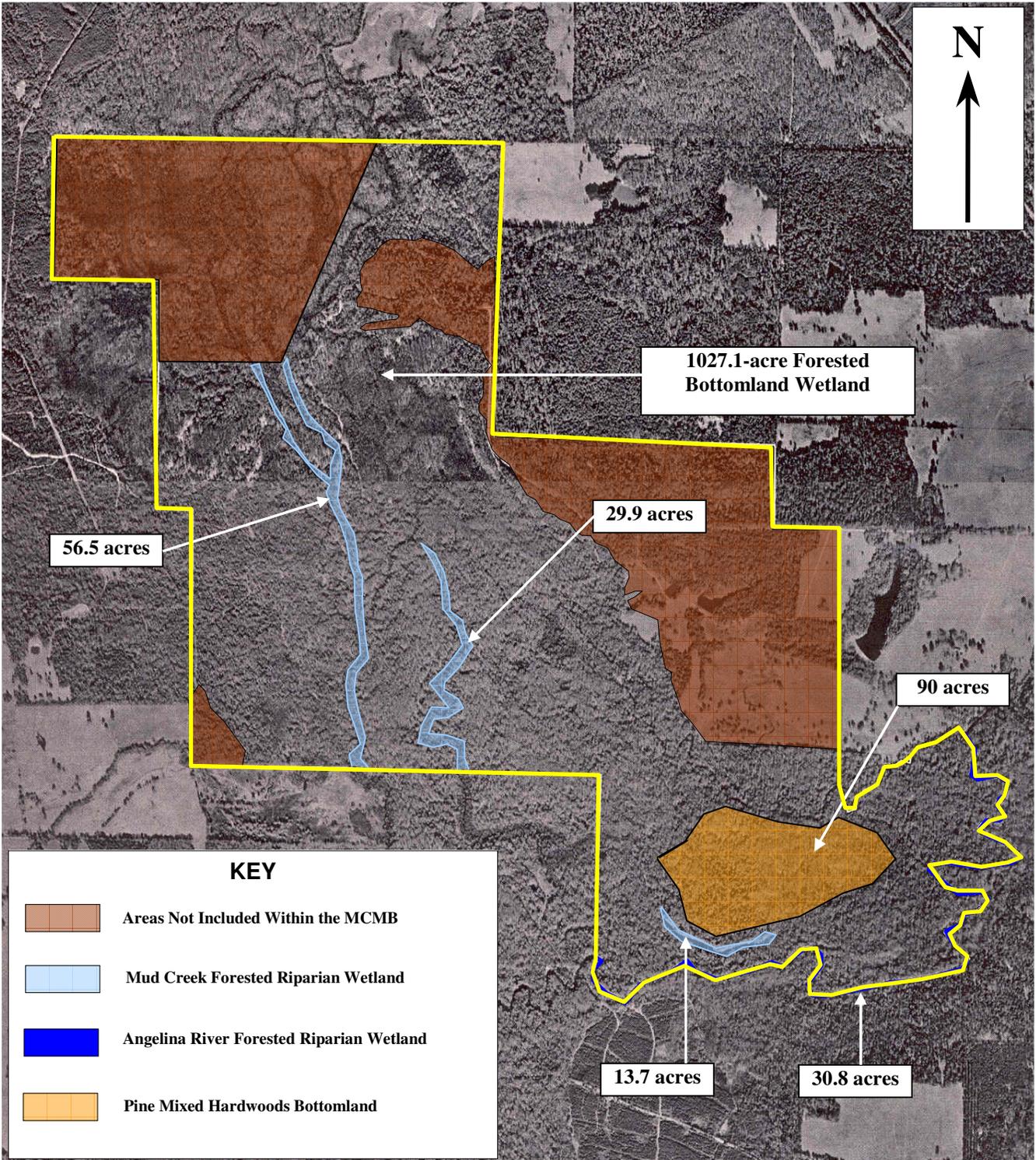
DRAWN BY: DL

DATE: 6/24/2009

DATE:

SCALE: NTS

FIGURE: 3



**USACE Project No. SWF-2006-00100**



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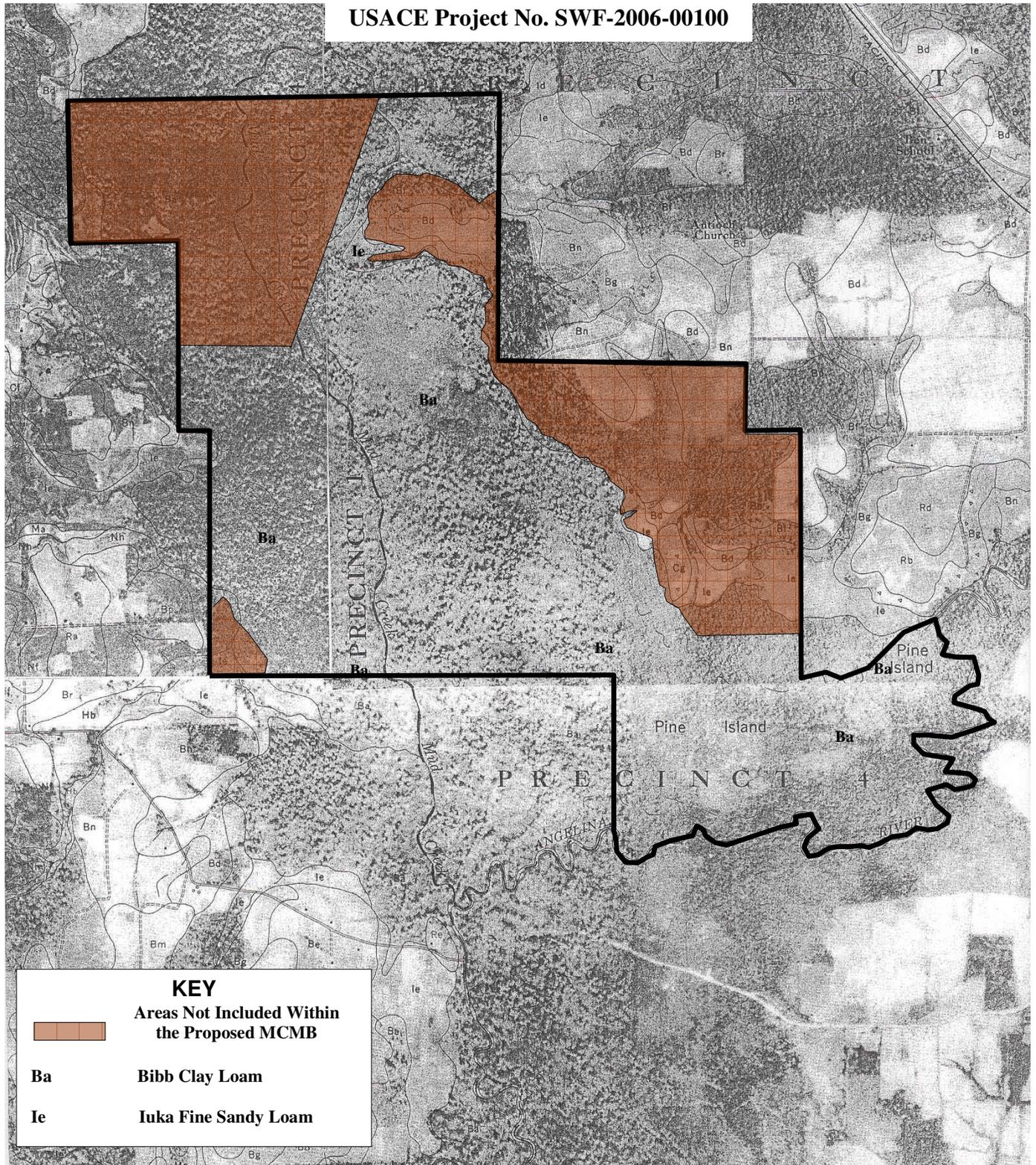
**Proposed Mud Creek Mitigation Bank  
Existing Habitat Conditions**

Reference: USGS Orthophotomaps (1996): Reklaw NW & Reklaw SW, TX

*prepared for:*

**Thomas Durisoe**

Project No.:	
Location: Cherokee County, Texas	
APPR.:	DATE: 06/24/2009
DRAWN BY: EJM	SCALE: 1:24,000
Figure No.: 4	



**KEY**

 Areas Not Included Within the Proposed MCMB

**Ba** Bibb Clay Loam

**Ie** Iuka Fine Sandy Loam

*prepared by:*



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environmental planning and permitting consultants

**Proposed Mud Creek Mitigation Bank  
Soil Series Occurring Within Property Boundary**

Reference: USDA Soil Survey for Cherokee County, Texas (1948); Sheets 42, 43 & 49

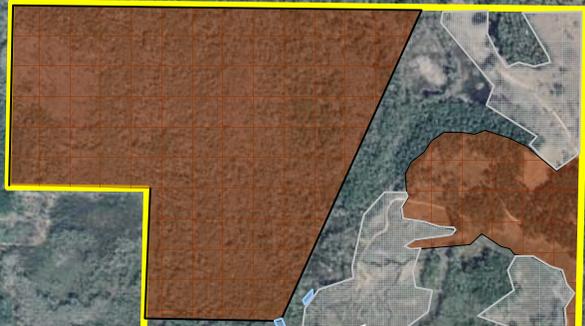
*prepared for:*

**Thomas Durisoe**

Project No.:	
Location: Cherokee County, Texas	
APPR.:	DATE: 06/24/2009
DRAWN BY: EJM	SCALE: 1:20,000
Figure No.: 5	

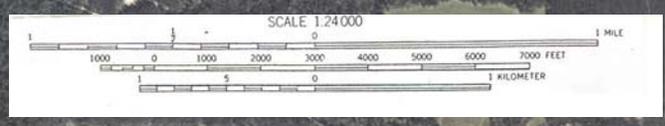
USACE Project No. SWF-2006-00100

N



774 Acres of Forested Wetland Restoration (all open areas)

485 Acres of Forested Wetland Enhancement



Gremminger & Associates, Inc.  
226 South Live Oak Street  
Bellville, Texas 77418

