



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

# Public Notice

Applicant: Brooks Creek Mitigation Bank

Permit Application No.: SWF-2009-00343

Date: November 23, 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. Mike Happold

Phone Number: (817) 886-1670

## **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 327.15-acre wetland mitigation bank to be known as the Brooks Creek Mitigation Bank (BCMB) in Bowie County, Texas.

**APPLICANT:** RES First Texas Resource, LLC  
108 Third St.  
Baton Rouge, Louisiana 70801

**APPLICATION NUMBER:** SWF-2009-00343

**DATE ISSUED:** November 23, 2009

**LOCATION:** The proposed BCMB site consists of a 327.15-acre tract of land located at the northeast intersection of US HWY 67 and Farm-to-Market 990 in Bowie County, Texas (Figures 1 and 2). The proposed 327.15-acre mitigation bank is located approximately at N 33°19'28.40" latitude; W 94°33'9.43" longitude or at Universal Transverse Mercator coordinates 355590.748315 East and 3688380.85277 North (Zone 15), in the United States Geological Survey Accounting Unit 111403 (Big Cypress-Sulphur) and the South Central Plains Ecoregion.

**PROJECT DESCRIPTION:** The proposed BCMB site consists of a total of 327.15 acres of land consisting of approximately 320.75 acres of emergent wetland (wet pasture), 0.19 acres of scrub/shrub wetland, 5.51 acres of non-wetland (non-wet pasture) and 0.7 acres of stock ponds (Figures 3 and 4). The BCMB has been used by the previous owner for cattle grazing. Historically, the site consisted of forest land with historical photography revealing that the property was forested as late as 1964. The property is free of all liens, mortgages or surface encumbrances which may affect the long-term viability and protection of the BCMB. The eastern portion of the BCMB is traversed by an overhead electric transmission line for which no recorded easement was evident within the title records of the property. The Sponsor is leaving a 25-foot right-of-way along the transmission line to allow for future maintenance.

The Sponsor proposes to generate wetland mitigation credits by restoring a native, self sustaining willow oak-water oak-blackgum forest and water oak-elm-hackberry hardwood forest indigenous to the Sulphur River Basin. Development of the BCMB would involve the conversion of wet pasture land to a palustrine forested wetland ecosystem (Figure 5). The site would be prepared for tree planting by mowing and ripping (i.e. subsoiling to a depth of approximately 6 to 8 inches). Subsoiling prior to planting helps eliminate compacted layers which develop through years of cattle grazing and allow for better root development of planted seedlings thereby providing greater probability for survival. Species planted in non-wetland areas (5.51 acres) would consist of appropriate native species. Planting of desirable species would be conducted through the planting of 1-0 bare-root seedling stock on approximate 9-foot centers (538 stems per acre). This spacing should control undesirable, early succession species and invasive species from establishing. Hydrologic restoration would be accomplished by filling drainage ditches, as

necessary, to restore surface hydrology and increase the period of soil saturation. In its existing condition, the site currently has adequate hydrology and periods of saturation in the upper soil profile to meet the wetland hydrology criteria specified in the USACE 1987 *Wetland Delineation Manual* and the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region*. Further hydrology restoration would increase the saturation time for longer periods thereby increasing the likelihood that this site would remain as a viable, self-sustaining forested wetland ecosystem. The Sponsor is proposing a plan that in other similar applications has proven successful in creating the hydrologic regime necessary to facilitate the restoration of wetland functions.

The project site would be protected through a perpetual conservation easement. The project would increase native plant structural diversity, habitat interspersion and complexity; increase surface water quality in wetlands; provide for the replacement of the chemical, physical and biological functions of wetlands and other aquatic resources that are lost or degraded as a result of USACE-authorized impacts; provide USACE permit applicants greater flexibility in compensating for unavoidable adverse impacts to the aquatic ecosystem after appropriate and practicable measures have been taken to avoid and minimize project-related impacts on-site (pursuant to 40 CFR Part 230), especially when those impacts would be relatively minor; and to provide more extensive, higher quality, and more cost-effective restoration and protection of wetlands and other aquatic resources than typically achieved by other forms of compensatory mitigation for activities that have minor adverse impacts to the aquatic ecosystem.

The soil mapping units identified in the proposed project include Annona loam, 1 to 3 percent slopes; Ashford clay, 0 to 1 percent slopes; Bryarly clay loam, 1 to 5 percent slopes; Thenas fine sandy loam, frequently flooded; and Wrightsville-Rodessa complex. A majority of this site is mapped as Ashford clay which is a poorly drained soil with very slow permeability and runoff potential. Much of the hydrologic input to this site is from precipitation coupled with a relatively high water table. The annual precipitation ranges from 42 to 55 inches per year and the depth to water table is listed as ranging from 0 to 12 inches for this particular soil type. Elevations range from a high of 280 feet North American Vertical Datum (NAVD) to a low of 274 feet NAVD (Figure 6). The overall topography is relatively flat with less than 0.6 percent slope. The slope is downward from west to east therefore surface water may sheetflow from FM 990 toward an unnamed tributary of Brooks Creek. Brooks Creek eventually drains into Anderson Creek which drains into the Sulphur River.

