



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

Public Notice

Applicant: OXBOW Investments, Inc.

Permit Application No.: SWF-2008-00426

Date: April 28, 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 an approximately 170.67-acre wetland mitigation bank to be known as the OXBOW Mitigation Bank (OMB) in northeast Smith County, Texas.

APPLICANT: OXBOW Investments, Inc.
19291 CR 373
Gladewater, Texas 75647

APPLICATION NUMBER: SWF-2008-00426

DATE ISSUED: April 28, 2009

LOCATION: The proposed OMB is a 170.67-acre tract of land located approximately two miles south of Big Sandy in northeast Smith County, Texas (Figure 1). The proposed mitigation bank is located approximately at Universal Transverse Mercator coordinates 319575.10 East and 3597137.03 North (Zone 15) on the Big Sandy 7.5-minute United States Geological Survey quadrangle map in the Sabine River Basin (Hydrologic Unit Code (HUC) 120100) in the South Central Plains Ecoregion (Figure5)

PROJECT DESCRIPTION: The proposed OMB site consists of 170.67 acres of land located within the floodplain of the Sabine River in northeast Smith County, Texas. The tract is located on the western boundary of the existing KLAMM Mitigation Bank.

Preliminary site investigations determined the OMB comprises approximately 170.67 acres of wetlands and other waters of the United States divided into three community types (102.97 acres of scrub/shrub wetland, 59.40 acres of immature forested wetland, 8.30-acre oxbow of the Sabine River). The scrub/shrub wetland component is dominated by loblolly pine, hickory saplings, willow oak saplings, American elm saplings, winged elm saplings, water oak saplings, eastern baccharis, dewberry, common greenbrier, saw greenbrier, panicgrass, peppervine, and rosettegrass. The immature forested wetland component is dominated by willow oak, water oak, hickories, sedges, and American buckwheat vine. The oxbow of the Sabine River is located within the immature forested wetland area and is approximately 50 to 75 feet in width and 7 to 10 feet in depth. Due to frequent and lengthy periods of inundation, little to no vegetation is present within the channel.

Soils within the project site are mapped as Estes silty clay loam, frequently flooded and Mantachie loam, frequently flooded, and Owentown loamy fine sand, occasionally flooded. Estes and Mantachie soils are mapped as hydric for Smith County (NRCS, 2005) (Figure 3).

The Bank Sponsor has developed a mitigation work plan for the proposed OMB. This would include removing the current pine plantation and replanting the area with native bottomland hardwood species, and restoring and enhancing wetland hydrology altered as a result of historic land uses and past timber management activities. Implementing this plan would result in the restoration and enhancement of aquatic functions, such as water storage, sediment retention and stabilization, wildlife habitat, and flood flow attenuation. The objective of completing this project is to enhance and develop native, self-sustaining habitat types historically characteristic of the area.

The bank sponsor proposes a primary service area and a secondary service area (Figure 5). The proposed primary service area for the OMB is the Sabine River Basin (HUC 120100) within the South Central Plains Ecoregion and within the boundaries of the Fort Worth District of the USACE within Texas. This would include Panola County in its entirety and portions of Sabine, San Augustine, Shelby, Harrison, Rusk, Gregg, Upshur, Smith, and Wood Counties. The proposed secondary service area for the OMB is the area within the intersection of the Big Cypress-Sulphur Basin (HUC 111403) and the South Central Plains Ecoregion, the intersection of the Neches River Basin (HUC 120200) and the South Central Plains Ecoregion, and the intersection of the Sabine River Basin (HUC 120100) and the East Central Texas Plains Ecoregion. This would include Marion, Nacogdoches, Angelina, Cherokee, Rains and Camp Counties in their entirety, and portions of Bowie, Harrison, San Augustine, Shelby, Rusk, Sabine, Houston, Anderson, Henderson, Smith, Van Zandt, Kaufman, Hunt, Hopkins, Wood, Franklin, Upshur, Gregg, Titus, Cass, and Morris Counties.

A mitigation banking instrument (MBI) would be developed in accordance with Compensatory Mitigation for Losses of Aquatic Resources (Federal Register, 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, 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 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 Smith County where the Louisiana Black Bear (*Ursus americanus luteolus*) is federally listed as a threatened species. 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 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. 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.