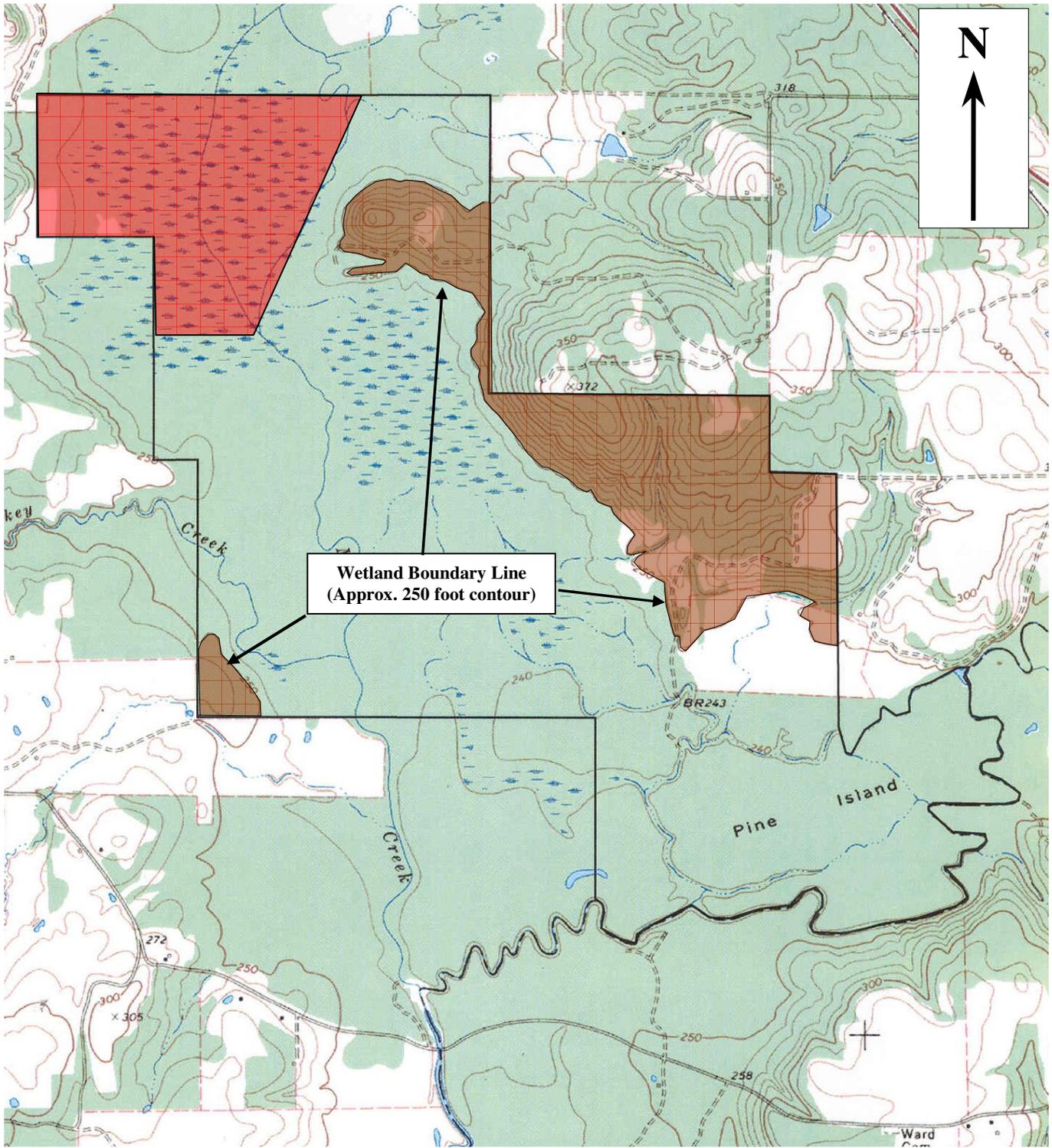
**Proposed Mud Creek Mitigation Bank  
Cherokee County, Texas  
Mitigation Development Plan**

Reference: Aerial Photography 10/29/2008: Reklaw NW and SW, TX

prepared for:

**Thomas Durisoe**

PROJECT:	
LOCATION: Cherokee County, Texas	
APPR.:	DATE: 6/24/2009
DRAWN BY: LJG	SCALE: 1:24000
DATE:	FIGURE: 6



**USACE Project No. SWF-2006-00100**



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Gremminger and Associates, Inc.  
 environmental planning and permitting consultants

**Proposed Mud Creek Mitigation Bank  
 Wetland Delineation Boundary Map**

Reference: USGS 7.5-Minute Quadrangle: Reklaw, TX

prepared for:

**Tom Durisoe**

Project No.:

Location: Cherokee County, Texas

APPR.:

DATE: 6/24/2009

DRAWN BY: EJM

SCALE: 1:24,000

Figure No.: 7