The largest vegetation community type occurring within the project area is an emergent wetland. The emergent wetland is dominated by peppervine (*Ampelopsis arborea*), common carpet grass (*Axonopus fissifolius*), woolly croton (*Croton capitatus*), Baldwin's flatsedge (*Cyperus croceus*), green flatsedge (*Cyperus virens*), common persimmon (*Diospyros virginiana*), annual sumpweed (*Iva annua*), grass-leaf rush (*Juncus marginatus*), vasey grass (*Paspalum urvillei*), meadow-beauty (*Rhexia mariana*), Louisiana dewberry (*Rubus louisianus*), and gaping panic grass (*Steinchisma hians*). The scrub/shrub wetland is dominated by Eastern baccharis (*Baccharis halimifolia*), common persimmon, sweetgum (*Liquidambar styraciflua*), vasey grass, Pennsylvania smartweed (*Polygonum pennsylvanicum*), and black willow (*Salix nigra*). The upland community is dominated by common carpet grass, woolly croton, common persimmon, bahiagrass (*Paspalum notatum*), and Southern dewberry (*Rubus trivialis*). Based on technical

criteria outlined in the USACE 1987 *Wetlands Delineation Manual* and the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region*, The community is representative of a hydrophytic community.

The primary service area for the BCMB is the Big Cypress-Sulphur USGS Hydrologic Unit (111403) within the South Central Plains Ecoregion within the boundaries of the USACE Fort Worth District. This primary service area includes all of Marion and Camp Counties and portions of Bowie, Cass, Morris, Titus, Franklin, Wood Upshur, Gregg, and Harrison Counties (Figure 7). The secondary service area is (1) the Sabine USGS Hydrologic Unit (120100) and the Red-Little USGS Hydrologic Unit (111401) within the South Central Plains Ecoregion, within the boundaries of the USACE Fort Worth District; (2) the Big Cypress-Sulphur USGS Hydrologic Unit (111403) within the East Central Texas Plains Ecoregion, within the boundaries of the USACE-Fort Worth District; and (3) the Big Cypress-Sulphur USGS Hydrologic Unit (111403) within the Central Oklahoma/Texas Plain Ecoregion within the boundaries of the USACE Fort Worth District. This secondary service area includes portions of Bowie, Cass, Morris, Red River, Lamar, Delta, Hopkins, Franklin, Titus, Wood, Smith, Upshur, Gregg, Rusk, Harrison, Panola, Shelby, San Augustine, Jasper, Sabine, and Newton 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, April 10, 2008, Vol.73, No. 70, pp 19670-19705). The MBI would detail the legal and physical characteristics of the bank, proposed bank establishment and operational requirements. 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 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 Bowie County where the Interior Least Tern (*Sterna antillarum*) is federally listed as an endangered species. Our initial review indicates that the proposed work would have no adverse effects on any federally- listed endangered or threatened species.