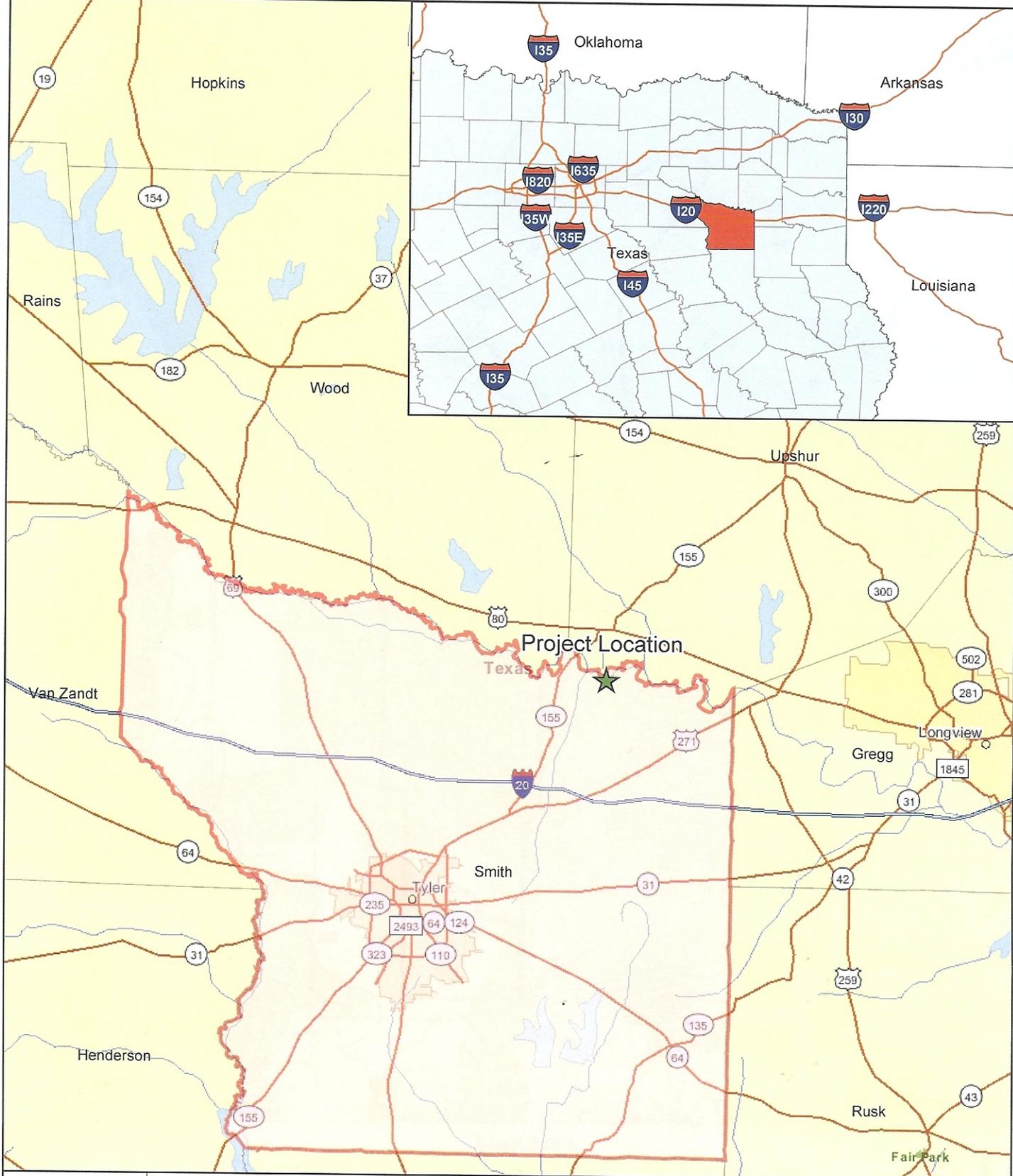
FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review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

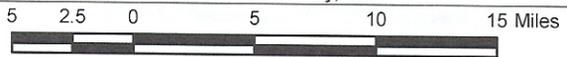
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If 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 May 27, 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



Sheet 1 of 5
 Vicinity Map of the Proposed OXBOW Mitigation Bank Area
 in Smith County, TX