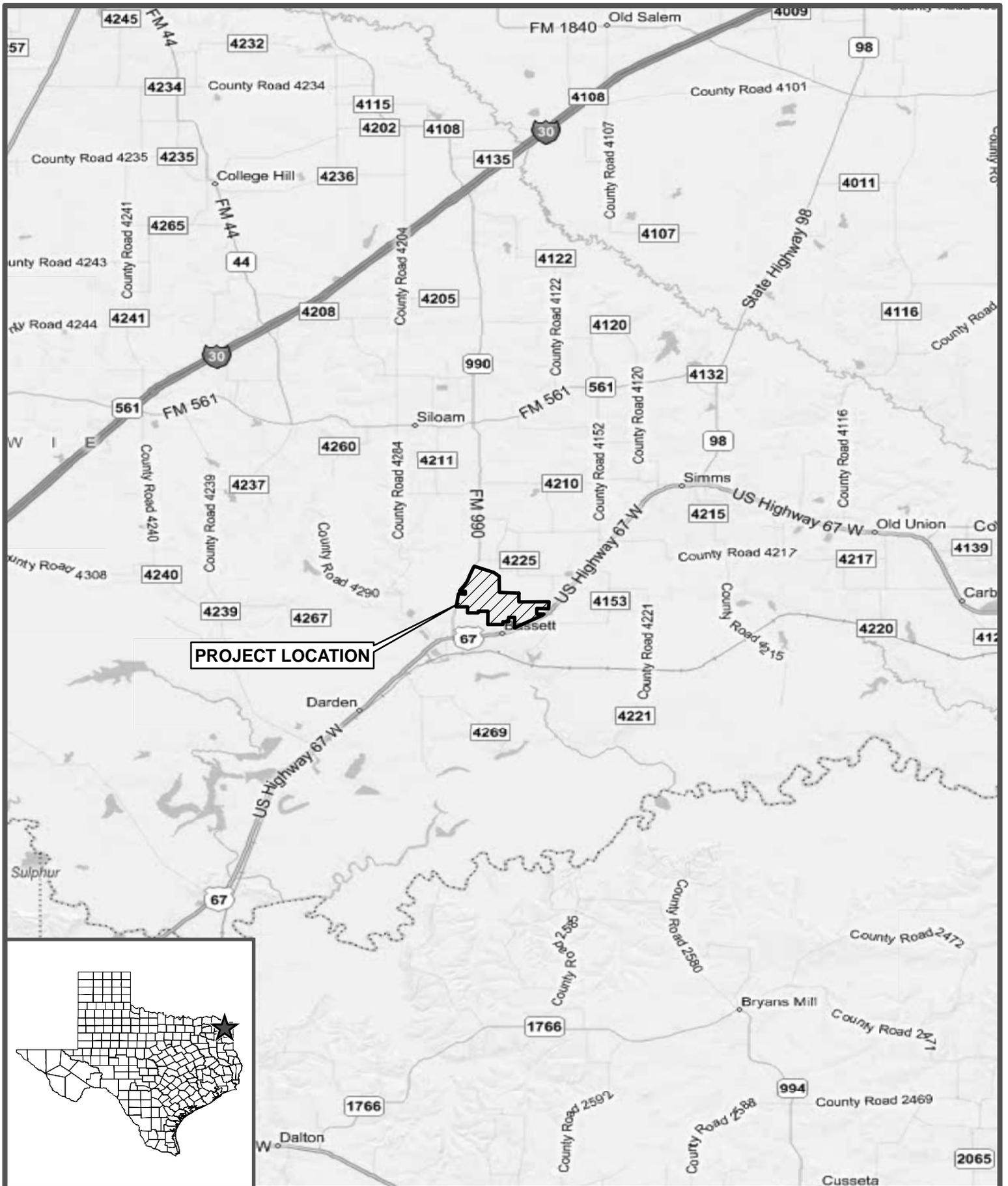
**NATIONAL REGISTER OF HISTORIC PLACES:** The area of the proposed Brooks Creek Mitigation Bank has never been systematically surveyed for the presence of historic or prehistoric cultural resources. There are no sites eligible for the National Register of Historic Places recorded on the property. Similar areas in East Texas are known to have deeply buried floodplain sites and sites associated with the Caddo Indians. Presently unknown cultural, archeological, or historical information may potentially be lost or destroyed by the proposed work under the requested permit.

**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.

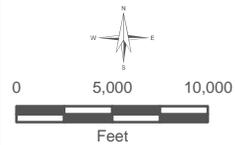
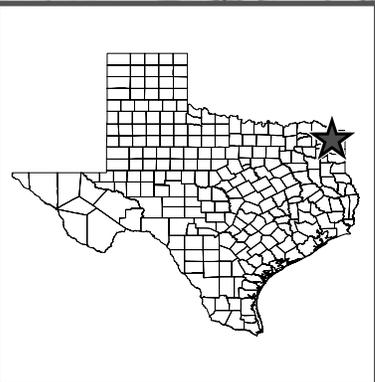
**SOLICITATION OF COMMENTS:** The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, 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 December 24, 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. Mike Happold; 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.