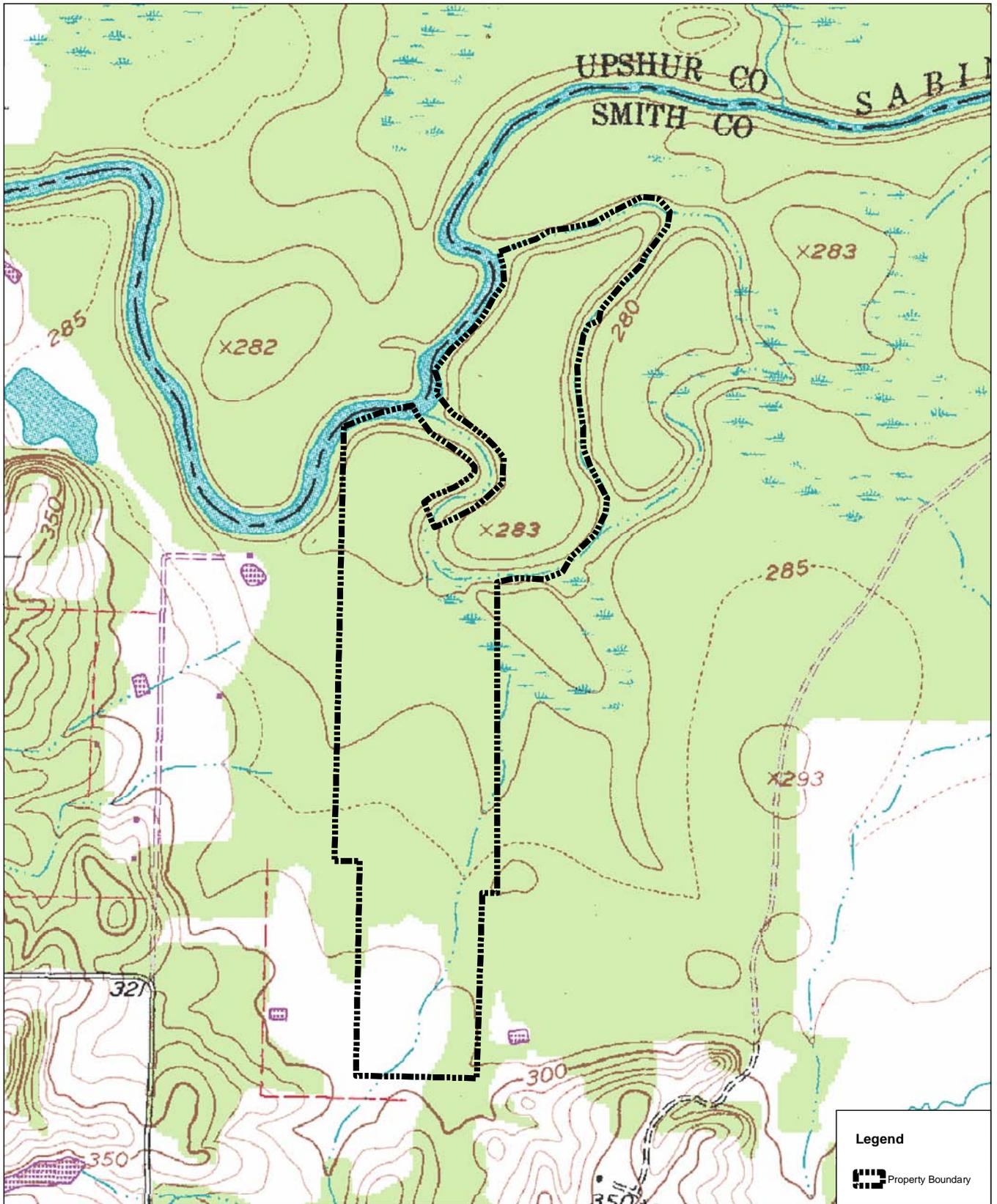


OXBOW Investments, Inc.