**PROJECT LOCATION**



FTR001BC\_A002\_VicinityMap\_2009.mxd

**FIGURE 1**  
**BROOKS CREEK MITIGATION BANK**  
**VICINITY MAP**  
**BOWIE COUNTY, TEXAS**

**Legend**

 Brooks Creek Mitigation Bank



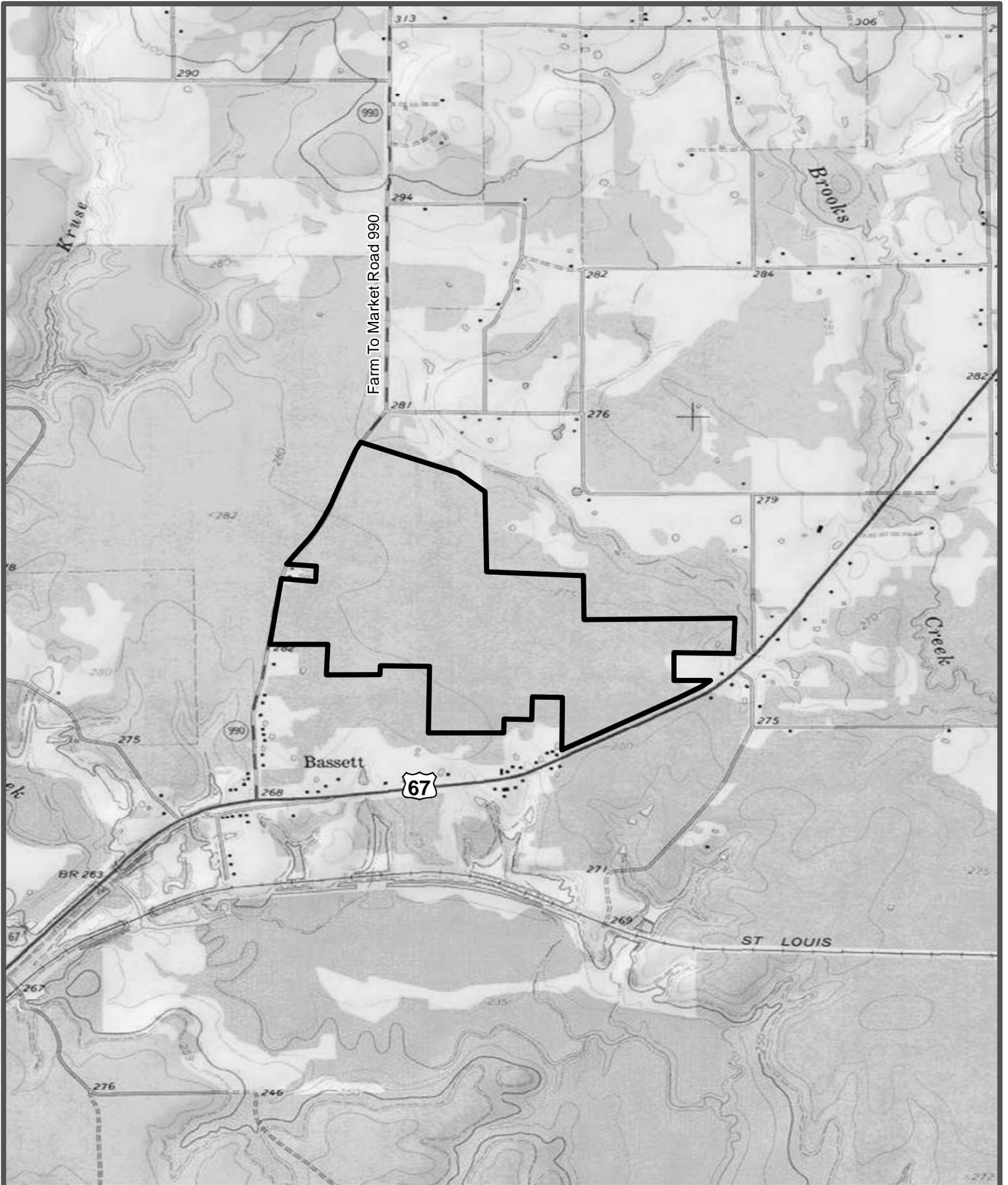


FIGURE 2

BROOKS CREEK MITIGATION BANK

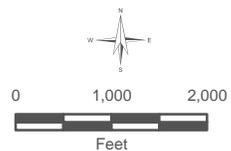
LOCATION MAP

BOWIE COUNTY, TEXAS

**Legend**

 Brooks Creek Mitigation Bank

 Resource  
Environmental  
Solutions  
SWF-2009-00343



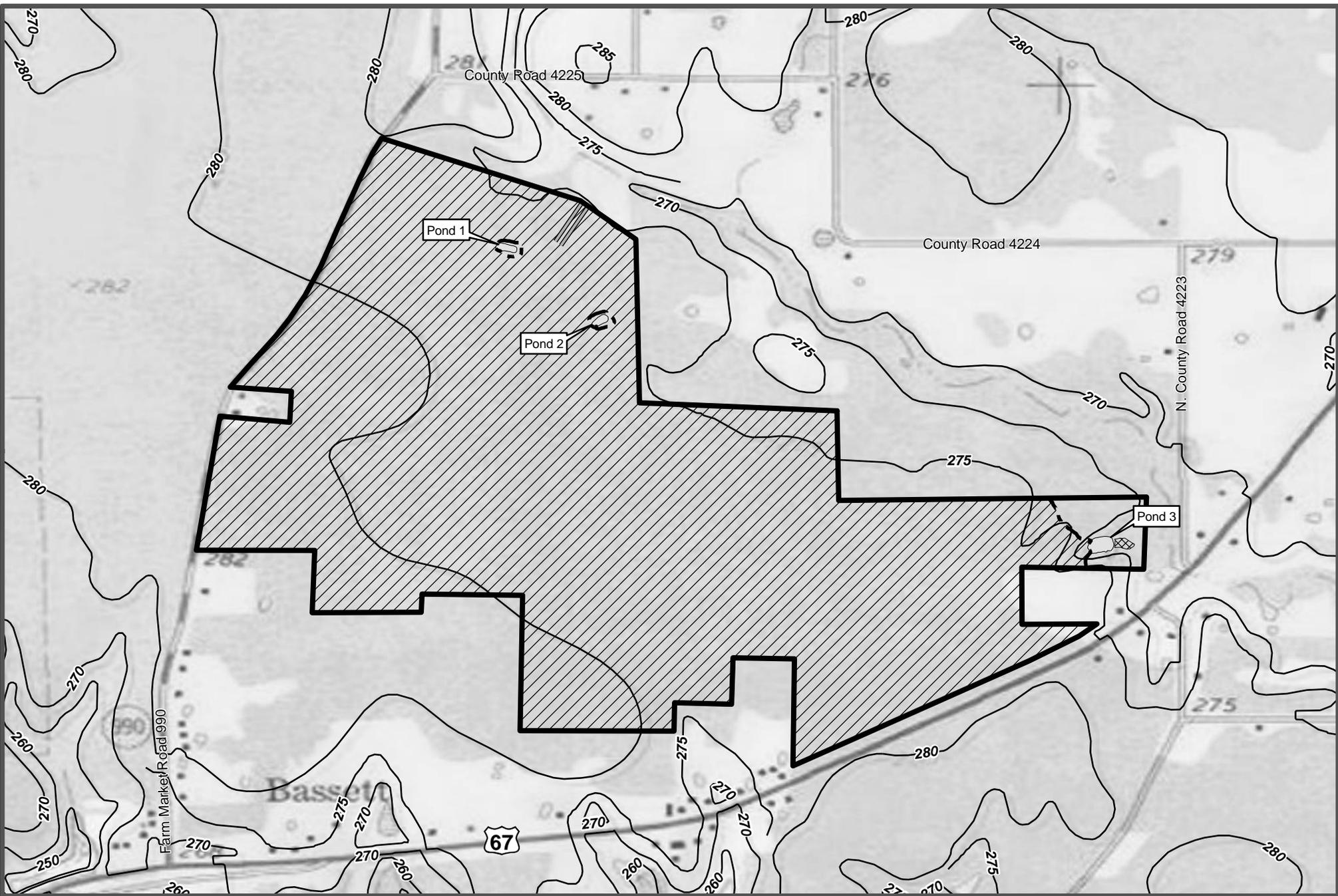


FIGURE 3

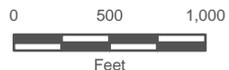
**BROOKS CREEK MITIGATION BANK**

**TOPOGRAPHIC MAP**

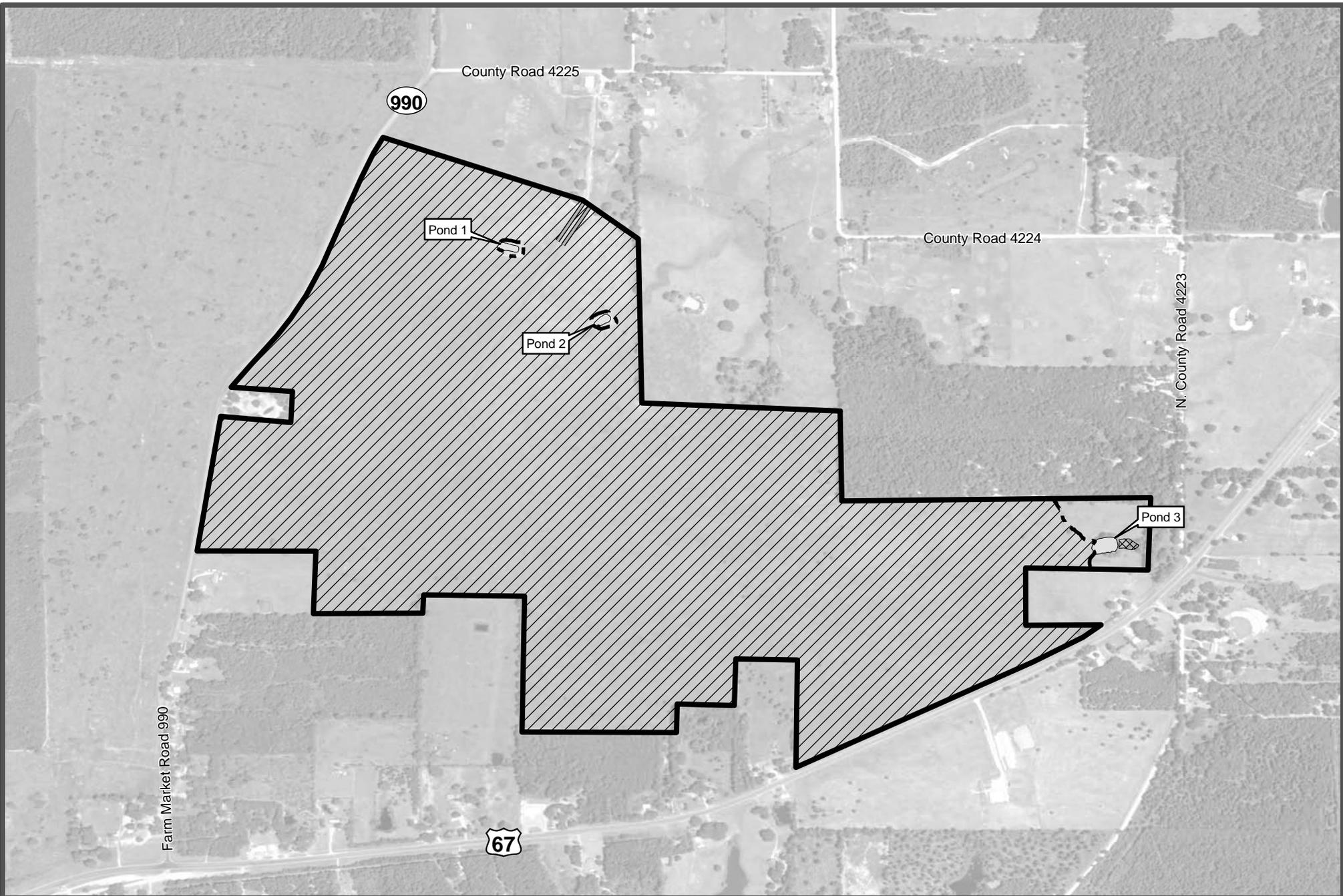