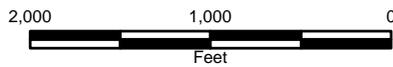
Date: 11/14/2008



1501 Bill Owens Parkway
 Longview, TX 75604
 Phone: (903) 297-4673
 Fax: (903) 297-4675



Sheet 2 of 5
 Topographic Features of the Proposed OXBOW Mitigation Bank Area
 in Smith County, TX



Legend
 Property Boundary

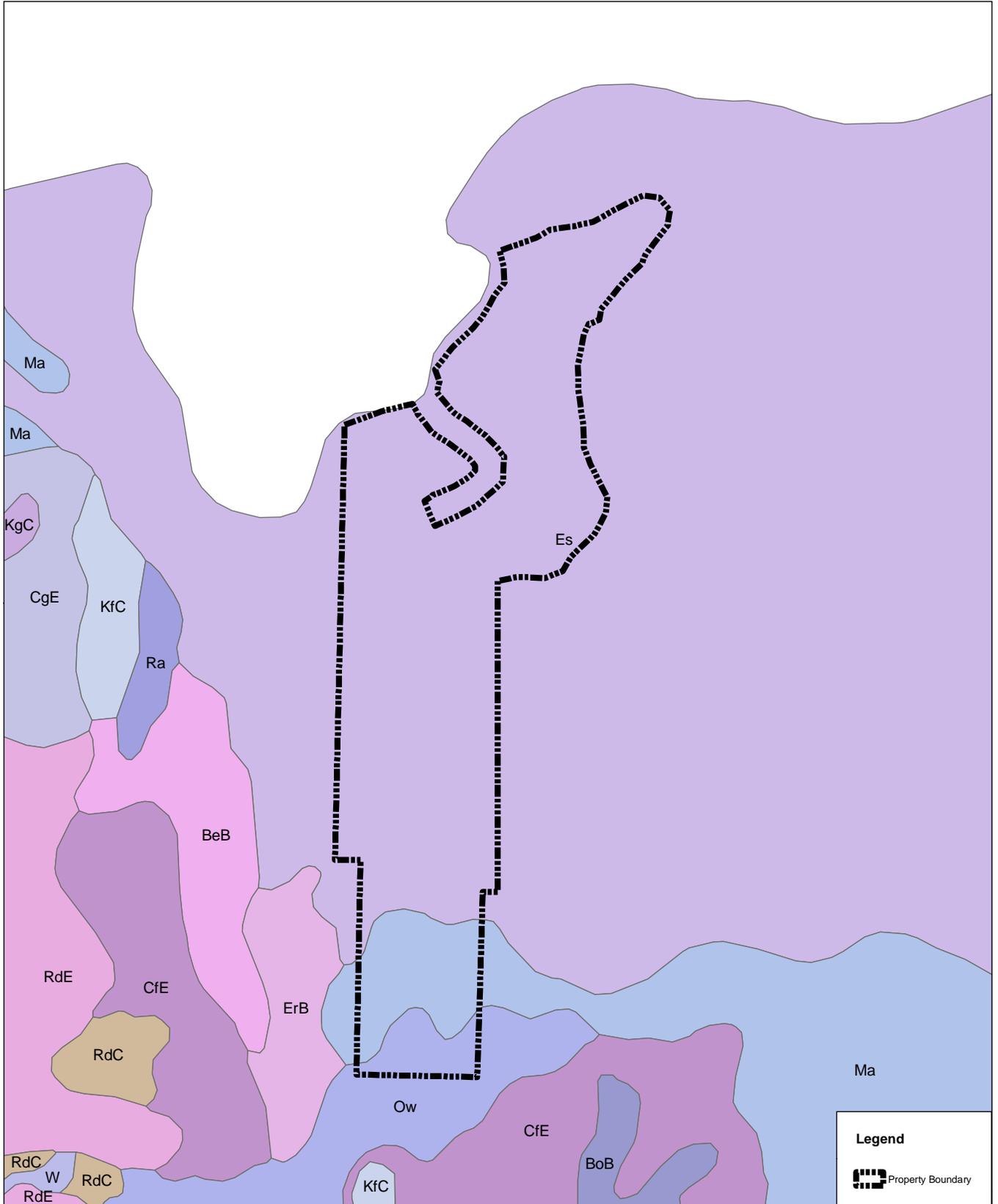


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OXBOW Investments, Inc.

Date: 01/08/2009

Base Map: USGS 7.5 Minute Topographic
 Quadrangle Big Sandy, TX (1960, Photorev.1981)



Sheet 3 of 5
Soil Features of the Proposed OXBOW Mitigation Bank Area
in Smith County, TX



Legend

Property Boundary

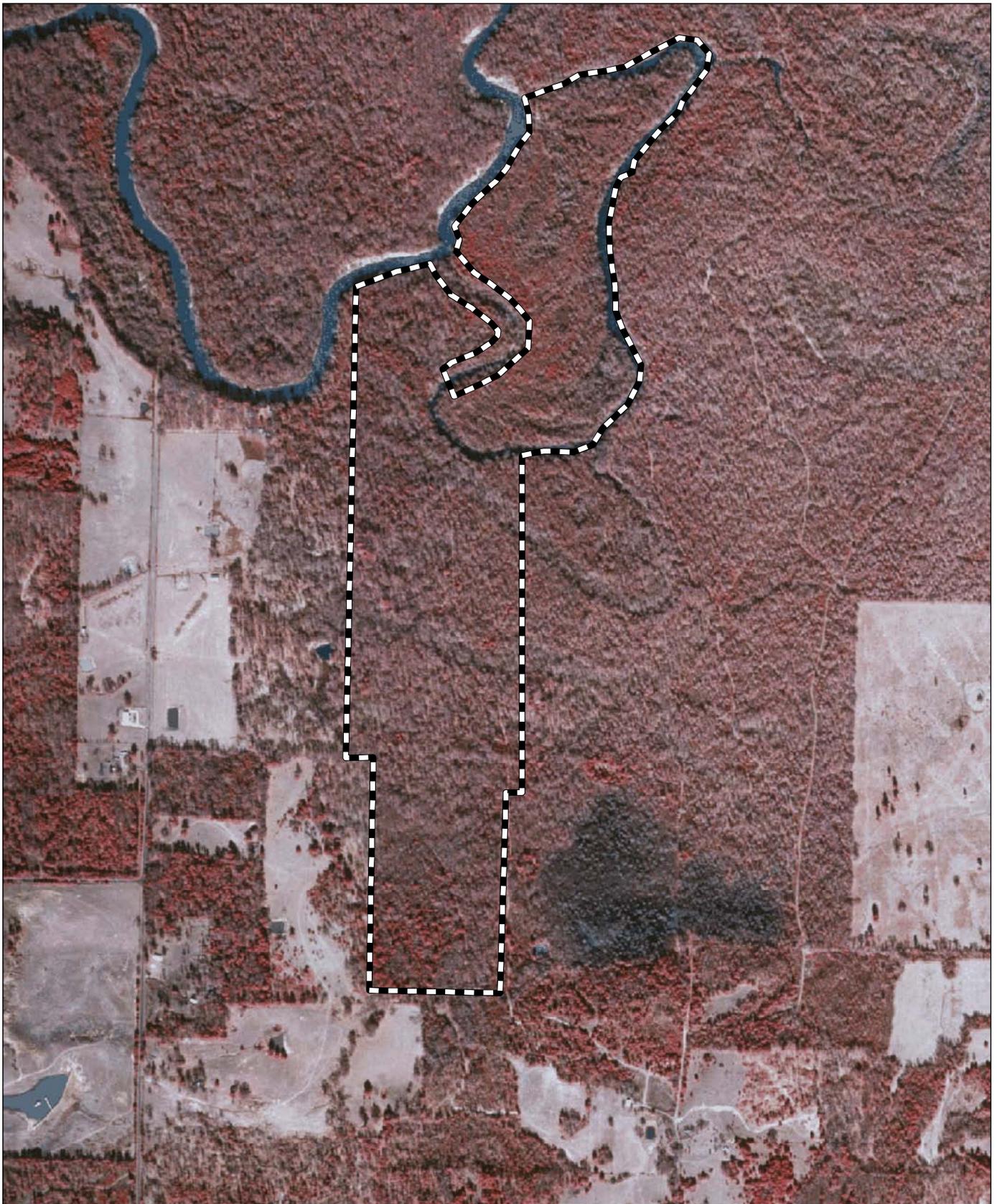


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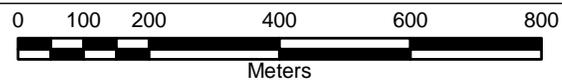
OXBOW Investments, Inc.