**BOWIE COUNTY, TEXAS**

Legend

-  Brooks Creek Mitigation Bank
-  Elevation, FT NAVD
-  Borrow Ditch
-  Pond
-  Palustrine Emergent Wetland
-  Palustrine Scrub/Shrub Wetland



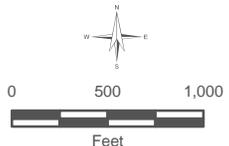
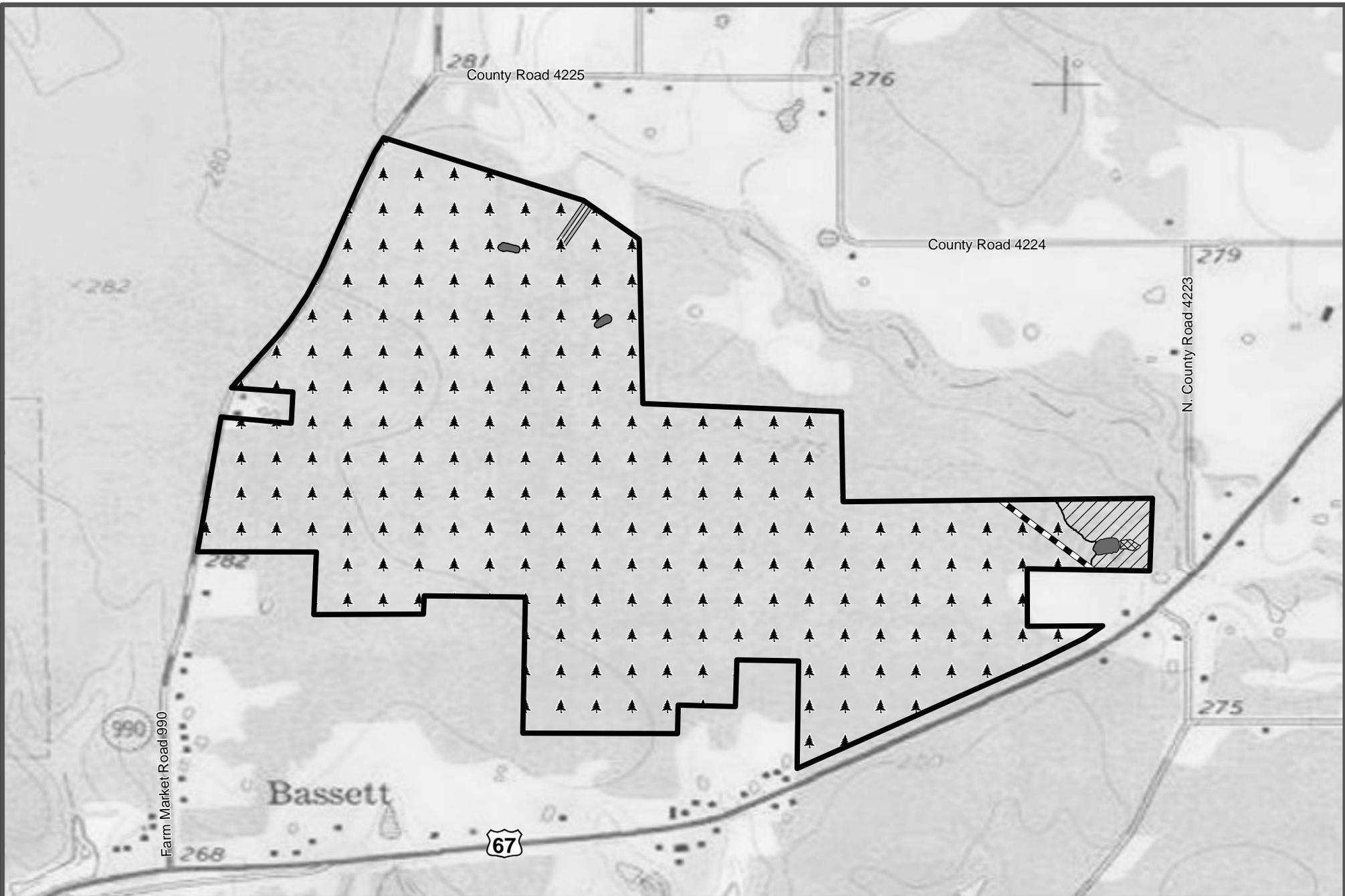
FTR001BC\_A004\_TopographicMap\_2009.mxd