Date: 01/08/2009

Base Map: NRCS-Data Gateway



Sheet 4 of 5
Aerial Photograph of the Proposed OXBOW Mitigation Bank Area
in Smith County, TX

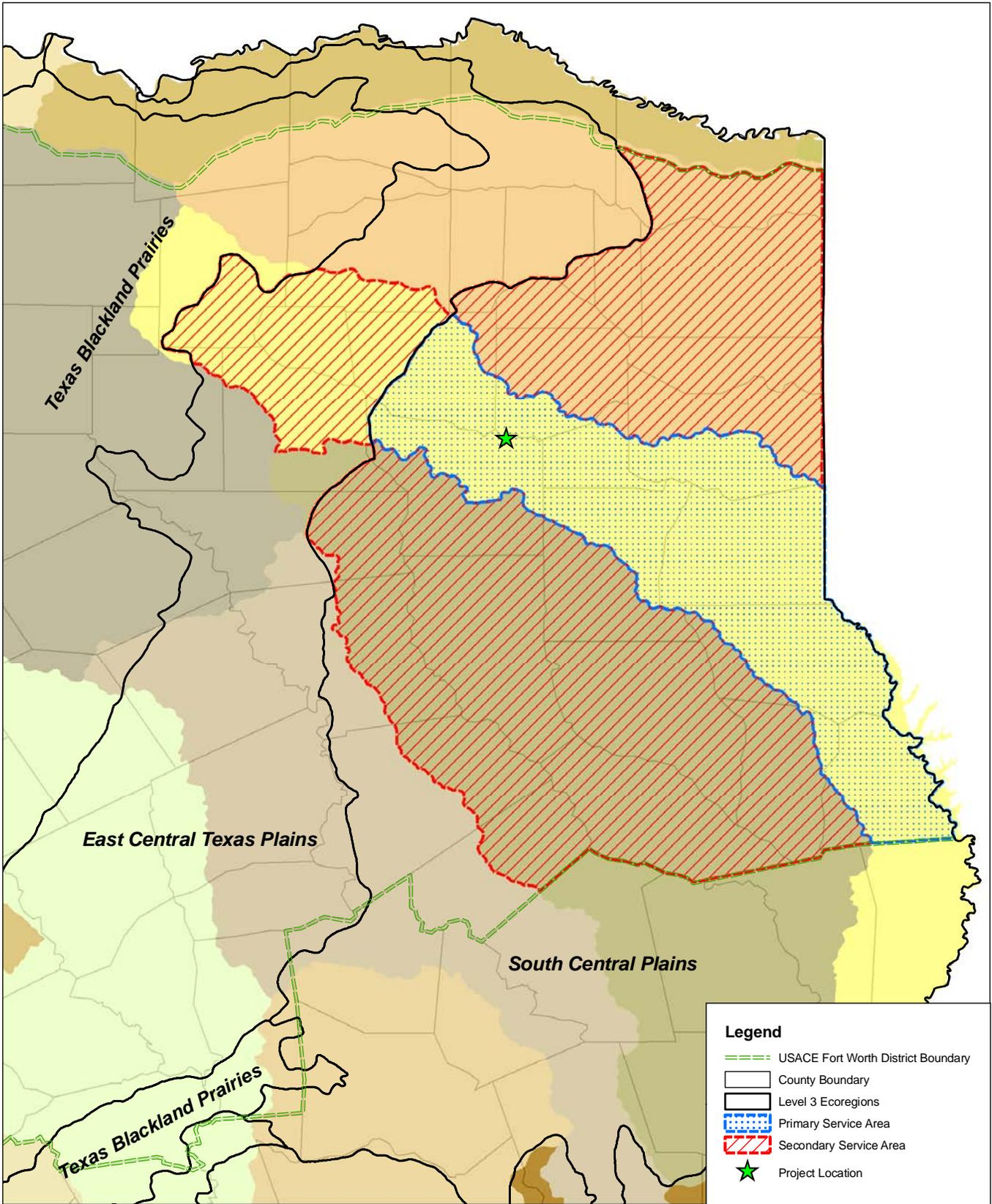


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OXBOW Investments, Inc.

Date: 01/08/2009

TNRIS- 2005 Infrared Aerial



Sheet 5 of 5

Service Area for the Proposed OXBOW Mitigation Bank Area.



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OXBOW Investments, Inc.

Date: 01/13/2009

Solid shades of color
 represent 6-digit HUCs