**FIGURE 4**  
**BROOKS CREEK MITIGATION BANK**  
**2008 AERIAL MAP**  
**BOWIE COUNTY, TEXAS**

*Legend*

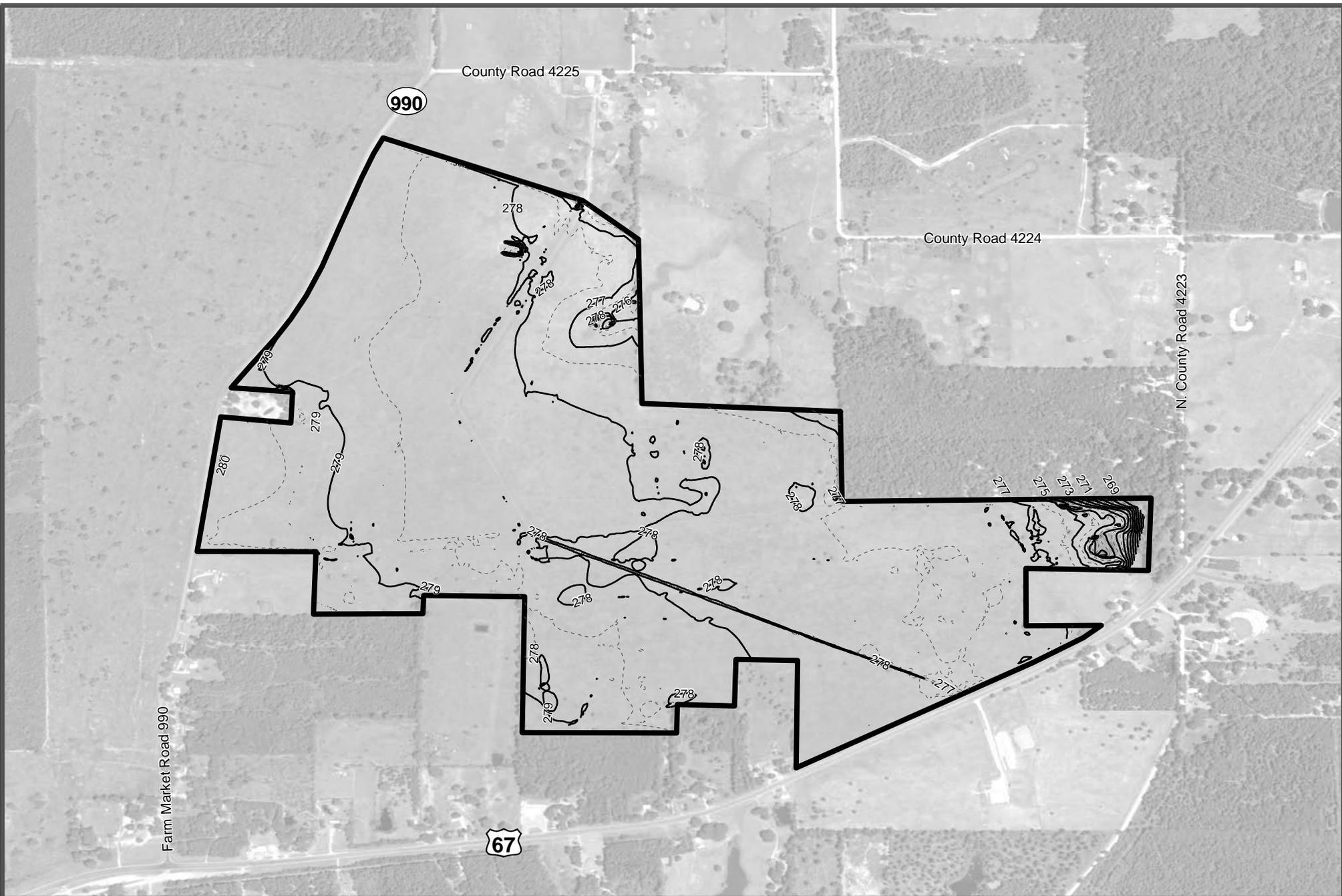
-  Brooks Creek Mitigation Bank
-  Borrow Ditch
-  Pond
-  Palustrine Emergent Wetland
-  Palustrine Scrub/Shrub Wetland



**FIGURE 5**  
**BROOKS CREEK MITIGATION BANK**  
**PROPOSED MITIGATION WORK**  
**BOWIE COUNTY, TEXAS**

**Legend**

-  Brooks Creek Mitigation Bank
-  Powerline ROW
-  Palustrine Forested Wetland Rehabilitation
-  Pond Removal/Emergent Wetland Rehabilitation
-  Scrub/Shrub Wetland Rehabilitation
-  Upland Buffer Enhancement
-  Borrow Ditch Removal



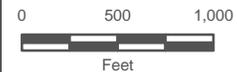
**FIGURE 6**  
**BROOKS CREEK MITIGATION BANK**  
**CONTOUR MAP**  
**BOWIE COUNTY, TEXAS**

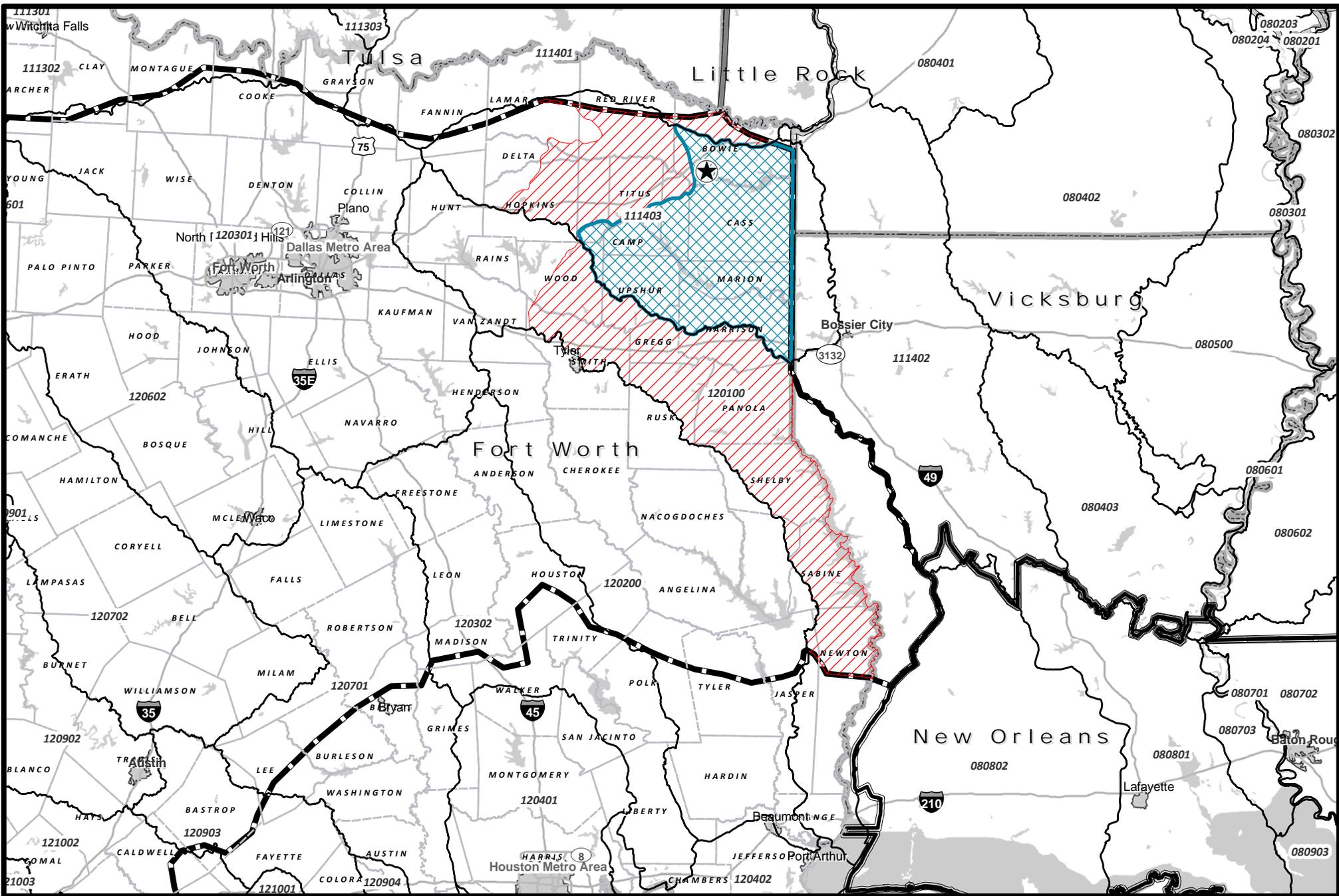
**Legend**

-  Brooks Creek Mitigation Bank
-  One Foot Contour, NAVD
-  Half Foot Contour, NAVD



SWF-2009-00343





**FIGURE 7**

**BROOKS CREEK MITIGATION BANK**

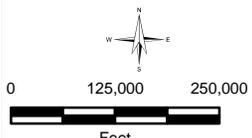
**SERVICE AREAS**

**BOWIE COUNTY, TEXAS**

**Legend**

- ★ Brooks Creek Location
- ▨ Primary Service Area
- ▧ Secondary Service Area

- USACE DISTRICT**
- ▭ New Orleans
  - ▭ Fort Worth
  - ▭ Little Rock
  - ▭ Tulsa
  - ▭ Vicksburg



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